

NH.PUC*01/04/82*[79160]*67 NH PUC 1*Public Service Company of New Hampshire

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Re Public Service Company of New Hampshire

DE 80-47, Supplemental Order No. 15,411

67 NH PUC 1

New Hampshire Public Utilities Commission

January 4, 1982

MOTION for rehearing denied.

1. PROCEDURE, § 7 — Determination of preliminary questions — Issues.

[N.H.] Whether an issue exists depends on the extent to which the evidence before the commission is judgmental. p. 1.

2. PROCEDURE, § 30 — Findings — Commission's statement of reasoning.

[N.H.] The statutory requirement that the commission state the reasoning behind its decision on each issue means that it is required to state the basis of its findings and conclusions, and once that statement is made, the reason is sufficient, regardless whether others would reach the same conclusion. p. 2.

BY THE COMMISSION:

REPORT

[1] In the PSNH Motion for Rehearing, (hereinafter Motion) the Company claims the Commission did not adequately address all of the subsidiary assumptions contained in Mr. Camfield's results; at least not to the extent required by RSA 363:17b, II and III. The Commission believes otherwise as explained below, but first it is necessary to look briefly at the relevant statute.

RSA 363:17-b requires that the Commission make

"A decision on each *issue* including the *reasoning* behind the decisions ... ". (Emphasis supplied)

Whether the Commission's Order in any instance conforms with this statutory requirement is a function of what is or is not an "issue". The answer to that question is not always apparent. But the Commission does believe the answer depends in large measure on the extent to which the evidence before the Commission is judgmental. Estimation of prospective electric growth,

especially over the next decade, is probably as judgmental as anything that can be imagined. It makes little sense to split hairs over the details or the relevancy or accuracy of all the factors making up such an estimate once the Commission has determined a preference for one methodology over another and has accepted the judgment of one witness over another.

It is the Commission's opinion that the "issue" in this docket is the annual growth rate of PSNH demand. Other questions are subsidiary, as recognized in the PSNH Motion, and need not be addressed item by item in the Order on this type of docket. Admittedly in a docket arriving at a revenue deficiency, money costs, rate base, operating etc. are all issues. In that situation there are subsidiary questions that need to be addressed. This refinement improves the end result. In this docket it does not do so, especially since half the analysis,

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supply side, is not adequately addressed in the record.

[2] Having selected Mr. Camfield's range to what extent must the Commission explain its "reasoning" pursuant to the above cited statute. Generally, it is considered that a Commission is required to state the reason or basis underlying its findings and conclusions. However, once this requirement is met, it is generally improper to question the decision as to how the decision was made or what factors were considered. *United States v Morgan* (1941) 313 US 409, 40 PUR NS 439, 85 L Ed 1429, 61 S Ct 999. *Morgan* indicates to the Commission that the RSA 363 "reasoning" is not a mental process the Commission must disclose but the Commission's answer to what *it* relied on in arriving at its conclusions. Once disclosed, unless the reason proffered by the Commission is clearly contrary to the record, that reason is sufficient whether others would come to the same conclusion or not. At that point the reason given is legally sufficient whether the parties agree or disagree as to the merit of the reason upon which the decision rests. The Commission arrived at its conclusion in this case when it selected Mr. Camfield's range. The reason for that selection is the Commission's opinion that his methodology is a sounder approach in this docket to making projections than the other approaches on record. The Commission does not believe it need go any further in explaining its decision, other than to point out that it should be understood that implicit in the Commission's selection of Mr. Camfield's approach is the Commission preference for his judgment.

Even though consistent with the above discussion, the Commission believes its Order is legally sufficient, the Commission will now briefly turn its attention to specifics of the PSNH Motion and to the opposition to the Motion filed by the Conservation Law Foundation (CLF).

Specifically, in paragraph 3 of the Motion, subparagraphs (a) and (b) do not require a response whereas the substance of the remaining points in paragraph 3 comes down to a matter of disagreement by PSNH with the Commission's acceptance of Mr. Camfield's judgement. The same can be said, after a close analysis, of paragraphs 6, 15, and 16.

Paragraphs 4 and 5 of the PSNH Motion do appear to have some merit. However, since PSNH attaches no quantifying numbers to paragraph 4, the best the Commission can do is agree with PSNH that Mr. Camfield's results may be "understated". (PSNH Brief pg IV 22). Recognition of such a possibility is not much help in and of itself. Other factors appear to be overstated by Mr. Camfield leading to a lower growth rate.

Although paragraph 5 gives the Commission greater specificity it would at best appear to be a new argument and even if it has merit, it is untimely. Therefore, at this time, the Commission can only conclude that paragraphs 4 and 5 tend to persuade the Commission that there is in fact some evidence to argue against the Commission's choice of the lower end of Mr. Camfield's range. However the Commission still finds the general tenor and weight of the record on the whole argues for the lower end of Mr. Camfield's range, especially given the historical track record of predicted as opposed to realized growth rates. But in recognition of these concerns on the part of PSNH the Commission will reiterate it has found Mr. Camfield's entire range of 3.0% - 3.5% appropriate given

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the record and continues to rely on it. Obviously 3.0% is within that range.

The major remaining part of the Motion as yet unaddressed is paragraphs 8 through 15. To summarize, these paragraphs deal with Seabrook and allegations of a violation of PSNH's rights to due process concerning Seabrook. The Company objects to the Order's reliance on a "base case" concept and argues that only the Company has included, in a proper way, consideration of Seabrook.

During the hearing the Company was most anxious to avoid expansion of this case to include Seabrook, now PSNH appears to be claiming that since others did not do an analysis to include Seabrook, only PSNH can prevail. But, it was exactly the Commission's concern about affording a sufficiently adequate scope of hearing to satisfy all parties that led to the decision to initiate a more inclusive investigation. PSNH also claims inadequate notice was given about limiting the scope of this proceeding to a "base case." Even if the time between the objected to April 22, 1981 Notice and the hearing was short, it was nevertheless perceived by the Commission as better to clearly restrict the scope of this docket and open another docket than to be subject to attack for expanding the scope of this docket.

To be specific about Seabrook, the fundamental difficulty with adopting the Company's analysis of Seabrook starts with their conclusion Seabrook will reduce rates and increase demand, a self fulfilling prophecy. Having taken that position, which is central to its whole conception of future demand, it is simply not equitable to then prohibit the other parties from exploring the eventual cost of power produced by Seabrook.

Parts of paragraphs 11, 12, and 14 demonstrate a simple misunderstanding of the Order. To clarify and repeat its intentions, this Commission is not now, or will it in the future, collaterally or directly attack the Company's Certificate of Site and Facility, nor however will the Commission abdicate its other statutory responsibilities to the ratepayer.

Paragraph 18 is a statement of the Company's opinion of Mr. Camfield's approach. The Commission does not share the same view. However, since the Commission does not intend to rely exclusively upon the results of this docket because of the need for a simultaneous review of supply and demand, the question is moot.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

In accordance with the accompanying Report which is made a part hereof, it is hereby ORDERED that the Motion of Public Service Company of New Hampshire for Rehearing in the above entitled matter is denied.

By Order of the Public Utilities Commission this fourth day of January, 1982.

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NH.PUC*01/05/82*[79161]*67 NH PUC 4*Nuclear Emergency Planning

[Go to End of 79161]

Re Nuclear Emergency Planning

Intervenors: Office of Civil Defense, Public Service Company of New Hampshire, Community Action Program, Selectmen for the Town of Hampton, Selectmen for the Town of Brentwood, Concerned Citizens Within a Ten Mile Radius, Selectmen for the Town of South Hampton, Selectmen for Rye, New Hampshire League of Women Voters, Selectmen for the Town of Kensington, and Selectmen for the Town of Newton et al.

DE 81-304, Order No. 15,412

67 NH PUC 4

New Hampshire Public Utilities Commission

January 5, 1982

EXPENSES assessed for Civil Defense evacuation plans.

ATOMIC ENERGY — Evacuation plans — Assessment of costs.

[N.H.] A statutory section that provided that the chairman of the public utilities commission was to assess utilities for the cost of preparing emergency evacuation plans and for providing equipment and materials to implement them was interpreted not to include personnel costs which were subject to the public comment and consideration provisions of a second section.

APPEARANCES: Peter Scott, Attorney General's Office on behalf of Civil Defense; D. Pierre Cameron, Jr., for Public Service Company of New Hampshire (PSNH); Gerald Eaton for Community Action Program (CAP); Robert A. Stein for Representative Beverly Hollingworth and Representative Roberta Pevear; Representative Arnie Wight, pro se; Tomlin P. Kendrick, Coastal Chamber of Commerce, pro se; Selectmen for the Town of Hampton; Selectmen for the Town of Brentwood; Concerned Citizens Within a Ten Mile Radius; Selectmen for the Town of South Hampton; Selectmen for Rye; New Hampshire League of Women Voters, Rina Petit; Selectmen for the Town of Kensington; Selectmen for the Town of Newton; and Mary Metcalf, pro se.

BY THE COMMISSION:
REPORT

The Office of Civil Defense has filed with the Commission two requests for expenses to be assessed by use of the provisions of the recently enacted RSA 107-B. The first request relates to a request for \$703,635, \$679,000 of the amount relates to the hiring of a consulting firm, Costello, Limasney and DeNapoli, Inc. for the purpose of developing a Radiological Emergency Response Plan for the Seabrook Station. The remaining \$24,635 is for the Massachusetts Civil Defense Agency for oversight assistance.

The second request was for an assessment of \$105,520 to be assessed against the Vermont Yankee Corporation (\$36,000) and Public Service Company of New Hampshire (\$69,520). These expenses

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are sought for administration and oversight of the Radiological Emergency Response Plan (RERP). Early in the proceedings, Civil Defense sought deferral of discussion concerning Vermont Yankee due to potential problems with notice and the ability to assess this corporate entity. While I recognize there are certain problems with procedural due process certainly the testimony in this proceeding, together with common sense, dictate initial focus on Vermont Yankee due to its actual operation.

Civil Defense requested that the statutes of the consulting contract be determined initially and that these additional assessments totalling \$105,520 be deferred (Transcript, Pages 3 - 3,4). However, later Civil Defense updated their assessment for PSNH from \$69,520 to \$68,873. Still later an update was provided of \$69,000 and a request to immediately consider these expenses for assessment.

Hearings began on November 19, 1981 and were held on two other occasions ending on November 25, 1981. Testimony was received from various State Representatives who have been active in energy. Consumers were provided an opportunity to speak.

The hearings raised numerous questions as is typical for a new piece of legislation. Furthermore, the record reveals that while the legislature passed the law, there remain many legislators and citizens who believe the law should be altered in some fashion. However, whatever the strength or infirmities I must comply with the law as written.

Under the Statute the Chairman has certain designated powers. The powers are specific and to a certain extent limited.

The first section of the Statute states as follows:

"I. The civil defense agency shall, in cooperation with affected local units of government, initiate and carry out a nuclear emergency response plan as specified in the licensing regulations of each nuclear electrical generating plant. The chairman of the public utilities Commission shall assess a fee from the utility, 'as necessary', to pay for the cost of preparing the plan and providing equipment and materials to implement it."

RSA 107-B:2 states the following:

"II. The director of civil defense shall conduct an annual review of the nuclear emergency response plans for those municipalities located in the emergency planning zone, as defined in Nuclear Regulatory Commission regulation Title 10, Code of Federal Regulations, Part 50.

"107-B:2 Annual Emergency Response Budget. The municipalities shall submit annually their emergency response budget to the director of civil defense who shall provide a reasonable opportunity for public comment and consideration. The director shall also receive and review the appropriateness of any budget request from any other state agency necessary for radiological emergency preparedness as outlined in the plan. The director shall then submit an approved total annual budget to the chairman of the public utilities commission for assessment against the utility or utilities."

Finally, RSA 107-B:3 Assessment states the following:

"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

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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."

Civil defense contends that the entire level of the expenses requested in this proceeding are subject to the first section of the statute and as a consequence the Chairman of the Public Utilities Commission, according to Civil Defense, must simply assess the money. Intervenors, especially the Representatives of the Seacoast and the Selectmen offices from the Seacoast, contend that the Commission should not recognize these expenses because there has been a failure to provide an opportunity for municipalities to file their respective annual emergency response budget and because there has been no reasonable opportunity for public comment.

The difference between the two contentions offered relate primarily to the two sections of the statute. Section 1 of the statute has no requirement of public comments nor does it require action initiated at the municipal level whereas Section 2 clearly does. Furthermore, Section 2 clearly is an allowance for an annual assessment that while unlimited in terms of dollars does require it to be an annual assessment.

Applying the statute sections to this case requires acceptance of some of each position offered. The contract with the consulting firm is clearly a cost of preparing the plan. It is clear from the intent of the legislation that the legislative and executive branches desire a program to provide for any emergencies that might develop as a result of the construction of a nuclear plant. The Civil Defense Agency has been entrusted with the power to initiate this plan by the Legislature. Their efforts, approved by the Attorney General's Office and then subsequently by the Governor and Executive Council, cannot be overturned by any action of the Chairman of the Public Utilities Commission. There is no grant of Legislative power to me or my predecessors to overturn the decisions of another State Agency, the Attorney General's Office, the Legislature and the Governor and Executive Council on such matters.

Thereby, I approve the assessment of \$679,000 for the hiring of the consulting firm, said funds to be assessed against PSNH. The \$24,365 for the Massachusetts Civil Defense Agency consists of costs of personnel, equipment and expenses. The \$5,000 associated with expenses and equipment is allowed as being part of the cost of "equipment and materials to implement" the plan. Both of these expense requests fall within Section I of the Statute (107-B:1) which clearly reserves only as assessment power to the Chairman or as I noted in the hearing a launderer of the money.

Of the requested \$69,000 for the New Hampshire Civil Defense Agency, I will recognize that \$19,600 of the expenses are associated with equipment or material to implement the plan. However, personnel expenses are not included under Section I and therefore these expenses plus the overtime request must await consideration in a proceeding pursuant to Section II of the statute which requires that an annual or one submission is allowed and then only after public comment and consideration and submissions by the affected municipalities.

I find that Civil Defense personnel expenses must be a Section II assessment where these expenses relate to overseeing or formulating the plan. As such, these expenses found to be reasonable by Civil Defense submitted by either

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municipalities or other State agencies must be subject of a Section II or RSA 107-B:2 proceeding. Since the public has not been accorded an opportunity to comment nor have municipalities submitted their budgets, nor has there been a certification that either the \$69,000 or the \$105,000 is an annual budget, any further recognition is impossible. The statute only allows me to act on an approved total annual budget.

Clearly, once that approved annual budget is submitted, I must approve the assessment since I find no grant of power to challenge its scope or amount.

It is clear that in this area agencies must be careful to only operate within the limits set by the Legislature. Ventures into the power of one agency by another can only lead to an increasing level of bureaucracy and indecision. Since the Civil Defense Agency clearly has the Legislative delegation of power it is they that must bear the responsibility of decisions concerning evacuation.

Evacuation planning for nuclear plant emergencies originally arose as a regulation of the NRC, belatedly after the Three Mile Island incident. Unfortunately, the NRC is now taking steps to relax those regulations. No doubt my frustration over this NRC backstep is mirrored in the frustrations of those that have raised concerns in this proceeding.

Certainly the NRC, Civil Defense or the Site Evaluation Committee should determine an answer to the questions of (1) the time limits within which those in the area surrounding the nuclear power plant can be safely evacuated; (2) a feasibility study to determine whether or not an evacuation could be carried out within the time frame; and (3) an analysis of the likelihood of the risks occurring in the first place and what type of risks are possible.

This Commission does not have the resources or the time or the in-house expertise to evaluate these factors. Nor under present statutes does the Commission appear to have any

substantial power in this area.

It appears that by assessing the costs for initiating a program, the Commission is complying with the State mandate and further that if done correctly some of these concerns can be answered. The Commission, nor I have access to the information to determine what risks if any are involved, how likely they are going to occur and what is a reasonable definition of safe under each possible risk. Unfortunately, the answer to these questions will continue to be unresolved because of the varying reactions by the NRC to evacuation plans in general and the continued attempt to place the evacuation issue into a verdict on nuclear power.

The following is thus approved for assessment under the provisions of RSA 107-B:9:

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

REQUESTEDAPPROVED

| | | |
|---------------------|-----------|-----------|
| Consultant | \$679,000 | \$679,000 |
| Mass. Civil Defense | \$ 24,635 | \$ 5,000 |
| N.H. Civil Defense | \$ 69,000 | \$ 19,600 |
| Total Approved | \$772,635 | \$703,600 |

PSNH is to pay the expenses associated with the two civil defense offices immediately. As for the consultant, the Commission will adopt CAP's suggestion and have payment on a two month basis in six installations with the first two months to be paid immediately. This will allow payment to correspond to the work completed and further it will minimize any cash flow problems.

My Order will issue accordingly.

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ORDER

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

ORDERED, that I hereby certify that \$703,600 be assessed against Public Service Company of New Hampshire pursuant to RSA 107-B:3 and 4 of which \$137,767 is to be paid within thirty days and the remainder in five additional and equal installments two months apart in duration.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1982.

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NH.PUC*01/05/82*[79162]*67 NH PUC 8*Public Service Company of New Hampshire

[Go to End of 79162]

Re Public Service Company of New Hampshire

DF 81-352, Supplemental Order No. 15,413

67 NH PUC 8

New Hampshire Public Utilities Commission

January 5, 1982

PETITION for authority to extend further the maturity of term notes granted as being in the public good.

APPEARANCES: Frederick J. Coolbroth for the petitioner.

BY THE COMMISSION:

SUPPLEMENTAL REPORT

In the continuation of this docket, Public Service Company of New Hampshire is seeking authority under RSA 369 to further extend the maturity of certain Term Notes aggregating \$25,000,000 originally issued pursuant to our Order No. 12,991 dated December 19, 1977 (62 NH PUC 336), and (now outstanding under Order No. 14,623 dated December 18, 1980 (65 NH PUC 636). The Company has withdrawn its request for authority to increase the amount of such Term Notes to be outstanding and to issue a new Term Note to Barclay's Bank International Limited, or an affiliate thereof.

A continued hearing in the above docket was held in Concord on December 16, 1981, at which the Company submitted the testimony of Charles E. Bayless, Financial Vice President.

Mr. Bayless stated that the Company proposed to extend until January 11, 1983, the maturity of \$25,000,000 in principal amount of Term Notes now outstanding and payable on January 7, 1982, the seven lending banks and the amount which each has lent the Company being as follows:

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

| | |
|--|-------------|
| Citibank, N.A. | \$5,000,000 |
| The First National Bank of Boston | 5,000,000 |
| Manufacturers Hanover Trust Company | 5,000,000 |
| Morgan Guaranty Trust Company of New York | 5,000,000 |
| Bank of America National Trust and Savings Association | 2,000,000 |
| Continental Illinois National Bank and Trust Company of Chicago | 2,000,000 |
| Shawmut Bank of Boston, N.A. | 1,000,000 |

Mr. Bayless further stated that the Company and the banks had agreed in principle, subject to regulatory approval, to the proposed extension of maturity to January 11, 1983, upon the existing terms, which provide for interest to be paid quarterly at fluctuating interest rates per annum equal to the sum of 116% of the base commercial lending rate charged from time to time by The First National Bank of Boston, plus 1/4%, and that the principal or any portion in integral multiples of \$1,000,000 may be repaid at any time upon three days notice.

Mr. Bayless stated that the Company believes that it is preferable to extend the maturity of the Term Notes rather than repaying them at maturity so that other permanent financing can be utilized to meet the Company's heavy 1982 construction financing requirements. Additionally, repaying the Term Notes at maturity would cause the Company to approach the limit of its

short-term lines of credit.

The Company submitted a balance sheet as at September 30, 1981, actual and pro formed to reflect the extension of the maturity and increase in amount of Eurodollar Term Notes from \$28,000,000 to \$55,000,000; the proposed extension of the maturity of \$25,000,000 Term Note; and the proposed sale of \$50,000,000 General and Refunding Mortgage Bonds.

Upon investigation and consideration, the Commission is satisfied and finds that extension of the maturity of the Term Notes will be consistent with the public good.

Our order will issue authorizing the extension of the maturity, on the terms presented, of the Company's outstanding Term Notes in the amount of \$25,000,000 payable to said group of commercial banks.

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to extend until January 11, 1983, the maturity of its Term Notes in the aggregate amount of \$25,000,000 presently payable on January 7, 1982, to the banks as follows:

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

| | |
|--|-------------|
| Citibank, N.A. | \$5,000,000 |
| The First National Bank of Boston | 5,000,000 |
| Manufacturers Hanover Trust Company | 5,000,000 |
| Morgan Guaranty Trust Company of New York | 5,000,000 |
| Bank of America National Trust and Savings Association | 2,000,000 |
| Continental Illinois National Bank and Trust Company of Chicago | 2,000,000 |
| Shawmut Bank of Boston, N.A. | 1,000,000 |

and bearing interest at fluctuating rates per annum equal at all times to the sum of 11655 of the base commercial lending rate charged from time to time by The First National Bank of Boston, plus 1/4%.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1982.

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NH.PUC*01/06/82*[79163]*67 NH PUC 10*Leak Survey and Reporting Procedure

[Go to End of 79163]

Re Leak Survey and Reporting Procedure

Intervenors: Concord Natural Gas Corporation, Gas Service, Inc., Manchester Gas, Inc., Northern Utilities, and Bay State Gas Company

DRM 81-307, Order No. 15,414

67 NH PUC 10

New Hampshire Public Utilities Commission

January 6, 1982

RULES and regulations concerning gas leak surveys and repairs modified.

APPEARANCES: Howard Moffett (Orr & Reno) representing Concord Natural Gas Corp., Gas Service, Inc., Manchester Gas, Inc., Northern Utilities.

BY THE COMMISSION:

REPORT

On October 7, 1981, staff submitted for Commission consideration proposed changes to the "Rules and Regulations Prescribing Standards for Gas Utilities" which provided specific guidance in regard to leak detection surveys.

The proposed change, PUC 508.04 *Leak Surveys and Action Criteria*, provided minimum requirements for gas leak identification classification, action criteria, and record maintenance. It also included three (3) tables identifying leak classification and action criteria by leak grade, and a monthly leak report (form PUC 409:20).

Public notice was issued to all regulated New Hampshire Gas Utilities and, additionally to M. Arnold Wight, Jr., Chairman, Science and Technology Committee, New Hampshire Legislature; Ward Brown, Chairman, Internal Affairs Committee; Conrad L. Quimby, Chairman, Commerce and Consumer Affairs Committee; and Donald S. Jennings, Director, Office of Legislative Services.

A public hearing was held on November 16, 1981, at 11:00 a.m. in the Commission's Concord office. Appearances included Howard Moffett, Esq., representing Concord Natural Gas Corp., Gas Service, Inc., Manchester Gas, Inc. and Northern Utilities, and Charles Setian, Vice President of Operations, Bay State Gas Company.

The Rules recommended by staff are based on standards generated by the Gas Piping Standards Committee of the American Society of Mechanical Engineers. That Committee published a "Guide for Gas Transmission and Distribution Piping Systems" as part of its overall safety codes and standards activities which is widely used by the Gas industry and Federal and State regulators as a technical supplement to the "Minimum Federal Safety Standards" published by the U.S. Department of Transportation in support of the Natural Gas Pipeline Safety Act, which became effective on August 12, 1968. The ASME Guide provided, specifically, for "Gas Leakage Control Guidelines". Those guidelines formed the basis for staff's proposal. Staff's document was offered as Exhibit #1.

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At the hearing, staff offered an amendment (Exhibit 2) which enlarged and clarified the provisions of PUC 508.04 B *Minimum Requirements*. It also offered Exhibits 3 and 4 which adds a requirement for the submission of monthly leak reports.

The Companies offered Charles Setian, Vice President of Operations for Bay State Gas

Company. Mr. Setian offered changes to Section B. which would allow the use of flame ionization equipment to satisfy the annual gas detector survey conducted in business districts, and which revised Section B.4 to limit the scope of winter patrol leakage surveys to the cast iron portion of gas distribution systems. He also expressed concern that the four (4) week requirement to repair Grade 2 leaks was too severe, and recommended action which allowed such repairs within the calendar year.

Mr. Setian commented that the proposed rules are far more severe than the current federal standards, but that his company supported them if his recommendations were adopted.

Representatives from Gas Service, Inc.; Manchester Gas Company; and Concord Gas Company agreed with the position of Mr. Setian.

Staff agreed to the first of the two proposals on the record. It did not agree with the proposal which eliminated the four (4) week time period to repair Grade 2 leaks. The Commission allowed an informal conference of all parties in order to arrive at a settlement on that point.

The Commission has been advised by staff that the parties have agreed to a new provision which will specify that all Class 2 leaks shall be repaired either within 6 months or by the end of the calendar year in which the leak was discovered, whichever is the shorter.

Staff explains that the ASME Guide recommends that Class 2 leaks should be repaired or cleared within one calendar year, but no later than 15 months from the date the leak was discovered. Staff also points out that its experience in dealing with other state regulatory agencies reveal that the twelve month repair time is more widely accepted, and appears to be the minimum time imposed on the industry. Staff emphasizes that Grade 2 leaks are, by definition, leaks which do not present an immediate hazard to the general public since they are not in immediate proximity to buildings or tunnels.

The Commission accepts the negotiated modifications as stated. It is satisfied that six (6) months will provide a satisfactory time period within which Grade 2 leaks will be repaired. It also accepts the two proposals offered by the company witnesses and will allow them to be incorporated as offered.

The Commission finds that the proposed rules are in the public interest. They will require more frequent leak surveys than some companies now provide, and they are certainly far more restrictive than the Federal Regulations. They will provide specific instructions to companies as to the expectations of the Commission. We will allow the rule as follows:

PUC 508.04 LEAK SURVEYS AND ACTION CRITERIA

A. Periodic Surveys

Each operator of a distribution system shall provide for period leakage surveys in its Operating and Maintenance Plan.

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B. Minimum Requirements

The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions (i.e.: L.P. distribution systems, natural gas distribution

systems), but it must meet the following minimum requirements:

1. *Annual Gas Leakage Survey — Business districts* — A gas detector survey must be conducted in business districts including tests of the atmosphere in gas, electric, telephone, sewer, and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks, at least once each year. Such survey shall be made during the period March 1 to December 1.

2. *Annual Gas Leakage Survey — Outside business districts* — Leakage survey of the distribution system outside of the principal business areas must be made at least once each year. Such survey shall be made during the period March 1 to December 1.

3. *Annual Winter patrol leakage survey — Business districts* — A gas detector survey must be conducted each year in business districts during the period January 1 to March 1. This type of survey is usually conducted with a mobile flame ionization unit and the main objective is to detect Class I and Class II leaks.

4. *Annual Winter Patrol Leakage Survey — Outside Business District* A gas detector survey must be conducted each year in the cast iron distribution system outside of the principal business areas during the period January 1 to March 1. This type of survey is usually conducted with a mobile flame ionization unit and the main objective is to detect Class I and Class II leaks.

5. *Annual Building Survey* — A gas detector survey of buildings used for public assembly, including schools, churches, hospitals, theaters, municipal buildings, downtown areas, etc. will be conducted each year during the period March 1 to December 1. This survey will test areas around service entrances, inside the foundation wall, at conduit or cable entrances below grade and at cracks or breaks in the foundation wall where gas seepage might enter the basement. Tests for inspection will be made on exposed piping from the service entrance to the outlet side of the meter.

6. *Other Surveys* — Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled at intervals not exceeding 3 months.

C. Leakage Classification and Action Criteria

1. General

The following establishes a procedure by which leakage indications of flammable gas can be graded and controlled. When evaluating any gas leak, indication, the initial step is to determine the perimeter of the leak area. When this perimeter extends to a building wall, the investigation should continue into the building.

2. Leak Grades

Based on evaluation of the location and/or magnitude of a leak, one of the following leak grades should be assigned, thereby establishing the leak repair priority:

(a) Grade 1, a leak that represents an existing or probable hazard to persons or property, and requires immediate repair

within 24 hours or continuous action until the conditions are no longer hazardous.

(b) Grade 2, a leak that is recognized as being non-hazardous at the time of detection, but requires scheduled repair within six (6) months or before the end of the calendar year based on probable future hazard.

(c) Grade 3, a leak that is non-hazardous at the time of detection and can be reasonably expected to remain non-hazardous.

3. Guidelines and Action Criteria

Guidelines for leak classification and leakage control are provided in Tables 3a and 3c. The examples of leak conditions provided in the tables are presented as guidelines and are not excluded. The judgment of the company personnel at the scene is of primary importance in determining the grade assigned to a leak.

4. Follow-up Inspection

The adequacy of leak repairs should be checked before backfilling. The perimeter of the leak area should be checked with a CGI. Where there is residual gas in the ground after the repair of a Grade I leak, a follow-up inspection should be made as soon as practical after allowing the soil atmosphere to vent and stabilize, but in no case later than one (1) month following the repair. In the case of other leak repairs, the need for a follow-up inspection should be determined by qualified personnel.

5. Re-evaluation of a Leak

When a leak is to be re-evaluated (see Table 3c), it should be classified using the same criteria as when the leak was first discovered.

D. Records and Self Audit Guideline

1. Leak Records

Historical gas leak records should be maintained. Sufficient data should be available to provide the information needed to complete the Department of Transportation Leak Report Forms DOT-F-7100.1, DOT-F-7100.1-1, DOT-F-7100.2 and DOT-F-7100.2-1, and to demonstrate the adequacy of company maintenance programs. The following data should be recorded and maintained, but need not be in any specific format or retained at one location. Time of day and environmental description records are required only for those leaks which are reported by an outside source or require reporting to a regulatory agency.

- (a) Date discovered, time reported, time dispatched, time investigated and by whom.
- (b) Date (s) re-evaluated before repair and by whom.
- (c) Date repaired, time repaired and by whom.
- (d) Date(s) rechecked after repair and by whom.
- (e) If a reportable leak, date and time of telephone report to regulatory authority and by whom.
- (f) Location of leak.
- (g) Leak Grade

- (h) Line use (distribution, transmission, etc.)
- (i) Method of leak detection (if reported by outside party, list name and address.)

E. Leak Reporting Requirements

1. Each utility shall report to this Commission as soon as possible, consistent

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with the public welfare and safety, and leak, as later described, occurring in its system. The immediate, or first, report shall be by telephone, include the location and time discovered, a brief description of what occurred, and the individual to be contacted should further information be desired. This report shall be followed in not more than twenty (20) days by a written report on Department of Transportation Form DOT F 7100:1, Leak Report-Distribution System or on a form acceptable to the Commission showing the same information. Reports shall be made on any leak that —

- (a) Caused a death or a personal injury requiring hospitalization;
- (b) Resulted in gas igniting;
- (c) Caused estimated damage to the property of the operator, or others, or both, of a total of \$1,000 or more;
- (d) In the judgment of the utility was significant even though it did not meet the criteria of (a), (b), or (c);
- (e) Because of its location, required immediate repair and other emergency action to protect the public, such as evacuation of a building, blocking off an area, or rerouting traffic.

2. Each company shall submit a monthly leak report indicating the status of leaks (Form PUC 509:20).

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[Graphic Not Displayed Here]

Page 15

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Page 16

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

MONTHLY LEAK REPORT

Company:

Month of:

Status of Leaks

Number of leaks at
beginning of month -

Number of leaks
reported during
the month -

Number of leaks
repaired during
month -

Total leaks remaining
at end of month -

Company Official:

Date Submitted:

Our Order will issue accordingly.

ORDER

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

ORDERED, that the following amendment, which is specified in the report, to the Rules and Regulations Prescribing Standards for Gas Utilities be added:

"NHPUC 508.04 *Leak Surveys and Action Criteria.*"

By Order of the Public Utilities Commission of New Hampshire this sixth day of January, 1982.

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NH.PUC*01/06/82*[79164]*67 NH PUC 19*Mountain Springs Water Company

[Go to End of 79164]

Re Mountain Springs Water Company

DE 81-360, Order No. 15,415

67 NH PUC 19

New Hampshire Public Utilities Commission

January 6, 1982

HEARING ordered to determine an acquisition price for water company.

BY THE COMMISSION:

ORDER

WHEREAS, the Mountain Lakes District, a municipal corporation existing in the Town of Haverhill, New Hampshire, has petitioned this Commission to determine the value of the plant and property of the Mountain Springs Water Company; and

WHEREAS, RSA 38:5 allows that any town or village district may acquire a plant for the distribution of water after two thirds (2/3) of all the voters present and voting at a special meeting, have voted to do so; and

WHEREAS, the Mountain Lakes District has represented that such a vote was taken and resulted in the affirmative; and

WHEREAS, in accordance with RSA 38:6 the District so notified the Mountain Springs Water Company and sought its concurrence for the sale of the water company plant and property; and

WHEREAS, the Mountain Springs Water Company has declined to answer such inquiry and declined to submit a price and terms it is willing to accept for its plant and property; and

WHEREAS, RSA 38:9 and RSA 38:10 provide that if the utility shall reply in the negative, this Commission, after proper notice and hearing, shall fix the price to be paid for said plant and property; it is hereby

ORDERED, that a hearing shall be held at the Commission offices on January 27 and 28, 1982, at 10:00 a.m., for the purpose of determining the price to be paid them by Mountain Lakes District for the plant and property of the Mountain Springs Water Company.

By order of the Public Utilities Commission of New Hampshire this sixth day of January, 1982.

=====

NH.PUC*01/07/82*[79165]*67 NH PUC 19*Concord Electric Company

[Go to End of 79165]

Re Concord Electric Company

DR 82-3, Order No. 15,418

67 NH PUC 19

New Hampshire Public Utilities Commission

January 7, 1982

CREDIT ordered on electric company bills.

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BY THE COMMISSION:

ORDER

WHEREAS, Concord Electric Company was allowed to pass through to its customers increased purchased power costs under Federal Energy Regulatory Commission Docket No. ER80-140; and

WHEREAS, settlement of said docket results in lesser costs than proposed and collected; and

WHEREAS, the Public Service Company of New Hampshire will refund any overcollected funds to Concord Electric Company during January through June, 1982; and

WHEREAS, Concord Electric Company similarly proposes to credit its consumers those monies received from PSNH during the same period and has filed with this Commission its Supplement No. 2 to Tariff, NHPUC No. 7 — Electricity documenting such credit; and

WHEREAS, the Commission finds such credit to be in the public good; it is

ORDERED, that Supplement No. 2 to Concord Electric Company Tariff, NHPUC No. 7 — Electricity, be, and hereby is, approved for effect with all bills rendered on and after January 1, 1982.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1982.

=====

NH.PUC*01/07/82*[79166]*67 NH PUC 20*Exeter and Hampton Electric Company

[Go to End of 79166]

Re Exeter and Hampton Electric Company

DR 82-4, Order No. 15,419

67 NH PUC 20

New Hampshire Public Utilities Commission

January 7, 1982

CREDIT ordered on electric company bills.

BY THE COMMISSION:

ORDER

WHEREAS, Exeter & Hampton Electric Company was allowed to pass through to its customers increased purchased power costs under Federal Energy Regulatory Commission Docket No. ER80-140; and

WHEREAS, settlement of said docket results in lesser costs than proposed and collected; and

WHEREAS, the Public Service Company of New Hampshire will refund any overcollected funds to Exeter & Hampton Electric Company during January through June, 1982; and

WHEREAS, Exeter & Hampton Electric Company similarly proposes to credit its consumers

those monies received

from PSNH during the same period and has filed with this Commission its Supplement No. 5 to Tariff, NHPUC No. 14 — Electricity, documenting such credit; and

WHEREAS, the Commission finds such credit to be in the public good; it is

ORDERED, that Supplement No. 5 to the Exeter & Hampton Electric Company Tariff, NHPUC No. 14 — Electricity, be, and hereby is, approved for effect with all bills rendered on and after January 1, 1982.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1982.

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NH.PUC*01/07/82*[79167]*67 NH PUC 21*New Hampshire Electric Cooperative, Inc.

[Go to End of 79167]

Re New Hampshire Electric Cooperative, Inc.

Intervenor: Office of Consumer Advocate

DF 81-375, Order No. 15,422

67 NH PUC 21

New Hampshire Public Utilities Commission

January 7, 1982

PETITION for authority to borrow through the Rural Electrification Administration approved.

APPEARANCES: Mayland H. Morse for the petitioner; Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:

REPORT

The unopposed petition filed December 8, 1981, upon which a hearing was held on January 4, 1982, before the Public Utilities Commission, filed by the New Hampshire Electric Cooperative, Inc., a public utility operating under the jurisdiction of this Commission.

The New Hampshire Electric Cooperative, Inc. seeks authority pursuant to RSA 369 to borrow \$ 10,000,000 through the Rural Electrification Administration for system improvements and for additions and extensions to their existing system. A portion of the \$10,000,000 may be borrowed on a concurrent basis from the National Rural Electrification Administration and supplemental lenders.

The petitioner submitted that the proceeds of the loan will be used for system improvements and additions and extensions to the existing system for a two year period beginning in the middle

of 1981 and terminating in the middle of 1983.

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The New Hampshire Electric Cooperative, Inc. represents that as of October 31, 1981, its long-term debt including interest thereon is as follows:

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

| | |
|--|-----------------|
| A. Long Term Debt to RED (Excluding Seabrook): | |
| 37 notes in the face amount of | \$52,543,179.59 |
| Less unadvanced funds as at 10/31/81 | 311,000.00 |
| | <hr/> |
| Net amount borrowed | \$52,232,179.59 |
| Repayment to date applicable to said notes | 10,462,114.75 |
| | <hr/> |
| Long-term debt 10/31/81 | 41,770,064.84 |
| | |
| B. Long Term Debt to REA and FFB (Seabrook): | |
| 2 notes in face amount of | \$75,750,000.00 |
| Less unadvanced funds as of 10/31/81 | 75,750,000.00 |
| | <hr/> |
| Net amount borrowed | \$ -0- |
| Repayment to date applicable to said notes | -0- |
| | <hr/> |
| Net long-term debt 10/31/81 | \$ -0- |
| | ===== |
| | |
| C. Long Term Debt to National Rural Utilities Cooperative Finance Corporation | |
| 1 note in face amount of | \$ 350,000.00 |
| Repayment to date applicable to said note | \$ 26,186.73 |
| | <hr/> |
| Net long-term debt 10/31/81 | \$ 323,813.27 |
| | ===== |
| | |
| D. Long Term Debt to Plymouth Guaranty Savings Bank, Plymouth, N.H. | |
| 1 note in face amount of | \$ 300,000.00 |
| Repayment to date applicable to said note | 87,900.24 |
| | <hr/> |
| Net long-term debt 10/31/81 | \$ 212,099.76 |
| | ===== |

There are no short-term notes outstanding.

\$4,799,000 will be borrowed from the Rural Electrification Administration at 5% interest in a note for the first year of the construction period. The remainder will be borrowed in a lender note to the Rural Electrification Administration and in all probability through a supplemental lender for the remainder of the borrowing.

During the loan period the Cooperative proposes to expend for system improvements, additions, and extensions to its existing facility from the proceeds of the proposed loan approximately the following:

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

| | |
|--------------------------------------|-------------|
| 1. Distribution | |
| A. New Services | \$3,018,000 |
| B. New Tie Lines | 259,500 |
| C. Conversion and Line Changes | 2,131,200 |
| D. New Substation or meter points | 164,000 |
| E. Increased Substation capacity | 721,750 |
| F. Miscellaneous Distribution Equip. | 2,844,500 |

| | |
|------------------------------------|--------------------|
| G. Engineering System Improvements | 410.050 |
| Total for Distribution | <u>\$9,549,000</u> |

The proposed expenditures are based upon a comprehensive survey made by an independent and reputable consulting firm, Booth & Associates, that is familiar with the petitioner's functions, property and service demands. A detailed system study was submitted as evidence by the petitioner as a basis for system improvements summarized as set forth above. Testimony of managerial personnel of the petitioner supported the conclusions of the independent study and confirmed the need for system improvements in the public interest.

Upon investigation and consideration of the evidence submitted, this Commission is of the opinion that the construction and system and distribution improvements which will expand and improve its service to the public and that

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financing thereof as proposed herein is the most economical that can be obtained. We find that the granting of the approval of the authority requested in this petition will be in the public interest. Prior to the issuance of the remaining notes mentioned heretofore, the Cooperative shall inform the Commission of the terms of said notes and obtain approval from this Commission to issue same.

Our order will issue accordingly.

ORDER

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

ORDERED, that the New Hampshire Electric Cooperative, Inc., be, and hereby is, authorized to issue and sell for cash and aggregate principal amount not in excess of \$10,000,000 of its mortgage notes to the United States government, acting through the Rural Electrification Administration or the supplemental lenders as may be required by the Rural Electrification Administration; and it is

FURTHER ORDERED, that the Cooperative shall issue a note in the sum of \$4,799,000.00 to be secured under a New Hampshire Electric Cooperative, Inc. mortgage to the United States of America to be executed during January, 1982; and it is

FURTHER ORDERED, that the aggregate borrowing of \$ 10,000,000 be executed and accomplished by the New Hampshire Electric Cooperative, Inc., issuing its note or notes for the whole amount or a part thereof at various dates and amounts, as said loan funds may become available from the United States Government through its Rural Electrification Administration and any adjunct lending agency or subdivision thereof; and it is

FURTHER ORDERED, that the proceeds from said note or notes be used by the New Hampshire Electric Cooperative, Inc. for system improvements; for additions and extensions to its existing system; and to reimburse its treasury for monies expended for other such additions and extensions; and it is

FURTHER ORDERED, that on January first and July first of each year, said New Hampshire Electric Cooperative, Inc. shall file with this Commission a detailed statement duly sworn to by

its Treasurer showing the disposition of the proceeds of such notes as shall be authorized by this Commission until the expenditures of the whole of said proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative, Inc. shall notify the Commission of the terms of said notes and obtain approval from this Commission for the issuance of same.

By order of the Public Utilities Commission New Hampshire this seventh day of January, 1982.

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NH.PUC*01/07/82*[79168]*67 NH PUC 24*Concord Natural Gas Corporation

[Go to End of 79168]

Re Concord Natural Gas Corporation

DE 82-8, Order No. 15,423

67 NH PUC 24

New Hampshire Public Utilities Commission

January 7, 1982

GAS company ordered to perform distribution system analysis.

BY THE COMMISSION:

ORDER

WHEREAS, on January 4, 1982, the Commission, during Concord Natural Gas Corporation's cost-of-gas hearing, expressed its concern over the company's growth and its distribution system capability; and

WHEREAS, the company's president testified that its last distribution system analysis was performed circa 1961; and

WHEREAS, the demand for gas service has continued to increase substantially over the last several years; and

WHEREAS, the company was unable to assure this Commission of adequate facilities to serve future growth within its franchise area; it is hereby

ORDERED, that Concord Natural Gas Corporation perform a distribution system analysis to determine the limitations of its mains, regulator stations, etc. concerning present load conditions and future growth; and it is

FURTHER ORDERED, that within six (6) months the company complete this analysis and submit to the Commission a written summary of the results including any actions the company has taken or will take because of their findings.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1982.

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NH.PUC*01/11/82*[79169]*67 NH PUC 25*Public Service Company of New Hampshire

[Go to End of 79169]

Re Public Service Company of New Hampshire

Intervenors: Community Action Program, Legislative Utility Consumers' Council, and Office of Consumer Advocate

DR 81-87, Order No. 15,424

67 NH PUC 25

New Hampshire Public Utilities Commission

January 11, 1982

ORDER granting rate increase, as modified, eliminating fuel adjustment charge, and directing company to sell its interest in nuclear generating units.

1. VALUATION, § 192.1 — Property excluded from rate base — Tax reserves.

[N.H.] Deferred taxes were deducted from rate base in lieu of carrying them at no cost to capital. p. 27.

2. RATES, § 303 — Fuel clauses — Rate base treatment of collections.

[N.H.] To account for over- and undercollections of the fuel adjustment clause and the resulting tax liabilities and benefits, deferred fuel costs were allowed in working capital and deferred taxes were deducted from rate base. p. 27.

3. VALUATION, § 274 — Waterpower and dam sites — Rate base recognition.

[N.H.] The commission gave immediate rate base treatment to the costs incurred in reconstructing a hydroelectric station as positive recognition for the reduction in fuel costs resulting from the increased capacity. p. 28.

4. RATES, § 120.1 — Test period — Post-test-year adjustments.

[N.H.] The commission adopted a proposal to use updated test-year data to mitigate the effects of attrition and the impact of inflation coupled with declining sales growth. p. 29.

5. EXPENSES, § 88 — Political and lobbying expenditures.

[N.H.] Expenses associated with membership in the Atomic Industrial Forum were not recognized for rate-making purposes where the commission found the organization was essentially a lobbying organization and rules and regulations prohibited the recovery of expenses associated with political or promotional advertising. p. 30.

6. EXPENSES, § 48 — Dues.

[N.H.] Membership dues for the Edison Electric Institute (EEI) were designated for below-the-line treatment where the commission found that the EEI advocated positions on issues that were contrary to the interests of New Hampshire ratepayers. p. 32.

7. EXPENSES, § 26 — Advertising, promotion, and publicity.

[N.H.] Fees associated with an Edison Electric Institute advertising campaign were not charged to ratepayers where the commission found that the advertising was promotional, political, and institutional. p. 33.

8. RETURN, § 43 — Reasonableness — Past earnings and losses.

[N.H.] The commission decided that the appropriate measure of dividend growth to be used in a discounted cash flow formula for determining rate of return was the utility's historic dividend growth. p. 38.

9. EXPENSES, § 10 — Effect of price changes and abnormal conditions — Attrition adjustment.

[N.H.] A proposed attrition adjustment was rejected by the commission where the utility failed to break down rate of return data by jurisdiction and by wholesale and retail operations, and the commission found that using an attrition allowance on retail operations to compensate for wholesale operations deficiencies would be discriminatory. p. 41.

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10. EXPENSES, § 10 — Effect of price changes and abnormal conditions — Attrition adjustment.

[N.H.] The commission refused to accept computations for an attrition allowance where: (1) the calculation failed to focus solely on operations in the regulatory jurisdiction; (2) construction work in progress related revenues were not added back; (3) the determination of per cent of capitalization equity portrayed a financial condition worse than the one that existed due to a failure to recognize revenue increases; (4) the calculation did not accept the actual rate of return for the year under consideration; and (5) inclusion of revenue increases would have yielded a higher rate of return. p. 43.

11. EXPENSES, § 10 — Effect of price changes and abnormal conditions — Attrition defined.

[N.H.] The commission distinguished between the overall rate of return and return on common equity in defining attrition as an erosion of overall rate of return that occurs despite efficient management. p. 46.

12. RATES, § 262 — Kinds and forms of rates and charges — Cost elements involved — Indexing.

[N.H.] A proposal to index utility rates to the consumer price index was rejected by the commission on the grounds that it was a make whole concept repugnant to regulation. p. 47.

13. RATES, § 303 — Fuel clauses.

[N.H.] The commission found no benefit to continuing an annual fuel adjustment clause

because frequent petitions for review provided access to overall rate relief and because consumers did not understand and were resistant to fuel adjustment clause charges. p. 48.

14. RATES, § 262 — Kinds and forms of rates and charges — Cost elements involved — Marginal costs.

[N.H.] The commission accepted the principle, reached in a settlement agreement, that marginal costs were the appropriate basis for utility retail pricing policy because that principle recognized that the efficient allocation of resources and the efficient purchasing behavior of consumers are premised on pricing policies that reflect true resource costs in rates. p. 54.

15. RATES, § 322 — Electric — Demand, load, and related factors — Interruptible rates.

[N.H.] Interruptible rates were not implemented because appropriate pricing could not be determined until issues of the value and cost effectiveness of interruptible rates were resolved. p. 60.

APPEARANCES: Martin L. Cross and Eaton W. Tarbell, Jr., for Public Service Company of New Hampshire; Gerald Eaton for Community Action Program; Gerald L. Lynch, Consumer Advocate — Legislative Utility Consumers' Council.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On April 2, 1981, the Public Service Company of New Hampshire (PSNH) filed a tariff designed to increase revenues approximately 35 million dollars, or a 9.770 increase in revenues.¹⁽¹⁾ The test year is offered as twelve months ending December 31, 1980. The merits of the case were heard in twelve days of hearings, including public hearings in Nashua, Portsmouth, Newport, and Franklin. In addition, due to the reservation of rate design and fuel adjustment issues from PSNH's last proceeding, DR 79-187, ten additional public hearings were held in that docket at which time additional public expression was received.

The Legislative Utility Consumers' Council (LUCC) and the Community Action Program (CAP) were active full-time intervenors.

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Temporary rates were allowed which consisted of \$17,460,000 in increased revenues. These temporary rates were filed subject to refund or recoupment depending upon the outcome of this proceeding.

II. RATE BASE

[1] The question of a proper rate base yielded little disagreement among the parties. The Public Service Company of New Hampshire (PSNH) accepts Staff's method of calculation of net investment in plant. Exhibit 41, Attachment D. This method, proposed by Finance Staff, includes a deduction from rate base for deferred taxes. The Commission will adopt this method in lieu of

carrying the deferred taxes at no cost in the PSNH capital structure.

PSNH also agrees with Staff's working capital calculation as accurate as to the amounts set forth in Exhibit 41, Attachment D for Materials and Supplies, Prepayments, unbilled fuel costs above base and CWIP refunds, all subsequently pro-formed for net AFUDC. The expense allowance has been pro-formed to reflect the AFUDC method.

The method of the Finance Staff's calculation of the test year actual expense allowance for working capital purposes emerged as a major area of dispute. Finance Staff proposes a deduction to reflect deferred taxes on deferred fuel costs. CAP supports the Staff's adjustment.

[2] Staff Witness Sullivan cites the Commission's attention to the effects of deferred fuel accounting in the calculation of rate base. Mr. Sullivan notes that PSNH agrees that deferred taxes should be deducted from rate base. Witness Sullivan notes that the Commission should recognize the tax timing differences between booking items for Commission purposes and booking items for IRS calculations.

Because the existing fuel adjustment charge allows over/under collections to occur, Mr. Sullivan contends that PSNH's characterization of its current FAC as perfectly collected is invalid. In the case of under-recovery, PSNH has not had to carry the cost of fuel without being able to offset the cost in part by the tax benefits. Mr. Sullivan recognizes that there is a tax benefit when revenues are received from ratepayers. Simply stated, Mr. Sullivan contends that the fact that PSNH must pay for fuel cannot be examined in isolation. Since there is a tax benefit when there are undercollections, Staff contends that some recognition of this fact must be made in the working capital allowance. In his testimony, Mr. Sullivan noted that ratepayers should not be required to provide a return of that tax benefit in advance of the time that the Company will be liable for them, which is when revenues are received.

PSNH contends that the Commission must remember that whether or not the Company uses deferred fuel cost accounting, PSNH must pay for the fuel burned during the test year. PSNH notes that the undercollection under the fuel adjustment clause was the highest ever and that deferred fuel cost accounting allows an adjustment to income for bookkeeping purposes. PSNH brings out that Mr. Sullivan's proposal would result in an increase in the working capital allowance if there was an over-recovery. PSNH contends that Mr. Sullivan's proposal implies that the greater the under-recovery, and therefore the lesser cash available to the Company, the fewer dollars are needed from investors to support the Company's day-to-day operating

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expenses. PSNH argues that common sense dictates that, if anything, the opposite is true.

PSNH offers that the Commission has taken steps to alleviate major over and under-collections in the fuel adjustment and that the goal is to achieve as near zero as is possible.

The Commission will allow for rates to reflect reasonable fuel costs. Those reasonable fuel costs will be collected. However, there are tax consequences to collection of revenues associated with fuel costs. The tax benefit could become a liability if the collection is over rather than under the estimates. In the working capital calculation we will allow deferred fuel costs. The deferred taxes associated therewith will be included in the deferred taxes on income deduction from rate

base.

[3] On December 30, 1981, PSNH placed into service a reconstructed hydro-electric station at Garvin Falls. In the past, Garvin Falls produced 5.6 MW. However, PSNH, through its recent efforts, has increased the level of capacity to 12.1 MW. This dramatic increase in hydro-electric generation from this site is deserving of positive recognition. PSNH's efforts in this regard represent an emergence of an energy policy that is more diversified as to energy sources than was previously the case. The greater capacity will result in an increase in hydro-electric energy from this station from 32,000 MWH to 54,000 MWH per year. The 22,000 MWH increase in generated electricity will save 37,400 barrels of oil over prior consumption. This is an *annual* savings of \$1,196,800 assuming a price of \$32 for a barrel of oil.

Positive action in the development of diversified resources to replace oil-fired generation should be encouraged. This action by PSNH is of tremendous assistance to its ratepayers and they are to be commended for its completion. Because of this excellent move to increase hydroelectric generation within the State, the Commission will allow immediate rate base inclusion for these costs. The level of investment which was transferred as of December 30, 1981, from construction work in progress to active plant is approximately \$6,882,206. The additional plant is generating electricity and thus used and useful. The Commission has, in the past, recognized additional generating plant in rate base where it was completed after the test year. Re Public Service Co. of New Hampshire (1974) 59 NH PUC 330.

Furthermore, the tremendous benefit from the reduction of fuel costs requires full and immediate recognition in rate base.

As to the test period for the remainder of rate base, the Commission adopts Witness Robert Camfield's recommendation that the most recent information available should be used. Such a procedure mitigates attrition and eliminates problems associated with regulatory lag. The Commission will adopt Staff's methodology using an average rate base for a time period ending September 30, 1981. It is interesting to note that a year end rate base would be an insignificant bit lower. Such a procedure results in an initial rate base of \$419,399,378 to which the investment in Garvin Falls hydro is added to arrive at a rate base of \$416,281,584. This figure is adopted as just and reasonable for purposes of this proceeding.

The Commission would note that it is prepared to give similar treatment to other hydro-electric projects that PSNH may decide to refurbish, upgrade or improve in terms of capacity. Furthermore, any new hydro-electric capacity

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will also be given year end rate base treatment. As you will note later in this opinion, the Commission is prepared to provide the proper incentives for acceleration of the Schiller conversion. It is the Commission's adopted policy that the public good requires implementation of any near term action which can reduce the percentage of oil-fired generation. The following table details the findings of this Commission on PSNH's rate base.

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

AVERAGE RATE BASE

September 30, 1981

Gross Plant
Plant Held for Future Use

TOTAL

Less Reserve for Depreciation
Customer Deposits & Interest
Accumulated Investment Tax Credit
Customer Advances for Construction
Deferred Taxes on Income

TOTAL

Net Investment in Plant
Working Capital
Expense Allowance
Materials & Supplies
Prepayments
Unbilled Fuel Cost Above Base
CWIP Refund

TOTAL

Investment in Androscoggin Reservoir
Co.

Rate Base (Initial)
Garvin Falls Hydro-Electric
Approved Rate Base

III. EXPENSES — REVENUES

A. Test Year

[4] PSNH originally submitted a test year based on data ending 12 months, December, 1980. Staff Witness Camfield noted that in lieu of an additional attrition allowance that the effects of attrition would be mitigated by updating the test year to a more recent time period. No party objected to this procedure in brief.

The Commission has always been guided by the understanding that rates should be fair, thereby balancing the interests of ratepayers and investors alike. To this end, it is very important that rates reflect current costs, as long as such costs are, in the view of the Commission, legitimate costs of doing business. Whereas, in the past sales growth has tended to negate the impact of moderate inflation upon expenses and earnings, today's utility is typically caught in the grip of higher inflation and declining sales growth. In recognition of these external forces, the Commission chooses to adopt witness Camfield's recommendation to use current expenses and capital costs in establishing current rates. The Commission herein has recognized and employed actual expenses, revenues and average rate base for the 12 month period ending September 30, 1981, the most recent period for which data is available. With similar intent, the capital structure and component cost rates are estimated at October 31, 1981.

An obvious difficulty in employing these very current data for ratemaking purposes is reconciling the allowed final revenue deficiency (\$29 million) with the previously authorized temporary rates which are implicit in the latter five months of the September, 1981 12 month period. Such reconciliation requires a recognition of the revenue realized under the temporary rates of May 1, 1981. Using the relationship of New Hampshire retail sales to total sales for the

calendar year 1980, an estimate has been made of the New Hampshire retail sales and their associated temporary rate revenues. That revenue estimate (net of tax), in turn, was subtracted from the net operating income requirement used in calculating the allowed revenue deficiency. The Commission fully realizes that

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the herein established final rates may require some changes to incorporate the actual rather than the estimated revenues associated with the temporary rates.

B. Atomic Industrial Forum

[5] The Commission, while adopting an updated test year, still finds that certain expenses are in both sets of data that need inquiry as to their reasonableness.

The first expense the Commission calls into question is the \$12,403 associated with membership in the Atomic Industrial Forum. These expenses were not broken out into lobbying and other expenses. Nor was there a demonstration of the justification of these expenses.

From Commission experience, we are aware that the Atomic Industrial Forum is essentially a lobbying organization. As such, these expenses are not recognized for ratemaking purposes as fitting into a level of expenses proper for just and reasonable rates. Re Public Service Co. of New Hampshire (1980) 65 NH PUC 251.

Furthermore, the Commission rules and regulations prohibit expenses associated with political or promotional advertising from being passed on to ratepayers.²⁽²⁾ Obviously, our rules, regulations and decisions cannot be undercut by allowing utilities subject to our jurisdiction to incur costs through organizations for activities which, if they did themselves, would not be recognized as a proper expense to the ratepayer. Thus, these expenses are denied.

C. Customer Survey — Commercial Sector

The Commission is also concerned about the state of knowledge concerning the Company's commercial customers. Remarkably little is known about the commercial sector and its usage of electricity, in spite of the fact that this sector has exhibited the highest rate of growth for PSNH. This lack of knowledge is complicated by the inclusion of manufacturing customers in the same rate classes as commercial customers, thus precluding a straight forward analysis. Under conditions of uncertainty about load growth, more adequate knowledge about electrical end uses and usage patterns is essential for improving forecasts. The lack of knowledge is also particularly disturbing because the commercial sector is a prime candidate for energy conservation and offers great potential for improved efficiency. For these reasons, the Commission orders PSNH to perform the necessary work to classify its commercial customers according to three-digit SIC code and to develop data profiling as accurately as possible the characteristics and consumption patterns of these customers. This work is intended to supplement the work being performed now by the Company in compliance with Section 133 of PURPA, and the Commission will therefore allow the Company an additional \$25,000 in expenses to accomplish this work. The Commission notes that sufficient work in other states exist to provide guidance to PSNH, and points out, in particular, that NEES has completed a similar effort.

D. Nuclear Electric Insurance Limited Adjustment

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PSNH seeks approval of \$308,490 for membership in the Nuclear Electric Insurance Limited program (NEIL), which is a mutual insurance company incorporated under the laws of Bermuda. Membership in the NEIL Program provides coverage against the extra expense incurred in obtaining electric power during prolonged accidental outages of nuclear power generating units. This pro forma adjustment increases insurance expense for test year to include the first years' premium for Company membership in the NEIL Program.

The Company believes that this is a prudent investment which could potentially save the New Hampshire ratepayer many millions of dollars in replacement purchase power cost. Exhibit P-4-G is a detailed explanation of the program and the calculation of the premium. Through this pro forma adjustment, the Company is seeking from the Commission a determination of the ratemaking treatment of: (1) premium cost; and (2) retrospective adjustments.

CAP argues against the adjustment. While CAP recognizes that insurance would be a sound investment if the policy provided substantial protection from the increased costs of replacement power, CAP contends that the NEIL Program does not provide such protection.

CAP raises concerns that besides an annual premium of \$273,000 there is a requirement of a reserve premium and a retrospective premium. Such premiums are viewed by CAP to represent a potential large liability for Public Service customers compared to PSNH's existing nuclear ownership. Furthermore, the other participants and covered facilities represent a potential for large losses that could be flowed through the retrospective premium adjustment to PSNH.

Recovery under the insurance policy is denied if an outage or delay results from the following:

"(e) Any governmental act, decree, order, regulation, statute or law prohibiting or preventing, directly or indirectly, the commencement, recommencement or continuation of any operations at the Site specified in the Declarations;" Exhibit 37 at C-14.

CAP seeks to have the Commission defer judgment on the NEIL Program until the completion of the Seabrook Units.

The Commission is very concerned about PSNH press releases sent to us for our records that reveal an intention to seek recovery for some unspecified level of expenses associated with Three Mile Island. Obviously, it is unclear what benefit New Hampshire ratepayers receive if they are forced to pay for insurance costs for protection from the costs of outages at PSNH nuclear plants and then are also required to pay a portion of the costs of outages at plants that PSNH has no investment interest.

The insurance documents presented in this proceeding seem to provide very little protection at a rather high rate. Further, because the industry has not been required to uniformly adopt this policy by the NRC the potential for liability for uncovered plants cannot be ignored.

While granted that Three Mile Island preceded NEIL, nothing prevented General Public Utilities from carrying insurance. Yet the Edison Electric Institute has called upon all utilities to

have their ratepayers pay for costs of major outages at the Three Mile Island plant. What is to prevent further requests for recovery of costs from other plants not covered by NEIL or covered facilities that PSNH does not have an ownership interest?

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It is inequitable for ratepayers to be held accountable regardless of the plant that is out of service and whether or not it is covered by insurance and also require them to pay for insurance protection.

The question of the reasonableness of NEIL should await a determination by the utility industry whether it seeks to actively seek recovery of costs from Three Mile Island II. The issues of Three Mile Island and NEIL should be examined together and not separately.

Further, the Commission finds CAP's concern about the open ended expense levels associated with the premiums together with the probability of lack of recovery to be valid considerations. Since for the above reasons we find CAP's concerns to remain unanswered as well as persuasive, the adjustment of \$308,490 to expenses is denied. We do not agree, however, that final resolution of this issue must remain until the completion of Seabrook. Rather, we wish the questions raised concerning potential liability, expenses and coverage to be addressed in greater detail in a subsequent proceeding this year. However, the Commission will not address this issue without also addressing the question of future requests for expenses associated with inoperable plants outside PSNH's ownership interest in nuclear plants whether covered by NEIL or not.

E. Edison Electric Institute

[6] The Commission calls into question the expenses attributable to the Edison Electric Institute (EEI). EEI has been quite active over the past year. One of its activities has been to oppose this Commission's decision to retain the benefits of Connecticut River hydro-electric power for the customers of New Hampshire. In that Docket, the Commission, acting pursuant to State statute ordered a return of the benefit of this low cost power to citizens of New Hampshire after finding that the power was reasonably required for use within New Hampshire and that the *public good* required that it be delivered for such use.³⁽³⁾ Certainly EEI or any other organization is entitled to advocate any position in any proceeding. However, it is potentially unreasonable to require ratepayers to contribute to an organization which advocates an interest against a state statute, the public good and their own economic interests. To hold ratepayers accountable for these expenses, which in part pay for activities against actions found to be in the public good, is unjust and unreasonable.

EEI has also recently advocated that all electric utilities request their consumers to pay for the costs of Three Mile Island. EEI has advocated that those utilities like PSNH that have ownership in nuclear plants and/or are constructing nuclear plants should have their customers pay a proportionately larger share than other utility customers. EEI is lobbying this position before the public, the media, the Congress and state commissions. If successful their efforts would increase the level of electric bills in whatever forums adopt their contentions.

Again, they have the right to lobby for any position they desire but past precedent of this

Commission dictates that utility expenditures associated with lobbying activities should be treated below the line and therefore not charged to

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consumers. Re Public Service Co. of New Hampshire (1980) 65 NH PUC 251. Since EEI is for the most part a consortium of electric utilities and where further the positions advocated by the group are determined by a board of representatives of electric utilities, it would be unreasonable to allow such expenses which would be denied on an individual utility basis.

Furthermore, EEI has not made similar requests for emergency relief for New England utilities ratepayers due to their catastrophic reliance upon oil. Nor has EEI sought to have ratepayers in other regions pay for the increased costs imposed upon New England utilities due to regulatory delays in constructing new facilities. In many ways New England's reliance upon oil and its difficulty in constructing new generating stations is of a greater financial hardship than the Three Mile Island situation. This uneven treatment elevates the interests of certain ratepayers over that of others which would also violate our State statute precluding discrimination.

The level of costs assessed for membership in this organization was \$124,471. Based upon the foregoing analysis the Commission finds such expenses to be against the public good and more properly chargeable to below the line accounts. PSNH is instructed to book these expenses below the line to stockholders rather than above the line to ratepayers. For ratemaking purposes, these expenses are denied.

[7] PSNH also seeks recognition of approximately \$43,313 associated with EEI's national advertising campaign.

The Commission has reviewed EEI advertising in the past and based on the Commission's review of these advertisements the Commission finds them to be the type of advertising and activity not chargeable to consumers pursuant to Commission Rule PUC 311.01. That rule is as follows:

"PUC 311 Rules Relative to Utility Advertising

"111.01 *General Standard*

"No electric utility shall recover, in any manner, from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional, political, or institutional advertising, or promotional, institutional or political activities."

Consequently, the \$43,313 attributed to the EEI advertising fund is found to be an indirect expenditure for promotional, political, and institutional advertising and is not an expense attributable to ratepayers but should be booked below the line to stockholders.

F. Consultant — Governmental Affairs

PSNH has hired a consultant in its governmental affairs division primarily for work involving the federal government. On page 354-G of the Form 1 the expense of this consultant is listed as \$29,157. Since this person is no longer employed with PSNH, the expenditure is

non-recurring and these expenses are removed as a result. The Commission is generally concerned with the government affairs division of PSNH and will expect further breakdowns in future cases as to divisions between lobbying activities and those required relationships in the day to day operations of a utility with government. These divisions should more clearly define expenses that are below the line and those that are above the line. The Company has the clear duty to reveal to the Commission the expenses both as to amount and type that it

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is placing below the line for any given test year. The Commission will so require this breakdown in all future PSNH rate filings.

G. Depreciation Expense

The pro forma adjustment in depreciation included in this case accounted for the change allowed in DR 79-187 for distribution depreciation expense. PSNH began recording the new rate on April 1, 1980, the day that the level of rates requested in Docket No. 79-187 were first billed. Therefore, by this Commission including twelve months of actual expenses as of September 30, 1981, a full year's distribution depreciation expense has been included.

H. Normalization

In Docket No. DR 79-187 this Commission allowed for the normalization of tax timing differences. PSNH began to reflect full normalization on its books on April 1, 1980. Therefore, a full year's effect of full normalization has been reflected in actual operating expenses for the twelve months ended 9/30/81.

I. Rate Case Expenses

The Company initially offered a pro forma adjustment for rate case expenses of \$168,731. Staff cross examination led to a reduction of this adjustment to \$163,955. The Supreme Court has required this Commission to recognize rate case expenses as a legitimate operating expense. *New Hampshire v Hampton Water Works Co.* (1941) 91 NH 278, 38 PUR NS 72, 18 A2d 765. Therefore, this adjustment to expenses is allowed.

J. Payroll, Pension, Payroll Taxes

The Company submitted three pro forma adjustments for payroll pension costs and payroll taxes. These adjustments were made to a 1980 level of expenses. The Commission has in this decision updated the test year to twelve months ending September 30, 1981. The Commission has traditionally reflected these adjustments in determining rates. The Commission finds such changes to be known and measurable and has adjusted rates accordingly. With the update to September 30, 1981, the Commission has now included nine months of this adjustment. The remainder of the proposed adjustment net of its tax effect is \$777,650. This adjustment is found to be a known and measurable change and is so included.

K. Utility Assessment Tax

The utility assessment tax was increased as of June 30, 1981. The updated test year incorporates a portion of the adjustment. The remainder is a known and measurable change, and is hereby approved. The effect of this adjustment net of its tax effect is \$177,652, (pro forma

increase).

L. Property Taxes

PSNH proposed a property tax adjustment so as to update that expense level to a more current figure. The updated test year will encompass nine months of actual changes in property taxes. The Commission will not accept the Company's proposed adjustment because of its estimated nature. Rather the Commission believes that actual changes in property taxes are more appropriate. Based upon Commission records, the Commission concludes that property

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taxes for PSNH will increase an additional \$125,000 over the enormous increase already reflected in the updated test year ending September 30, 1981. This adjustment which is net of its tax effect is allowed.

The Commission wishes to commend PSNH for its efforts to fight unreasonable property tax increases. PSNH's recent efforts to control this cost factor to a more reasonable level should be a model to all other utilities. Certainly no other New England electric utility has approached the high standard set by PSNH in this regard. PSNH has demonstrated that utilities, much like private unregulated businesses, must challenge unreasonable expenses.

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

SUMMARY OF PRO FORMA ADJUSTMENTS TO SEPTEMBER 30, 1981

TEST YEAR

Expense

Atomic Industrial Forum
Company Survey - Commercial
Nuclear Electric Insurance*
Edison Electric Institute
Edison Electric Inst. Advert
Consultant - Governmental Aff
Rate Case Expenses
Payroll Pension Costs etc
Utility Assessment Tax
Property Taxes

Total

For NOI purposes (\$1,059,913)

ADJUSTED NET OPERATING REVENUE FOR 12 MONTHS ENDED SEPTEMBER 30, 1981

Operating Revenue
Operating Expenses +
Depreciation & Amortization
Investment Tax Credits
Taxes Other
Taxes Income
Federal Current
New Hampshire
Deferred Taxes
Total
Net Operating Income
Adjustments:
Depreciation
Donations
Return On Customer Dep

Adjusted Net Operating Income

NEIL expenditures were requested as was permission to join, expenses not in test year figures expenses.

IV. RATE OF RETURN

A. General Concerns

At the heart of the calculation of revenue requirement is a determination of the earnings rate on the invested capital or, stated differently, the overall rate of return as applied to the rate base. Determination of the overall rate of return is particularly critical to Public Service Company of New Hampshire because the construction program demands great amounts of external capital. In New Hampshire, standard ratemaking practice uses original cost accounting dollars in the determination of the rate base. Similarly, senior capital is recorded at the interest rate at the time the capital was raised. The construction program, however, requires the addition of external senior capital issued at today's interest rates. Rolled-in with the embedded cost rate of debt and preferred stock, recent issues tend to increase the earnings rate required to service the senior capital. It is this fact coupled with upward movements in short-term debt costs that has profoundly impacted the overall return requirements of the Company. Whereas PSNH had an overall return rate of 12.29% in mid-1980 (DR 79-187), current estimates of the overall return shown in exhibits filed in this docket range from 14.00% to nearly 16%. Further, the rate base has increased. The increase in the required earnings rate, coupled with the rate base account for over 65% of the awarded revenue deficiency. The process of replacing

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and updating its plant and equipment will naturally cause the Company's rate base to increase. Moreover, the Company has recently placed the expanded Garvin Falls hydro unit in service, accounting for a major portion of the increase in gross plant. Of the requested revenue increase, about 65% alone is required to service the increase in capital costs.

In the original filing of April 1981, PSNH employed the capital structure and the cost rates of senior capital which compose that capital structure at December 31, 1980. The end of test year capital structure, proformed to include the sale of common stock of early 1981, has a common equity ratio of 37%, with a long-term debt cost rate of 11.30%, a preferred stock cost rate of 11.78%, and a short-term debt cost rate of 18.36%. The overall rate of return is 14.62%, including a common equity return of 18.65%.

In its Trial Brief, however, the Company chose to use an October 31, 1981 capital structure and cost rates. Because of changing proportions of capitalization, in addition to changing cost rates of preferred stock and long-term debt (conversion of 5.50% preferred stock, the redemption of long-term debt Series T, sinking fund redemptions, Eurobond sales), the overall return request increased to 15.17%. Finally, the Company is requesting a 100 basis point attrition allowance, which amounts to about seven million dollars in revenue requirement.

Mr. Camfield employed estimated capital structure and cost rates at October 31, 1981, when he filed his direct testimony in July 1981. Implicit in the recommendation was common equity participation of 40% and cost rates of 11.68%, 11.32 - 11.72%, and 16.16% - 18.32% for

preferred stock, long-term debt and short-term debt, respectively. Collectively, the recommendation for overall return was 14.11% - 14.95%. In that recommendation was Camfield's earlier expectation of the issue of G & R debt (\$35 million) and common stock (\$14 million) in the third quarter of 1981.

In addition, Mr. Camfield states that the Commission may wish to alternately use the actual capital structure at October 31, 1981.

Soon after the initial filing, Camfield filed supplemental testimony with an update which reflected significant upward movements in costs of capital. The new recommendation was 14.88% - 15.85%, including 18% - 19% on common equity and a prime rate estimate of 17% - 21%.

B. Return on Common Equity

The Re Applicant, Public Service Company of New Hampshire, has supported its request for a common equity return of 18.65% through the analysis of its witness, Professor Williamson.

Dr. Williamson employed discounted cash flow (DCF) theory to generate the 18.6570 recommendation. The yield component of the DCF theory requires that the analyst choose a market price which reflects the observed price behavior of the stock in question. Dr. Williamson used the observed price at January 2, 1980, an average of daily prices for the year 1980 and the average of daily prices for the period December, 1979, through March, 1981. Combined with the annual dividend (\$2.12), the unadjusted yields are 13.55%, 13.25%, and 13.65%.

Having settled on 13.55% for the unadjusted yield, Professor Williamson proceeded to examine the historical experience

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with regard to growth in earnings and dividends per share. Using the experience unique to PSNH and an index of electric utilities, Professor Williamson concluded that investor expectations of growth would likely fall in the range of 3.5% to 6%. Combined with the yield of 13.55%, the estimated cost of common equity was in the range of 17% to 19.5% with a midpoint 18.25%. Finally, adjusting for issuance costs (.4%), the estimated cost of common equity as used and recommended by the Applicant for ratemaking purposes is 18.65%.

The Commission notes that Dr. Williamson did a relatively complete review of PSNH, discussing the Company relative to the industry, examining Valueline and Solomon Brothers data, recent market costs of debt, and preferred stock. Moreover, Dr. Williamson conducted analyses of the relationship(s) between the market price- book value ratios and earned returns in support of his 18.65% recommendation. However, the evidence certainly reveals that it was discounted cash flow analysis which he predominantly relied upon in the recommendation.

Senior Economist Camfield testified regarding the appropriate cost of capital on behalf of the Commission Staff. Mr. Camfield's original testimony and exhibits, filed in July 1981, recommend an overall rate of return of 14.11% - 14.95%. The rate of return on the common equity component of capital included in the overall return was 17.00% - 18.25%.

The common equity rate of return was calculated using the discounted cash flow (DCF)

methodology. Mr. Camfield utilized a market price range of 15.00% - 15.50% based not on any particular point in time but on recent experience of share price. The expected value of growth was estimated using historical data and calculating compound and stochastic growth rates for annual earnings and dividends. Mr. Camfield's recommendation was a range of 2.50% - 3.00% based upon his analysis and an intuitive estimate of the expectations of a "reasonable investor."

Two additional adjustments to the classic of DCF formula were made by the witness. First, Camfield adjusted the market price by 3.33% in recognition of issuance expenses. Secondly, Mr. Camfield adjusted his yield figures for the effect of the quarterly sequence of dividend payments.

The Commission has historically applied the criteria set forth by the United States Supreme Court. In the case of *Bluefield Water Works & Improv. Co. v West Virginia Pub. Service Commission*, 262 US 679, PUR1923D 11, 67 L Ed 1176, 43 S Ct 675, the Court ruled that (262 US at pp. 692, 693, PUR1923D at pp. 20, 21):

"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 right to profits such as are realized or anticipated 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

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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."

The Court elaborated further in *Federal Power Commission v Hope Nat. Gas Co.* (1944) 320 US 591, 603, 51 PUR NS 193, 200, 201, 88 L Ed 333, 64 S Ct 281:

"The ratemaking process under the (Natural Gas) Act, i.e., the fixing of 'just and reasonable rates,' involves a balancing of the investor and the consumer interests. Thus we stated in the *Natural Gas Pipeline Co.* case that 'regulation does not insure that the business shall produce net revenues.' 315 US at p. 590, 42 PUR NS at p. 140. But such considerations aside, the investor 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"

PSNH's requested return on equity of 18.25% is derived from and explained by the testimony of Prof. Williamson. The DCF calculation that he made was based upon (1) the daily average stock price observed in 1980 and the corresponding yield and (2) an estimation of expectations

for dividend growth of 3.5% - 6.0%. Prof. Williamson submitted that the 13.55% yield based on a stock price of \$15.65 per share and an annual dividend of \$2.12 is reasonable. Mr. Camfield used a range of prices from \$15.00 - \$15.50 for his calculation using a quarterly dividend adjustment and an adjustment for flotation expenses which equalled a yield of 14.67% - 15.12%.

[8] The Company's submission of 3.5% - 6.0% as an appropriate range for expected dividend growth is supported by two approaches. First, Prof. Williamson calculated 3.35% and 3.89% as the historic 10-year and 5-year dividend growth rates (Exhibit P-3-D). Prof. Williamson noted that his calculation of 5-year earnings growth was 3.570 and then went on to say:

"On the basis of past dividend and earnings growth, I believe a minimum expectation is 3.5% and a maximum expectation is 4%." (Exh. P-3, P. 8)

Professor Williamson goes on to say:

"I believe investor expectations with respect to PSNH are influenced by historic-growth rates in *earnings* for electric utilities in general." (emphasis added)

He then cites a range of *dividend* (emphasis added) growth rates for Standard and Poor's Utility Index and the Dow Jones Utility Index of 5 - 7% and 4 - 6¢ respectively.

Prof. Williamson cited in his prefiled testimony the Commission's preference for the use of 10-year dividend growth rates rather than other types of growth measures (1980) 65 NH PUC 283. The Commission continues to believe that historical dividend growth is predictive for the estimation of investor expectations of future growth. We have, however, evaluated the information Prof. Williamson provided in regard to the S & P, and D.J. Utility Index companies.

The Following is a list of the S & P 40 Utilities:

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

| | |
|-----------------------------|---------------------------|
| American Electric Power | Virginia Electric Power |
| Baltimore Gas and Electric | Wisconsin Electric Power |
| Central and Southwest Corp. | Amer. Natural Resources |
| Commonwealth Edison | Bklyn Union Gas |
| Consolidated Edison | Columbia Gas |
| Detroit Edison | Consolidated Natural Gas |
| Duke Power | Ensearch Corp. |
| Florida P & L | ONEOK |
| Middle South Utilities | Pacific Light |
| NEES | People's Energy |
| Niagara Mohawk | El Paso Co. |
| Northern States Power | Internorth, Inc. |
| Ohio Edison | Panhandle Eastern |
| Pacific G & E | So. Natural Resources |
| Philadelphia Electric | Texas East Corp. |
| Public Service G & E | Texas Gas Transmission |
| P.S. Of Indiana | Central Tel. & Utilities |
| Southern California Edison | Continental Tel. |
| Southern Company | G.T.E. |
| Texas Utilities | United Telecommunications |

The following table, derived from the *Value Line Investment Survey*, which is hereby administratively noticed, exhibits the disparities in historical experience between the Company groups in the S & P Index, used by Prof. Williamson, and PSNH:

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

DIVIDEND GROWTH
PSNH, ELECTRIC UTILITY INDUSTRY v. S & P

Past
10 Years

PSNH
*Electric Utility Industry**

Standard & Poor's

40 Utilities
 22 Electrics
 8 Gas Distribution
 6 Gas Pipeline
 4 Telephone

All electrics listed by *Value Line*.

The following is a list of the companies included in the Dow Jones Utility Index:

American Electric Power Cleveland Elec. Illum. Commonwealth Edison Columbia Gas Systems Consolidated Edison Consolidated Natural Gas Detroit Edison Houston Industries Niagara Mohawk Pacific G & E Panhandle Eastern People's Energy Philadelphia Electric Public Service E & G Southern Cal. Edison

A similar table comparing these companies with PSNH again shows dissimilarities in historical experience between the sample and PSNH.

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

DIVIDEND GROWTH
PSNH, ELECTRIC UTILITY INDUSTRY v. DJ

PSNH
Electric Utility Industry

Dow Jones

15 Utilities
 9 Electric Only
 6 Electric & Gas

All Electrics Listed by *Value Line*.

Upon the foregoing analysis, the Commission concludes that the appropriate measure of expectation for dividend growth of PSNH investors is the historical dividend growth of PSNH.

The Commission will, therefore, accept Mr. Camfield's analysis of historical growth unique to PSNH, and his estimate of investor expectations given his report of previous experience.

Aside from Prof. Williamson's faulty use of Utility Index Data, we are impressed by how close the Company and Staff witnesses' calculations actually are. Discussing the acceptability of

numbers other than his mid-point recommendation of 18.25%, Prof. Williamson states:

"My range of 17% to 19.5% is I think one that is reflected consistently by all of these methods. And as long as a method gives me a number within that range, I am prepared to accept that method." (emphasis added) (Tr. p 4-86)

We note that Mr. Camfield's recommendation of 17.00% - 18.25% does indeed fall within the range of 17.00% - 19.50%.

For ratemaking purposes, the Commission will accept 17.00% as the appropriate allowed return on common equity capital.

Both Prof. Williamson and Mr. Camfield compared PSNH to other electric utilities and both concluded that PSNH is a relatively high risk company that requires a relatively high return. Most of the Commission's concerns in this Order are addressed to risk, and the future of the Company. The Commission will remind the Company, however, that it is not afflicted by the severe woes of many companies and industries that are unregulated. The Commission has provided an opportunity for the Company to earn its allowed return. Indeed, this electric utility has never yet approached the dire condition of some other industries. For example, PSNH has yet to experience a year with a negative return on common equity as, on occasion, some other companies have.

The Air Transport Industry lost \$17.4 million in 1980, and the effect of 1981's air traffic comptrollers strike on the bottom line is not yet known. The Agriculture Equipment Industry lost \$340 million in 1980 and further losses over \$100 million are expected for 1981. The Auto and Truck Industry lost \$3.9 billion in 1980, and 1981 losses will again probably amount to over 5 billion dollars. The Mobile Home/RV Manufacturers lost a half billion dollars in 1980.

The Company should bear in mind that regulation has protected PSNH from experiences such as those of the auto industry. Our primary responsibility, however, is to balance the interests of both ratepayers and investors.

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

DR 81-87
OVERALL RATE OF RETURN FOR RATE MAKING PURPOSES
(OCTOBER 31, 1981)

ITEM

Common Equity
Preferred Stock
L-T Debt
S-T Debt

V. ATTRITION

A. Position of the Parties

[9] Professor Williamson develops his attrition factor from a variety of exhibits which,

PSNH contends, compares the allowed rate of return versus the earned rate of return. Professor Williamson examines attrition by focusing on return on equity and overall rate of return over a time period from twelve months ended March 1975 through twelve months ended December 1979. Professor Williamson examined a twelve-month time period ending December 31, 1980 (Exhibit P-3-Q). Based on these historical analyses, Professor Williamson reached the conclusion that it would "take an attrition allowance of 1.0712% to make PSNH whole during the year 1980".

Williamson stated that the 1980 time period was appropriate for use in determining attrition assuming a rate increase effective around July 1, 1981. PSNH offers that Williamson found no evidence on which he could predict that the rate of cost inflation to be encountered by PSNH would be significantly different from that which had occurred in 1980.

Professor Williamson also used a second method, which PSNH claims more appropriately recognizes future attrition. This second method projects costs and revenues based on an allowed rate of return equal to the cost of capital with or without an attrition allowance. As a result of this method, Professor Williamson arrived at an attrition factor ranging from 1.78 percentage points at March 31, 1982 to 2.49% at December 31, 1982. Williamson selected the June 30, 1982 figure as a reasonable one for use in this case. (Exhibit 3, page 33)

The average of Williamson's two methods indicated an attrition allowance of 1.55% which he stated as his best estimate for attrition which would be encountered during the twelve months ending June 30, 1982 assuming the rate increase was allowed as of July 1, 1981. The Company requests that a 1.0% attrition allowance be allowed. This allowance, if permitted, based on the Commission-determined rate base would reflect in additional revenues of \$6,000,000.

The Company also advocates that the Commission adopt a "make whole" procedure. This procedure, if adopted, would allow for filings in 1982 and 1983 that would use many of the findings in this proceeding. PSNH, for example, suggests that the return on common equity would not need to be re-litigated but rather they would just increase revenues using the consumer price index (the CPI) to compensate for any retreat

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in return from that allowed in this proceeding. This process is advocated as a short cut to minimize the regulatory process.

Staff Witness Camfield suggested that the proper mitigation for attrition is to update PSNH's capital structure, rate base and expenses to the most recent time frame available to the Commission.

CAP opposes the indexing or "make whole" procedure. Noting that this Commission has steadfastly adhered to the test year concept. CAP sees no reason to change what it refers to as a well reasoned and accepted form of ratemaking.

The suggestion of indexing PSNH rates to the CPI is rejected by CAP. CAP states that the overall Consumer Price Index reflects energy costs so indexing rates would allow the Company to increase its rates based in part upon the effects of the energy industry on inflation. Community Action suggests that this type of increase constitutes a double recovery. CAP alleges that the

Company has been well insulated from inflation by the fact that its fuel adjustment charge allows all increases to be passed through in the same month they are incurred. Fuel costs represent one half of the rates customers now pay. If the costs included in the fuel adjustment charge push the CPI up during the next year and PSNH were allowed to index its rates to the CPI, the Company would be double covered against the inflation rate. CAP states that if the Commission wishes to accept the Company's suggestion, it should adopt the index less energy.

Finally, CAP states that indexing would have the effect of telegraphing a message to all suppliers and unions which deal with the Company. If these organizations know that the Company's rates will go up by at least the CPI every year, they will use that figure for a minimum when setting new prices for their supplies, services or wage demands. If expenses rise while the rates are in effect, the Company should come to the Commission for limited relief to reflect those changes.

B. Precedent

New England Teleph. & Teleg. Co. v New Hampshire (1973) 113 NH 92, 98 PUR3d 253, 302 A2d 814, is the principle case for the requirement that the Commission examine the attrition question. The Court defined attrition as "an erosion in the earning power of a revenue producing investment". 113 NH at p. 97, 98 PUR3d at p. 257.

The Court went on to state the following (98 PUR3d at p. 257):

"If the existence of attrition can be established by the company the commission should evaluate the impact of this factor on the earnings of the utility and make an appropriate allowance for it. Re Public Service Co., *supra*; Re New England Teleph. & Teleg Co. (1957) 39 NH PUC 284, 291. See Also New England Teleph. & Teleg. Co. v Massachusetts Dept. of Pub. Utilities (1971) — Mass — , 92 PUR3d 113, 275 NE2d 493, 500. The methods generally used to offset attrition are: (1) an increase in the otherwise allowable rate of return (Re Hampton Water Works Co. [1967] 49 NH PUC 50), (2) use of a year-end rate base instead of the average test year rate base (Re Public Service Co. of New Hampshire [1953] 35 NH PUC 13, 15; see Chicopee Mfg. Co. v Public Service Co. of New Hampshire [1953] 98 NH 5, 18, 98 PUR NS 187, 93 A2d 820, 828, 829); (3) a combination of the previous two methods. Re Chesapeake & P. Teleph.

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Co. of Virginia (Va 1957) 21 PUR3d 239."

In Re Hampton Water Works Co. (1979) 64 NH PUC 374, 379, the Commission stated that:

" ... [T]he area of attrition must be recognized if proven by the Company, and such proof must support the adjustment actually requested. To put that another way, not only must a company prove attrition, but it must also carry the burden as to quantifying the adjustment."

Finally, the Commission in Re Public Service Co. of New Hampshire (1981) 66 NH PSC 99, gave the following test for utilities like PSNH and New England Telephone that serve more than one jurisdiction (66 NH PSC at p. 100):

"PSNH, like all other utilities that come before this Commission, must demonstrate that they

are failing to earn a reasonable rate of return within their New Hampshire jurisdiction. While many utilities subject to the Commission's jurisdiction serve only within the boundaries of the State of New Hampshire, there exists a few utilities, such as PSNH, that provide service in more than one state or to both retail and wholesale customers. See *Re New England Teleph. & Teleg. Co.* (1980) 65 NH PSC 564, 40 PUR4th 29. The Commission must be concerned with possible subsidization in situations where a utility services customers in more than one jurisdiction."

C. Commission Analysis

The Commission finds that the submission by Professor Williamson must be rejected. The submissions, even if factually accurate fail to distinguish between PSNH as a corporate entity and PSNH's retail portion of its business which is under the sole regulatory control of this Commission.

The Commission has repeatedly set forth its concerns that PSNH has historically received a higher rate of return in its N.H. retail business than its wholesale Maine or Vermont jurisdictions. *Re Public Service Co. of New Hampshire* (1979) 64 NH PUC 467, 475; *Re Public Service Co. of New Hampshire* (1980) 64 NH PUC 239, 240, 241; *Re Public Service Co. of New Hampshire* (1981) 66 NH PSC 26, 66 NH PSC 33, 66 NH PSC 76, 66 NH PSC 99.

PSNH has failed to heed our repeated requests for a jurisdictional breakdown. By attempting to have the Commission examine the overall rate of return for PSNH as a whole, PSNH is seeking to have its retail ratepayers make up for deficiencies in the rate of return earned in other jurisdictions. Such a practice, if adopted, would be blatantly discriminatory. RSA 378:10.

[10] A review of Professor Williamson's numbers and those supplied by both the Commission Staff or PSNH personnel in other proceedings reveals the documentation to support our concern over discrimination and further casts sufficient doubt on the numbers supplied to or calculated by Professor Williamson.

Exhibit P-3-P allegedly reveals the rate of return earned by quarter for the years 1975 through 1979. This is compared allegedly against the allowed rate of return. However, the Commission doesn't accept either of these contentions.

The incorrect nature of P-3-P is particularly evident in the year 1979. The following is an excerpt from that exhibit.

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

Return on Rate Base

*12 Months
Ended*

*March
June
Sept.
Dec.*

The first error is that the allowed rate of return was not 10.19 but rather 9.99. *Re Public Service Co. of New Hampshire* (1978) 63 NH PUC 127, 158. As the Commission has noted in

the past, it is the allowed rate of return rather than the return plus attrition that is used for measuring future attrition. Re Hampton Water Works Co. (1979) 64 NH PUC 374, 380. The attrition factor is used to assist in achieving the allowed rate of return not as a separate higher level sought to be achieved. It is a factor to help minimize erosion in the rate of return.

A further error is demonstrated by the figures given for the actual date of return. For example, on August 16, 1979 the Commission received a submission from PSNH indicating its rate of return calculation for twelve months ended March 31, 1979. That document revealed an overall rate of return of 11.27% on an entire company basis. This compares to Williamson's figure of 9.97%. Furthermore, that submission reveals a 11.77% overall rate of return for the New Hampshire jurisdiction, which demonstrates how the other jurisdictions can influence the overall company rate of return.

As of May, 1979, the Commission found an overall rate of return of 12.737% and a New Hampshire retail jurisdictional return of 13.1%+. Re Public Service Co. of New Hampshire (1980) 65 NH PUC 239, 241. Again, the lower returns in the other jurisdictions lessened the overall rate of return as compared with that from the N.H. retail jurisdiction.

In that same proceeding, the staff testimony established company-wide rate of return as of September, 1979 of 11.92%. Since the Company failed to file any adjustments in its other jurisdictions, clearly the New Hampshire rate of return remained higher than the overall rate of return.

The presentation by PSNH as to attrition consistently mismatches New Hampshire allowed rate of return versus company-wide earned rate of return. Such an attempt proves nothing concerning rates within the New Hampshire retail jurisdiction.

There are even further demonstrations of incorrect information. In the remaining years (1975 through 1978) PSNH again fails to use the allowed rate of return of 9.48 for 1975 through 1977 and 9.99% for 1978. Consequently, all of the percentage deficiencies are overstated.

The actual rate of return shown on P-3-P for twelve months ended September, 1975 is 9.22%. Yet, Statement M, Supplement A, Volume III, Exhibit 202 of PSNH 1975 filing with the Federal Energy Regulatory Commission while showing an overall rate of return of only 9.12%, indicates that all other jurisdictions besides PSNH wholesale combined into a total rate of return of 9.63%. Since the Maine and Vermont jurisdictions had not carried their respective weight prior to that time period, the New Hampshire jurisdictional rate of return would be in excess of 9.63, which would be above the then allowed rate of return of 9.48 and compared to Williamson's submission of an overall rate of return of 9.22%. This time period demonstrates the inaccuracy of adopting PSNH's method of measuring attrition, to compare

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overall company return to this Commission's allowed rate of return. In using this method, PSNH arrives at a conclusion of attrition, whereas a more proper comparison of the New Hampshire jurisdictional return alone revealed a return level above the allowed rate.

There are other examples that reveal the tendency of other jurisdictional returns, besides New Hampshire retail, to lower the Company's overall rate of return. In Commission Docket IR -

14,783 Volume III, Statement M, the wholesale division is shown as lowering the overall rate of return below the New Hampshire rate of return for the time period of twelve months ending October 31, 1977. Earlier in time, Exhibit P-6-A, page 1 of 2, in DR 77-49, revealed an overall rate of return of 8.09% as of April 30, 1977, but with a New Hampshire jurisdiction return of 8.27%. Again, compared to P-3-P, the return is shown to be dropping from March to June, 1977, but again, the New Hampshire rate of return is higher vis-a-vis the overall return.

In June of 1978, PSNH indicates an overall rate of return of 8.29%. Yet, in DR 79-187, a cost of service study submitted reveals an overall rate of return of 9.39 and a New Hampshire jurisdiction rate of return of 10.17.

Based upon the above documents from previous cases and within our files, administratively noticed, the Commission rejects the attrition analysis performed for PSNH by Mr. Williamson as shown on Exhibit P-3-P.

The analysis on Exhibit P-3-Q is less convincing than that set forth in the prior exhibit. No attempt is offered to calculate the earned rate of return for the New Hampshire jurisdiction or for the Company as a whole, even though those numbers are accessible, nor has there been an analysis to reflect the CWIP refunds which relate to the time period in 1979 when PSNH earned above its allowed rate of return because of continuation of rates based on the inclusion of CWIP in rate base. Such refunds which are credited against 1980 bills results in an overall rate of return which is lower absent the credits.

The calculation used in P-3-Q is incorrect in various aspects. First, it again fails to focus solely on the New Hampshire jurisdiction. Second, it does not add back in the CWIP related revenues. This tends to understate the actual rate of return earned.

Third, in the determination of the "percent of capitalization equity" there is a February 1981 pro forma to total equity that obviously goes beyond 1980, thus portraying a worse than actual financial situation. This error is compounded by the failure to recognize subsequent Commission revenue increases of \$2,582,240 effective January 2, 1981, and \$1,003,289 effective April 16, 1981.

Fourth, the calculation attempts to back into the overall rate or return calculation rather than accept an actual rate of return figure for the year ended 1980. Staff witness Sullivan calculated an unadjusted New Hampshire jurisdictional return of 11.56 in his testimony. Adjusting this figure for the CWIP credits which are, after all, refunds from a prior period increased the New Hampshire rate of return to 12.09%. Furthermore, the major increase placed into effect in April of 1980 and only slightly changed in June of 1980, would, if annualized increase the rate of return within the New Hampshire jurisdiction beyond the 12.09%.

Fifth, an update reflecting the increased revenue allowances given in January

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and April 1981, would reveal a higher overall rate of return than for 12 months ended December 1980. For all of these reasons as well as the mathematical errors shown in line 10, Exhibit P-3-Q is given no weight.

[11] P-3-R attempts to focus the Commission's attention on compensation for attrition to the

actual return on common equity versus the actual overall rate of return.

Attrition has been defined in New Hampshire as follows (113 NH 92, 97, 98 PUR3d at p. 257):

" 'an erosion in earning power of a revenue-producing investment. This erosion is a complex phenomenon, the result of operating expenses or plant investment, or both, increasing more rapidly than revenues. If attrition occurs, the result would be that the *rate of return* realized in the future would be below that which rates were designed to produce.' This effect is apt to occur in a period of comparatively high construction costs when 'new plant is being added which ... is relatively expensive per telephone station. As the high cost plant comes into service, it tends to increase the applicable rate base at a more rapid pace than the resultant earnings, and the *rate of return* decreases accordingly' "

The language of the Supreme Court relates to "rate of return" and not "return on common equity." The entire discussion in *New England Telephone* is on how to compensate for attrition in the allowed rate of return. Among the avenues addressed by the Court to compensate for attrition are an increase in the otherwise allowable rate of return or an adoption of a year end rate base or a combination of both. The Commission has effectively recognized all plant in service as of the end of 1981. Thus it has in effect adopted the second option. Furthermore, the Commission has updated the expenses of the Company through September of 1981 and then made pro forma adjustments to test year expenses. This will also offset attrition in the future. Finally, the Commission has used a sixteen percent prime in calculating the overall rate of return which again provides some resistance to attrition.

However, the greatest offset to attrition taken by the Commission is to update the capital structure. PSNH has issued a tremendous amount of capital since the last case. All carry cost rates significantly above the previous historical costs. This updated capital structure encompasses these charges. Newer issues even at the same high cost rates will have a significantly lesser impact because of this new higher base.

Attrition refers to the erosion of the overall rate of return rather than the return on equity. Variations in interest rates and capital ratios may affect the level of overall rate of return and return on common equity but not necessarily in the same direction or in the same degree. PSNH has increased its equity portion of its capitalization from 34% to 39% since the last case. The alone would lead to a down turn in the return on common equity but not necessarily in the same magnitude as the overall rate of return.

Our analysis reveals that PSNH has not experienced an erosion in its overall rate of return. Because of PSNH's need for further issues of capital it is likely that in the future PSNH will earn its overall rate of return but not necessarily its return on common equity.

This Commission interprets attrition as an erosion that occurs in the overall rate of return despite efficient management. This Commission does not accept

the standard of measuring attrition by a reduction in the earned return on common equity. To adopt PSNH's position would effectively change regulation from offering an opportunity to earn

a reasonable return to a guarantee. The Commission has never understood its role to be to provide such a guarantee. Furthermore, under such a system decisions by consumers to use less energy would reduce the return only to then require additional revenue because of the loss of sales. Again such a result would be unjust and unreasonable.

[12] Reductions in the return actually earned on common equity can be the result of many factors independent of the rates set by the Commission. For this reason as well as those discussed, the Commission refuses to adopt as its attrition standard the erosion of the return on common equity. Rather, the Commission will adhere to its standard of measuring attrition based on the erosion in the overall rate of return. PSNH seeks to have this Commission adopt a standard by which rates are adjusted or indexed to the consumer price index. This "make whole" concept is repugnant to regulation. The CPI may well increase at a rate below or above the result achieved from a determination of a just and reasonable rate. To tie rates to a standard not governed by the just and reasonable standard would be as equally incorrect whether the result was higher or lower.

An indexing concept or a make whole proceeding would lead to proceedings in which the questions were no longer what is a reasonable expense, rate of return and rate base but rather what's a proper consumer price index.

The Commission cannot adopt such a standard for ratemaking. Whatever the merits as to PSNH such a precedent would be quickly seized upon by other utilities. The Commission recently was forced with a rate increase request by the Cheshire Bridge Corporation. In that proceeding they sought to charge rates that had been unaltered since 1924. If the standard was the increase in the CPI it would cost \$20 instead of 20¢ to cross that bridge today.

The Commission rejects the approach offered by PSNH which would hold certain factors constant, such as return on common equity, while addressing expense changes. As the U.S. Supreme Court noted in *Bluefield* (262 US at pp. 692, 693, PUR1923D at pp. 20, 21):

"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."

The Commission finds value in CAP's concern about the open check book signals that such an automatic procedure would sent to suppliers, employees banking institutions and other utilities.

The indexing to the consumer price index or the make whole concept is rejected.

The Commission finds that PSNH has not supported its request for attrition nor has it provided adequate support for a derivation in the method used to establish attrition or rates in general. Primarily our rejection rests on the data submitted being inaccurate, not being solely related to New Hampshire retail operations and not in accord with the established standard of erosion in the rate of return.

The Commission based upon the foregoing, arrives at a revenue increase of \$28,928,171 as being just and reasonable. Because of the elimination of the fuel adjustment and a desire to monitor PSNH closely, the Commission will open

new proceedings for determination of proper rates of July 1, 1982.

No changes in rates will be allowed between this order and July 1, 1982. The Commission finds consumers cannot accept, comprehend, or understand the prior practices of rate alterations almost every month. However, before any new increase is allowed, PSNH or this Commission must make a decision on the difficult choices set forth later in this opinion.

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

REVISED REVENUE INCREASE,
AS ESTIMATED

Rate Base
Cost of Capital
Required Operating Income
Adjusted Operating Income*
Adjustment for Temporary Order
Net, Adjusted Operating Income
Difference
Revenue Deficiency
Expenses Tax Affected Change

Employs the allocation factor as shown in the trial brief filed on behalf of the Company.

VI. FUEL ADJUSTMENT CHARGE

[13] Historically, the fuel adjustment charge levied by electric utilities goes back many, many years. This discussion, however, will be restricted to the past decade.

In its filing of Tariff 18, on July 8, 1971, the Public Service Company of New Hampshire included provisions for a fuel adjustment clause. This filing was suspended by Order No. 10,335. Under provisions of RSA 378:6, that tariff was placed in effect on April 11, 1972. (Note that the delay in implementing the provisions of that statute resulted from federal pricing restrictions). The New Hampshire Public Utilities Commission issued its Order No. 10,679 on August 8, 1972 rejecting Tariff 18 and its fuel adjustment provisions and granting an increase in rates of 7% versus the 9.28% requested.

Rehearings denied, the Public Service Company took the fuel adjustment issue to the Supreme Court of the State of New Hampshire. That court remanded the issue to the Commission stating that there should be " ... provision of appropriate allowance for current costs in some form, whether by fuel clause or otherwise ... ". (113 NH 497, 503, 2 PUR4th 59, 64, 311 A2d 513.) The Court stayed Commission Order No. 10,679 as of October 19, 1972. Shortly thereafter on October 27, 1972, the Public Service Company filed its Second Revised Page 13 of its Tariff 18 for effect on November 1, 1972, restoring the fuel adjustment charge. This was approved by Order No. 10,774 on October 31, 1972 (57 NH PSC 214).

For many years now, such a fuel adjustment has worked smoothly, tracking the dynamic changes in oil and coal costs in as reasonable and timely manner as one could expect. In December, 1981, however, things appeared to suggest to this Commission that the Supreme Court's " ... or otherwise ... " might be more acceptable than a fuel adjustment. In this regard, commenting on the Commission's

1972 objection to the fuel adjustment, the Supreme Court indicated that, should the Commission find fuel adjustment revenues too high it ".. was not without authority to take corrective action ... ", citing RSA 378:7 and 378:27. This same view might be taken for the reverse circumstances, should the fuel adjustment be abolished or stabilized for a one-year period.

A review of the FAC for the Public Service Company of New Hampshire reveals some interesting data to support this view. Attached to the PSNH letter of December 16, 1981, FAC Submission, Attachment 13 provides the net average unit cost for coal burned at Merrimack Station since November, 1980. These costs are as follows:

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

| | |
|----------------|---------|
| November, 1980 | \$44.03 |
| December | 44.31 |
| January, 1981 | 44.40 |
| February | 44.22 |
| March | 44.20 |
| April | 44.29 |
| May | 45.10 |
| June | 45.10 |
| July | 45.26 |
| August | 45.33 |
| September | 46.83 |
| October | 48.85 |
| November | 48.92 |

The Company projects to the future (Exhibit 5):

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

| | |
|---------------|---------|
| January, 1982 | \$49.37 |
| February | 49.39 |
| March | 49.65 |

Similarly, the Company shows historical documentation for oil costs at Newington and Schiller Station (Exhibit 15):

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

| | |
|----------------|---------|
| November, 1980 | \$26.78 |
| December | 30.52 |
| January, 1981 | 32.96 |
| February | 35.27 |
| March | 35.32 |
| April | 34.18 |
| May | 31.97 |
| June | 30.81 |
| July | 27.16 |
| August | 26.34 |
| September | 25.52 |
| October | 26.49 |
| November | 26.71 |

The Company projects to the future:

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

| | |
|---------------|---------|
| January, 1982 | \$27.53 |
|---------------|---------|

| | |
|----------|-------|
| February | 28.56 |
| March | 29.00 |

Clearly, oil and coal costs have "stabilized" when compared to the dramatic changes that occurred through the decade.

An important factor in the need for immediate relief from changes in fuel cost is the Company's access to the Commission for overall rate relief. Early in the decade, the Company did not avail itself of that access to the extent that it does now. Were it not for the Company's frequent petition for general rate review, we would be tempted to support an annual fuel adjustment clause. Because of the Company's frequent appearances before us, however, we see no benefit to continuing the fuel adjustment clause at all.

The fuel adjustment clause has caused more consumer confusion than any other rate mechanism ever established. Consumers do not comprehend all the reasons for which the rate fluctuates. For example, the price of oil or coal is only one factor in the determination of this rate. Of almost equal importance are the thousands of decisions by consumers in using energy and the fluctuations that occur in the generation mix. If consumers use a rather balanced level of energy during the day, a greater reliance upon the more efficient or less costly units is

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achieved. When consumers increase their usage, such as between 4:00 P.M. and 6:00 P.M. on weekdays, they in effect increase the fuel adjustment by causing more costly and less efficient units to be called into operation.

Changes in the type of units that are available are also a cause of fluctuations in the fuel adjustment rate. For example, if all nuclear, coal and hydro units are in operation, all other factors being equal, the rate will be lower than if one or more are out of service for maintenance. Yet, these factors have never been adequately explained, much less understood.

The lack of understanding of the fuel adjustment also is evidenced by the fact that the fuel costs are divided between those collected through the basic rates and those collected through the fuel adjustment. In December, 1981, the bill for a 500-KWH customer was \$45.66. If a customer attempted to figure out the fuel-related costs associated with this bill, he/she would naturally multiply the fuel adjustment clause rate of \$2.25 per 100 KWH times 5 to arrive at the fuel costs for 500 KWH, or \$11.25. Yet, this would fail to recognize that \$9.73 of additional fuel costs are recovered in the basic rates. Thus, fuel costs reflect \$20.98 of the basic residential bill, a fact which only a handful of customers understand.

To illustrate the further absurdity of the situation we should examine the fuel adjustment charges for the year 1980 in full. The fuel adjustment charge went from \$.60 per hundred KWH to \$1.80 per hundred KWH. Consumers naturally assumed that *fuel* costs tripled. Actually, *total fuel* costs went from \$12.73 to \$18.73 per hundred KWH. While this was indeed a large increase, it was not a tripling of costs.

The increase in fuel costs itself was related not to oil price increases, for overall oil prices remained relatively stable, but to the Commission's attempt to transfer the benefits of Connecticut River hydroelectric power to PSNH. This attempt was temporarily blocked by the

U.S. Supreme Court and PSNH was ordered to be compensated. Thus PSNH recovered fuel costs that were incurred because of the absence of hydroelectric power from the Connecticut River.

Customers do not recognize that the Commission examines the reasonableness of the entire level of fuel costs during the fuel adjustment clause hearings. The level of fuel costs is first examined as a whole. The amount adduced to be reasonable is then reduced by the amount of fuel costs included in basic rates, leaving for collection by the fuel clause mechanism only those costs above the amount the customers already pay in their basic rates.

This lack of customer understanding and acceptance of the fuel adjustment clause is a major drawback to its usefulness. The Commission's experience with its Consumer Hotline is that the hostility of customers towards the fuel adjustment clause creates work for our State employees, Company personnel and in addition foments resistance to any change in rates, especially rate structure. Since the Commission has made rate structure a priority (See Section VII) and will be trying to effect changes that further the goals of conservation, equity and efficiency, we see this kind of consumer loathing as anathema to sound rate making practice.

Another clear example of the deficiencies of the fuel adjustment clause is the clear lack of incentives full fuel cost recovery provides to effect changes in generation mix which will positively affect

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rates to customers. We point first to PSNH's failure to buy a share of the Point Lepreau nuclear power station.

Should PSNH buy a share of the Point Lepreau station, it would incur costs for the capacity entitlement, a return to the Canadian owners of the plant, taxes, transmission expenses and the like, all of which may not be passed through the fuel adjustment mechanism. PSNH instead opted for an agreement with NEES to buy all of their additional capacity needs between now and the advent of Seabrook from NEES' ownership in oil-fired plants. The ratepayers are thus assured no alleviation of PSNH's dependency on oil until the Seabrook units are completed and in operation. The consumer will pay higher costs equal to the difference between the cost of oil-fired generation and the cost of the Canadian nuclear power. Because of PSNH's ability to pass costs through the fuel adjustment mechanism as they are incurred and their inflexibility because of the massive needs of the Seabrook construction program for new capital, an opportunity to lower costs to customers has been lost.

The Company is also slow to convert the Schiller Station in Portsmouth to coal for similar reasons. It has no incentive to convert as long as it may pass on the oil generation costs as they are incurred. The capital costs of the conversion are an extra burden on their already huge construction program. A conversion to coal will reduce the cost per KWH from the Schiller Station at least in half, including the cost of capital. Two years ago the Commission ordered the Company to convert the Schiller Station. Only very recently has the Company even issued a work order. All this despite the fact that the cost of conversion is less than \$250 per KW. The Company's latest estimate for Seabrook is that it will be seven times as expensive as the Schiller conversion!

For the reasons indicated above, the Commission has determined that abolishing the existing

fuel adjustment charge for PSNH is in the best interests of the consumers of the State. However, the Commission is not unmindful of the effectiveness of the existing FAC proceedings, the desire of the Company for forward-looking full recovery practices for fuel costs, or the rights and expertise of the parties negotiating settlement of the FAC issues in DR 79-187 Phase II. Therefore the Commission will withhold a final determination on the disposition of the fuel adjustment clause pending final action in DR 79-187 Phase II, as outlined in Section VII of this decision.

In the interim, the Commission will allow a \$1.75 per 100 KWH fuel charge to appear on January 1982 bills. For February 1982 until July 1, 1982 fuel costs are to be folded into basic rates and no fuel charge is to exist or appear on any bill. As of July 1, 1982 the Company will include in basic rates a reasonable estimate of fuel costs. The Commission will expect the Company to submit such an estimate, including all documentation relevant to its calculation. The Commission will expect in the future that the Company will minimize the amount of oil-fired generation by all reasonable means between now and the time that Seabrook I is operational. Seabrook is not a panacea for the high oil-dependency of the Company until it is available. We expect positive and determined action by the Company to effect the Schiller conversion, bring on any and all possible alternate energy sources it can build or buy from small power producers, and otherwise expertly manage

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both its loads and its supply planning better than we have seen in the past.

VII. RATE DESIGN

A. Introduction

The Commission's Thirty-Fifth Supplemental Report and Order No. 14,271 in DR 79-187 (65 NH PSC 251) formally relegated to Phase II of DR 79-187 the issues of rate design. The report stated (65 NH PSC at p. 287):

"A final decision as to the proper distribution of revenue between and among PSNH's classes of customers, as well as the customers within each class, has been reserved until Phase II of these proceedings. This procedure will allow the Commission and the parties to adequately address questions of the rate design. In addition, the hearings held pursuant to Phase II will assist the Commission in its attempt to adequately address the major issues involved in complying with the Public Utility Regulatory Policies Act of 1978 (PURPA)."

A procedural hearing for DR 79-187, Phase II, was held on June 30, 1980, and formal proceedings were initiated with the Commission's Forty-Sixth Supplemental Order No. 14,654 of January 6, 1981 (66 NH PUC 6). The scope of issues, as per Order Nos. 14,271 and 14,654, included revenue allocation, rate design, the PURPA section 111 standards, and the fuel adjustment clause.

The Commission additionally referenced the scope of Phase II in Supplemental Order No. 14,797 in Docket DE 80-246 (66 NH PUC 83), wherein the Company was instructed to address the issue of "additional service" tariffs in Phase II, and in Supplemental Order No. 14,861 in DR 79-187, Phase II (66 NH PSC 161), wherein the issue of an annual fuel adjustment charge was

specifically assigned for consideration in Phase II.

The design of rates for the Company was further complicated by the initiation of DR 81-87 to consider the Company's request for temporary and permanent increases in rates. In particular, in Supplemental Report and Order No. 14,877 in DR 81-87 (66 NH PUC 178), which granted a temporary rate increase to the Company, the Commission addressed certain questions of rate design on the basis that some measure of rate reform had to be implemented with the temporary rates prior to the completion of Phase II.

The proceedings in DR 79-187, Phase II, have been quite extensive, with some 1,000 pages of testimony, 24 days of formal hearings, and 50 proposed exhibits filling several volumes. Towards the end of these proceedings, the parties indicated an interest in exploring the possibilities of settlement on the various issues in Phase II, and the Commission supported the settlement efforts in Fifty-Second Supplemental Order No. 15,036 (66 NH PUC 286). The Company's proposal for a Residential Load Management Service was the first issue addressed, and culminated in a stipulation Agreement on August 14, 1981, which was accepted by the Commission in Fifty-Second Supplemental Order No. 15,086, September 13, 1981 (66 NH PUC 346).

The settlement process continued, and stipulated recommendations covering all remaining issues except the fuel adjustment issues were filed with the Commission October 26, 1981. To date, no resolution by the parties of the outstanding issues in DR 79-187, Phase II, has been achieved.

The Commission also has outstanding in Phase II two motions — one filed July

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20, 1981 by the Company protesting a portion of the Staff testimony, the second filed August 21, 1981 by the Staff protesting one Company Exhibit and a portion of the Company testimony. Although these questions are, in a practical sense, moot, this Commission has considered these motions and the objection filed by the Company to the Staff motion, and will indicate its position for the record. The requests to strike Schedule IV of Exhibit II-36-A and portions of Exhibit II-48 are accepted, and the Commission advises that the issues referred to in these documents will be addressed in Docket DE 81-312. Exhibit II-44 will not be struck from the record, not because of any judgment as to the "probative value" of the exhibit, but because the exhibit was a document filed by the Staff in this docket in accordance with the Commission's Fiftieth Supplemental Order No. 14,829 (66 NH PUC 121).

B. Response to Proposed Settlement

1. Introduction

The stipulated recommendations on rate design in this docket represent a remarkable accomplishment by the parties, and the Commission congratulates the parties for the good faith efforts they have made in resolving fundamental differences disclosed in a record of great complexity and technical sophistication. However, the Commission must also express the concern that settlement of a case this complex and this extensively litigated has risks. Ultimately, the Commission must decide on the basis of the record that the determinations proposed are just

and reasonable, or reject the settlement and instruct the parties to brief the issues. Such rejection is not necessary in this case, but the Commission will provide in the following paragraphs its analysis of the settlement and the reasons for acceptance.

2. Ratemaking Standards and Objectives

Section I of the settlement document refers to ratemaking objectives and the PURPA ratemaking standards. The objectives identified include the purposes specified in section 101 of PURPA, conservation, efficiency and equity, as well as the objectives of rate continuity, revenue stability and practicality of rates. These objectives are comprehensive, clear and well-stated, with the single exception of "equitable rates" which may be subject to considerable interpretation. The interpretation of equitable rates is appropriately the responsibility of the Commission, given the requirements of law and the guidance of the courts. The Commission finds that the equity objective includes the concepts of basing rates and class revenue allocation on costs, and providing essential services at an affordable cost. These findings reaffirm the Commission's prior decisions and support the recommendations of the parties in Phase II concerning ratemaking objectives. These objectives are adopted by this Commission and provide the basis on which the Commission judges the adequacy and acceptability of the remaining recommendations in the settlement agreement.

The parties recommend that the PURPA section 111 (and 115) ratemaking standards, including Cost of Service, Declining Block Rates, Time-of-Day Rates, Seasonal Rates, Interruptible Rates, and Load Management Techniques, be found "appropriate in principle, to carry out the purposes set forth in PURPA ... " The record clearly supports such a finding and the Commission does

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not hesitate to embrace the PURPA standards in principle.

The parties in subsection *C. Cost-Effectiveness* of the Stipulation indicate agreement that changes in rate design or product offerings must be justified on a cost-versus-benefit basis. The Commission finds no fault with this principle, but cautions the parties that defining and measuring costs and benefits is extremely difficult. In particular, the Commission has the responsibility to consider costs and benefits in the broadest sense, from the point of view that Commission decisions must be "in the public good", and within the context of the ratemaking objectives above. With this caution, the Commission adopts the cost-effectiveness principle agreed to by the parties.

3. Costs of Service

[14] In Section II-A(1) of the Stipulation, the parties address the issue of costs of service. The agreements set forth here are the most important and notable elements of the settlement. The parties agree to the use of accounting costs for the determination of revenue requirements, which is consistent with the traditional ratemaking practice in this jurisdiction; more significantly, the parties agreed to the following (p.3):

"As a long run regulatory principle, marginal costs are the appropriate basis for making utility retail pricing policy, i.e., allocation of costs among customer classes and rate design."

This agreement cuts straight through a decades-long debate and controversy about the costs of service and establishes a guiding regulatory principle for the decades to come. This principle recognizes that the efficient allocation of resources and the efficient purchasing behavior of consumers is premised on pricing policies that reflect true resource costs in the rates. The agreement is profound, perhaps surprising, but is fully grounded in the record of this case and fully satisfies the basic objectives of ratemaking discussed above. The Commission accepts the recommendation and wholeheartedly adopts this principle. In addition, the Commission finds that this decision establishes a precedent in this jurisdiction, and indicates its intention to apply this precedent generally to all questions of pricing policy that must be addressed by this Commission.

Despite the mayor agreement on costs of service, the parties have been unable to agree on the methodology by which to measure marginal costs, and have proposed in section II-A(2) a good-faith consultative process (hereinafter referred to as the Consultative Process) to address this and other issues in time for inclusion in the Company's second PURPA Section 133 filing, due June 30, 1982, and to address the implementation of the results. The Consultative Process is referred to several times in the Stipulation, and is clearly a very important element of the agreement. Such a Consultative Process appears to the Commission to be highly commendable, and the Commission approves of the Process and offers its full support. The questions of rate design, including the broad questions of pricing policy and product offerings, can never be answered finally, but must be subject to continuing investigations. Rate design is evolutionary in nature, and successful rate design must respond to and anticipate changes in the utility environment. The Consultative Process is one very important element of such an evolution, and will contribute to the education of all parties and the Commission, and to the rapid implementation of a more efficient, a more proactive,

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and a more equitable rate design for the Company. As a final point, the Commission asks that the Consultative Process remain open to other parties that may be able to contribute to the success of the efforts.

4. Revenue Allocation

The parties have recommended in section II-A(3) a revised allocation of revenues to class, based on the final DR 79-187 Phase I revenue levels. The Commission, not being privy to the settlement discussions, must presume that the parties reached the proposed dollar amounts in consideration of the rate-making objectives and costs of service principles previously agreed to. The proposal is within the range of alternatives presented in the record, and is consistent with the major points established in the record. In particular, substantial revenues are shifted to the residential class and away from the small general service class Rate G. This shift is consistent with the Commission's Order No. 14,877 in DR 81-87 (66 NH PUC 178), and thus some measure of the proposed allocation is reflected in current rates. The Commission notes carefully the language of the Stipulation. In particular, the final increase approved in DR 81-87, by this Order, must be allocated on the basis of the "class revenue relationships established" by the Stipulation, and such relationships shall remain in effect pending results from the Consultative

Process. In addition, the relationships "shall also apply to any refund or recoupment finally ordered" pursuant to the temporary rates in DR 81-87. Finally, the parties agree that "there shall be no further refund or recoupment of revenues established in Docket No. DR 79-187 Phase I." By these requirements, the Commission understands the Stipulation to mean that the class revenue relationships proposed are intended to apply in the future; that is, from the time the rates (and recoupments) pursuant to this Order are implemented forward until reallocations are proposed as per the Consultative Process. The Commission finds the proposal to be just and to be supported by the record, and therefore accepts that part of the Stipulation.

The Company is instructed to file its tariff in accordance with the final revenue level established by this Order and in conformance with the agreements in Phase II.

5. Residential Rate Design

The recommendations in the Stipulation pertaining to the residential class involve fundamental changes in the Company's tariff. The proposal dramatically changes the Company's policies with respect to ancillary service (e.g., space and water heating), implements Lifeline Rates, lowers the Customer Charge, and makes other changes that update the rate design in the residential class and that focus on innovative product offerings, such as seasonal and time-of-day rates and load controlled service. Unfortunately, the final rates and charges resulting from the settlement and the revenue level approved in this Order are not known and will take some time for the Company to determine. Subject to a review of the final tariff submission to insure against any unanticipated problems with this Order or the Stipulation, the Commission finds that the proposals meet the ratemaking objectives established in this Order, are supported by the record, and are just and reasonable. On this basis the recommendations are accepted.

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The Commission wishes to make note of several important facets of this decision. First, the Lifeline proposal satisfies the Commission's requirements in Report and Supplemental Order No. 14,872 in Docket DP 80-260 (66 NH PUC 166), and establishes for the majority of residential consumers in this State a rate that seeks to provide essential electrical service at a price affordable to all. Such a rate is not a panacea or a welfare program and does not eliminate the reality of constantly increasing costs and exorbitant prices for foreign oil, but it does offer lower essential usage customers some protection against this reality at the same time as it encourages conservation and energy efficiency for the higher usage customers.

The Lifeline Rate proposed resembles that previously adopted by this Commission for Concord Electric in that the recovery of the lifeline revenues is achieved by an increased charge for consumption between 200 and 500 KWH's per month. In conjunction with the lower customer charge, this rate will reduce bills for customers consuming less than 377 KWH's per month from what they would otherwise have to pay. As a result, about half of the residential power and light bills for the Company will be reduced. The Commission notes that the charges for space and water heating are not affected by the Lifeline proposal, and thus the rate will not unduly burden space and water heating customers. Rather, the large power and light users who are more likely to be able to conserve electricity will experience increases that will encourage conservation.

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

| <i>KWH</i> | <i>Power & Light Present</i> | <i>Bill*Proposed</i> | <i>Bill*Difference</i> | <i>Present</i> |
|------------|----------------------------------|----------------------|------------------------|----------------|
| 0 | \$ 4.85 | \$ 4.50 | \$ (.35) | (7.2)% |
| 100 | 13.01 | 11.50 | (1.51) | (11.6) |
| 200 | 21.17 | 18.51 | (2.66) | (12.6) |
| 300 | 29.33 | 28.18 | (1.15) | (3.9) |
| 377 | 35.62 | 35.62 | 0 | 0 |
| 500 | 45.66 | 47.51 | 1.85 | 4.1 |
| 750 | 66.06 | 68.14 | 2.08 | 3.1 |
| 1000 | 86.46 | 88.78 | 2.32 | 2.7 |

Assumes Fuel Adjustment at 2.25¢/KWH and class revenue level under Temporary Rates.

Second, the decision eliminates permanently the promotional rates for new electric resistance heating customers at the same time as it provides some protection for existing customers with large investments in electric resistance heating equipment. Such promotional rates simply cannot be justified when it is clear that future supplies of electricity, whether from existing oil-fired generating stations or from new capacity such as Seabrook, will be more expensive. By increasing the price of electricity for new electric heating installations as a reflection of the true costs of service, potential customers will be encouraged to make the proper decisions about using electricity. The objective of equity, efficiency and conservation are thereby well served. In addition, the Company will offer lower priced Load Controlled Service (LCS) to electric storage heating customers, including customers who might otherwise have chosen electric resistance heating under the old space heating rate. LCS offers substantial benefits

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to the Company in the form of improved operating efficiencies and lower costs of service, which are properly reflected in this lower price, and the objectives of equity and efficiency are again well served. The Commission is also hopeful that the rate design changes relating to space heating will help to encourage other approaches for new residential construction, such as super insulation, passive solar heating, integrated wood heating, etc.

Third, the elderly customer discount will be continued in perpetuity for those customers who currently qualify, and for their surviving spouses at the same principal residence. The lifeline rate discount and the lifeline revenue recovery from higher usage blocks will not apply to these customers, although they have the option to select the Lifeline Rate as an alternative. This measure resolves to the satisfaction of the Commission the inequitable situation that arose when CWIP was removed from the Company's rates without also eliminating the Elderly Discount, which was justified by virtue of having CWIP in the rates, and it solves the problem without dramatically impacting the elderly population that has come to rely on the discount to further stretch already strained fixed incomes. The parties in DR 79-187 Phase II are to be congratulated for developing this idea.

Finally, the Commission notes the substantial changes in policy towards seasonal rates, time-of-day rates and load management rates that are represented by the settlement terms as adopted by this order. These rates, despite the many unknowns and difficulties that may be involved, are clearly the wave of the future and offer the only long-term solution to the problems

of equitable and efficient pricing of electricity. Although the steps to be taken on the basis of this order are small, they will prepare us for the major changes to come. Optional rates for seasonal and time-of-day residential service will be retained, but with more attractive pricing than that available in the past, and the Company will renew its customer education efforts with regard to time-of-day rates. In addition, the rate for Load Controlled Service will be continued permanently and is available for storage space and water heating applications, as well as experimental applications proposed by the Commission Staff. The Commission is hopeful that the Consultative Process culminates in further recommended improvements in these offerings, and indicates its intention to act responsively and quickly to such recommendations.

6. Non-Residential Rate Design

In section II-B(2) of the Stipulation, the parties recommend that non-residential class definitions evolve over time with a goal of achieving consistent classification according to voltage level, size, load characteristics and metering requirements. Such a recommendation is consistent with cost of service principles and the goal of grouping customers with similar costs, and the Commission accepts this recommendation and encourages the parties to give it full attention in the Consultative Process. In addition, the Commission points out that certain Company reports, such as the Annual Report to Stockholders, or the monthly operating reports to this Commission, disaggregate certain data by type of customer, e.g., residential, commercial and industrial, in a way that fails to correspond with customer class definitions of the tariff. This discrepancy causes some confusion and makes class level

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analyses more difficult. This criticism extends to the Company's load forecasts, which again do not correspond at the class level with the class definitions of the tariff. If a distinction between customers is important for purposes of forecasting, then perhaps similar distinctions are appropriate for ratemaking.

For Rate TR, the parties recommend a two-year target for implementation of mandatory time-differentiated rates, and an immediate restructuring to reduce the declining block nature of the rates. This recommendation is ambitious, but is based on the fact that no new metering will be required for implementing time-differentiated rates for the class. The Company can expect substantial benefits from improved efficiency as a result of implementing this plan, and the interests of the customers will be served by more accurately reflecting costs in rates, thereby avoiding subsidies and inequities within the class. In the meantime, the rate will be moved towards this end, with due consideration of billing impacts and the need for determined progress. The Commission approves of the proposal for the TR class.

For Rate GV, the parties recommend an eventual cost-based, three-part rate (customer, demand and energy), with an immediate implementation of a customer charge, a two-block demand charge and an energy charge that moves toward such a goal. The Commission approves the proposal for the GV class.

For Rate G, the parties recommend that the class be split eventually into small and large customer categories corresponding to a two-part (customer, energy) rate or a three-part rate for demand-metered customers, respectively. In the interim, a modified three-part rate with a

declining block energy charge is proposed to replace the existing and very complicated hours-use-of-demand rate. The ancillary services, space and water heating, are placed on the same basis for Rate G customers as for residential Rate D customers, including provisions regarding space heating, water heating and load controlled service. Under the new rate, approximately one-half of the Rate G customers will see billing decreases, and one-half increases, as compared to what they would otherwise have had to pay.

These changes in Rate G in conjunction with the revenue allocation, which substantially benefits Rate G customers, begin to redress the significant inequities that have afflicted the Company's Rate G customers in the past. This relief is long overdue. Many Rate G customers, particularly the smaller customers who were most severely affected by the old rate structure, will see substantial reductions in their bills. The new rate will begin to reward the efficient small businesses that utilize electricity wisely, and will eliminate the subsidies that such customers have been paying over the years. Although the declining block structure has not been eliminated completely from Rate G, the Commission is pleased with the substantial progress towards this end that is embodied in the settlement. The initial block which had been 17.302¢ /KWH under the temporary rates, will be 8.25¢ /KWH under the new rates, a reduction of over 50 percent, while the last block will remain substantially unchanged. The Commission accepts the recommendations for Rate G.

The improvements identified above with respect to the rates for Rate G and Rate GV customers do much to satisfy the ratemaking objectives established above. However, the parties do agree in sections II-B-6 through II-B-9 of the

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Stipulation that further improvements in the form of optional time-differentiated pricing and implementation of load management are also required. With respect to load management, LCS will be available to Rate G customers, and, additionally, the Company's Energy Application Specialist Program will provide load management information. Time-differentiated rates, including both time-of-day and seasonal price differentiation as justified, are recommended for implementation as soon as possible, but must be based on the results of the Consultative Process, and must also satisfy the ratemaking objectives. These recommendations represent a significant step forward, and will result in a dramatic expansion of the product offerings for Rate G and GV customers. Such innovative offerings, as mentioned previously with respect to residential rates, are the wave of the future and must be vigorously pursued. The Commission accepts these recommendations.

Finally, the Stipulation in subsection II-B(10) addresses the questions of ratchets and "additional services" for Qualifying Facilities (QF's) under LEE-PA and PURPA. The Commission understands the recommendation on ratchets to mean that the demand ratchet in Rate TR will remain in effect pending more detailed consideration in the Consultative Process. With respect to "additional services", the Commission understands that the Company will revise its tariff in accordance with Commission Order No. 14,797 (66 NH PUC 83), and that, presumably, the issue of "additional services" to QF's is fully addressed by these changes and by the rate designs to be in place for the general service classes. In particular, the Commission understands that QF's will be eligible for service on a net purchase or simultaneous purchase and

sale basis within all general service rate classes, they will take service in the class they would be in if they had no generation, and they will not be assessed any special charges for "additional services", as these are services to which they are entitled under the rate structure for that class. The Commission accepts these recommendations, but further indicates that exceptions, such as for a QF willing to accept a lower level of reliability in order to take service on a cheaper rate, should be considered on a case-by-case basis.

7. Outdoor Lighting: Class ML

The Stipulation makes no recommendations on rate structure for Rate ML. The Commission will proceed on the assumption that parties have no disagreements with the Commission's decision on Rate ML in Report and Supplemental Order No. 14,877 (66 NH PUC 178) concerning temporary rates in Docket DR 81-87, or with the Commission's encouragement of high efficiency lamps. The Commission thus finds that the revenue decrease for Class ML should be applied in a manner that rewards high efficiency. The Company is instructed to allocate the class revenue decrease on the basis of lumens in the tariff filed to comply with this Order.

8. Miscellaneous

The Commission accepts the miscellaneous provisions of the Stipulation. With respect to subsection IV-C, the Commission suggests that the Company's need for an improved and more flexible billing system is a high priority, that the Company should consider diverting such internal resources as may be available to the task of implementation, and that the

Commission expects the Company to resolve the problem quickly. The rate design changes accomplished by this Order and the probable future changes to occur over the next few years are essential to the Company's long-term viability and to the success of oil conservation through rate reform; the investment in an improved billing system required to implement those changes is clearly cost effective in this regard, and should, therefore, receive a corresponding level of attention.

C. PURPA Findings

Title I of PURPA requires this Commission to consider, for Public Service Company of New Hampshire as a covered utility under Section 102, the six ratemaking standards of Section 111(d) and make a determination concerning whether or not these standards are appropriate to carry out the Section 101 purposes of conservation, efficiency and equity. The Commission must also decide, for those standards that are considered appropriate, whether or not to implement the standard. If a standard is appropriate but not implemented, the Commission must state in writing its reasons and make such statements available to the public. The six standards are Cost of Service, Declining Block Rates, Time-of-Day Rates, Seasonal Rates, Interruptible Rates and Load Management Techniques.

[15] This Commission, as indicated in section B-2 above, finds the six ratemaking standards appropriate, in principle, to carry out the purposes of PURPA. In addition, the Commission finds that the standards shall be implemented in accordance with the Stipulation of the parties in DR

79-187, Phase II, as accepted by this Order. In particular, the six standards are to be implemented to varying degrees in the various classes, with the exception of Interruptible Rates, which are not to be implemented at this time. With respect to Interruptible Rates, the reasons for not implementing the standard at this time are clear in the record for DR 79-187, Phase II. In particular, the record leads this Commission to conclude that:

- a. The value of interruptible rates to the Company is uncertain at this time, because of the Company's relatively broad peaks and more-than-adequate supply of available capacity.
- b. The cost-effectiveness of interruptible rates is not self-evident and cannot be determined until a marginal cost methodology is established pursuant to the Consultative Process.
- c. The appropriate pricing of interruptible rates cannot be determined until issues (a) and (b) are resolved.

The Commission finds that the requirements of PURPA Title 1 with regards to the six ratemaking standards are hereby fully satisfied both for the Company and for the Commission's entire regulatory jurisdiction.

D. Fuel Adjustment Issues

As no Stipulation has been proposed by the parties on the fuel adjustment issues in DR 79-187, Phase II, and no briefs have yet been filed, the Commission must reserve these issues for further consideration. However, the provisions of this Order as they apply in DR 81-87 have relevance to the fuel adjustment issues and will provide guidance to the parties in the settlement process still going on in Phase II. In particular, the Commission's findings in Section VI of this Order, and the provisions for periodic

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updating of costs in rates, should be carefully considered by the parties.

The Commission stresses the importance of resolving the fuel adjustment issues as quickly as possible, and to this end instructs the parties to file a Stipulation with this Commission on or before January 20, 1982, or, in the event settlement is not possible on any or all issues, to file final arguments on the unresolved issues on or before January 27, 1982.

VIII. *GENERATION PLANS*

A. *Introduction*

The decision of this Commission in DR 81-87 is clearly important for PSNH with respect to the Company's plans in the near term and to the long term viability of the firm. However, this decision is also important to the electric utility industry in New England, whose health and long-term viability is so clearly intertwined with that of PSNH. This decision must be placed within the context of utility planning and operations for the entire New England region, and PSNH's situation must be examined in the context of its sister utilities and the New England Power Pool (NEPOOL).

The cooperative approach to utility planning and operation embodied in NEPOOL is clearly of benefit to the utilities and consumers of this region with respect to more efficient dispatching of plants and improved regional and system reliability. However, the growth of NEPOOL's

importance for generation planning in the region is not without risks. The NEPOOL Agreement⁴⁽⁴⁾ gives NEPOOL the authority to recommend specific actions to member utilities (Section 10.1) and the authority to support these recommendations through various other provisions of the NEPOOL Agreement. In addition, the NEPOOL imprimatur on a Company's construction program may act as a coercive influence on a Company's planning activities and may distort the markets for generation capacity in the region. The cooperative planning function invested in NEPOOL also requires the full cooperation of all member utilities. The NEPOOL Agreement cannot insure such cooperation over a long-term planning horizon, and there is much evidence of a lack of cooperation in sharing the burden of the existing generation mix and the cost of new generating capacity. These issues are explored in the following section.

Two very recent events dramatically impact the region's plans for capacity in future years and thus must be considered carefully. These events have received relatively little attention from the capacity planning perspective, partly because of the public interest in Canadian hydropower, which will not be available on a firm capacity basis. The first event is the potential reallocation of hydro power generated by PASNY away from the Vermont utilities. The proposed reallocation could eliminate almost 150 MW of currently available and very attractive power from the region's supply. The second event is the cancellation of Pilgrim II, a 1150 MW nuclear unit previously scheduled for completion in the mid-1980's.

These changes, when analyzed in accordance with data provided in the New England Load and Capacity Reports published by NEPOOL, do not indicate in and of themselves that New England as a whole is likely to undergo power shortages in the near future. However,

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when the data is corrected for PSNH's most recent estimated schedule for Seabrook I and II, the results imply that a need for new capacity in the region will occur in the mid-1990's. And, if contingencies occur for any of the three remaining nuclear plants, including Millstone III, the region may be in need of additional capacity during the early 1990's. On the other hand, some individual utilities of the region appear to be facing considerable uncertainty with respect to their own capacity plans.

However, an immediate problem and a more troubling one is the impact the cancellations and postponements have on the region's plans for oil import reductions. As NEPOOL indicates in the transmittal letter for the 1981 Load and Capacity Report:

"However, with approximately 60% of the existing capacity in oil-fired units, energy deficiencies could occur in the mid-1980's. It is especially critical that all non-oil-fired capacity be built as scheduled ... "

This sentiment is also reflected in the August 1981 11th Annual Review of Overall Reliability and Adequacy of the North American Bulk Power Systems by the North American Electric Reliability Council, which states (p. 38):

"The single most serious threat to future reliability in the U. S. portions of NPCC (northeast Power Coordinating Council) is the continuing dependence on foreign oil for electric generation."

The loss of 150 MW from PASNY and the cancellation of an 1150 MW nuclear power plant imply very directly an increase in the region's consumption of oil and a consequent greater risk of "energy deficiencies" in this decade. The continued reliance on oil also implies continued escalation of utility prices for consumers as well as the continued vulnerability of utilities and consumers to substantial price shocks due to the volatility of the oil markets.

For these reasons, it is worth reviewing the region's forecasts and capacity plans in order to properly evaluate the impact of these recent events as well as the relationship of PSNH to the Power Pool and its other member utilities. It is also important to note the accuracy and consistency of these plans and forecasts, and the extent to which New England utilities are, in fact, operating in a cooperative planning environment. For these purposes, the Commission takes administrative notice of all pertinent forecasts in its files, including Annual Forecasts and Load and Capacity Reports from NEPOOL, Annual Reports of all companies participating in the Seabrook project, and all reports to the Securities and Exchange Commission for PSNH, NEES and other New England utilities that are on file with this Commission.

B. Forecasts

In 1973, NEPOOL forecast a peak demand for 1980 of 23,937 MW. The actual peak for that year was 15,620 MW, almost 35 percent below the estimate made seven years earlier. Although NEPOOL's forecasting capability has improved over time, and although some of the overestimate can be explained by the unanticipated events of 1974 and later years, it is clear that NEPOOL failed to give good guidance to the utilities in the region. The resulting recommendations of NEPOOL for generation facilities, and the corresponding decisions by member utilities, based on their own inaccurate forecasts as well as NEPOOL's, were very poor. Whether the current forecasts of NEPOOL accurately predict future demands is important, but less so, since the construction of new capacity in New

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England is being justified on the basis of conservation.

Nevertheless, the initial impetus for the construction of nuclear units in New England was the anticipated need for capacity. The 1973 forecast predicted percentage reserve margins in the low to mid-20's, with the addition of 10 nuclear units by the end of 1983. The 1977 forecast predicted a steep decline in reserve margins until the somewhat delayed nuclear units began coming on line in 1981. The 1979 forecast predicted an even steeper decline to 15 percent in 1984. These predictions were consistently and substantially lower, as would be expected, than the actual reserve margins for the 1970's, which gradually declined to 39.2 percent in 1980. The 1981 forecast predicts a slight increase in reserve margins as the planned nuclear units come on line, followed by a moderate decline to 19.7 percent by 1994.

The forecasts of reserve margin offer a revealing picture of the impact of NEPOOL on utility planning in the region. In particular, the period from 1977 through 1979 was a critical time with respect to the schedules, costs and ownership of nuclear units in New England. NEPOOL's prediction of impending capacity shortages should have influenced utility construction plans significantly; the market for nuclear capacity should have been strong; and the determination of utilities to pursue nuclear construction programs rapidly should also have been strong.

This clearly did not occur as demonstrated by recent history. If anything, most New England investor-owned utilities have walked away from nuclear despite their own forecasts showing positive economics.

C. Nuclear Construction Plans

New England adopted nuclear power in a big way in the late sixties and early seventies. Not only were the four Yankee Units and the three later units at Millstone and Pilgrim successful and relatively inexpensive, but electrical demands were growing very rapidly. However, the nuclear program launched in the early seventies was plagued from the start with problems, and exhibited a history of uncertainty, poor planning, and the confluence of declining load growth and escalating costs. The attached tables show the progress of the nuclear program in New England through the forecasts NEPOOL and the financial documents of PSNH and NEES. The picture they reveal is startling.

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[Graphic Not Displayed Here]

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

NEES Completion Dates as Presented
in SEC 10K, Ann. Report to Stockholders

1972
1973
1974*
1975
1976
1977
1978
1979
1980

In 1981 First Update – NEESPLAN for planning purposes this is 85/86,
88/89.
Dates for Seabrook, Pilgrim and Millstone from NEES entry in '74 Moody's
P.U. Manual.

In 1973, all the New England nuclear units now in service, with the exception of Millstone 2, were in operation. In addition, ten new nuclear units were planned by the members of the power pool and included in the regional capacity plan of NEPOOL. These plants (Pilgrim 2 and 3, Millstone 3, Seabrook 1 and 2, Montague 1 and 2, NEPCO 1 and 2 and Sears Island) were all to be very large, over 1000 MW each, and were scheduled, according to the 1973 Load and Capacity Report of NEPOOL, to come on line between November 1978 and May 1983. Pilgrim

II was scheduled by NEPOOL to be the first of these units on line. However, PSNH and NEES, participants in Pilgrim 2, gave the completion date for Pilgrim 2 as 1980 in their official documents. NEPOOL also assigned June 1982 and May 1983 to NEES' twin nuclear units NEPCO I and II for completion. NEES told its stockholders in its 1973 annual report that construction at the so-called Rome Point site was postponed indefinitely, and that NEES would review other sites. Apparently, NEPOOL, an arm of the utilities then three years old, did not share the same knowledge of its members' plans, although it was responsible for coordinating those plans.

By 1977, NEPOOL, NEES and PSNH each seemed to lose track of the others altogether. In official documents released during 1977, NEPOOL showed the Seabrook units coming into service in 1981 and 1983. In 1977, PSNH, the lead owner, presented official dates of 1983 and 1984. Both the Power Pool and PSNH agreed on 1984 and 1982 as the on-line dates for Pilgrim and Millstone; however, NEES, in its annual report for 1977, showed Pilgrim scheduled to be on line in 1985 and Millstone in 1986, a change not only in the dates but in order of initial service.

Perhaps NEES differed with NEPOOL and PSNH estimates because its report comes out a few months later, but perhaps not. In 1977, NEPOOL gave the on-line dates for NEES 1 and 2 and Montague 1 and 2 as 84/86 and 88/89, respectively. NEES showed in-service dates for the same units of 86/88 and 88/89. Can a difference of a few months account for such disparity of outlook?

These kinds of inconsistencies are troubling. The earlier divergences in service dates are perhaps differences of perspective or disparities in the quality of information among utilities and the power pool. Upon further investigation, though, these trivialities have much greater implications. For instance, we

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look at the information for 1977 again and find PSNH showed Millstone 3 and Pilgrim 2 coming on line the same years as Seabrook 1 and 2, respectively. NEPOOL, meanwhile, showed the plants coming on line in successive years, beginning in 1981; Seabrook 1, Millstone 3, Seabrook 2, Pilgrim 2. NEES, quite differently, showed Seabrook 1 on line in 1982, Seabrook 2 in 1984, Pilgrim 2 in 1985 and Millstone 3 in 1986. Together these plants were in 1977 estimated to cost a total of \$5 billion! Yet, three parties, all deeply involved in planning and construction could not agree on the order in which the plants would come into service, let alone the dates. It almost appears that the schedules for these units have become matters of policy rather than engineering.

In 1981, we again see a level of discord among the utilities and NEPOOL. Between the February, 1981 Common Stock Prospectus and the April, 1981 Common Stock Prospectus, PSNH changed its estimate of Seabrook's completion dates to 1984 and 1986 from 1983 and 1985.

In March, 1981 NEES released an update of its long-range corporate plan (NEESPLAN). It apparently was not aware of PSNH's change in service dates for Seabrook. NEESPLAN 1981 presents the same on-line dates as NEPOOL, of 1983 and 1985, officially. For planning purposes, however, NEES gave the following dates for initial operation:

Seabrook 1 — Winter Peak 1984/85 Seabrook 2 — Winter Peak 1988/89 Millstone 3 — Winter Peak 1986/87 Pilgrim 2 — Winter Peak 1987/88

NEES seemed to believe that Pilgrim, which was not yet under construction, would come on line before Seabrook 2, which was partially complete and where triple shifts were being used to speed completion. It is also interesting that New England Power Co. (of NEES) filed testimony with the FERC in August of 1981 asking that they be allowed to write off their share of Pilgrim 2, even before the plant was actually canceled.

MMWEC, the Massachusetts Municipal Wholesale Electric Company, took a different tack than NEES. It estimated in its 1980 Annual Report to member companies the following dates of initial operation:

Seabrook 1 — 1985 Seabrook 2 — 1987 Millstone 3 — 1986 Pilgrim 2 — 1990

MMWEC added a year to PSNH's official dates; stuck with Millstone's official date, but on Pilgrim, put off the date beyond even the conservative expectations of NEES.

In retrospect, 1981 proved to be a year of considerable change with respect to New England's nuclear plans. In early 1981, the estimated costs and completion dates for Seabrook were substantially revised, and in the last quarter of 1981, Pilgrim 2 was canceled by its lead owner, Boston Edison (shortly after the Massachusetts DPU approved the commitment to construction of the plant). Surely, if there was a year for the New England utilities to know and understand their priorities, to have a common basis of understanding upon which to proceed with these massive construction efforts, it was 1981. We wish there was information that would show that there is now an authority, a singular viewpoint, a basic understanding and appreciation, as to when the Seabrook nuclear units and the Millstone 3 plant will be completed and available for service. However,

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as was once said, "If wishes were horses, beggars would ride."

It is worth noting that the decimation of New England's nuclear program dramatically affected the region's generation mix, leaving the region dependent on oil for a much longer period of time than should have been the case. The Electric Utility Industry In New England Statistical Bulletin for 1975 published August of 1976 stated (p. 3):

"Projected cost analysis shows nuclear energy to be the most economical source of base-load power for New England in the foreseeable future. Current plans call for the addition of seven more nuclear units by 1986 when nuclear power is expected to account for about half of New England's generation."

Five years later, the Statistical Bulletin for 1980 reports (p. 10):

" ... Nuclear power is expected to provide about one-half of the region's electricity by 1990."

In five years, the target date for achieving "one-half nuclear" generation was delayed four years in spite of substantial reductions in forecasted load growth during this same period.

At the present time, only three of the original ten nuclear units planned in New England are

scheduled for completion. According to the original schedule of 1973, Pilgrim 2 was to be the first, and Seabrook 1 and 2, the third and sixth of the ten plants to come on line. Along the way, Seabrook 1 and Seabrook 2 became the front runners in the nuclear race in New England. One can only observe that PSNH, the lead utility in Seabrook, had kept to its plans and commitments in the face of ever-worsening financial conditions, eroding load growth, and declining interest in and support for nuclear power by the other utilities in New England. PSNH has assumed a disproportionately large share of the burden for bringing nuclear capacity on line in New England, and has suffered greatly as a consequence.

D. The NEPOOL Agreement

Given this pattern of delays, cancellations, and apparent disagreements concerning the construction of nuclear plants in New England, it is interesting to review the provisions of the NEPOOL Agreement concerning the planning of generation facilities. Additions to and changes in generating facilities of the NEPOOL participants are recommended by the NEPOOL Management Committee and can be enforced to a limited extent as indicated in Section 10 of the NEPOOL Agreement. Three objectives are identified in subsection 10.1, *Recommendation of Additional Facilities*. These are:

(a) Each Participant should have a reasonable opportunity to satisfy its load over some reasonable time period with a mix of generation reasonably comparable as to economics and types to that being developed for New England.

(b) No Participant should be required to subject itself to an excessive disproportionate exposure to backup power costs or reserve obligations as a result of having to take any Entitlement which is excessively disproportionately large as compared to the Participant's size, or as the result, during any sustained period, of having to take a disproportionate portion of its capacity from immature units.

(c) No Participant which has maintained an integrated system in the past should be required to impair the attractiveness of its securities in the capital markets by making unreasonably large capital investments in new generation or by becoming dependent upon other Participants

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for a substantially disproportionate amount of its system capability.

In the case of PSNH, each of these objectives is being violated. With respect to generation mix, PSNH is and has been for quite some time, deficient in nuclear capacity. Other utilities, particularly United Illuminating, are in considerably worse shape. The nuclear ownership level and percentage of oil-fired generation of the major New England utilities are portrayed in the attached tables, which demonstrate the inequities that have existed for some time in the region. It is puzzling as to why the successful Yankee concept for nuclear construction was abandoned in favor of individual utility ownership, where the risks fall more heavily on the single utility sitting in the lead role. Perhaps NEES, Northeast Utilities and Boston Edison felt they could afford such risks; PSNH and CMP, because of their smaller size, might have been better off to avoid these risks. NEES, NU and Boston Edison have also canceled nuclear units for which they were lead participants. PSNH did not, and CMP did not, although it changed its plans for Sears Island to coal-fired generation.. checkend

[Graphic Not Displayed Here]

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

| <i>PUBLIC UTILITY</i> | <i>% OIL FIRED GENERATION</i> |
|---------------------------|-------------------------------|
| Bangor Electric | 65% |
| Boston Edison | 73% |
| Central Maine | 55% |
| Central Vermont PS | 7% |
| Commonwealth Energy | 70% |
| Eastern Utilities Assoc. | 83% |
| Green Mountain Power | 73% |
| Maine Public Service | 38% |
| NEES - NEPCO | 70% |
| Northeast Utilities | 43% |
| Public Service Company NH | 53% |
| United Illuminating | 91% |
| <hr/> | |
| Region | 61% |

As to objective (b) relating to exposure to backup power costs or reserve obligations, we merely note that the schedule for maintenance outages planned by the N. E. Power Pool for Seabrook 1 and 2 during their first 10 years of operation burdens both PSNH and its customers with moderately higher fuel costs during the highest use months.

NEPOOL schedules certain units to be out of service each month of every year. In the past, efforts have been made to retain the most efficient and least costly units for operation during system peaks. In New Hampshire, the primary concern is for the months of December through February, but March and November are also months of high usage as well.

The following information, taken from our files in DE 80-175, Data Request 2, Response 4, which we administratively notice, reveals a horrendous maintenance schedule for Seabrook. If Seabrook is designed to reduce the use of oil, meet demand, and supply large amounts of energy, it would appear sound scheduling to have these units available for colder months. Yet the colder months are exactly when NEPOOL has scheduled these units for outages. A review of the table set forth below reveals the following:

First, if the definition of "Winter" is limited to the very coldest months of December through February, we find one Seabrook unit to be out of service in 47% of these months between 1985 and 1995. During the first four (4) years after Seabrook 1 goes on line, this climbs to a remarkable 67%. Fully, two-thirds of the coldest months for the first four years that Seabrook 1 is in operation and the first two years that Seabrook 2 is scheduled for operation, one unit is out of service or scheduled for maintenance. If, as usually happens, scheduled maintenance is extended by 10-20% to repair unforeseen problems, the percentage is even higher.

If this were to occur, ratepayers would be asked to pay high costs for replacement power (which is likely to be oil-generated) plus a return on the high capital investment of the nuclear plant at a time when usage is generally the highest and customer bills the largest. This is hardly a

scenario designed to increase favorable reaction to the Seabrook plant.

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

SCHEDULED MAINTENANCE OUTAGES

YEAR

1985

1986

1987

1988

1989

1990

1991

1992

1993

1994

1995

The third objective in the NEPOOL Agreement refers to the attractiveness of a firm's securities. As the table below shows, PSNH has the lowest bond rating in New England, and yet is the lead for two out of three of the remaining planned nuclear units in New England. The Seabrook units being constructed by PSNH will be the first nuclear units to come on line since 1975 and the first nuclear plant in New England to experience the massive cost escalations and extraordinary high capital costs of the late 1970's and early 1980's. Since inception, the schedule for the plants has slipped only five years, in stock contrast to the other units planned at the same time. The second largest participant in Seabrook is United Illuminating Company, also in an extremely difficult financial position, although stronger than PSNH. Despite being the lead owner of Seabrook, PSNH owns only 35% of the plant, having sold 15 percent of its original share, and may own less before the plant is completed.

A more important observation for the region can be made with respect to the nuclear units that have been cancelled. Boston Edison, Northeast Utilities, and NEES (NEP) have all cancelled

two large nuclear units since 1973. These utilities are the largest and the financially strongest utilities in the region, and at this point in time NEES has the healthiest bond ratings in the region. It may be no

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coincidence that these utilities bailed out of New England's nuclear program leaving PSNH with the major responsibility for New England's nuclear capacity plan.

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

*BOND RATINGS,
MAJOR NEW ENGLAND UTILITIES*

Central Maine Power
United Illuminating
Eastern Utilities
New England Electric Systems*
Northeast Utilities*
Boston Edison
Public Service of New Hampshire
Central Vermont Public Service

Rating of a major subsidiary.
Source: First Boston Corporation, Moody's Utility Manual.

E. Summary

The spectre of continued regional reliance on oil should cause the New England utilities to pursue oil conservation even more aggressively than they have in the past. However, the prevalence of complete fuel-cost recovery Fuel Adjustment Charges throughout the region and the perceived stabilization of the world oil markets have lessened the incentive for these utilities to pursue aggressive programs of conservation and non-oil capacity expansion. Given that Seabrook and Millstone III constitute the only major new non-oil-fired capacity scheduled for completion by the middle of this decade, and that the New England utilities continue to tout nuclear power as the least cost alternative, it is surprising that the New England utilities have not been beating down the doors to acquire pieces of this capacity, or increases in their ownership shares, even though such capacity has been offered for sale. One gets the impression that certain utilities are holding their cards close to their chests and waiting for the situation to deteriorate before offering to buy some nuclear capacity at bargain basement prices. It is in this context that the pressures of NEPOOL may act counter to the interests of smaller utilities, particularly those such as PSNH who have accepted the burden as lead participant in joint projects planned and approved in the NEPOOL context. As lead participant, a utility has the burden of fulfilling the capacity plans of all participating utilities and of the region. In addition, the lead participant must assume the risk of proceeding with the plant, even if they must ultimately sell down a portion of their ownership at below full cost, as PSNH did. A well positioned utility in New England thus stands to benefit greatly from the misfortunes of other utilities involved in major construction projects. Why is the financially weakest utility in the region left holding the key to the entire region's capacity plans for the coming decade? Why is the weakest utility in the region forced to assume the major burden in the region's efforts to reduce oil consumption? These circumstances point to a pattern of discrimination and exploitation, whether accidental or intentional, of utilities

such as PSNH in the New England region.

Evidence of such practices is readily available. We merely point out the following facts. (1) PSNH contracted with New England Power Company of (of NEES) for purchases of capacity from the Brayton and Wyman oil-fired units that locked PSNH into these plants. The contract contained a clause that specifies that any requirements for PSNH to increase capacity to meet NEPOOL requirements be met by increasing the purchases under the contract. Thus, PSNH became locked into purchases from some very expensive oil-fired units at the same time as NEP declined to purchase any of the Seabrook shares that PSNH was offering in 1979 and 1980. (2) PSNH sold a portion of Seabrook to MMWEC under terms whereby they not only covered the MMWEC payments for a period of time, but also contained a forgiveness clause whereby all such payments with accumulated AFUDC would be forgiven if MMWEC failed to get approvals by a specific date. (3) When PSNH sold down from 50% ownership of Seabrook, they sold at construction cost without accumulated AFUDC, thus absorbing millions of dollars in AFUDC for a plant that they no longer owned.

F. Seabrook II Completion

Seabrook II and Millstone III share one thing in common: they are both estimated to be in operation during 1986. Seabrook II is scheduled for done of 1986 while Millstone III is scheduled to be completed one month earlier, May, 1986. The Commission asks how valid these estimates are? We believe that the estimate for completion for Seabrook II is open to serious question.

As has been noted, Seabrook II and Millstone are both scheduled for 1986. Yet, as of June 30, 1981 Seabrook II was 8% complete, whereas Millstone III was 36% complete. It is highly unlikely that one plant four and one-half times further along in terms of completion than another plant will be completed virtually as of the same date.

In its 1980 year-end financial statements, MMWEC listed the completion date of Seabrook II as 1987. The source was given as the lead participant.

The first update of NEESPLAN reiterates the completion dates for Seabrook I, II and Millstone III and Pilgrim II as the dates given in the annual NEPOOL forecasts. Yet, for NEESPLAN planning purposes, NEES uses what it describes as a more conservative position in terms of scheduling the capacity and the energy of these units. While these dates differ for all four plants, by far the greatest differential is shown in the completion date for Seabrook II. NEESPLAN uses a completion date for Seabrook II of the winter peak of 1988-89, which would establish the completion date between December 1988 and March 1, 1989. This leaves two of the major four owners carrying an in-service date other than that which is regularly provided by PSNH to the public and the Commission.

Another example of the delay of Seabrook II is shown through a review of the record in Public Service Company, DF 79-100-6205, which is hereby administratively noticed as well as included as part of the record in this proceeding. In that proceeding, the Commission in Order No. 13,759 (1979) 64 NH PUC 262 initially approved an ownership level of 35.9739 in Seabrook, together with divestiture of the interests in the Pilgrim II and Millstone III units.

PSNH responded by motion that there was no way that it could finance a 35% share and that the Commission failed to recognize the true economics of

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the situation. The closest scenario to retaining a larger than 28% interest in Seabrook II was based on the delay of Seabrook II for four years. PSNH's documentation especially in the hearing held on August 6, 1979 demonstrated that there was no way that PSNH could retain more than 28% of the plant. Even that level was conditioned upon immediate divestiture of the Pilgrim and Millstone ownership interests. (1979) 64 NH PUC 286. PSNH is now attempting to hold a 35% interest, has not divested its Millstone III interest and held a Pilgrim II interest right to the end.

In November of 1979, Gordon McKenney was quoted in the press as saying that if PSNH divested only 15% instead of 22%, that it could still afford to finish Seabrook by delaying the second reactor four years.

Construction at Seabrook II was first slowed and then stopped by the Commission in 1980 pending an approval of the divestiture to the Massachusetts utilities through a decision by the Massachusetts Department of Public Utilities. Yet, despite this reduced level of construction at Seabrook II, and some major workforce strikes, the dates for Seabrook I and II remained the same prior to these actions.

If in five years of construction, Seabrook I and common plant has reached a level of 54% completion, why should the Commission or anyone else accept that the remaining 90%+ of Seabrook II will be completed within a shorter time period of a little over four years?

Our conclusion is that Seabrook II will probably not be operational in 1986. Furthermore, the winter of 1988-89 does appear to be a more realistic date upon which we might expect Seabrook II to be ready for operation. In a sense then, the confusion that has marked the official and unofficial documents regarding Seabrook II has placed the Commission in the position of a contingency planner looking behind for evidence of what others might know. Lacking faith in what we have seen and heard it is not unreasonable to pursue a course which looks at future events conservatively.

G. NEES

NEES is clearly the healthiest and financially strongest utility in New England. NEES wholesale subsidiary NEPCO has bond ratings of AA for its first mortgage bonds and A for its G & R bonds. (S & P's and Moody's). Only Commonwealth Electric, of the major NE electric utilities has a higher rating. NEP's internal generation of funds has averaged 66% since 1970, a full 36% above the internal cash generation of the New England investor owned utilities. For this reason, it is important to understand the relationship between PSNH and NEES; and the behavior of NEES in the "cooperative" atmosphere of the New England utility industry. The investigations of this Commission yield some very disturbing results. NEES has behaved as an entity unto themselves, manipulating events to their own needs, refusing cooperation and ignoring, even possibly exploiting, the problems of the other New England utilities. This Commission cannot watch complacently as these machinations occur, and will examine very carefully in the future the actions and behavior of NEES, and Granite State Electric.

NEES has always *said* it's a strong supporter of nuclear power. On February 23, 1977, Russell Holden, commenting on the relatively cheaper cost of nuclear power states: "It is as much a matter of economics as it is fuel supply. The evidence clearly show that nuclear

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power is the only realistic hope we have of holding down the cost of electricity in the next twenty years." (March UL 2-23-77) Frederick Greeman, Vice President of New England Power, was quoted in the Manchester Union Leader, December 18, 1979 as saying "It is critical that the Seabrook Nuclear Plant in New Hampshire, the Millstone Nuclear Plant in Connecticut, and the proposed Pilgrim II Nuclear Plant in Massachusetts be completed as quickly as possible in order to reduce the region's dependence on foreign oil."

In regard to nuclear power and Seabrook the 1978, 10K states, "The System has two principal alternatives to provide new major generating capacity — nuclear power and coal-fired generation ... Studies demonstrate that, among these alternative, nuclear power promises the lowest generating costs. All of the System's planned units are nuclear."

On June 15, 1979, NEPCO issued a press release headlined *Need for Nuclear Rises with Oil Prices*. NEES reports that nuclear power saved its customer \$29 million in 1978.

However, their *actions* have been less than supportive and in fact have more than any other factor disrupted the development of nuclear power in New England. The following is illustrative.

The 1976 Moody's PU Manual quotes NEES as stating, "A subsidiary is negotiating for an additional 400 MW of capacity in one or more of the nuclear units now in the construction and/or advanced planning stages. Also in 1976 NEES requested authorization to operate as a utility in the towns of Seabrook, Hampton, and Hampton Falls (DE 76-175, 12/14/76). The purpose NEES gave for this action was to lay the groundwork for acquiring an additional 15% share of Seabrook 1 and 2. Neither of these actions were taken.

In 1977 NEES offered to trade shares in its soon to be abandoned nuclear plants for Seabrook shares. *PSNH* FERC docket #EL 78-15, ER 78-339 Volume 4 transcript pages 664-665 (1978).

In the 1978 10-K in regard to Seabrook NEES states: "If PSNH is not permitted to include CWIP in its rates, NEP understands that PSNH will have difficulty meeting its current one-half portion of the construction program. PSNH has offered to sell 22% of the units to current joint owners. NEP has expressed to PSNH an interest in acquiring an additional 10% (230MW) of the units provided satisfactory terms can be negotiated and regulatory approvals are obtained."

NEES subsequently refused to buy any shares even though offered at a reduced rate from either PSNH or UI, the two lowest rated electric utilities in New England.

In 1980, NEES witness Bigelow testified that NEES sought to sell PSNH oil-fired capacity and energy in exchange for putting up temporary advance payments to keep Seabrook going during the time period when the question of divestiture had placed the plant in jeopardy. PSNH initially refused and NEES withdrew their support. Alas, PSNH subsequently bought the power from NEES, and NEES never loaned the money.

In late 1979, NEES announced NEESPLAN shortly after canceling its two major nuclear

units. In the report, NEES states "To meet the se needs, we will build or buy 100 MW of alternative energy sources and acquire 100 MW of additional nuclear or other base load capacity." Since there were no other base load units being built other than nuclear, an assumption would be that NEES

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would buy 100 MW of power from the remaining four nuclear stations. Yet no purchase was made.

In the first NEESPLAN update, NEES still indicated the same level of capacity for the next fifteen years but changed the level of alternative energy from 100 MW to 200 MW stating that the 100 MW of conventional nuclear capacity would no longer be needed.

In early 1981, a NEES official addressing a legislative committee stated that Pilgrim II was a more sound investment than Seabrook. In mid 1981, NEES filed for recovery of its Pilgrim II investment prior to Boston Edison cancelling the plant.

NEESPLAN Update states: "Delay or cancellation of any of these (four planned) units would constitute a serious setback to our efforts to reduce our use of foreign oil to 10 percent of total energy requirements." Sec. VII, p. 2.

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

NEES Nuclear Capacity

Year
 1970
 1971
 1972
 1973
 1974
 1975
 1976
 1977
 1978
 1979
 1980
 1981
 1982

NEES has dropped its projected nuclear capacity from a level of 2608 MW in 1979 to 370 MW In 1982. Despite the cancellation of Pilgrim II, NEES has made no attempts to secure additional shares of Seabrook or Millstone despite the fact that these units will be available for the same years as Pilgrim II would have been. Furthermore, the studies performed by every Commission in New England together with every utility already has demonstrated a favorable set of economics for nuclear power.

NEES has already had consumers compensate it for its investment in NEP I and II. It is now seeking the same treatment for Pilgrim II expenditures. There remains the question as to why these costs should be recovered if NEES didn't believe it needed the capacity or the oil displacement capability. If NEES doesn't attempt to replace its Pilgrim share with Seabrook or Millstone interests, should its Pilgrim II costs be recognized? Now that NEES' percentage of nuclear generation will be 16% instead of 18%, are they in violation of the NEPOOL agreement?

If they are in violation, and due to their violation the three plants are delayed, who should bear the costs?

This Commission looks to NEES to set an example and purchase additional shares in Seabrook. Obviously their own words and studies support such action. Since NEES serves customers in this

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state, we expect them to carry their proper level of nuclear ownership. A failure by NEES to purchase additional nuclear capacity may well lead to further delays in completion dates.

H. Pilgrim II

In the Spring of 1981, the cost of Pilgrim II was being quoted in terms of 2.6 billion dollars, operational in 1987, and a cost per KW in the \$2,200 range. In September of 1981, Boston Edison cancelled the unit and the figures given at that time are an overall cost of \$4 billion, an operational date estimated at 1990, and a cost per KW of \$3,478. This 58% increase in the estimated cost of the project six months must be recognized as one of the prime examples as of why the electric utility industry has little, if any, credibility. Ignoring the obvious SEC violations such as misrepresentation to stockholders, bond holders and the investment community as a whole, the question remains; Do the New England Electric Utilities really know the true costs of the projects they undertake?

If Pilgrim estimates can be so incorrect, it does not encourage belief in the validity of the estimates for other units, nor does the industry increase our faith by providing ancient information receiving regulatory approval to proceed and then cancelling the unit. This Commission must wonder how Boston Edison can trust the regulatory environment so shabbily and then expect a continuing faith in their mode of operation.

When Boston Edison cancelled Pilgrim II they stated that they would seek to increase ownership in Seabrook I and II or Millstone III. If in cancelling Pilgrim II, they lost 680 MW of nuclear power it would appear logical they pursue additional nuclear power both for capacity and oil displacement reasons. Boston Edison's oil fired generation figure of 73% would appear to dictate that they purchase additional shares, but again they have not offered to purchase any additional shares in the three remaining plants.

I. Maine and Vermont Utilities

Both Central Maine and Central Vermont lost projected capacity in the cancellation of Pilgrim II. The Vermont utilities stand to lose 150 MW of power from PASNY, that *Power Line* estimates will double electric rates in Vermont.

In Maine, Central Maine attempted to secure approval for construction of Sears Island, by stating that it had to build that unit because among other reasons, additional interests in the nuclear units under construction were not available. Yet UI, PSNH, NU, and others all sought to sell interests in the nuclear units but found that the level of buyers never met the level of shares available. As the Maine Commission noted and we concur:

"We are therefore, puzzled by the Company's argument that, if it cannot satisfy all of its

needs by increased participation in nuclear facilities, it should not satisfy any of its needs in that manner. If an alternative to Sears Island can provide reliable generating capacity which can produce electricity at a total cost less than the Sears Island plant, the Company should purchase that capacity." Maine PUC decision U3238, U3239, U3356 (1979).

J. Analysis

Each of the regulatory Commissions in Maine, Massachusetts and New Hampshire have issued decisions supporting the economics of nuclear over the continuation

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of a heavy reliance upon oil. Each of the investor owned utilities have adamantly supported Seabrook, Millstone and nuclear power in general in their press releases. Yet there has now been a cancellation of seven of the ten nuclear units originally scheduled for New England without any meaningful redistribution of ownership in the remaining three units.

The utilities with the lowest bond ratings are left to overcome insurmountable odds. Units are cancelled and the utilities fail to obtain additional capacity from these two struggling utilities, PSNH and UI. PSNH seeks to sell from 22-30% and can only achieve a sale of 15%. UI attempts to sell a half of it's share and barely is able to sell any at all. A 1150 MW unit is cancelled and no one attempts to buy into the existing nuclear plants under construction. Those that are presently buying interests in nuclear plants under construction are municipal and not investor owned utilities. NEES chooses to increase its level of alternative energy instead of buying additional nuclear. Boston Edison chooses to purchase 100 MW from a Canadian nuclear station after the cancellation of Pilgrim II but none from Seabrook or Millstone.

The bottom line is that the members of NEPOOL appear to be either inadvertently or intentionally placing the future of Millstone III and Seabrook I and II in jeopardy. It is they not regulation that is choosing to place PSNH and UI on the brink of downgrades into less than investment grade. It is the members of NEPOOL and not regulation that hold in their credit ratings the future of Seabrook and Millstone. If they choose not to buy additional interests in these units, the projects themselves together with one or two of the utilities involved are in deep financial trouble. The choice is NEPOOL's and they have six months from the date of this order to rectify the situation.

IX. FINANCIAL PLANNING

A. Introduction

The disarray found in the planning for generation facilities is matched by the disarray found in the planning of utility financial matters. The construction cost estimates, construction program budgets, and financial forecasts prepared by PSNH over the past ten years, as well as those of other utilities, are inconsistent and confused and demonstrate a fundamental weakness in the ability of utilities such as PSNH to manage their financial affairs given the changing financial environment.

B. Construction Cost Estimates

If the estimates of in-service dates for large plants are as inaccurate as they have been in New

England, one wonders how accurate the cost estimates can possibly be. Again, we must examine the history of such cost estimates and their changes over time. However, we note that cost estimates are different from estimates of completion dates. We assume utilities involved in the same project should have the same projected date for completion, although this assumption is not borne out by experience as we have seen. Cost, however, should differ by utility when measured at any point, because each utility's interest costs, which it accrues on incomplete plant, will be different. However, over time, we should be able to discern some logical patterns in the cost estimates. We would obviously expect such estimates to increase steadily over the years. After all, the utilities have emphasized in their

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reports to the public and the regulatory agencies the effects of inflation and regulatory delay, which at various times have been called "burdensome", "dramatic", or "overwhelming".

An examination of cost estimates presented by PSNH in documents prepared for the SEC shows that this is not the case. Cost estimates have changed with time considerably, and have been noted to go down, as exhibited in the table in Section VIII-C of the Report.

Between May and July of 1978, PSNH revised its estimates of the cost of Seabrook 1 and 2, Pilgrim 2 and Millstone 3. The estimates went down by \$504 million, \$478 million and \$841 million, respectively. Between May, 1979 and July, 1979, PSNH's cost estimates for Pilgrim 2 and Millstone 3 again went down-this time by \$9 million and \$54 million, respectively. Again, between September, 1979 and January, 1980, the cost estimates shrank. For Seabrook, this was by \$81 million; for Pilgrim 2, \$35 million; and for Millstone 3, \$33 million. The latest contraction in cost was for Seabrook and Millstone between February and April, 1981. Seabrook's cost dwindled by \$258 million and Millstone by \$332 million. In all other intervening periods when PSNH reported cost estimates for completion the estimates for Seabrook, Pilgrim and Millstone rose, sometimes quite enormously.

Now it is true that these changes all have explanations of one form or another. The decreases in 1978 are probably due to the allowance of CWIP in rate base, which would eliminate the need for AFUDC to be capitalized; the decreases in 1981 may be the result of PSNH's change to the next AFUDC method which lowers the total estimated cost of the plant. However, none of the changes that were made to the cost estimates were explained in the SEC documents. The many changes in cost estimates, even considering the conspicuously absent explanations, portrays an inability to predict accurately the final costs that will be incurred to construct these plants. This conclusion may not be surprising, given the long lead times for such plants and the great uncertainties with respect to inflation, capital costs, regulation, etc.; however, it gives one pause when all of the estimates for such plants more than tripled in less than seven years, and when the completion dates are still several years away.

C. Financial Plans

The financial plans of Public Service Company of New Hampshire over time appear similarly confused. Again, PSNH documents filed with the SEC indicate dramatic changes in construction program budgets, associated AFUDC, when it is reported at all, and financing requirements as a result of refinancings and sinking funds. The table below shows a selection of

comparable estimates as presented by PSNH in SEC filings.

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

SELECTED DATA ON PSNH FINANCING PLANS AS REPORTED TO THE SEC

DOCUMENT

Prospectus 9-74¹
 Prospectus 9-75
 Prospectus 9-76
 Prospectus 7-77²
 Prospectus 12-78
 Prospectus 1-80
 1979 Form 10K
 Prospectus 4-80
 1980 Form 10K

¹Five year plan only, through 1978.

²Eight year plan through 1984.

^eRough estimate only. AFUDC not reported under Financing Requirements. Estimates calculated by subtracting past Seabrook AFUDC from total estimated Seabrook AFUDC.

Of particular concern to this Commission is the inability of the Company to provide consistent estimates of the financing expected from operations. Each of the three documents issued in 1980, all basically during the first quarter, show dramatically different estimates ranging from \$100 million to \$280 million. One year later, the estimate presented is \$435 million. Either PSNH is playing a financial shell game with these numbers as a way of hiding what may be some unpleasant truths about their financial situation, or they simply have no idea of what future market conditions and future actions of this Commission may bring. A review of the Company's cash flow and financial forecasts available in Commission files, which are hereby administratively noticed, suggests that the latter is actually the case.

A most significant problem with the Company's financial forecasts is that they are based on a load forecast that is considerably too high, as determined by this Commission in Report and Order No. 15,201 of Docket DE 80-47. Not only does PSNH forecast an excessively high growth in sales as a result, but they have also failed to benchmark their latest financial forecasts, NHPUC — 1 prepared December 2, 1981, to actual operating experience for the first eleven months of 1981. The sales figures and average revenue figures from this financial forecast are presented in the attached table. Forecasted prime sales through the third quarter of 1981, as included in the financial forecast, are 4,342 MWH. Actual sales through the third quarter, as

indicated in PSNH monthly reports filed with this Commission, totaled only 4,234 MWH, 2.5 percent below the forecast. Clearly, the revenues forecast by PSNH, based as they are on overly optimistic projections of sales, are overstated, and will tend to make the Company's financial forecast overly optimistic.

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The dangers of this overly optimistic forecast of sales are tremendous. For example, the optimistic load forecast is used in spite of the predicted doubling of average base revenues in the five year period ending 1986. A reduction in sales will dramatically increase these average revenues, thus increasing retail prices, because the forecasted increases are largely due to the capital expenses in Seabrook, which are final. Delays or cost overruns in Seabrook, or poorer than predicted plant performance, all of which are quite possible, if not probable, will increase total average revenues and the corresponding retail prices. Under such circumstances, sales would undoubtedly drop further in response to the higher prices, thus exacerbating the already intolerable financial situation.

Other potential problems of which the Commission makes note include:

- Forecasts of debt and equity costs and AFUDC rates may be optimistic particularly given recent events.
- Projected in-service dates for Seabrook I and especially Seabrook II that are quite optimistic.
- Assumptions as to the timing and results of PSNH financings that may be optimistic given past history and experience, the Company's bond rating, and continued severe cash problems. The attached table shows the magnitude of what PSNH is trying to accomplish in the face of these problems. Even minor problems with any particular financing could have a domino effect that would destroy the whole plan.
- Assumptions concerning rate relief which may be optimistic, given the regulatory lag that, unfortunately exists at both the FERC and in this jurisdiction, and given the likelihood that 100 percent of a Company's rate requests will not be granted.
- Assumptions concerning the treatment of Pilgrim II and Rate Base related to completed plants, which may differ from that approved by FERC and this Commission.

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Examination of PSNH forecasts and statements before this Commission yield the conclusion

that the Company tends to overestimate its revenues and underestimate its costs with some regularity. Thus, we must assume that the Company is actually worse off than their financial forecasts would indicate. Given the less favorable future conditions that this Commission expects and unforeseen events that may have a negative impact on PSNH, this Commission is forced to conclude that PSNH may indeed reach a point in the near future where it will be unable to secure additional financing and unable to meet current obligations.

The prospect is not new, nor is it unknown to the Company. Mr. Harrison testified to this very possibility during the hearings in DR 81-6 (Tr. 2-24). The Company exhibited an awareness of this possibility quite some time ago; Mr. Harrison also alluded to an inability to "continue its business operations" in page 5 of his prefiled testimony in DSF 79-100-6205.

D. Ownership of Seabrook

The major factor underlying the Company's forecasts is the construction of the Seabrook nuclear power station. This project is the dominant element of the Company's construction budget and the single reason why PSNH is experiencing such tremendous cash flow problems and such huge requirements for external financing. Changes in the Company's plans for Seabrook affect the financial forecasts in a major way. Perhaps the most critical element of such plans is the level of ownership.

Originally, PSNH intended to finance and own 50 percent of both Seabrook I and II. As conditions changed, the difficulty of financing such a large investment became apparent, and PSNH subsequently sought and received in DR 77-49 the approval to include Construction Work in Progress in rate base. As the Commission pointed out in Report and Order No. 13,162 (63 NH PSC 127, 138):

"The Company's position in this proceeding is that it will not be able to obtain the necessary financing to complete its construction program without additional current cash revenues. It is contended by the Company that only an appropriate amount of CWIP in the rate base would generate the needed financing, and not by the use of the usual ratemaking practice."

Conditions changed again with the passage of RSA 378:30-a, and PSNH was forced to review its ownership level and, eventually, to decide to sell a portion of its share in the plant. The Company's plans to sell shares of Seabrook were presented to this Commission in DSF 79-100-6205. It is revealing to examine the record of that proceeding, which is hereby administratively noticed. Mr. Harrison stated in his direct pre-filed testimony that:

"The Company's Board of Directors decided on March 3, 1979 to direct the officers of the Company to reduce its ownership interest in the Seabrook project to 28% by offering ownership interests totaling 22% to other Participants in the Project. The Board also directed the Company's officers to offer to other utilities tire Company's interest in the Pilgrim No. 2 and Millstone No. 3 projects and to offer to the Company's resale customers located in New Hampshire an 8% interest in the Seabrook project."

The basis of this decision of the Board was:

" ... the consensus among investment bankers, commercial bankers and the financial community in general that, absent

the level of revenues generated by the inclusion of CWIP in rate base, the Company could not finance any more than 25% to 30% of Seabrook."

Mr. Harrison reiterated this conclusion many times in cross-examination (TR 3-14,3-15,3-20,3-21,3-22,3-79). Mr. Harrison additionally explained (page 3-15):

"It was further decided that we could stretch this from 25 percent up to 28 percent by selling our entire ownership in the Pilgrim and Millstone plants."

The claim that the extra three percent could be financed only on the basis of the sale of the Company's Pilgrim and Millstone shares was also reiterated several times (TR 3-21,3-23). Mr. Harrison also pointed out the concern of the other New England utilities with regards to the Company's finances (page 3-79):

"Consequently, not one of them were willing to have a transaction go through which would result in the Company owning any more than 28 percent. They did not want to be in a position where the lead partners had a construction program the size of which was generally acknowledged to be too large for the Company to finance. In view of that, the whole deal is for the transfer of 22 percent ownership."

As it turns out, the Company failed to sell its shares in Pilgrim II, has negotiated the sale of only half its interest in Millstone III, and now owns and intends to keep over 35 percent of Seabrook including the eight percent share intended for other New Hampshire utilities. Financial conditions for PSNH have not improved, load growth has continued to decline, and the construction program has been plagued with delays and cost increases, and yet we now find the gloom and doom predictions of the past to be no more than fanciful nightmares. The Commission is either being hoodwinked or is dealing with a Company that honestly cannot plan for the future.

It is revealing to place PSNH actions and decisions in the context of the New England market for nuclear capacity. As early as 1976, the press noted that PSNH and United Illuminating were interested in selling shares of Seabrook. At that time, PSNH was quoted in the New Hampshire Times, January 7, 1976, as saying that "more interest in purchasing pieces of the Seabrook Project has been voiced than shares are available ... " After the CWIP crisis arose, in 1979, press coverage on the sale of Seabrook shares was extensive. The Concord Monitor on March 6 and March 21 reported, "No shortage of buyers for Seabrook" and "the Company president said there was no lack of interested buyers." The New Hampshire Times on May 9 reported that PSNH was unable to reach an agreement of the sale with New England Power, but that 22 percent of the plant would still be sold. However, the market quickly dried up, and by 1981 there were "Plenty of Sellers but Few are Buying Nuclear Plant Stock" (New England Business Magazine, February 16, 1981, pg 17).

It appears that PSNH tried to sell the shares of Seabrook that were noted in the decision of the Board, but found an unresponsive market. The shares that PSNH did sell were sold at full construction cost without accumulated AFUDC, and were sold over the course of Adjustment Periods, during which time PSNH covered the AFUDC on the as yet unsold shares being transferred. Clearly, the terms of the sale were advantageous to the buyers and disadvantageous to PSNH, but nevertheless, PSNH failed to sell even one half of what it hoped to sell of all its

nuclear holdings.

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What's remarkable is that PSNH reacted, not by taking new actions, but apparently by altering its forecasts and predictions so that it could claim that the new levels of ownership were not only affordable but desirable. The misstatements and perhaps sincere misjudgments that the Company provided to this Commission in justification for its actions simply cannot be trusted, nor should they be trusted by the financial community or the independent rating agencies. From this point forward, the Commission will not accept any forecasts or financial presentations of the Company unless we are convinced that such analyses are consistent with the findings and assumptions of this Commission and are as conservative as possible.

E. Analysis of Revenue Requirements

Ultimately, benefits to the consumers derived from the actions of a regulated utility must be measured by the costs to the consumer, e.g. the revenue requirement of the utility. The Company provides estimates of revenues in its financial forecasts as an important and integral element of the analysis. Therefore, the caveats mentioned above must again be noted, with the additional proviso that the Company's analysis will tend to understate the required revenues.

The attached table shows the revenue requirements resulting in the Company's latest financial forecast, NHPUC-1, referenced above. The most significant feature is the forecast of \$33.4 million rate increase as a result of this decision in DR 81-87, a \$30.7 million retail rate increase in 1982, a \$32.0 million retail rate increase in 1983, and a total rate increase of \$66.2 million including fuel cost reductions of \$84.5 million in 1984. Rate increases of a magnitude that was unheard of before DR 77-49 when CWIP was included in basic rates are forecast to become yearly events; the largest such increase is forecast to occur the year Seabrook I is scheduled to come into service. Stripped of optimistic assumptions, however, the rate increases that will be required are much worse. Using the same 14.650% target return on equity as the Company, rough calculations assuming \$29 million approved in DR 81-87, zero sales growth in '81 and 1% sales growth in '82, show a rate increase required of some \$48 million. If the Company were to achieve the 17% return on equity allowed in this decision, the rate increase would be more like \$67 million. None of these estimates, except the Company's estimate for 1984, even consider the cost of fuel. PSNH estimates fuel revenue increases of \$18 million and \$35.7 million in 1982 and 1983, respectively. Of course, the Company's estimates have varied considerably over- time. In response to a request for documentation of "adequate and timely rate increases," referenced in the 1980 Form 10K (Staff Data Request Set. No.1, Item 18 in DR 81-312), PSNH, responded with a table indicating \$52.2 million and \$11.1 million in increases for base rates and fuel in 1982, \$35.4 million increases for fuel in 1983 and \$87.5 million of net increases in 1984. It was this last set of estimates upon which the earlier referenced estimate of \$435 million of financings from operations was based.

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[Graphic Not Displayed Here]

The resolve and determination of this Commission is shaken by the spectre of yearly rate increases of this magnitude. Even more disturbing, however, is the fact that these forecasts are based on unsupported and overly optimistic assumptions and judgements; what further rate increases will be necessary if Sea-brook costs increase, if Seabrook is further delayed, or if Seabrook performance is poor? What further rate increases will be necessary if PSNH is faced with insolvency, or if Seabrook II is ultimately cancelled?

Even if we assumed that the problems of access to adequate financings by PSNH were solved, the revenue impact of their construction program would still be massive. For instance, under the assumption that RSA 378:30-A were repealed, and CWIP were included in rate base, the revenue requirement for the Company (based on \$704 million of CWIP) would increase by almost \$195 million (about 3.2 cents per KWH) over and above the increases referred to above. Many PSNH consumers, both residential and business, report problems paying the electric bills currently; a rate increase of over \$250 million would be simply impossible for the ratepayers to absorb. Net reductions in demand and a severe economic decline throughout this state would be likely to result.

Given that including CWIP in the Rate Base is claimed by PSNH to be the cheapest way for a company to construct a plant, and given the forecasts of assumed revenue increases without CWIP in Rate Base, this Commission is concerned that PSNH and the ratepayers of this state may simply be unable to afford the costs of the Company's current construction program. While the Company or the banks may hope for a return to the allowance of CWIP, it would appear unlikely that there would be a movement to increase bills by over \$200 million over what they would be otherwise plus increases after that. Consequently, the Commission must presume that this is not an option nor should PSNH rely on such an occurrence.

X. COMMISSION RESPONSE

A. Introduction

All human affairs depend upon a degree of trust; trust implicitly includes the telling of truth. Neither "truth" nor "trust", however, are enforceable concepts in the spheres of regulation or cooperative utility planning. Rather, we must rely on practices, procedures and formal agreements as the signs of "trust", and evidence, opinion, and judgment as the elements of "truth"; the real truth may be completely unknown or may prove to be quite different.

In this context it is indeed agonizing to know that the major crisis affecting the largest native regulated business in the State has occurred in an environment where the "truth" has been at times manipulated, shrouded, ignored, unknown and misconstrued. There are undoubtedly many reasons why this has occurred; one reason may be that PSNH has been unwilling to admit the possibility of a future reality without the presence of Seabrook II, or possibly Public Service Company itself. These prospects are now so tangible they cannot be ignored.

This Commission, as careful as it must be to protect the interests of ratepayers and stockholders alike, and the Company management as well, may never get the chance to untangle the crisis and chart a safe course; events may unfold too quickly. For example, a further

downgrading of PSNH by the independent financial rating agencies could

trigger a series of events likely to put the firm into bankruptcy and to interrupt, perhaps permanently, the construction of Seabrook II.

The Commission does not want to see any such event come about. In the long run they are likely to be costly to the State's ratepayers. Although our trust in the Company's management and the New England utility industry has been badly shaken, PSNH still has opportunities to shape out a course less burdensome to itself and offering greater hope to the ratepayers of this State. Certain actions of the Company in the past year, highlighted in the following section, have in fact been very positive and are encouraging signs to this Commission. However, the depth of the problems facing PSNH must be addressed by dealing with the root causes of the problem, not just the symptoms. The remaining sections below discuss the actions that may be available to PSNH, and the prospects for Commission decisions in the future that are intended to improve the situation. PSNH must understand that permanent solutions must be engineered quickly, and implemented with great determination. If PSNH and other firms in the utility industry fail to act, this Commission will respond with a heavy hand to protect the interests and the rights of the consumers of this State.

B. PSNH Response to Crisis

It is helpful and encouraging for this Commission to review the positive steps PSNH has taken to ease its situation and the burden on the State's ratepayers.

The Commission is gratified to note that the Company has addressed its concerns by taking the following actions:

Consolidation of Districts and Divisions
Computerization of customer accounts and customer services
Management control systems
Two-man line crews
Maintenance control

These actions have eliminated or avoided 516 jobs and are expected to have a total savings over a ten-year period of \$95,000,000. In addition, the Company has established a Cash Conservation Committee. This Committee, in 1980, recommended that construction and maintenance projects in the sum of \$5.5 million be cancelled or postponed. An additional \$900,000 of other proposed expenses were reduced. The total effect of the above actions account for a total reduction in estimated cash expenditures of the sum of \$6.4 million.

In 1981, the Cash Conservation Committee has recommended, and the Company has implemented, the following actions:

a company hiring freeze; a salary freeze for senior management; an \$8.8 million reduction in the 1981 construction budget; a \$2.5 million reduction in maintenance expenses; a restraint on business travel; and elimination of employee discount rates.

The above actions represent a reduction of cash outlays of \$12.8 million. No other electric utility in New England has done as well in this regard.

In the money markets the Company has taken some very substantial steps to improve their

financing success. The most significant action was the company sale of interest in the Seabrook Plant. The Company has also confirmed that it has negotiated a contract to transfer 44% of its interest in Millstone III.

The Company has developed a professional financing team that has been extremely successful in obtaining access

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to the European money markets and bond markets. The Company planned in 1981 to raise \$50,000,000 by the sale of additional G & R Bonds, \$20,000,000 in a new term note to the Barclay's Bank International Limited, and \$27,000,000 by extending their European Dollar term notes. By borrowing in the European market, the Company has saved approximately one million dollars. The Company is the first electric utility with a BB-Ba rating to be successful in participating in European markets. It is contemplated that the Company will be able to avail itself of the Banker Acceptance Corporation rates to replace borrowing at the prime rate.

The Company has taken action in other areas to reduce expenditures. It has appealed real estate property tax assessments, and, if successful, will enjoy significant savings. The Company has also appealed the State Revenue and Finance Departments' inclusion of AFUDC in the calculation of franchise taxes. Again, if successful, considerable savings will be enjoyed.

In different areas, the Company has completed the sale of its Maine properties and is endeavoring to dispose of its Vermont properties. All of these actions demonstrate that the Company has seen the necessity to follow the Commission's direction. The Commission appreciates the significant response it has received.

C. Need For Further Response

Despite the steps taken, the Company is in a precarious financial position. The Company must begin to take this position seriously and must understand that this Commission is not the ultimate solution to its problems and cannot be expected to bail out the Company's construction program. We cannot shelter the Company's management from imprudent decisions; nor can the Commission sit idly by while the Company courts disaster.

The Company is well aware of the perilous, insecure position it is in currently. At the beginning of this case, Robert Harrison, President of PSNH, stated:

"I cannot overemphasize the critical fact that this Company's inadequate cash earnings and poor G and R coverage leaves the Company very little or no flexibility to postpone or defer any part of the above financing program."

The Commission has previously discussed and detailed its judgment on the appropriate level of earnings that can be justified under the banner of just and reasonable rates according to the standards of Bluefield and Hope. The Company must realize that these standards are the ones the Commission must apply and not the standard of what coverage ratio the Company requires to issue G and R bonds, or what cash earnings must be supplied to sustain the Company's bond rating. The causes of "inadequate cash earnings" and "poor G and R coverage" are many and complex. "Inadequate" cash earnings are only insufficient in relation to cash requirements. "Poor" G and R coverage ratios relate not only to earnings available, but the size of the

additional financing required and the degree of leverage involved. Over the many years that rate regulation has been practiced in this State and in this nation formulas and methods have been devised and evaluated and reasonable bases developed upon which to calculate rates. We, the Commission, apply the accumulated knowledge and guidance of past experience, as well as our own careful reasoning to any request for a change in the level of rates.

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We are especially careful in the case of PSNH to weigh each item of expense and each issue regarding the cost of money thoughtfully. This is not only because PSNH is the largest utility in the State, but because where PSNH leads, other utilities follow. We must be sure that practices and formulas, are just and reasonable and in the public interest when setting rates for PSNH, in part because such practices and formulas become landmarks for all utility, regulation in the State.

The facts are never the same in any two proceedings. If they were, the Commission's expertise and judgment would not be needed. By rule of precedent, by accommodation to practices and formulas previously found to be just and reasonable, and by application of judgment after review of all the facts and opinions submitted, the Commission will arrive at a determination in a case.

We will not go beyond just and reasonable ratemaking practices to guarantee protections or privileges to any particular Company. Even if the time is approaching for PSNH when just and reasonable ratemaking practice provides insufficient funds or assurances to allow the Company to continue to finance its existing construction program, the Commission will be unable to step beyond the bounds we have just set out. Mr. Williamson recognized the potential for such a problem some time ago. In the Portsmouth Herald on December 14, 1979, he was quoted as follows:

"I believe there is a substantial likelihood that further increases will be requested, that the Company will be unable to justify them on a cost basis and without them the Company will be in extraordinary financial difficulty."

The Commission recognizes, however, that its responsibility extends beyond the narrow realm of simply approving rates. This Commission has an obligation to understand and to protect the interests of both ratepayers and stockholders. Should the Company fail to act adequately to solve its financial problems, the Commission will be forced to take such action as it deems necessary. The New Hampshire Supreme Court has suggested that it is not in the best interest of the State to have a regulated utility go bankrupt. We fully endorse the Court's reasoning, but must further clarify it by pointing out that the principle is not a guarantee to a utility's management that mistakes in planning or mistakes in judgment can be mitigated in all cases by Commission action.

D. Approval of Securities Issuances

A public utility doing business in New Hampshire may not 'issue or sell its stocks, bonds, notes, or other evidence of indebtedness' payable more than twelve months after the issuance date, without the approval of the PUC". The standard for PUC approval of the sale is that it be

consistent with the public good⁵⁽⁵⁾. The approval of the issuance of securities by the PUC is also an approval of "the purpose or purposes to which the securities or proceeds thereof are to be applied ..."⁶⁽⁶⁾ The approval is subject to such reasonable terms and conditions as the PUC may find to be in the public interest.⁷⁽⁷⁾

This approval process is set in motion when a public utility files an application statement with the PUC. The statement must contain, among other items, "the actual cost already incurred and the

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estimated cost to be incurred for any of the purposes of which the securities are to be issued".⁸⁽⁸⁾ The PUC will hold a hearing on the matter.⁹⁽⁹⁾ Within 30 days of its order, the PUC must file a certificate, detailing the amount authorized and the purpose for which the proceeds may be used. The proceeds may only be applied to the purpose for which issuance was approved.¹⁰⁽¹⁰⁾

PSNH has sought and received approval for the issuance of securities under RSA § 369:1 for the purpose of financing Seabrook construction on numerous occasions.¹¹⁽¹¹⁾ In all cases, the Commission has made the requisite finding that the financing was in the public good. However, the PUC has stated that it is "not in the interest of the public good to issue an open ended order ... the Company's financing position and methods of financing will be investigated prior to each additional financing".¹²⁽¹²⁾

The Commission has general supervisory authority over all public utilities and the plants owned or operated by the same. The Commission enforces the provision of reasonably safe and adequate and just and reasonable service by public utilities.¹³⁽¹³⁾ A request to issue securities has a direct bearing upon the setting of just and reasonable rates:

"It is clear that the immediate design of the legislature, by these provisions, was to limit not only the capital or the utility as represented by its stock, but also its other obligations so far as they are designed to supplement capital by borrowings of a permanent character; the ultimate purpose being, as we have seen, to preserve a proper base for the determination of the "just and reasonable" rates which the commission is required to fix by order." *New Hampshire v New Hampshire Gas & Electric Co.* 86 NH 16, PUR1932E 369, 377, 163 Atl 1724.

The Commission has recognized that it must approve the purpose "to which the securities are to be applied" each time approval for financing is requested.¹⁴⁽¹⁴⁾ The approval, however, is contingent upon a finding that the financing is in the public good.¹⁵⁽¹⁵⁾ The public good standard requires that the PUC examine *each* financing to determine if it is in the public good.¹⁶⁽¹⁶⁾ Thus, RSA § 369:1 grants the PUC continuing authority to approve or reject security issuances.

Rejection of a securities issue will foreclose a utility from the capital market. Thus, the Commission has taken steps in the alternative to limit the uses of proceeds in order to avoid the necessity of limiting financing completely. In the Motion for Rehearing on the Commission's authority to issue a halt in Unit 2 construction, the Commission stated "all [PSNH] financings from this day forward will carry an express condition that none of the proceeds from the

financings can be used to further the construction of Seabrook II until the divestiture has received the necessary approvals ... " (65 NH PSC 433.) The PUC does not operate PSNH; rather, the authority delegated by the legislature of the State of New Hampshire is in the nature of oversight. RSA 374:3-7. As we have said, the situation facing the Company requires action by the Company, in concert with the New England electric

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utilities, to reduce the Company's obligations to Seabrook as discussed below. We expect to see such action forthcoming.

Future requests for authority to finance new capital will be carefully scrutinized. We will review the purposes for which securities will be issued and the rates at which such securities are issued, for this will affect the rates and charges of PSNH. We will impose such reasonable terms and conditions as are in the public good. The burden of proof will be on the Company to show that it must expand its capital, or incur higher interest costs than those currently incurred on the average, for the public good.

E. Seabrook

The Company's financial position is caused by its commitment to the construction of Seabrook, and can therefore be improved only by changing this construction program. The Company has relied for its future health and success on one, and only one, alternative. As a result, few options are available to the Company for improving its financial position. All these options involve major changes in the Company's plans for Seabrook. The options include: selling additional shares of both units; modifying the Seabrook Agreement and selling shares of only one of the units; delaying one or both of the units; cancelling one of the units.

These options must be examined in detail and with an open mind. An action that appears repugnant could actually prove to be very beneficial to the Company. For instance, PSNH should carefully review FERC Order 49 and related decisions concerning the treatment of costs for abandoned plant for their implication as to the effects of plant cancellation. This Commission will have to deal with these questions in any case as a result of the cancellation of Pilgrim II, and under some circumstances such an option might prove highly advantageous to the Company.

Additionally, modification to the Seabrook Agreement, although possibly difficult to negotiate, might improve the market for nuclear shares in New England and improve the prospects for both plants.

These are the options apparent to this Commission. It is now incumbent upon PSNH and the other New England utilities to reflect on these options and determine what course to pursue. The considerations are many and complex, but must be addressed. Given consistently lower load growth, continued escalation of construction costs, uncertainty in the capital markets, questions of the supply and cost of oil and additional prospects for conservation and non-conventional electrical supply, PSNH must rethink its plans and determine a proper course of action. The Commission will expect PSNH to address which major decision it has chosen within a time, period of six months. This Company's problem is not rate of return but cash flow. We believe that we have set forth the problem and will now expect the New England electric utility industry to address the answer.

F. Schiller Conversion

This Commission found that by the expenditure of some \$40 million this company could dramatically improve its reliance upon foreign oil prior to the advent of Seabrook. The *annual* savings to consumers is at least \$45 million dollars. This should be contrasted to the minimal \$23 million for three years associated with the proposed Canadian transmission line.

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It is a project that we believe deserves top priority status and does not or should not impact on the construction of Seabrook I. This Commission conducted hearings on the conversion to coal and issued an order to convert. If PSNH is unhappy with the result then their avenue is appeal. However, the Commission fully intends to pursue this conversion because it will actually reduce bills if the conversion becomes a reality. With all the discussion focused on lifeline rates, Canadian Power and Seabrook, the Commission still believes that the quickest form of relief can come from the Schiller conversion. This is not to say that the others should not be pursued but rather the Commission is stating that it will not change its order on the Schiller conversion. Furthermore we are prepared to provide encouragement for this conversion but we will not allow mere lip service to be given to this order.

G. Commission Action

If during the next six months PSNH's bond rating is downgraded from its present level of BB+ (SP) or BBB (Moody's) the Commission will condition financings that will prevent their use towards the construction of Seabrook II. It must be remembered that with all the discussion concerning the State losing its AAA bond rating, PSNH has carried these low bond ratings since 1974. If their rating drops again it will no longer be of investment grade. A BB+/BBB utility is unlikely to be able to raise \$1.3 billion over the next five years. A lower rated utility could never raise this level of capital.

During the next six months, PSNH is to sell the remainder of their Millstone III interest. Since Millstone III costs nearly double the cost of Seabrook on a per KW basis, such a sale will allow them to keep a larger share of Seabrook.

During the next six months PSNH is to sell an additional ownership interest in the plant totaling seven percent of the cumulative MW in Seabrook I and II. A reduction is contemplated from 357%+ to 28%+.

Hopefully, the sale so constructed will allow for different levels of Seabrook I and II to be sold. However, if there is another attempt by the other New England utilities to buy at less than cost including accumulated AFUDC, this Commission will respond with an extremely heavy regulatory hand. The economics of Seabrook justify these utilities buying in at full cost. We will expect them to honor the NEPOOL agreement.

This Commission must take these actions because it simply has no other choices. Even these actions necessitate further decisions by PSNH and the New England utilities. This Commission cannot allow PSNH to slide into bankruptcy no matter how valid their intentions. The Commission must protect the ratepayers, stockholders and bondholders of this Company.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the tariff sheets filed in this proceeding are hereby rejected; and it as

FURTHER ORDERED, that PSNH file revise tariff pages to collect rates at a level \$11,492,903 above that established under temporary rates which increased rates by \$17,435,268; and it is

FURTHER ORDERED, that the annual collection of this \$28,928,171 be in conformance with the rate design section

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set forth in the decision which was the result of settlement; and it is

FURTHER ORDERED, that the fuel adjustment charge is eliminated and is not to appear on bills after February 1, 1982 and it is

FURTHER ORDERED, that the existing fuel adjustment rate of \$1.75 per 100 KWH is to be folded into basic rates as of February 1, 1982; and it is

FURTHER ORDERED, that PSNH is to within the next six months sell their remaining interest in Millstone 3 and a cumulative seven percent interest in the two Seabrook units; and it is

FURTHER ORDERED, that if PSNH is downgraded by either Standard and Poors or Moody's then the actions set forth in the Report are immediately operational.

By Order of the Commission this eleventh day of January, 1982. APPEARANCES: As noted previously.

CLARIFICATION REPORT

The Commission, because of the length of its report and order, believes that certain points deserve further clarification. The overwhelming theme of our report and order is that the other utilities in New England are forcing Public Service Company of New Hampshire (PSNH) to shoulder responsibilities above and beyond their financial abilities.

The Commission in its decision noted that despite positive and unequalled efforts by PSNH to cut costs, a financial crisis looms because PSNH is being asked to carry a disproportionate share of constructions costs, and the associated financings necessary to meet those commitments.

PSNH has demonstrated an ability to adapt to changing conditions in a positive fashion. As we noted, we are extremely pleased and support their efforts to refurbish the Garvin's Falls Hydro Station, make major changes in rate design, restrict expenses and defer maintenance. The Commission is aware that the European financing, involving some of the finest banking institutions in the world, could only have been achieved with a, correctly perceived, positive view of PSNH management.

This Commission is attempting to state that PSNH is approaching a financial problem. The

financial forecasts provided this Commission by the Company have been optimistic as to the amount of necessary new capital, the amounts of rate increases that can be expected pursuant to the "just and reasonable" standard for ratemaking, the level of internally generated funds that can be achieved, the strength of the economy, and the growth in sales. We believe that more conservative and more realistic assumptions should be used in view of the difficulties of the world we live in. We are not questioning PSNH's ability to tell the truth or its past actions but rather we are challenging their perceptions of the future.

We believe that these optimistic forecasts are again tied to, the central problem; the unwillingness, by PSNH's sister utilities to comply with the NEPOOL agreement and thereby shoulder their burdens with respect to the Seabrook Nuclear Project.

The Commission also reminds PSNH of its own financial forecasts, which indicated an inability to proceed with any level of ownership above 28%, absent CWIP in rate base. Nothing has changed from that forecast given on August 6,

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1979. In fact, the economy has worsened.

This Commission has demonstrated in its order a willingness to come to grips with the larger picture facing PSNH. The Commission wishes more conservative financial forecasts to be run by PSNH and will have its staff coordinate those efforts with PSNH staff. The Commission believes that this will improve both PSNH's planning ability; i.e., its ability to deal with the difficulties of the future.

The Commission has had its faith shaken in the New England utility industry from the recently-cancelled Pilgrim II unit. NEPOOL as well as its members, failed to adequately inform regulators as to the true cost of Pilgrim II. It is they, and not PSNH, that drew our concerns expressed on p. 95 (67 NH PUC 78) of the decision. Simply stated, we believe the industry as a whole must attempt to make more credible forecasts as to completion dates, construction costs and cost per KWH in the future.

Finally, this Commission is not stating PSNH is about to go bankrupt. The Commission is saying that a cash flow problem will probably exist in late 1982, if the other electric utilities fail to meet their obligations under the NEPOOL agreement.

We are charting a course looking both backwards and forwards to help the management of PSNH improve the Company's ability to: (1) raise the capital it needs for Seabrook; and (2) take advantage of opportunities to lower costs to consumers.

Interpretations of this report and order that purport to say that the Commission is negative in regards to PSNH are failing to understand the major thrust of this complex decision. We praise PSNH for being steadfast, for doing everything in its power to carry the burden of the last two of three nuclear plants to be built in New England in the foreseeable future. It is, fundamentally, the investor-owned electric utility industry in New England, which already has investments in Seabrook, that is leaving the greatest burden to PSNH. We see any negative events in the future relating to PSNH's financial condition as the responsibility of these New England utilities. Our only caveat is that, lacking timely action on the part of the other utilities, delay or cancellation of

one nuclear unit may have to be considered.

FOOTNOTES

¹This does not suggest, nor should it be interpreted, that if granted all bills would increase by the same percentage.

²PUC Rules and Regulations 311.01.

³RSA 374:35 Re New England Power Co. (1980) 65 NH PUC 442.

⁴New England Power Pool Agreement, dated September 1, 1971, as amended through October 1, 1978. Docket DE 79-223, Company Exhibit 2B.

⁵RSA 369:1.

⁶*Id.*

⁷*Id.*

⁸RSA § 369:3.

⁹RSA § 369:4.

¹⁰RSA § 369:11.

¹¹*e.g.*, DF 81-188; DF 81-76; DF 81-2 and DF 80-239.

¹²(1979) 64 NH PUC 487, 489.

¹³RSA 373:1,374:3.

¹⁴RSA § 369:1.

¹⁵See Re Legislative Utility Consumers' Council (1980) 120 NH 173, 412 A2d 738 where the Court interpreted a similar public good standard in RSA § 374:30 as including consideration of the financial necessity to avoid insolvency. The future need for power must be weighed against the financial capability to supply the power.

¹⁶See, *e.g.* (1979) 64 NH PUC 487, 489.

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NH.PUC*01/11/82*[79170]*67 NH PUC 97*Public Service Company of New Hampshire

[Go to End of 79170]

Re Public Service Company of New Hampshire

DR 81-87, DR 79-187 Phase II, Supplemental Order No. 15,425

67 NH PUC 97

New Hampshire Public Utilities Commission

January 11, 1982

ORDER accepting settlement agreement on rate design issues.

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SUPPLEMENTAL ORDER

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

ORDERED that the settlement agreement offered in Phase II of DR 79-187 is accepted by the Commission for resolution of the rate design issues in that docket and DR 81-87.

By Order of the Commission this eleventh day of January, 1982

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NH.PUC*01/13/82*[79171]*67 NH PUC 98*Granite State Electric Company

[Go to End of 79171]

Re Granite State Electric Company

DF 81-107, Supplemental Order No. 15,428

67 NH PUC 98

New Hampshire Public Utilities Commission

January 13, 1982

ORDER revising tariff page assignments.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, a review of Order No. 15,391 (66 NH PUC 587) reveals errors in tariff page assignments; it is

ORDERED, that the following portion of said Order be, and hereby is, rescinded:

"FURTHER ORDERED, that the following revised pages of Granite State Electric Company tariff, NHPUC No. 7 — Electricity, are permitted to become effective January 1, 1982:

First Revised Page 1; Second Revised Page 22; First Revised Page 27; First Revised Page 30; First Revised Page 33; First Revised Page 38; First Revised Page 42; First Revised Page 46; First Revised Page 5; and Original Page 53."

and it is

FURTHER ORDERED, that the following pages of the Granite State Electric Company tariff, NHPUC No. 9 — Electricity, be, and hereby are, rejected:

First Revised Page 1; Second Revised Page 22; First Revised Page 27; First Revised Page 30; First Revised Page 33; First Revised Page 38; First Revised Page 42; First Revised

Page 36; First Revised Page 50; and Original Page 53;
and it is

FURTHER ORDERED, that the following page of the Granite State Electric Company tariff, NHPUC No. 8 — Electricity, be, and hereby is, approved for effect on January 1, 1982: Original Page 42.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of January, 1982.

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NH.PUC*01/13/82*[79172]*67 NH PUC 99*Keene Gas Corporation

[Go to End of 79172]

Re Keene Gas Corporation

Intervenor: Office of Consumer Advocate

DR 81-305, Supplemental Order No. 15,431

67 NH PUC 99

New Hampshire Public Utilities Commission

January 13, 1982

REQUEST by a gas company for a 10 per cent emergency surcharge; granted with modifications.

RATES, § 85 — Temporary rates — Emergency surcharge — Cost of gas adjustment — Cash-flow problems.

[N.H.] In lieu of a gas company's request for a 10 per cent emergency surcharge to supplement a recently granted temporary rate increase, the commission approved a stipulation whereby the temporary rate increase was increased on a temporary rate level under bond, and the billing of the company's cost of gas adjustment would be changed from a six-month estimated period to a monthly computation based on actual therm sales and costs in order to ease the cash-flow problems.

APPEARANCES: Harry B. Sheldon, Jr., president, Keene Gas Corporation; and Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:

REPORT

On January 4, 1982, the Company filed for a 10% emergency surcharge, mainly due to continued operating losses, in spite of the \$107,642 temporary rate increase granted by the Commission in Order No. 15,255 on November 3, 1981 (66 NH PUC 447); and a severe cash shortage which is preventing the corporation from paying its supplier of propane, Warren Petroleum, within the required time frame, thereby endangering future supplies.

The Commission held a duly noticed hearing on January 13, 1982, at which Mr. Sheldon was extensively cross-examined by Mr. Traum of the Commission's Finance Department and others in such diverse areas as the Company's various cost cutting measures; i.e., no wage increases granted for 1982; the Company's unsuccessful search for loans; allocations to non-utility operations; accounts receivable; the cost of gas adjustment, cash flow; tariff revisions, etc.

As noted in the Commission's previous order on temporary rates, "certainly a situation in which a financial loss has been demonstrated qualifies for temporary rates". The Company's Exhibit 1 shows that even with the granting of this \$112,659 on a temporary basis, for the period July, 1981 through June, 1982, the utility will be fortunate to break even.

As a result of this and the cross-examination, an agreement was reached

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between all parties which is more in line with regulatory principles than a 10% surcharge.

The agreement is twofold:

1) No surcharge will be added to customer bills, but the temporary rate increase of \$107,642 as ordered in Order No. 15,255 will be increased by \$112,659 on a temporary rate level under bond, effective with the submittal of approved tariff pages.

This additional \$112,659 shall be spread on a straight per therm basis to the tariff as outlined in the previously mentioned Report of Temporary Rates.

In connection with the Permanent rate filing, the Company will update the test year to calendar 1981 and develop its request according to normal regulatory concepts.

2) The Company currently bills its CGA on a 6-month estimated Winter or Summer Period. This appears to aggravate the cash flow problems in the early winter months. Per agreement this will be changed to a monthly computation of the CGA based on actual therm sales and costs, which are available as the Company reads all of its meters monthly in the first few days of the month. In addition, the Company should compute the total over/under collection of the CGA through December 31, 1981, which after filing and acceptance by this Commission will be surcharged or recouped over the succeeding 6 months.

The monthly surcharge computations should be filed each month, and may automatically go into effect unless determined otherwise by this Commission; additionally, every 6 months the Company will come into this Commission, along with all of the other gas companies for the periodic CCA hearing, to show what it has done for the last 6 months.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Keene Gas Corporation be, and hereby is, authorized to place into effect a temporary increase of \$112,659; and it is

FURTHER ORDERED, that such increase be protected by bond until a permanent increase in rates may be determined; and it is

FURTHER ORDERED, that Keene Gas Corporation is to file revised tariff pages to implement the increase and revision of the Cost of Gas Adjustment as set forth in the Report.

By Order of the Public Utilities Commission of New Hampshire this 13th day of January, 1982.

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NH.PUC*01/15/82*[79173]*67 NH PUC 100*Seacoast Railroad Safety

[Go to End of 79173]

Re Seacoast Railroad Safety

DX 81-383, Second Supplemental Order No. 15,430

67 NH PUC 100

New Hampshire Public Utilities Commission

January 15, 1982

ORDER suspending section of previous order that would close railroad track.

Page 100

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission has issued Order No. 15,370, on December 17, 1981; and

WHEREAS, subsequent to the issue of the aforementioned Order and Supplemental Order No. 15,379, issued December 23, 1981, a portion of the Boston and Maine Railroad Track has been monitored and inspected by the Commission Railroad Inspector and found to be adequately maintained; and

WHEREAS, this Commission has received assurances from the Boston and Maine Railroad that further repairs and improvements are being actively pursued; and

WHEREAS, a public hearing has been scheduled in the City of Portsmouth on January 22, 1982 to investigate this matter; it is hereby

ORDERED, that the section of Order No. 15,370 which would close that track on January

18, 1982 is suspended until otherwise ordered by this Commission.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1982.

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NH.PUC*01/21/82*[79174]*67 NH PUC 101*Public Service Company of New Hampshire

[Go to End of 79174]

Re Public Service Company of New Hampshire

DR 81-87, Tenth Supplemental Order No. 15,439

67 NH PUC 101

New Hampshire Public Utilities Commission

January 21, 1982

ORDER implementing tariff and granting recoupment.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission has considered the request in Section V-E of PSNH's Trial Brief in this docket regarding the implementation of the new tariff and the effectiveness of the new rates; and

WHEREAS, the Commission is aware of the concerns of the Company with respect to recoupments to be booked in 1981; and

WHEREAS, the Commission desires to clarify its position; it is

ORDERED, that the Company implement Tariff 26 to be filed in compliance with said orders, on February 1, 1982, in accordance with Tariff Filing Rule No. 1601.05, thus applying the new rates to all bills rendered on or after February 1, 1982; and it is

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FURTHER ORDERED, that the Company is entitled to the full recoupment of the revenues that would have been collected under Tariff 26 from May 1, 1981 to January 31, 1982.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of January, 1982.

=====

NH.PUC*01/21/82*[79175]*67 NH PUC 102*Prohibition of Gas Outdoor Lighting

[Go to End of 79175]

Re Prohibition of Gas Outdoor Lighting

DE 82-20, Order No. 15,440

67 NH PUC 102

New Hampshire Public Utilities Commission

January 21, 1982

ORDER requiring gas distribution companies to incorporate new statutory provisions into previous commission order prohibiting outdoor gas lighting.

BY THE COMMISSION:

ORDER

WHEREAS, on August 13, 1981, the Omnibus Budget Reconciliation Act of 1981 was enacted; and

WHEREAS, Section 1024 of that act made certain amendments to Section 402 of the Fuel Use Act; and

WHEREAS, those amendments specifically (1) lift the prohibition on the supplying of natural gas for use in outdoor residential lights installed prior to and in service on November 9, 1978; (2) require local distribution companies to select and develop a method to periodically inform their customers of the amount of natural gas used for outdoor lighting and the cost thereof; (3) require local distribution companies to report the method selected to the Secretary of Energy; it is hereby

ORDERED, that the gas distribution companies, under the jurisdiction of this Commission incorporate these amendments into Public Utilities Commission's Prohibition of Gas Outdoor Lighting - Order No. 13,936.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of January, 1982.

=====

NH.PUC*01/21/82*[79176]*67 NH PUC 103*Public Service Company of New Hampshire

[Go to End of 79176]

Re Public Service Company of New Hampshire

DE 81-312, Fourth Supplemental Order No. 15,442

67 NH PUC 103

New Hampshire Public Utilities Commission

January 21, 1982

ORDER denying rehearing on motion to delineate commission staff functions.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, PSNH filed on January 4, 1982 a Motion for Rehearing with respect to Commission Order No. 15,368 (66 NH PUC 565), regarding the delineation of Staff functions; and

WHEREAS, the Commission finds that Staff is already appropriately divided along functional lines in accordance with RSA 363:27,II and that further delineation along "advisory" and "investigatory" lines is not required,

WHEREAS, the Commission has determined that the investigatory records of this Commission pursuant to DE 81-312 include the formal evidentiary record to be established, as well as the workpapers supporting the formal presentations by Staff, all of which will be provided to the Company in due course and in response to discovery requests; and

WHEREAS, the Commission believes that the "fundamental concepts of due process" are adequately protected by RSA 363:12 and other provisions of State law; and

WHEREAS, the Company has failed to provide sufficient grounds for this Commission to grant a rehearing; it is hereby

ORDERED, that PSNH's Motion for Rehearing Re Denial of Motion to Delineate Staff Functions is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of January, 1982.

R2

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NH.PUC*01/25/82*[79177]*67 NH PUC 104*Public Service Company of New Hampshire

[Go to End of 79177]

Re Public Service Company of New Hampshire

DE 81-312, Fifth Supplemental Order No. 15,443

67 NH PUC 104

New Hampshire Public Utilities Commission

January 25, 1982

ORDER requiring intervenor to file a finding of eligibility for compensation by specified date.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Conservation Law Foundation (CLF) has filed a Motion to Set a Date for the Filing of a Request for Finding of Eligibility for Intervenor Funding, and PSNH has filed an Objection to said Motion; and

WHEREAS, the Commission is persuaded by the circumstances described by CLF that fairness requires that they be allowed to file such a request; and

WHEREAS, the Commission intends to hold a hearing at some time in the future to consider the outstanding requests for consumer compensation, at which time the issues raised by PSNH will be ripe for review; it is hereby

ORDERED, that CLF file a Request for Finding of Eligibility for Compensation on or before February 2, 1982.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of January, 1982.

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NH.PUC*01/25/82*[79178]*67 NH PUC 104*Public Service Company of New Hampshire

[Go to End of 79178]

Re Public Service Company of New Hampshire

DE 81-312, Sixth Supplemental Order No. 15,444

67 NH PUC 104

New Hampshire Public Utilities Commission

January 25, 1982

ORDER permitting organization to intervene in commission proceeding.

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PARTIES, § 18 — Intervenor — Qualifications.

[N.H.] An organization was permitted to intervene in a commission proceeding where the commission found that the organization had a sufficient interest in the proceeding, had demonstrated the relevance of the issues it intended to raise, had shown an intent and capability to contribute to the proceedings, and had shown that its participation would not delay or impair the proceedings.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission has reviewed the PSNH Motion in Opposition to Intervention by Union of Concerned Scientists, the Motion of the Union of Concerned Scientists for Permission to Intervene, and the PSNH Objection to the Motion of the Union of Concerned Scientists to Intervene; and

WHEREAS, the Commission finds the objections of the Company to be unpersuasive; and

WHEREAS, the Commission finds that the Union of Concerned Scientists has demonstrated a sufficient interest in this proceeding, has demonstrated the relevance of the issues they intend to raise, has shown an intent and a capability to contribute to the proceedings, and has convincingly argued that their participation as joint intervenors will not delay or impair the proceedings; it is hereby

ORDERED, that the Union of Concerned Scientists is permitted to participate as joint intervenor with the New Hampshire Energy Coalition and the Conservation Law Foundation with representation by the Conservation Law Foundation.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of January, 1982.

=====

NH.PUC*01/26/82*[79179]*67 NH PUC 105*Manchester Gas Company

[Go to End of 79179]

Re Manchester Gas Company

DF 82-13, Order No. 15,562

67 NH PUC 105

New Hampshire Public Utilities Commission

January 26, 1982

ORDER authorizing increase in short-term debt limit.

BY THE COMMISSION:

ORDER

WHEREAS, Manchester Gas Company, a public utility operating under the jurisdiction of this Commission as a gas utility in Manchester, Goffstown, and a limited area in Hooksett, seeks authority to increase its short-term debt limit from \$2,000,000 to \$3,000,000; and

WHEREAS, Manchester Gas Company attests that the short-term notes outstanding at the end of December 1981 were \$2,000,000 and that an increase of

Page 105

\$1,000,000 is needed to finance the increased volume of its inventory in natural gas, liquified natural gas and propane; and

WHEREAS, Manchester Gas Company further states that due to the increased price and volumes of its gas supplies, the value of its inventory has increased from \$666,066 in 1980 to \$1,052,714 in 1981 and that an increased short-term debt limit is required to maintain an inventory of that size and to finance construction expenditures; it is

ORDERED, that Manchester Gas Company 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 such time as permanent financing is obtained, or a contemplated inventory financing is accomplished, at which time a new level of short-term financing will be set; 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 notes.

By Order of the Public Utilities Commission of New Hampshire this twenty-sixth day of January, 1982.

=====

NH.PUC*01/26/82*[79180]*67 NH PUC 106*Hudson Water Company

[Go to End of 79180]

Re Hudson Water Company

DF 82-22, Order No. 15,563

67 NH PUC 106

New Hampshire Public Utilities Commission

January 26, 1982

ORDER authorizing increase in short-term debt limit.

BY THE COMMISSION:

ORDER

WHEREAS, Hudson Water Company, a corporation duly organized and existing under laws of the State of New Hampshire and operating as a water public utility in the towns of Hudson and Litchfield under the jurisdiction of this Commission, seeks authority to issue short-term notes not in excess of \$1,400,000; and

WHEREAS, Hudson Water Company is engaged in a major water supply project to develop "The Weinstein Well" and the interconnect between the Hudson and Litchfield water systems;

and

WHEREAS, Hudson Water Company will require an additional \$250,000 to complete the project and such expenditures

Page 106

will raise the short-term debt level to \$1,400,000; and

WHEREAS, Hudson Water Company requires the additional short-term debt level to complete the project and to have the flexibility to pursue a method of implementing permanent financing in more favorable financial markets; and

WHEREAS, Hudson Water Company was previously authorized a short-term level of \$800,000 in Order No. 12,846, issued July 22, 1977 (62 NH PUC 205), and due to a misunderstanding relative to the authorized short-term debt limit and presently has \$1,150,000 outstanding; it is

ORDERED, that Hudson Water Company 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 the aggregate principal amount not in excess of one million four hundred thousand dollars (\$1,400,000), said note or notes to bear interest at a rate not in excess of one percent (1%) above the prime rate of interest; and it is

FURTHER ORDERED, that this authorization shall remain in effect for a period of one year from the date of this order, or until permanent financing is obtained, if sooner, and a new short-term debt limit is set at that time; and it is

FURTHER ORDERED, that on January 1st and July 1st each year, the Hudson Water Company 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 twenty-sixth day of January, 1982.

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NH.PUC*01/27/82*[79181]*67 NH PUC 107*Fuel Adjustment Charge

[Go to End of 79181]

Re Fuel Adjustment Charge

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

DR 81-384, Order No. 15,459

67 NH PUC 107

New Hampshire Public Utilities Commission

January 27, 1982

ORDER permitting fuel surcharges to become effective.

Page 107

BY THE COMMISSION:

ORDER

WHEREAS, the Commission in DR 81-87, Order No. 15,424 (67 NH PUC 25) abolished the fuel adjustment rate for Public Service Company of New Hampshire effective February 1, 1982; it is

ORDERED, that Public Service Company of New Hampshire shall not bill a fuel adjustment charge commencing February 1, 1982; and it is

FURTHER ORDERED, that 3rd Revised Page 19A of Concord Electric Company tariff, NHPUC No. 7 — Electricity, providing for a fuel surcharge of \$1.78 per 100 KWH for the month of February, 1982, be, and hereby is, permitted to become effective February 1, 1982; and it is

FURTHER ORDERED, that 17th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 14 — Electricity, providing for a fuel surcharge of \$1.60 per 100 KWH for the month of February, 1982, be, and hereby is, permitted to become effective February 1, 1982; and it is

FURTHER ORDERED, that 60th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 — Electricity, providing for a fuel surcharge of \$2.07 per 100 KWH for the month of February, 1982, be, and hereby is, permitted to become effective February 1, 1982; and it is

FURTHER ORDERED, that Original Page 42 and 81st Page 15A of Granite State Electric Company tariff, NHPUC No. 8 — Electricity, providing for an oil conservation adjustment surcharge of four cents (\$0.04) per 100 KWH and a fuel surcharge of \$1.01 per 100 KWH for the month of February, 1982, be, and hereby is, permitted to become effective February 1, 1982; and it is

FURTHER ORDERED, that 11th Revised Page 15 of the N.H. Electric Cooperative, Inc. tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of \$2.95 per 100 KWH for the month of February, 1982, be, and hereby is, permitted to become effective February 1, 1982; and it is

FURTHER ORDERED, that 13th Revised Page 11B of the Municipal Electric Department of Wolfboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$3.08 per 100 KWH for the month of February, 1982, be, and hereby is, permitted to become effective February 1, 1982; and it is

FURTHER ORDERED, that 97th Revised Page 6 of the Littleton Light Department tariff,

NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$2.34 per 100 KWH for the month of February, 1982, be, and hereby is, permitted to become effective February 1, 1982; and it is

FURTHER ORDERED, that 65th Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge of \$0.29 per 100 KWH for the month of February, 1982, be, and hereby is, permitted to become effective February 1, 1982.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of January, 1982.

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NH.PUC*01/27/82*[79182]*67 NH PUC 109*Connecticut Valley Electric Company, Inc.

[Go to End of 79182]

Re Connecticut Valley Electric Company, Inc.

Additional petitioner: Claremont and Concord Railway Company

DE 82-23, Order No. 15,560

67 NH PUC 109

New Hampshire Public Utilities Commission

January 27, 1982

ORDER approving an easement to install electric company pole, guy, and wire.

BY THE COMMISSION:

ORDER

WHEREAS, on January 8, 1982, the Connecticut Valley Electric Company Inc., submitted to this Commission, under the provisions of RSA 371:24 a plan and layout delineating the proposed utility route over railroad property in the City of Claremont; and

WHEREAS, said plan includes a petition and agreement submitted to the Claremont and Concord Railway Company for the establishment of appropriate charges for a three month easement; and

WHEREAS, said agreement has been returned by the Claremont and Concord Railway with charges of \$100.00 established; and

WHEREAS, the Connecticut Valley Electric Company concurs with the reasonableness of those charges; and

WHEREAS, upon investigation, this Commission finds that the agreement between the parties is consistent, reasonable, and in the public interest; it is

ORDERED, that the agreement between the Connecticut Valley Electric Company, Inc. and

the Claremont and Concord Railway Company for a three month easement to install a pole, guy, and wire to be located on railroad property near Claremont Junction, New Hampshire to serve Belfon Machine Company for a fee of \$100.00 be and hereby is approved.

By Order of the Public Utilities Commission of New Hampshire this twenty-seventh day of January, 1982.

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NH.PUC*01/29/82*[79183]*67 NH PUC 110*Manchester Water Works

[Go to End of 79183]

Re Manchester Water Works

DE 82-2, Order No. 15,465

67 NH PUC 110

New Hampshire Public Utilities Commission

January 29, 1982

ORDER clarifying water company 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 December 31, 1981, seeks to clarify its service area 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 is served under its regularly filed tariff; and

WHEREAS, the Central Hooksett Water Precinct 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; it is

ORDERED, that Manchester Water Works be, and hereby is, authorized to include in its franchise area in the Town of Hooksett, the area herein described:

Beginning at a point along the centerline of North River Road where said road intersects with the boundary line common to Hooksett and Manchester continuing northerly along the centerline of the path and contour of North River Road a distance of nine hundred seventy (970) feet, then turning 90 degrees in a westerly direction and continuing to the Manchester/Hooksett townline, then turning in a southerly direction along said Town line to the point of beginning; and as set forth on a map on file with the Commission.

By Order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January. 1982.

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NH.PUC*01/29/82*[79184]*67 NH PUC 110*Granite State Electric Company

[Go to End of 79184]

Re Granite State Electric Company

DF 81-107, Second Supplemental Order No. 15,467

67 NH PUC 110

New Hampshire Public Utilities Commission

January 29, 1982

ORDER amending previous order.

Page 110

BY THE COMMISSION:
SUPPLEMENTAL ORDER

So much of Commission Order No. 15,428 (67 NH PSC 98) which reads " ... First Revised Page 36 ... " is amended to read " ... First Revised page 46..".

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1982.

=====

NH.PUC*01/29/82*[79185]*67 NH PUC 111*Fuel Adjustment Charge

[Go to End of 79185]

Re Fuel Adjustment Charge

DR 81-357, Supplemental Order No. 15,468

67 NH PUC 111

New Hampshire Public Utilities Commission

January 29, 1982

ORDER amending previous order.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

So much of Order No. 15,386 (66 NH PUC 580) pertaining to the Oil Conservation

Adjustment of the Granite State Electric Company is amended to read "NHPUC No. 8 — Electricity, Original Page 41A" in lieu of "Original Page 53A".

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1982.

=====

NH.PUC*02/01/82*[79186]*67 NH PUC 111*New Hampshire Electric Cooperative, Inc.

[Go to End of 79186]

Re New Hampshire Electric Cooperative, Inc.

DE 81-372, Order No. 15,470

67 NH PUC 111

New Hampshire Public Utilities Commission

February 1, 1982

ORDER granting petition of authority to cross state-owned railroad property.

Page 111

APPEARANCES: Thomas Morse for the petitioner.

BY THE COMMISSION:

REPORT

On November 23, 1981, the New Hampshire Electric Cooperative, Inc., filed with this Commission a petition for authority to cross state-owned railroad property in the Town of Thornton, for the purpose of providing electric service to the Thornton Fire Department.

The Commission issued an Order of Notice on December 10, 1981, directing all interested parties to appear at public hearings at 1:00 p.m. on January 12, 1982, at the Commission's Concord offices. Notices were sent to Elaine Farina, N.H. Electric Cooperative Inc., for publication; the New Hampshire Transportation Authority; John R. Sweeney, Director, Aeronautics Commission; George Gilman, Commissioner, DRED; John Bridges, Director, Safety Services; and the Office of Attorney General.

An affidavit of publication indicating that publication was made in the Union Leader on Friday, December 18, 1981, was received at the Commission's office, Concord, New Hampshire on December 24, 1981. The Company explained that the petition results from a request for electric service to the Thornton Fire Station by the Selectmen of Thornton. In order to provide this service, it is necessary for the Company to place a new pole on state railroad property. The pole will be used for an overhead guy wire only; no electric wires are involved over the tracks.

The pole will be located at the northeasterly corner of Route 3 and crossroads in Thornton. The guy wire will be placed in a manner as to provide a minimum of 27 ft. 7 inch height over the

existing railroad tracks. The facility will be installed in accordance with the practices 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 authority to cross state-owned railroad property in the Town of Thornton, in order to provide electric service to the Thornton Fire Department, 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, authority be granted to the New Hampshire Electric Cooperative Inc. to cross state-owned railroad property in the Town of Thornton, New Hampshire in order to provide poles and guy wires necessary to support the installation of electric service to the Thornton Fire Department.

By Order of the Public Utilities Commission of New Hampshire this first day of February, 1982.

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NH.PUC*02/02/82*[79187]*67 NH PUC 113*Concord Natural Gas Corporation

[Go to End of 79187]

Re Concord Natural Gas Corporation

DR 81-284, Supplemental Order No. 15,471

67 NH PUC 113

New Hampshire Public Utilities Commission

February 2, 1982

ORDER resolving cost of gas adjustment clause issues.

1. RATES, § 303 — Fuel clauses — Gas.

[N.H.] The commission rejected an argument that disallowance of penalties paid by a gas company in a cost of gas adjustment was retroactive rate making because fuel clauses operate in a forward-looking manner, reconciling under- and overcollections which are brought forward to a future adjustment period. p. 114.

2. EXPENSES, § 19 — Generally — Penalties.

[N.H.] The commission directed a gas company to give below-the-line treatment to penalties

incurred by exceeding tariff restrictions from a supplier. p. 114.

3. EXPENSES, § 39 — Commodity or supply cost — Gas.

[N.H.] A gas company must assure the commission that all reasonable steps have been taken to procure the most favorable price for customers because the cost of gas adjustment clause was not intended to recover costs that were not reasonably incurred. p. 114.

BY THE COMMISSION:

MOTION FOR REHEARING AND OTHER RELIEF

On November 25, 1981, Concord Natural Gas Corporation (the "Company") filed a Motion for Rehearing and other relief on the matter of the 1981-82 winter cost of gas adjustment. The Commission issued Order No. 15,285 on November 6, 1981 which rejected the 23rd and 24th Revised Pages 21 and 21A of the tariff for an adjustment of \$0.2466 per therm and ordered the Company to file 25th Revised Pages 21 and 21A to reflect an adjustment of \$0.2132, effective November, 1981. The Commission also ordered the Company to file an entirely new permanent rate structure based on a flat charge per therm to be implemented as of December 1, 1981. On November 13, 1981, the Company filed the flat charge rate design under protest and objected to the implementation of the same.

Concord Natural Gas Corporation objects to the discussion in the Report and Order in this case regarding past winter heating periods and asks that the Commission specifically state how such findings are relevant to this case. The findings in our Report were meant to point out the wide discrepancies in Company forecasts, especially in the last winter period (DR 81-78), and to define the reasons why the Commission was rejecting the forecast of sales for this winter period. The Company further believes our statement regarding past overcollections is incorrect and cites a letter which was sent to the Commission on December 27, 1976 stating that the cost of gas adjustment could be reduced on January 1, 1977. A review of Commission files shows the Company's rate case in Docket No. 76-66 was decided on December 30, 1976 and in that decision, the base cost of gas was changed and the winter cost of gas adjustment was revised for the remainder of the winter period.

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[1, 2] Concord Gas objects to the adjustment which was made to remove penalties paid by the Company from the cost of gas adjustment. The Commission reduced costs by \$39,170 and added interest at 8 percent (\$3,539) for a total adjustment of \$42,709. The Company claims that \$39,170 was never paid and only \$19,880 was actually paid. They further claim that only \$8,806 of the penalty was included in the summer cost of gas and the remainder - \$11,074 - was booked "below-the-line". They further argue that the \$8,806 was adjudicated in the summer cost of gas adjustment and therefore has been settled and it would be retroactive ratemaking to include that adjustment in the winter cost of gas adjustment. The Company has submitted documentation to show that the \$11,704 was removed from purchased gas expense in October 1981 and not included in operating expenses. They have also filed documentation attempting to show that the

second penalty from Tennessee Gas Pipeline in the amount of \$19,290 was never paid and was forgiven. The Commission does not accept the Company's argument that the disallowance of any portion of the penalty that was included in the summer cost of gas adjustment is retroactive ratemaking. The nature of the fuel clauses approved by this Commission are such that they are always based on estimated costs for a forward-looking period and a subject to reconciliation. Over and undercollections are carried in deferred accounts and are brought forward to a future adjustment period. Furthermore, if the Commission Staff found errors in the past bookings of the cost of gas adjustment, an adjustment would be made. To accept the Company's argument would be to accept the gas costs of Tennessee without considering the fact that the final rates have not been settled at the Federal Energy Regulatory Commission. The Commission reiterates that penalties due to exceeding tariff restrictions from a supplier are not proper costs for ratepayers and are to be booked below the line. Such accounting treatment is hereby ordered by this Commission. As the penalty was included in the 1981 summer cost of gas adjustment, the exclusion of those costs will be reconciled in the next summer cost of gas adjustment in order to return that revenue to the proper ratepayer. The Commission reiterates that it was correct in removing the penalties and will still want further proof as to the second penalty.

[3] Concord Gas objects to the disallowance of \$92,608 for propane purchased from Gas Service, Inc. during the last winter period. As the Company has reviewed its records and has provided this Commission with further substantiation that the propane obtained was at the least available price, the Commission will withdraw its previous adjustment. In the future, the Company must assure this Commission that it has taken all reasonable steps to procure the most favorable price for its customers. The cost of gas adjustment clause is not a blank check for any company to recover costs which have not been reasonably incurred.

The Commission, in its Order, reduced the estimated cost of LNG used by Concord Gas from \$7.605 per MCF to \$7.10 per MCF. Upon a review of all the information supplied by the Company, the Commission will accept \$7.48 per MCF.

The Company objects to the projection of gas sales for the 1981-82 winter period and states that there is no evidence to support a 2.6% reduction in sales. Concord Gas further states that the best sales estimate should be at a

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minimum last winter's sales, or 8,318,380 therms. In its appeal, the Company has submitted a new calculation of the cost of gas using actual known sales for November. Instead of reducing sales for the period for the known reduction, the reduction has been shifted to increase sales in January, 1982, for the forecast for the remainder of the period. The Commission has analyzed sales and degree days for the past three years. Their analysis show that for the 1980-81 winter period, the first three months were considerably colder than normal and the last three months were warmer than normal. Due to cycle billings, sales were above average. In order to arrive at a sales projection for a revised cost of gas adjustment, the Commission has obtained the actual sales for November and December, 1981. For the remainder of the period, the original forecasted sales submitted by the Company has been used. The sales forecast in therms is as follows:

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

| | |
|-----------------|--------------------|
| November actual | 897,580 |
| December actual | 1,412,350 |
| January | 1,390,170 |
| February | 2,016,450 |
| March | 1,261,070 |
| April | 1,251,770 |
| TOTAL | <u>\$8,229,390</u> |

As the actual costs are known for November and December 1981, those amounts will be used in our calculation. For January through April, the original projected gas mix usage will be used at the indicated prices. The cost of gas adjustment to be used for the remainder of the period is calculated as follows:

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

| | | |
|--|----------------------------|--------------------|
| Purchased Gas, 1-1-82 through 4-30-82 | | |
| Gas Service Charge | (543,455 MCF @ \$1.2630) | \$ 686,384 |
| Gas Charge | (555,954 MCF @ \$2.8026) | 1,558,117 |
| Propane | (219,927 Gals. @ \$0.5889) | 129,515 |
| LNG | (9,782 DT @ \$7.3473) | 71,871 |
| November, December actual costs | | 1,129,374 |
| Tennessee refunds and undercollection | | (212,273) |
| TOTAL ESTIMATED COST OF GAS | | <u>\$3,362,988</u> |
| Less: Costs recovered in November & December, 1981 | | 947,302 |
| ESTIMATED COSTS, JANUARY-APRIL 1982 | | <u>\$2,415,686</u> |
| Projected Sales | | 5,919,460 |
| Unit Cost of Gas | | \$ 0.4081 |
| Less: Base Cost of Gas | | \$ 0.1969 |
| COST OF GAS ADJUSTMENT, JANUARY-APRIL, 1982 | | <u>\$ 0.2112</u> |

The \$0.2112 per therm is less than the original rate of \$0.2132. The new rate will be effective for the remainder of the winter period, effective with all bills issued after the date of this Order.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that 25th Revised Pages 21 and 21A of tariff, NHPUC No. 13 — Gas, of Concord Natural Gas Corporation, be, and hereby are, rejected; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation file new 26th Revised Pages 21 and 21A of tariff, NHPUC No. 13 — Gas reflecting a cost of

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gas adjustment of \$.2112 effective February 1, 1982.

By order of the Public Utilities Commission of New Hampshire this second day of February, 1982.

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NH.PUC*02/02/82*[79188]*67 NH PUC 116*Northern Utilities, Inc.

[Go to End of 79188]

Re Northern Utilities, Inc.

DR 81-288, Supplemental Order No. 15,473

67 NH PUC 116

New Hampshire Public Utilities Commission

February 2, 1982

ORDER accepting revised tariff correcting winter cost of gas adjustment to account for undercollection.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission has been advised by Northern Utilities, Inc. that a refund in the amount of \$181,311 from its supplier had been credited against the Winter 1981-82 cost of gas; and

WHEREAS, it has confirmed that the same refund of \$181,311 had been credited against the cost of gas for the Winter 1980-81 period; and

WHEREAS, Northern Utilities has proposed a corrective amendment to its winter cost-of-gas adjustment said proposal designed to eliminate any under-collection resulting from this error; and

WHEREAS, the Commission finds that avoidance of undercollection of this type is in the best interest of the consumer; it is

ORDERED, that Twenty-seventh Revised Page 22A of the Northern Utilities, Inc. tariff, NHPUC No. 6 — Gas, be, and hereby is, approved for effect with all billings rendered on and after February 1, 1982; and it is

FURTHER ORDERED, that Northern Utilities, Inc. give notice of this change via is choice; of a one-time bill insert or newspaper publication.

By order of the Public Utilities Commission of New Hampshire this second day of February, 1982.

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NH.PUC*02/03/82*[79189]*67 NH PUC 117*Granite State Electric Company

[Go to End of 79189]

Re Granite State Electric Company

Intervenors: Legislative Utility Consumers' Council and Community Action Program

DR 81-86, Sixth Supplemental Order No. 15,452

67 NH PUC 117

New Hampshire Public Utilities Commission

February 3, 1982

ORDER granting rate increase, as modified.

1. COGENERATION, § 15 — Metering.

[N.H.] A special demand charge and a special related requirement for demand meters for small power producers and cogenerators were rejected by the commission where there was insufficient evidence to show that they were needed. p. 119.

2. VALUATION, § 216 — Property used or useful — Real estate — Building sites.

[N.H.] The value of land held for future use was subtracted from rate base where the utility failed to demonstrate a definite plan for actual use within a reasonable time. p. 120.

3. VALUATION, § 290 — Working capital — Particular factors affecting allowance — Lead-lag study.

[N.H.] The commission accepted a lead-lag study in determining working capital. p. 120.

4. REVENUES, § 13 — Rentals — Test-year adjustments — Increases.

[N.H.] Test-year revenues were adjusted upward to account for increases in hot water heater rental rates. p. 121.

5. EXPENSES, § 10 — Effect of price changes and abnormal conditions — Attrition.

[N.H.] The commission rejected an attrition adjustment based on the consumer price index. p. 124.

6. Expenses, § 109 — Taxes.

[N.H.] A pro forma increase for payroll and property taxes was accepted with the provision that the company file for a step increase at the end of the year. p. 125.

7. RETURN, § 26.1 — Capital structure — Hypothetical.

[N.H.] The commission has the power to set a hypothetical capital structure and can legally determine a rate of return upon a capital structure different from that actually existing. p. 130.

8. EXPENSES, § 10 — Effect of price changes and abnormal conditions — Attrition — Defined.

[N.H.] Attrition has been defined as an erosion of the earning power of a revenue-producing investment resulting in a rate of return below that which rates were designed to produce; therefore, attrition will be measured on the basis of erosion of the overall rate of return. p. 132.

9. RATES, § 362 — Electric — Outdoor lighting.

[N.H.] Upon finding that outdoor lighting was being subsidized by residential customers, the

commission ordered an immediate increase in outdoor lighting rates. p. 135.

APPEARANCES: Michael Flynn for the petitioner, Gerald Lynch for the Legislative Utility Consumers' Council (LUCC), and Gerald Eaton, for the Community Action Program (CAP).

BY THE COMMISSION:

REPORT

These proceedings were initiated when the Granite State Electric Company (GSE), a wholly-owned subsidiary of New England Electric System (NEES), petitioned this Commission with its revised

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tariff, NHPUC No. 9 — Electricity, providing for an increase in annual revenues, temporary and permanent, of \$1,706,450. This proposed tariff revision provides for a 6 percent increase over the existing tariffed rates.

The petition was filed on April 1, 1981, whereupon this Commission duly suspended the filing on April 7, 1981. On April 20, 1981, this Commission issued an Order of Notice setting a procedural and temporary rate hearing for May 13, 1981. During this hearing, one GSE witness testified regarding temporary rates, and two additional dates were set, July 1 and 2, 1981, for hearing on the permanent rate filing. Subsequent to this hearing, a temporary rate at the existing rate level was approved for all service rendered after May 13, 1981.

Additional hearing dates of July 10, August 13, and August 31, were added as the proceedings progressed. A public hearing was held in Hanover on December 29, 1981. Testifying were five GSE witnesses and three Commission Staff witnesses; no other party submitted testimony. The witnesses and their subject of testimony were as follows:

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

| <i>Name and Position</i> | <i>Subject</i> |
|--|--|
| Russell A. Holden, President, GSE Position | Introduction and Overview of Company |
| Alfred D. Houston, Asst. Treasurer, GSE | Capital Structure and Rate of Return |
| Edward L. Perry, Senior Fin. Analyst, GSE Required Revenue, | Cost of Service, Rate Base, and Attrition |
| William S. McDade, Mgr. of Rates, New fuel expense England Power Service Co. | Rate design, and surcharge to recover |
| John F. Brosnan, Sr. Rate Analyst, New England Power Service Co. | Outdoor Lighting Service Rate M |
| Kenneth E. Traum, Asst. Fin. Director, NHPUC | Working Capital |
| Robert J. Camfield, Economist, NHPUC Return, Quarterly | Capital Structure, Taxes, Rates of Dividend Adjustment Mechanism, and Earnings Attrition |
| David W. Lavoie, Stat. Asst., Economics, NHPUC Return | Capital Structure and Rate of |

In addition, there were 42 exhibits submitted by GSE, Staff, and CAP.

I. BACKGROUND AND HISTORY

GSE is a public utility whose principal business is the distribution and sale of electricity in a franchise area solely within this Commission's jurisdiction. As aforementioned, GSE is a wholly-owned company of NEES. In addition to GSE, NEES owns three other electric operating utilities. These are: Massachusetts Electric Co., The Narrangansett Electric Company, and New England Power Company (NEP). NEES also has two other wholly-owned non-operating subsidiaries. These are: New England Power Service Company (NEPSCO), a service company, and New England Energy Incorporated (NEEI), a fuel subsidiary.

GSE's last rate filing was approved on May 23, 1978. Prior to this, the latest rate increase petitioned and approved for GSE was August 1974. On the surface, longevity of rates appears prominent, especially when compared with like utilities within this jurisdiction. The possible reasons for this longevity and incentives or disincentives to continue such will be addressed later in this Report.

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II. SMALL POWER PRODUCERS

[1] In its proposed tariff No. 9, 1st Revised Page 7 and Original Page 7A, the Company describes Auxiliary Service for certain customers "having another source of electrical power from which to supply all or a portion of his electrical requirements". The Company proposes that Auxiliary Service customers shall be required to pay \$2 per KW per month for "contracted demand" in excess of the actual demand in any given month, and in some cases shall be required to install special demand meters related to this charge. The special charge for contracted demand contradicts Commission policies for sales to small power producers and cogenerators (qualifying facilities, or QFs), as stated in Order No. 14,797 in DE 80-246 (66 NH PUC 83). That Order states, in general (66 NH PUC at p. 94):

"all utility sales to QFs shall be billed according to the tariff provisions that would apply if the QF had no generation."

Although the Company did not request a rehearing of this aspect of Order No. 14,797, in a timely manner, the Company's initial brief in this case indicates a desire to reconsider this principle governing rates for sales to small power producers and cogenerators. The Commission notes, however, that although the Company has made an argument of a general nature, the Company has not presented sufficient evidence that the proposed demand charge is cost-justified and non-discriminatory for any and all classes of Auxiliary Service customers. The need for special demand meters for Auxiliary Service customers, therefore, also is undemonstrated. The proposed \$2/KW contracted demand charge and related requirement for special demand meters are therefore disallowed. In the future, the Company, of course, is free to petition the Commission to reconsider the issue of back-up rates to Auxiliary Service customers. At such time, the Company should present sufficient evidence to demonstrate that any proposed back-up charges are cost-justified and non-discriminatory to all affected customers. Until and unless the Commission formally alters its policies for small power producers and cogenerators, however, the Company's tariffs should fully reflect existing Commission policies.

III. RATE BASE

The Company in its original filing requested a valuation of rate base of \$16,470,000 for the test year ending December 31, 1980. This value consisted of net plant-in-service, plant held for future use; plus materials and supplies, prepayments, and cash working capital; less deferred taxes, investment tax credit (pre-1971), customers' deposits, and customer advances.

The GSE witness that represented the computation of rate base utilized the average of 13 monthly balances. This method was uncontested by Staff or other intervening parties.

This Commission has previously put forward our position regarding the use of 13 average monthly balances to determine rate base.

"the most accurate method for calculating rate base is an average of 13 monthly balances for an historical test year. This approach provides for the most accurate matching of revenues, expenses, and investment." (Re Union Teleph. Co. [1979] 64 NH PUC 434, 443.)

In light of this, with the exception of the following issues, we will accept rate base as presented by GSE.

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A. Land Held For Future Use

The Company witness added as a component of his rate base calculation \$25,000 for land held for future use. Under cross-examination, it was revealed that this land was predominantly one parcel in the Salem area. According to a hearing response later submitted to this Commission, GSE does not plan to put this land to use before 1988.

[2] As we have stated in previous dockets "[p]rior to any consideration of the merits involving a given piece of property, the Commission believes a utility must demonstrate a definite plan for actual use within a reasonable time". (Re Public Service Co. of New Hampshire, DR 79-187, Report, page 32). It is our opinion that land held for construction, 7 years hence, is not "within a reasonable time". Therefore, we will remove the \$25,000 from rate base.

B. Working Capital

GSE's witness, Mr. Perry, in his original testimony submitted a cash working capital amount of \$36,000. The method utilized by Mr. Perry in deriving this figure was the FERC conventional 45-day method.

Mr. Traum, through cross-examination and testimony, pointed out the inadequacies of the 45-day method and championed a lead/lag study. Because this method of computing working capital was not available, he used the balance sheet approach utilizing the average of 13 monthly balances put forward by Mr. Donald J. Trawicki in GSE's previous rate case, DR 77-63 (see Re Granite State Electric Co. [1978] 28 PUR4th 240) as a second choice. Using this method, he attained a (\$718,321) working capital value.

Citing Mr. Traum's belief that the most accurate method for calculating working capital is to perform a lead/lag study, Mr. Perry presented rebuttal testimony displaying a lead/lag study he conducted. The result of this study decreased GSE's requested cash working capital to

(\$195,000).

Under cross-examination by Staff, Mr. Perry conceded an additional adjustment of \$5,000 for prepayments were not adjusted for in his rebuttal testimony (DR 81-86, TR 5-55). Additionally, CAP raised numerous issues in objection to the computation of *Number of Days Sales in Accounts Receivable* (Exhibit P-2, pg. 3 of 19). Foremost among these issues was the use of partial post test year data (January 1981-June 1981) in determining the number of days sales that are retained in Accounts Receivable. CAP is of the opinion that the use of a partial year does not reflect the "yearly experience of Accounts Receivable" (see *Trial Brief of Community Action Program*, pg. 4), and the portion of the year used for this study unduly weighed Receivables in GSE's favor.

Mr. Perry's reply was that the period used is the most recent and better represents the Company's present and future situation (DR 81-86, TR 5-73). We will accept this with the reservation that future lead/lag study will envelope a consistent nature in determining both lead, lag, and their components; i.e., if revenue lag is developed over a one-year period, we would expect that in determining the number of days revenue is retained in receivables, a company would also use a year's period.

[3] All parties appear to agree that lead/lag study, with some reservations, is the best method to use in determining cash working capital. Therefore, after taking this into consideration, and that

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the Commission has accepted lead/lag studies in the past (see Re Public Service Co. of New Hampshire, DR 79-187), we will accept the study as submitted. We, however, will remove from the rate base calculation prepayments of \$5,000.

C. Construction Work in Progress (CWIP)

Mr. Traum indicated, during cross-examination of Mr. Perry, a concern for an item in rate base called "CWIP in Service". According to Mr. Perry, these are jobs and projects completed and in service before the end of the test year. As Mr. Traum pointed out, Account No. 106 — Completed Construction Not Classified, is a specific account set aside for this type of plant, in the FERC chart of accounts. (The FERC chart of accounts is adopted by this Commission in whole.) We will take note of Mr. Traum's concern, as it is stated in the *Uniform System of Accounts* (T.S. 2) page 101-22, "At the end of the year or such other date as a balance sheet may be required by the Commission, this account shall include the total of the balances of work orders for electric plant which has been completed and placed in service but which work orders have not been classified for transfer to the detailed electric plant accounts." In the future, we will require all electric filings to adhere to this policy of accounting. This plant is now fully operational and serving the public's need. The plant, being complete and thereby used and useful, results in its inclusion in rate base.

D. Summation of Rate Base

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

| | |
|--------------------------------|--------------|
| Company's Original Request | \$16,470,000 |
| Less: Land Held for Future Use | (25,000) |

| | |
|-------------------------------|---------------------|
| Adjustment to Working Capital | (36,000) |
| | (195,000) |
| Less: Prepayments | (5,000) |
| ACCEPTED RATE BASE | <u>\$16,209,000</u> |

IV. REVENUES

GSE witness, Mr. Perry, presented testimony and exhibits displaying \$25,726,000 of revenue in the test year. He then proformed another \$2,358,000 of revenues for the increased PPCA to the current W-3 rate, and to offset four refunds made during the test year, and finally to adjust for an undercollection of fuel cost in the test year.

A. Appliance Rentals

[4] Under cross-examination by Mr. Traum, Mr. Perry pointed out that hot water heater rental rates were in the process of being increased. This has not been acknowledged in GSE's original filing nor in their trial brief. We note that the amount of \$32,000 was presented to this Commission in oral testimony (DR 81-86, July 2, 1981 TR, page 100).

Although this amount is ignored in GSE's trial brief, it is not disputed; therefore, we will accept this amount as a known and measurable change and will adjust revenues accordingly.

B. Cable T.V.

Mr. Traum, during cross-examination of GSE witness Mr. Perry, confronted the subject of cable T.V. and their lease of GSE-owned or jointly owned utility poles. Mr. Perry referred this subject to another company witness, Mr. McDade.

Mr. McDade stated that he had recently verified the appropriateness of the current lease rate by comparing it to a formula created by the FCC. After some consideration, we have found GSE's lease rate acceptable. However, at this Commission suggested in a prior docket, we will begin a review concerning cable T.V. to determine the extent they may be regulated by this Commission. (See

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Re Public Service Co. of New Hampshire, DR 81-87). This has become of particular concern as the cable T.V. companies continued to move into the southern section of our State (Hampstead and Derry). Our areas of consideration could go beyond pole rental and into customer service and rate setting.

Lastly, Mr. Perry has brought to this Commission's attention the duplication of test year revenues due to delayed billings to cable T.V. (DR 81-86, July 2, 1981 TR, pages 27 & 28). This billing delay resulted in \$16,000 of 1979 revenues booked in the 1980 test year. We will remove this amount from test year revenues as a known and measurable change.

In summation, the test year adjusted revenue figure the Commission will accept is:

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

| | |
|-------------------------------|--------------|
| Test year Revenues | \$25,726,000 |
| Company's Proforma Adjustment | + 2,358,000 |
| Appliance Rentals | + 32,000 |
| Cable T.V. Adjustment | - 16,000 |

Accepted Proformed Test Year \$28,100,000
Revenues

V. ROLL-IN OF PPCA

The Company witness, Mr. McDade, has proposed a roll-in to basic rates of \$0.01002/KWH for the cost of purchased power previously recovered through GSE's Purchased Power Cost Adjustment (PPCA). The witness presented GSE tariff pages 16A-16H, Exhibit M-1, which displayed PPCA's 1 through W2(D) and accumulated to the aggregated "roll-in" of \$0.01002.

Company Exhibit 11, "June 10, 1981 Date Request and Responses, Financial Staff Request #33" requested the Company to reconcile the purchased power cost with the revenues cleaned from the PPCA. GSE's response was the same as they had made concerning the FAC. This was, any type of reconciliation is impossible, and they then referred Staff to DR 80-245. Mr. McDade later repeated this on the stand (DR 81-86, July 10, 1981 TR, page 107).

Staff later developed a methodology for reconciling the PPCA, and unveiled such during cross-examination of Mr. McDade. The methodology showed a large overcollection accumulated over a period of seven years. In an attempt to determine if Staff's method of reconciling was correct, and if there were other reconciling figures to consider, Staff and GSE had a series of meetings.

From Staff and Company correspondence, we are able to determine that: (a) there was substantial evidence to support the contention that there was some amount of overcollection found during the test year; and (b) Staff's methodology appears to be acceptable.

The determination of an overcollection is disturbing. In this Commission's eyes, the PPCA is a tool to be used only as leverage against an ever-increasing cost of generation; not as a buffer for attrition in other expense areas. The overcollection demonstrates that this ratemaking device has been used improperly. Since Staff's method of reconciling the purchased power is acceptable, we will order all future applications for an increase in GSE's PPCA to be accompanied by a reconciliation in this manner. This reconciliation will completely disclose any over or undercollection of the PPCA. If GSE does not need an increase in the PPCA within a year after the current PPCA is approved, they will submit a reconciliation as an update. Any over/undercollection will be rolled-in to GSE's present method of determining PPCA. In no way will GSE's PPCA be in effect longer than a year without a reconciliation and adjustment if necessary. It is expected that Staff and GSE will determine

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a proper purchased power \$/KWH figure in basic rates reflecting the over-collection after the ratification of this docket to facilitate the reconciliation process.

This action will protect the PPCA from over or underproviding. It is our opinion that the reconciliation of purchased power, as with the FAC, is a necessary consideration for both the customers' and utilities' interest. If this ratemaking device is again used improperly, the Commission will remove it as a ratemaking tool available to this Company.

VI. OPERATING EXPENSES

GSE presented that test year operating expenses at \$24,428,000. To this, they proformed increases totaling \$2,275,000. This consisted of a net adjustment to increase purchased power, increases to salaries and wages, donations, removal of customer information system development costs, increases to postage, an inflationary adjustment to increase miscellaneous operation and maintenance charges (a substitute for an attrition allowance), an increase to property and payroll taxes, and an adjustment to federal and state taxes.

CAP and Staff reviewed these and other issues at length through both data requests and cross-examination. The predominant issues and each party's views are discussed in detail below.

A. Miscellaneous Operation and Maintenance Inflation Adjustment

1. GSE's Position

The GSE witness through testimony and exhibits advocated a proforma adjustment to reflect the effect of inflation on miscellaneous operation and maintenance expenses. The basis for this adjustment is, "inflation unquestionably exists and persists ... [t]hus, miscellaneous O and M increases due to inflation qualify as a 'known' adjustment." (DR 81-86, Initial Brief of Granite State Electric Company, page 5).

Through their cost of capital witness, GSE purported the rate of inflation to be 9%. This rate is a composite of the "GNP implicit price deflator" and "consumer price index".

This inflation adjustment has been proposed by GSE in lieu of an attrition allowance. The Company witness submits that an attrition allowance is an economic necessity recognized by this Commission in the Company's last rate filing. Staff and GSE agree that tying an inflation index to miscellaneous O and M expenses directly confronts attrition at its root.

2. Staff's Position

Mr. Camfield addressed this issue in testimony. He agrees with GSE that a better method of attaching attrition is through an inflation adjustment. However, he recommends that inflation adjustments be made in steps. He also feels the adjustments to miscellaneous O and M should not be made until the Company demonstrates the relationship between sales unit costs and the GNP deflator, historically.

Mr. Traum during cross-examination of GSE's witness submitted Exhibit 14 which demonstrates a lower rate of inflation found in the test year from the previous year. This inflation rate was 6.1% and is significantly lower than the indicators used by the Company of 8.5% and 11.3%, the "GNP implicit rate deflator" and the "consumer price index", respectively.

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3. Commission Analysis

[5] Attrition is a difficult financial creature to tame and the Commission attempts to be flexible in providing the appropriate remedies. However, the method proposed by the company simply is not a method we can accept. The Commission recently discussed its rationale in its recent decision Public Service Company DR 81-87 Report and Order 15,424, January 11, 1982 (67 NH PUC 25).

This "make whole" concept is repugnant to regulation. The CPI may well increase at a rate below or above the result achieved from a determination of a just and reasonable rate. To tie rates to a standard not governed by the just and reasonable standard would be as equally incorrect whether the result was higher or lower.

An indexing concept or a make whole proceeding would lead to proceedings in which the questions were no longer what is a reasonable expense, rate of return and rate base but rather what's a proper consumer price index.

The Commission cannot adopt such a standard for ratemaking. Whatever the merits as to Granite State such a precedent would be quickly seized upon by other utilities. The Commission recently was forced with a rate increase request by the Cheshire Bridge Corporation. In that proceeding they sought to charge rates that had been unaltered since 1924. If the standard was the increase in the CPI it would cost \$20 instead of 20¢ to cross that bridge today.

The Commission rejects the approach offered by PSNH which would hold certain factors constant, such as return on common equity, while addressing expense changes. As the U.S Supreme Court noted in Bluefield:

"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." (262 US at pp. 692, 693, PUR1923D at pp. 20, 21.)

The Commission has concern about the open check book signals that such an automatic procedure would send to suppliers, employee banking institutions and other utilities.

The indexing to the consumer price index or the make whole concept is rejected.

We, in part, share the views of both GSE and Staff. This is understandably the most direct way of battling attrition. However, the method proposed by the Company simply is not a method we can accept. As Mr. Camfield points out, there are many factors to consider when making an adjustment such as this. We feel the foremost factor is, of course, can inflation be projected. Not unlike the cost of common equity, a rate of inflation is a moving target. The Company's own Exhibit H-12 displays this. Going from 1970-1980, inflation has peaked twice consistently going lap *and* down.

Additionally, in the past this Commission has clearly rules on this form of adjustment:

"Inflation factors are not accepted by this Commission as known and measurable changes." (Re Hanover Water Works Co. [1979] 64 NH PUC 480.)

We will not abandon this policy.

With this and Mr. Camfield's concerns in mind, we will reject the \$309,000 adjustment for inflation.

B. Payroll and Property Tax Increase

1. Company Position

GSE has proformed payroll and property tax increases through October, 1982. The purpose

of this is to take into consideration increases up to a year after GSE projects this docket will be ratified (Nov. 1981). Their basic assumption is, if the increase is to last at least a year, the Company will need these increases currently as known and measurable changes, as opposed to taking the increases in steps.

GSE witness, Mr. Perry, has pro-formed the payroll increase at 8.5% for the entire period (1/01/81-10/31/82) based on the current negotiated contract. He adjusts property tax by 5% for the same period. The 5% is based on the average compound growth rate from 1976 through the test year.

During brief, the Company supported Mr. Perry's current adjustments by citing the decrease in work load for GSE, Staff, and Commission, and the fulfillment of the need a customer has for stable rates, and stating the opposite would be true if this Commission decided to take the proformed adjustments in steps. However, the Company did recognize past policy of this Commission, favoring step increases.

2. Staff's Position

Mr. Camfield also testified in this area. His recommendation was for a step increase on payroll discounted for growth in energy. Mr. Traum, during cross-examination, also advocated a step increase for payroll as well as for property tax.

3. Commission Analysis

[6] As the Company brief states,

"We recognize, however, that the Commission — *as a matter of policy* — has ordered step increases in the past." [Emphasis added] (DR 81-86, Initial Brief of Granite State Electric Company, page 5).

We have created the policy of step increases for items that will undoubtedly increase, yet the extent of the increase is uncertain before a decision is issued. This can be found in numerous decisions put forth by this Commission, i.e., DR 79-187, Re Public Service Co. of New Hampshire; DR 80-104, Re Northern Utilities, Inc.; DR 81-32, Re Exeter & Hampton Electric Co.; DR 81-97, Re Concord Electric Co.

We will continue this policy with Granite State Electric. The proforma increases for payroll, related payroll taxes, and property taxes will be accepted through 1981 for \$115,000, \$10,000, and \$30,000, respectively. A petition for a step increase by June 1, 1982 will be entertained by this Commission to the extent that the increased or decreased values of these expenses are "known". This step will include postal rate increases. We except GSE to determine this increase using the proformed dollar amount allowed in this Order.

C. Dues — Association of New Hampshire Utilities

Through cross-examination by Staff, Mr. Perry submitted to the removal of dues for the Association of N.H. Utilities. He had stated that most of the activities performed by this organization related to lobbying. Consequently, GSE, in computing their cost of service in brief, eliminated \$3,000 applicable to the Association's dues.

We agree with Staff and Company and will not accept dues for the Association of N.H. Utilities as an "above the line" item. This is consistent with our prior decisions (DR 79-187, Re

Public Service Co. of New Hampshire, Report and Order, p. 24).

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In summation, the Operating Expense figure the Commission will accept is: (in thousands)

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

| | |
|-------------------------------|----------|
| Test Year Amount | \$24,428 |
| Company's Proformas | + 2,275 |
| Less: Inflation Proforma | - 309 |
| Less: Payroll Adjustment | - 72 |
| Less: Payroll Tax Adjustment | - 18 |
| Less: Property Tax Adjustment | - 26 |
| Plus: Taxes Based on Income | + 223 |

Accepted Operating Expense Figure \$26,501

FOOTNOTE

¹Calculated in similar fashion to Attachment 1, pages 23 and 24 of 26 in GSECo's Initial Brief.

VII. FUEL ADJUSTMENT CLAUSE

The issue of the fuel adjustment is one that has again received special attention from the Commission and must be handled in two steps.

The first step is calculation of the proforma adjustment needed to be made for the test year to bring fuel clause revenues and expenses into parity. This adjustment was made by the Company and amounted to \$408,000 which the Commission accepts.

The second step involves the Company's request to recoup this \$408,000 through a twelve-month surcharge.

To determine the validity of this requested surcharge, the Commission is aware that the Company states on Page 17 of its Initial Brief, "The intent of the surcharge is the same: to make the Company reasonably whole following the transition from the old to the new surcharge."

The Commission agrees that in 1980 the Company, as ordered by this Commission in DR 79-214, revised "its Fuel Adjustment Clause from a monthly calculation to a future-looking quarterly calculation ...".

In that docket, the Commission denied collection of the Company's purported "2 Month Lock-In" and cumulative "undercollections" from the past FAC, pending further investigation.

With that background as well as a statement by Company witness McDade in DR 79-214, on Page 37 of the July 22, 1980 transcript, "The Company does not account for the unbilled fuel cost", the Commission put emphasis on the following from the July 10, 1981 transcript in the instant docket on Page 8 between Mr. Traum of the Commission Staff and Company Witness McDade.

"Q. By requesting a surcharge of \$408,000, is the Company in effect withdrawing any request as to an additional so-called two-month lag?

"A. Well, this is because of the two-month lag. This is our calculation of revenue loss because we went from a two-month to a current basis."

So the issue becomes, was there a two-month lag? The Commission finds there is not one because the "two months" were collected historically, one in 1972 and one in 1975.

Looking first at 1972, the Commission approved the current FAC for the Company as of December 28, 1971. The Company began billing in January, 1972, based on December, 1971, costs. This resulted in a one-month *lead*, not lag or as stated by McDade on T 3-11, "We incurred the expense in December, and we recovered it in January. It is a lag, as you say, but in the opposite direction."

In 1975, as illustrated by Exhibit 19, the second month of the so-called lag was developed by billing the same data month rate for two months.

No wonder on July 22, 1980, Mr. McDade stated "the Company does not account for unbilled fuel cost".

To put another nail in the coffin, going back to the Company's last rate case, no request was made for a proforma adjustment to the 1976 test year to

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reconcile FAC revenues and expenses. Since the Company now has attempted to go back and developed a figure for over/undercollections since 1972, and those figures reflect a \$160,000 under-collection for the 1976 test year. If that \$160,000 had been proformed in that case, the result would probably have been a \$160,000 addition to the rate increase. Therefore, this Commission finds itself unable to accept that the Company in that rate case would have overlooked such a large potential proforma adjustment, due to inability to account for it,¹ and presently develop the capability to go back and calculate the over/undercollection in the FAC accurately since 1972.

Our Order will accordingly disallow any surcharge related to the FAC.

VII. COST OF CAPITAL

A. Company Position

Although the test year ended with a capital structure consisting of 45.3% common stock, 40% long-term debt, and 14.7% short-term debt, neither the Company's witness, Mr. Houston, nor Staff recommend using this capital structure for ratemaking purposes. Mr. Houston recommended setting rates on a capital structure of 48.8% common stock and 51.2% long-term debt. This capital structure reflects sinking fund payments and the proposed placement of \$2 million of long-term debt to retire short-term debt.

Mr. Houston recommends the following cost rates be applied for ratemaking:

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

| Item | Component Ratio | Cost Rate | Weighted | |
|--------------|-----------------|-----------|----------|-----------|
| | | | Rate | Cost Rate |
| Common Stock | .488 | 16.5 | 8.10% | |
| L-T Debt | .512 | 10.7 | 5.50 | |

Weighted Average Cost 13.60%

Mr. Houston arrives at his cost estimate for the common equity component of the capital structure through several different methods. His primary method used is discounted cash flow. The DCF method is represented by the following formula:

[Equation below may extend beyond size of screen or contain distortions.]

$$k = D/MP + g$$

where

k = cost of common equity D = dividend rate MP = market price of stock g = expected growth rate in dividends D/MP = dividend yield

Because Granite State's common shares are not publicly traded, and are in fact totally owned by NEES, Mr. Houston uses NEES as a proxy for Granite State.

Using the DCF method, Mr. Houston arrives at a cost rate of 15.8-16.3%. To this he adds a .6% adjustment to allow for issuance costs. This results in an estimated cost of common of 16.4 - 16.9%

The third method used is an equity risk premium approach. This results in an estimated cost of common of 17.2-18.5%.

The fourth method used is the earnings price ratio method. This method results in a cost estimate of 16.6-17.2%.

The fifth method used was a comparable earnings analysis. This results in an estimated cost of 16.3%

In Mr. Houston's original pre-filed testimony, filed in April, 1981 he stated

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that the Company would be placing a \$2,000,000 long-term note later in the year. At that time, he anticipated that the bond could be placed at 14%. In his rebuttal testimony, filed in August, 1981, Mr. Houston states that he no longer believes that the Company could place a note at 14%. He, therefore, revises his estimate upwards to 17%.

B. Staff's Position

Mr. Lavoie submitted testimony and exhibits which discuss rate of return and capital structure to be used for ratemaking. He proposed that the Commission set rates upon a

hypothetical capital structure. The capital structure and cost rates which he presented in testimony are as follows:

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

| <i>Item</i> | <i>Component Ratio</i> | <i>Component Cost Rate</i> | <i>Weighted Ave. Cost</i> |
|---------------------------------------|------------------------|----------------------------|---------------------------|
| Common Equity | .3877 | 15.5-16.25% | 6.01-6.30% |
| Preferred Stock | .1000 | 12.33 | 1.23 |
| Long-Term Debt | .5123 | 10.95-11.41% | 5.61-5.58% |
| Overall Rate of Return Recommendation | | 12.85-13.38% | |

In revisions to his testimony which he made under direct testimony, he stated that because financial markets had deteriorated since his prefiled testimony was submitted, he now recommends that the Commission place greater emphasis on the higher end of his ranges.

His recommendations for the cost of common equity was arrived at through the use of discounted cash flow analysis. Because Granite State's common stock is not publicly traded, he used the dividend yields and anticipated growth rates of a sample of 22 small electric utilities. In arriving at a cost rate for preferred stock, he assumed that the stock had been issued sometime during 1980.

Witness Houston stated in his testimony which was filed in June, that he anticipated a 14% cost rate. At the time Mr. Lavoie's testimony was submitted in July, the financial markets had deteriorated somewhat, rather than improving as expected by Mr. Houston. Therefore, Mr. Lavoie assigned a 14.00 — 15.00% cost rate to the Company's projected issue of long-term debt.

In addition to his original proposal, Mr. Lavoie submitted two alternate capital structures for the Commission's perusal, which he labeled Alternate Scenario I and Alternate Scenario II. Alternate Scenario I consists of the same capital structure proposed by the Company (adjusted for the \$800,000 sinking fund payment, and the proposed \$2,000,000 L-T Debt issue), but with his recommended cost rates. Alternate Scenario II consists of the Company's capital structure as it actually was on December 31, 1980, the end of the test year. This capital included \$2,350,000 or 14.7% short-term debt. Although the Company's calculations reveal a weighted average cost of short-term debt of 20.77%, he has used the range of 17.00 - 21.00%.

C. CAP's Position

CAP has stated, through cross-examination and brief, two main concerns with the Company's cost of capital. The first is GSE's apparently consistent thickening of equity, the most expensive form of capital. CAP feels that this practice should be subdued and that "the company should add diversity to its capital structure ... " (DR 81-86, *Trial Brief for*

Community Action Program, pg. 1). Further, they suggest that the constant thickening of equity may be one of the components contributing to a deteriorating return.

Their second concern is over Mr. Houston's use of a .6% issuance cost for determining the cost of common equity. Mr. Houston obtained this figure by multiplying a cost of issuance of 5% times a dividend yield of 11.3%. CAP is of the opinion that this cost is either extraordinarily

high or should not be recognized at all. If the Commission feels it is necessary to impute this cost, they feel it should be 1.25% or 2.50% times the dividend yield. This is one half the actual or average historical issuance cost, respectively (NEES only issues stock every two years, ergo the 1/2).

D. Commission Analysis

In numerous prior decisions, this Commission has readily acknowledged the Bluefield Water Works (262 US 679, PUR1923D 11, 67 L Ed 1176, 43 S Ct 675) and Hope Natural Gas Company ([1944] 320 US 591, 51 PUR NS 193, 88 L Ed 333, 64 S Ct 675) cases and has plainly stated that the Commission "is governed by the criteria set forth by the United States Supreme Court" in these cases. (Re Pennichuck Water Works [1979] 64 NH PUC 206.)

Coincident with the above mentioned, we will first approach the subject of cost issuance expenses for Granite State Electric. CAP's view regarding the subject is well taken. We are aware of NEES's Dividend Reinvestment Plan that sells stock at a discount of 5%. This is the cost Mr. Houston uses as a proxy in his cost of issuance calculation. However, we also recognize that this is a decision made by management to encourage stockholders to reinvest. Idealistically, this practice is beneficial to the stock holder; we, therefore, cannot comprehend why the stockholder who receives this benefit should glean additional return on equity because of a related loss the company felt in issuing the discounted stock. Additionally, it is assumed that NEES, in keeping with its above-average management practice, will discontinue this discount with the enactment of the *Economic Recovery Tax Act of 1981* and a liberal dividend reinvestment contained within it. Hence, we will remove the cost of issuance found in Mr. Houston's first and strongest range for cost on common equity and arrive at a proper range of 15.8 — 16.3%. This is well within the range proposed by Mr. Lavoie. We will not ignore the exhibit Mr. Houston presents displaying the true cost of issuance, H-10; we simply state that the 1977 data, the latest date of issuance, is far too stale to be accepted by this Commission for a decision that is being made during the early part of 1982. In addition, CSE itself has no true cost of issuance; therefore, we will not accept that proxied cost in computing a cost of common equity.

Neither the Company nor Staff advocated increasing the cost of common equity for alleged market pressure. In fact, Mr. Lavoie has directly stated it is not necessary because GSE has not pronounced any plans to enter the capital market in the near future (DR 81-86, Exhibit 34 at 12). We will acknowledge this as it is also portrayed by the Company in brief (DR 81-86, *Initial Brief of Granite State Electric Company* at 11).

Mr. Houston's second method of determining cost of equity used 84 of the nation's largest companies in the electric utility industry as a proxy Mr. Lavoie, on the other hand, has taken 22 small electric utilities as a proxy. It would appear with all the different risk factors contemplated by investors when investing,

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one of the main indicators would be size. Mr. Houston signified this under cross-examination by Mr. Camfield (DR 81-86, July 1, 1981 transcript, page 38), and we are inclined to agree. This would, therefore, prompt a heavier weight on Mr. Lavoie's range.

As aforementioned, Mr. Lavoie presented a hypothetical capital structure based on what he has determined to be optimum for the test year. By optimum, Mr. Lavoie means the most economic and cost minimal. Mr. James C. Bonbright discusses this subject in *Principles of Public Utility Rates* (Columbia University Press: New York, copyright 1961).

On Pages 243-244, Mr. Bonbright writes:

"... the use of a hypothetical or "typical" capitalization substitutes an estimate of what the capital cost *would be* under non-existing conditions for what it *actually is or will soon be* under prevailing conditions. But if the existing security structure is clearly unsound or is extravagantly conservative, the rule must be modified in the public interest. *Actual* cost of capital may then be disqualified in favor of *legitimate* cost."

Additionally, the Federal Communications Commission has stated in their Docket Nos. 16,258 and 15,011, an American Telephone and Telegraph Company Filing,

"Accordingly, the overall rate of return is affected by the capital structure in respect to the proportion of debt an equity in the total capitalization of the Company. Respondents have the obligation to fix this proportion in such a way as to raise the required capital at the lowest possible cost consistent with overall responsibility to provide modern, efficient service at reasonable rates and to maintain the financial integrity of the enterprise." (Re American Teleph. & Teleg. Co. [1967] 70 PUR3d 129, 158).

[7] The Commission has the power in New Hampshire to set a hypothetical capital structure. The Commission can legally determine a rate of return upon a capital structure different from that actually existing. *New England Teleph. & Teleg. Co. v New Hampshire* (1962) 104 NH 229, 236, 44 PUR3d 498, 183 A2d 237.

Based upon the evidence in this proceeding the Commission finds that a hypothetical capital structure need not be used.

Mr. Lavoie's second proposed capital structure is a reflection of Mr. Houston's. His third includes short-term debt as opposed to the proformed long-term debt issue included in Mr. Houston's capital structure and Mr. Lavoie's second proposal. The Company has made known their plans to retire short-term debt with proceeds obtained by a tentative issuance of senior capital (DR 81-86, Exhibit 3, page 14). This is the debt proformed into Mr. Houston's capital structure. The Commission accepts this proforma adjustment as a favorable practice in prudent financial management, yet we hope GSE will look into alternative financing. For this reason, we cannot agree to Mr. Lavoie's third proposal.

Given this, we will acknowledge the capital structure as it is presented in Mr. Lavoie's Alternative Scenario I (DR 81-86, Exhibit 34) and Mr. Houston's testimony (DR 81-86, Exhibit H-1 at 2 of 8).

Next, we will address the cost of common equity. As put forth previously, the cost of common in our opinion should be weighted heavily on Mr. Lavoie's range. We make one exception to Mr. Lavoie's testimony. In oral testimony, he has stated a desire for this Commission

to recognize primarily the high point of his range. If we had accepted Mr. Lavoie's hypothetical structure, we would, of course, oblige. In as much as we have not allowed this form of capital structure in these proceedings, it is no longer a valid request. We, therefore, will evaluate the cost of equity through his entire range.

In evaluating cost of common equity, this Commission has determined that it must "remove the blinders" and look into evidence submitted in previous rate filings by GSE, specifically DR 77-63. In this docket, the Commission accepted the fact that there is double debt leverage in Granite's capital structure. We acknowledge that there has been no evidence to this submitted in the current docket; however, we will continue to recognize the effect and consider this an indicator toward the low end of Mr. Lavoie's range.

In addition to this, the use of Mr. Houston's capital structure thickens the equity ratio considerably, when compared to Mr. Lavoie's hypothetical capital structure. We are of the understanding from numerous cost of capital experts, testifying before this Commission, that thick equity components provide less risk to the investor, thereby reducing the cost of common. This also will be taken into consideration.

With these two factors in mind, we will pinpoint cost of common equity at the low end of Mr. Lavoie's range, 15.5%

VIII. *ATTRITION*

Our act of eliminating the inflation adjustment to miscellaneous operation and maintenance expenses at first glance would connote the necessity of an attrition factor to be added to the overall cost of capital. After a closer examination, this may not be the case. We cite numerous issues in this case that would buffer attrition well enough without help from an additional factor. These are:

1. The acceptance of the street lighting increases without respectively increasing the revenue in this docket's proformed revenues.

2. We have not, as Mr. Camfield recommends in Exhibit 35, discounted the 1981 payroll adjustment in this Report and Order for the 1 1/2 to 2 1/2% expected growth in energy (per Mr. Holden, DR 81-86, July 1, 1981 transcript, pages 12-13). Nor have we discounted any other proformed increase in expense as would be appropriate. As an aside, in the future, adjustments such as these will be extremely attractive to this Commission.

3. Mr. Perry has stated through cross-examination that the new consumer information system will act as a retardant to attrition (DR 81-86, July 2, 1981 transcript, page 12).

4. We have allowed a step increase for two major items of expense: property taxes and payroll. In addition to these step increases, GSE will continue to employ their FAC and PPCA. These items combined with efficient management should adequately offset any attrition that may be found in at least the next two years (barring any extraordinary, unforeseen developments).

The only proposal for an attrition factor is put forward through an exhibit represented by Mr. Houston (DR 81-86, Exhibit H-11). The Company brief requests an increase to the overall return in the amount of 2.2%, which is the average percentage displayed on the exhibit. The

Commission cannot accept this as a measure of attrition for two reasons. First, our concerns for the previously

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stated FAC and PPCA over and under collections create accounting problems, the impact which are not adequately disclosed in the presentation of this exhibit. Second, this exhibit displays the attrition of earned return on *common equity*. In fairness to ratepayers, we cannot be expected to issue an attrition factor on overall return that is based on attrition of equity.

[8] Attrition has been defined in New Hampshire as follows (113 NH 92, 97, 98 PUR3d 253, 257):

" 'an erosion in earning power of a revenue-producing investment. This erosion is a complex phenomenon, the result of operating expenses or plant investment, or both, increasing more rapidly than revenues. If attrition occurs, the result would be that the *rate of return* realized in the future would be below that which rates were designed to produce.' This effect is apt to occur in a period of comparatively high construction costs when 'new plant is being added which ... is relatively expensive per telephone station. As the high cost plant comes into service, it tends to increase the applicable rate base at a more rapid pace than the resultant earnings, and the *rate of return* decreases accordingly' "

The language of the Supreme Court relates to "rate of return" and not "return on common equity". The entire discussion in *New England Telephone* is on how to compensate for attrition in the allowed rate of return. Among the avenues addressed by the Court to compensate for attrition are an increase in the otherwise allowable rate of return or an adoption of a year-end rate base, or a combination of both.

Attrition refers to the erosion of the overall rate of return rather than the return of equity. Variations in interest rates and capital ratios may affect the level of overall rate of return and return on common equity but not necessarily in the same direction or in the same degree.

This Commission interprets attrition as an erosion that occurs in the overall rate of return despite efficient management. This Commission does not accept the standard of measuring attrition by a reduction in the earned return on common equity. To adopt GSE's position would effectively change regulation from offering an opportunity to earn a reasonable return to a guarantee. The Commission has never understood its role to be to provide such a guarantee. Furthermore, under such a system decisions by consumers to use less energy would reduce the return only to then require additional revenue because of the loss of sales. Again, such a result would be unjust and unreasonable.

Reductions in the return actually earned on common equity can be the result of many factors independent of the rates set by the Commission. For this reason, as well as those discussed, the Commission refuses to adopt as its attrition standard the erosion of the return on common equity. Rather, the Commission will adhere to its standard of measuring attrition based on the erosion in the overall rate of return.

The subject of incentives is a delicate one. It invariably leads to the proverbial "carrot or stick". Are we as a Commission to award a utility for above-average performance, or are we to

be punitive to poorly managed companies, or both? If an award or punishment, to what extent for each?

Both GSE and CAP confronted this subject in brief. We find they both agree, that, in most instances, NEES has shown good management practices. The Commission

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agrees that NEES has demonstrated some excellent management techniques.

The development of NEESPLAN, the encouragement of conservation, the coal conversion of Brayton Point and their investment in nuclear projects with construction permits all demonstrate a serious commitment to the backout of oil, both in the near and long term. The Commission believes it reasonable to expect that NEES will continue to demonstrate leadership by purchasing an additional share in Seabrook I or II, or both, in the very near future. Such a move will allow the benefits of Seabrook to be further extended to New Hampshire ratepayers and replace the loss of potential baseload capacity from the now-cancelled Pilgrim II unit.

A utility that shows initiative and concern that goes beyond the stockholder's interest and encompass a minimization of costs to ratepayers, (i.e., coal conversions) can only be in the aforementioned "carrot" category.

At this point, however, the Commission finds it difficult to determine the incentive value to be given simply because of a lack of precedent. We consider two hundred basis points as presented by Mr. Houston excessive; yet, it appears some value is in order. Due to the lack of precedent, we will develop a starting point of 50 basis points to be added to the cost of common equity.

A utility that is deserving of this incentive will be expected to perform as well, if not better, than it has in the past. Additionally, we expect the ratepayers of New Hampshire to see benefits from this incentive in a tangible form, and, because this is an innovation for the period these rates, and amendments thereto, are in effect, we will not hesitate to exercise our legal option, under NH RSA 365:5 and withdraw this incentive if we are with the opinion a utility is no longer warranting of it.

A. Long-Term Debt

Long-term debt was proformed by the Company at 14.00%. Mr. Lavoie in his proposal gave a range of 14-15% for the proformed debt. Again, in rebuttal testimony, Mr. Houston reassigned his cost for proformed debt to 17%. Finally, in brief, the Company returned to their original 14%.

We have asked Staff to calculate the net effect on return requirement for an increase in proforma debt from 14-17%. The figures, net of tax considerations, showed a \$31,000 increase to revenue requirement, all other items being equal.

The Commission finds the proformed debt cost rate as presented in the Company brief and by the Company witness appropriate. At the ratification of this Report, in early November, the petition to issue this debt has not been presented to this Commission. We are not in doubt of its forthcoming; however, we are concerned as to when the issuance is to be made. With a highly

volatile market to enter, a debt issuance can be "cast in cement" at any unpredictable cost. Much depends on the timing. We have based our decision on conservative estimates with the implicit knowledge that the Company's above-average management will enter the market at the most opportune moment.

Additionally, the step increase for outdoor lighting revenues approved in this Report will more than cover the \$31,000 loss in revenue requirement, if the Company runs into unfavorable market conditions while issuing this debt.

The Commission accepts the overall cost of capital computed as follows:

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

| <i>Equity</i> | <i>Component Weight</i> | <i>Cost</i> | <i>Weighted Average of Cost</i> |
|-------------------------|-------------------------|-------------|-------------------------------------|
| Cost of common equity | | 15.50 | |
| Incentive | | .50 | |
| Total | 48.8% | 16.00% | 7.8 |
| <i>Debt</i> | 51.2% | 10.70% | 5.5 |
| Overall Cost of Capital | | | 13.3% |

B. Revenue Deficiency

Based on all the information previously stated in this Report, the revenue deficiency is simply calculated by plugging the accepted figures into a formula corresponding to Attachment 1, page 1 of 26 of the Company's Initial Brief. The result of such is \$1,120,000.

Our Order will issue accordingly.

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

*GRANITE STATE ELECTRIC COMPANY
Computation of Revenue Deficiency
for the Test Year Ended
December 31, 1980
(000s)*

1. Rate Base
2. Rate of Return
3. Return on Rate Base
4. Plus Interest on Customer Deposits
5. Total Income Required
6. Adjusted Net Operating Income (28,100)
(-26.501)
7. Deficiency
8. State Income Tax @ .09
- 9 Federal Income Tax @ .46/.54
10. Revenue Deficiency

IX. RATE DESIGN

A. Outdoor Lighting

The Commission made significant inquiries into the rates being charged under the rate classification M, Outdoor Lighting. In GSE's most recent purchased power cost adjustment (PPCA), the Commission criticized GSE's past practice of excluding this customer class from being charged the costs of purchased power. The Commission noted that it was discrimination to charge all other rate classes purchase power costs and exempt one class. Such a practice is a direct violation of the equality of rates statute, RSA 378: 10. Furthermore, this practice largely contributed to the Company's failure to achieve rates of return established by this Commission. Granite State has corrected this discriminatory aspect of this rate, but unfortunately the level of subsidization to this class still exists.

The Commission initially was aware of the subsidization accorded this rate class only through the absence of a proper purchased power cost adjustment. However, our inquiry has revealed

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a further subsidization in this class that exists in the basic or annual rates.

These rates have been allowed to stagnate with little or no increase for years. Granite State Electric Company's existing rates for outdoor lighting are in many instances one-fourth or one-fifth that charged by other utilities. Or to state this another way, the outdoor lighting rates for other New Hampshire electric utilities are four to five times that charged by Granite State for identical service.

This Commission recently completed a two-year study of rate design of Public Service Company of New Hampshire. In completing that study the Commission found that all PSNH outdoor lighting was slightly above cost and the rates were lowered. Yet these lowered PSNH rates are many times that presently being charged by Granite State. The following table demonstrates the difference and, in our opinion, the subsidy:

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

| <i>MercuryPSNH</i> | <i>GSE</i> |
|--------------------|------------------|
| <i>Lumens</i> | |
| 3,500 | \$105.60 \$40.00 |
| 7,000 | \$147.00 \$55.00 |

[9] Granite state admits that outdoor lighting customers are being subsidized and the Company proposes to improve this situation in large step increases over the next few years. The Commission finds the Company's proposal unpersuasive. The subsidy has lasted far too long. Residential, commercial and industrial customers have been subsidizing the outdoor lighting class for at least six years. Rounding the time period of subsidy to a decade is not responsible rate-making. Nor does such a proposal allow for the proper economic signals to be sent to the town government officials who make decisions on the type and number of outdoor lights to install.

Another reason for a total discontinuation of the subsidy is the extremely unfair impact of this situation on the residential ratepayer. In GSE's service territory residential ratepayers pay more than a fair allocation as far as electricity costs.

Since they do not receive an income tax deduction for the costs of electricity, they end up paying more of their disposable income than they would if a more proper allocation was made to the out-door lighting class. Furthermore, property taxes and not electricity costs are an income tax deduction for the residential ratepayer.

Based upon this, the testimony that reveals a major subsidy, the Commission will require that the fourth step increase or the Company's proposed 1/1/84 increase be effective immediately for all incandescent mercury vapor, wood poles and metal poles. Sodium vapor is to receive the smallest increase that being what was originally proposed for 7/1/81. The Commission has found that it is in the public interest to encourage conversions to sodium vapor lights over outdated incandescent and mercury vapor lights. Sodium vapor lights are far more energy efficient and are in keeping with the intent and spirit of PURPA, NEES-PLAN and just and reasonable principles.

Furthermore, Granite State is to stop any further installation of incandescent or mercury vapor lights beyond what exists presently in Granite State Electric Company's inventory unless specific permission is received from the Commission's Chief Engineer.

B. Small Commercial G-3 Rate

The Commission's evaluation of the Company's rates results in a finding that the G-3 rate or small commercial customer

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has been subsidizing the other customer classes. Small commercial customers' present rates as well as the Company's proposed rates are significantly above that charged the residential class. There has been no evidence of substance to support this differential. Consequently, the Commission will accept a G-3 rate which consists of \$5.00 as a customer charge and a flat KWH charge of 6.671 cents per KWH. This rate design will reduce the revenues proposed by the Company for this class by \$199,165. Further this rate design will reduce present customer bills who use less than 1000 KWH per month.

C. Residential Rate — Rate D

The customer charge proposed by Granite State Electric is \$3.24 and a flat rate of 6.722% per KWH. There is not a valid cost of service study to justify this rate structure although the rate structure does follow the appropriate philosophy of rewarding conservation and increasing efficiency in electrical usage.

The Commission has been reviewing the practice of customer charges and is not satisfied that the appropriate proof has been offered to move from a \$2.45 minimum charge to a \$3.24 customer charge.

The Commission will return the \$2.45 level and will allow the Company the discretion of it being either a minimum or customer charge. The Commission will not sanction increased customer charges which in essence bring back declining block rates.

The Commission will require a reduction of the proposed D rate per KWH by 0.2¢ per KWH from the two residential usage levels under the lifeline rate.

The Commission rejects any increase to the off peak provisions of rate D. These rates are to

remain as they were prior to the beginning of this proceeding. The Commission will also require that the proposed customer charge for the D-10 time of day rate be reduced to \$5.00. Off peak use is to be encouraged and is and will remain a benefit to all customers.

D. Rate G-2 Large Commercial/Industrial

The Commission would require the remaining difference between proposed and approved revenue levels, \$63,967 to be used to reduce the proposed rate levels of G-2 as to minimum bill and the demand charge. The energy charge is approved as proposed.

E. Lifeline Rates

In an attempt to reward conservation and provide a reasonable rate for essential services the Commission adopts the following residential lifeline structure which is applicable to all rate D bills unless otherwise noted (such as farm use):

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

Customer Charge \$2.45

Regular Use: 4.475¢ per KWH for the First 200 KWH
 8.125¢ per KWH for in excess of 200 KWH

Farm Use 5.455¢ per KWH

F. Other Rate Classes

The customer classes of T, V and farm use are to be grandfathered to existing locations and not offered to any new customers. The economics behind

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these rate aberrations no longer justifies their extension to new customers.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that revisions of the Granite State Electric Company tariff, NHPUC No. 9 — Electricity, various original pages, which were duly suspended by Order No. 14,830, dated April 7, 1981 (66 NH PUC 121), be, and hereby are, rejected; and it is

FURTHER ORDERED, that in accordance with the increase in rates authorized by this Report and Order, Granite State Electric Company shall file new tariff pages designated in accordance with this Commission's rate design directive setting forth therein rates designed to produce an annual increase in gross revenues of \$1,120,000; and it is

FURTHER ORDERED, that said tariff pages be filed to become effective on all bills rendered on or after the date of this Order, such pages to carry the notation "issued in compliance with Supplemental Order No. 15,452 in case DR 81-86"; and it is

FURTHER ORDERED, that by June 1, 1982, Granite State Electric Company shall file new tariff pages setting forth therein, rates designed to generate an increase or decrease in revenues equalled to known changes in payroll, payroll taxes, postage, and property taxes; such rates shall

be derived by an equal increase to each KWH of all rate schedules; and it is

FURTHER ORDERED, that Granite State Electric file with this Commission a plan to surcharge customers for the difference between revenue authorized in this Order and actual revenues collected under temporary rates since May 13, 1981; and it is

FURTHER ORDERED, that Granite State Electric and Commission Staff attempt to determine the cost of purchased power in base rates prior to the next purchased power cost adjustment filing. If a determination cannot be found agreeable to both parties, it will be decided by the Commission at the next purchased power cost adjustment hearing; and it is

FURTHER ORDERED, that Granite State Electric Company tariff, NHPUC No. 9 — Electricity, 1st Revised Page 7 and Original Page 7A be revised to eliminate the proposed \$2/KW contracted demand charge and related requirement for special demand meter, and to fully reflect existing Commission policies for small power producers and cogenerators; and it is

FURTHER ORDERED, that the revised tariff, NHPUC No. 9 — Electricity, 1st Revised Page 7 and Original Page 7A be submitted in full with the tariffed rate schedules designed to produce the increase in annual revenues approved herein; and it is

FURTHER ORDERED, that Granite State Electric Company's requested \$408,000 surcharge related to the fuel adjustment clause, be, and hereby is, denied; and it is

FURTHER ORDERED, that this increase is to be applied on all bills rendered on or after February 1, 1982.

By order of the Public Utilities Commission of New Hampshire this third day of February, 1982.

FOOTNOTE

¹McDade in DR 79-214, July 22, 1980, page 37, "I think as a general rule if you had a situation where fuel clause revenue and expense were at variance, you would make an adjustment in the rate case so that you would not either increase or decrease your requested increase because of any deficiency in the fuel clause."

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NH.PUC*02/04/82*[79190]*67 NH PUC 138*Granite State Electric Company

[Go to End of 79190]

Re Granite State Electric Company

DR 81-86, Fourth Supplemental Order No. 15,474

67 NH PUC 138

New Hampshire Public Utilities Commission

February 4, 1982

ORDER directing company to apply credit to reflect overcollection of purchased power costs.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, this Commission by its Order No. 15,140 (66 NH PSC 381) authorized the Granite State Electric Company to recover through its PPCA W-3(S) the increased cost of purchased power from its supplier, New England Power Company; and

WHEREAS, that PPCA W-3(S) resulted from settlement of the wholesale case at a lesser level than that which had prompted the earlier authorized PPCA W-3(C) from which it now appears that excesses were collected during the months of June, July, August and September 1981; and

WHEREAS, the excesses from said months have been refunded to Granite State Electric Company along with appropriate interest, and that Company proposes to return these in the form of a credit to consumers during the February 1982 billing cycle; and

WHEREAS this Commission finds that such credit for overcollection and associated interest thereon is in the public good; it is hereby

ORDERED, that Granite State Electric Company establish a one-time credit of \$0.00073 to be applied to all February 1982 billings (\$28,858 divided by the estimated sales of 39,204,000 KWH); and it is

FURTHER ORDERED, that Granite State Electric Company provide to this Commission a full accounting of the monies refunded via such credit no later than April 15, 1982; and it is

FURTHER ORDERED, that customers be provided an explanation of this credit via the Company's choice of bill insert or one-time newspaper advertisement.

By order of the Public Utilities Commission of New Hampshire this fourth day of February, 1982.

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NH.PUC*02/05/82*[79191]*67 NH PUC 139*Public Service Company of New Hampshire

[Go to End of 79191]

Re Public Service Company of New Hampshire

Intervenors: Community Action Program, Office of Consumer Advocate, and Legislative Utility Consumers' Council

DR 81-87, 11th Supplemental Order No. 15,477

67 NH PUC 139

New Hampshire Public Utilities Commission

February 5, 1982

ORDER directing power company to pursue one of several options concerning a nuclear power

plant to improve the company's financial status.

APPEARANCES: Martin L. Gross and Eaton W. Tarbell, Jr., for Public Service Company of New Hampshire; Gerald Eaton for Community Action Program; and Gerald L. Lynch, Consumer Advocate - Legislative Utility Consumers' Council.

BY THE COMMISSION:

COMMISSION'S RESPONSE TO PSNH'S MOTION FOR CLARIFICATION

The Public Service Company of New Hampshire has filed a Motion for Clarification as to the Commission's Report and Order No. 15,424 (67 NH PUC 25). The Commission perceives the Motion as seeking direction from the Commission as to where the Commission places its priorities as to the various options raised in the latter part of the Report.

The Commission stated in the Report that clearly a major choice had to be undertaken by PSNH if it was to achieve the necessary financial flexibility to continue its ambitious construction program. Nothing has changed to alter the necessity of implementing a major change.

The five options set forth by the Commission in its Order are as follows:

1. Selling additional shares of ownership in both Seabrook Units.
2. Selling shares in only one of the Units.
3. Delaying one of the Units.
4. Delaying both of the Units.
5. Cancelling one of the Units.

The Commission believes that these options are listed in order of preference with the divestiture of an interest in both units being the most preferred option.

Or to state our priority system another way, the commission does not believe that cancellation of Seabrook Unit II is an acceptable method to resolve its concern for PSNH's future financial situation except as the last resort and only if the other four options fail or no other option arises. The New England Region's need to dramatically reduce its dependence on oil fired generation, together with New Hampshire Legislature's mandate to timely and promptly complete both Seabrook Units, require

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this option to be relegated to the role of last resort.

After this option is the next least desirable options of delay. Delay of Sea-brook I is untenable due to its high level of completion. Obviously, an avoidable delay in construction of Seabrook II is not in the interest of ratepayers or stockholders due to the consequent and substantial increase in construction costs and if such delay can be avoided consistent with the Commission's concern for the Company's future financial status. After all, the Commission has issued no order which would require the shutdown of construction on Seabrook II and does not intend to do so if satisfactory progress can be made by PSNH in reducing its ownership interest

in the Sea-brook project.

What the Commission has done is to state that no further financings for Sea-brook II would be approved until there was a positive and bona fide response for additional Seabrook ownership by the other utilities to buy into Seabrook. Obviously, if other utilities wish to incur additional costs due to delay because they fail to adhere to the NEPOOL agreement that is certainly their choice. However, let it clearly be recognized that we specifically find the NEPOOL agreement is being violated by most New England utilities.

The Commission is prepared to facilitate PSNH's reduction of ownership interest in either or both of the Seabrook Units, which the Commission recognizes as the most appropriate course to be followed. In the event of a *bona fide positive* response by other utilities to PSNH's efforts to reduce its ownership interests and the current burden of Unit II construction and *sustained* progress in achieving these goals, the Commission would be prepared to suspend that portion of Order No. 15,424 which would prevent use of the proceeds of financings for continued work on Seabrook Unit II, pending successful completion of the transaction, in order to preserve the value of those transactions.

Notwithstanding the Commission's belief that a reduction of PSNH's Sea-brook ownership and the broadening of that ownership is in the best interests of the Company and the region, in the event that prompt substantial progress is not made in that direction, the Commission will be forced to continue with its Order No. 15,424 and prohibit use of the proceeds for use on the second Seabrook Unit. Such a scenario would quickly lead to a delay of Seabrook II.

The fate of Seabrook II is in the hands of the other utilities. If other utilities don't wish an additional ownership interest and thus reject the NEPOOL agreement then the Commission will have adequately explored this option. The Commission is attempting to discover which options are viable and which ones are not.

To further clarify what we mean by a bona fide positive response by other utilities and prompt substantial progress, we give the following guidance. First, any oral promise to buy additional ownership does not qualify as being a bona fide response. Second, attempts to extort ownership interests in Merrimack I and II or the Yankee Units is not a positive response. Third, purchase of an ownership interest for a set level of years with some responsibility for financings now is a bona fide positive response. Fourth, short time periods for responses must be kept throughout the negotiation to qualify as prompt substantial progress.

The Commission will be happy to provide additional guidance if requested.

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However, the strength of our convictions to provide greater financial flexibility to PSNH by reducing its construction related financial obligations should be clearly understood.

The Commission also has not altered its test set forth in Commission Report and Order Nos. 13,759 (64 NH PUC 262) and 13,817 (64 NH PUC 315) in DF 79-100-6205. In those Orders the Commission noted that PSNH would be provided an opportunity to demonstrate either that previous ownership adjustments were not made at less than full cost or that the Company has received some other consideration in exchange. Nothing in Report and Order No. 15,424

impaired or prejudiced PSNH's rights. Nor did anything in that Report and Order alter the consumers' right that a presumption exists that the costs will not be passed on to ratepayers if full cost was not received.

The Commission's language in the Report was very strong. The Commission clearly established that the other New England utilities have not been supportive of either PSNH or the Seabrook project. PSNH's response is that the New England utilities were only a problem three years ago. The Commission disagrees. In terms of financing, PSNH has sought assistance from its partners only to be confronted with its partners asking an interest rate of prime plus 2% or its ownership interest in the Yankee nuclear units. PSNH would be wise to turn its concern where it belongs; namely, the other New England Utilities and not this Commission.

The Company has expressed concern over the language of the Report. The Report does not challenge PSNH's presentations before this Commission. Nor do we challenge their honesty. Rather, the Commission was confronted with conflicting signals from PSNH as to whether they were seeking to hold a 28% or 35% interest in Seabrook. The Company was sending mixed signals.

The Commission believes that PSNH management had begun to believe that a 35% ownership level was do-able. The rejection of two offers to buy additional Seabrook shares would tend to support this conclusion. Subsequent submissions of financial cash flow models showing a 35% level, as obtainable would also support the assumption that PSNH had embarked upon a 35% ownership. It was this conclusion and these financial models the Commission found to be untenable. The Commission could not reconcile PSNH's previous history of honesty and candor with this new 35% scenario. It certainly was not feasible.

The Commission's harshest comments as to PSNH are reserved for these most recent forecasts that revealed proposed cash requirements of \$1.3 billion, which the Commission found to unlikely of achievement.

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 incorporated report sets forth the Commission's priorities as to options set forth in Report and Order No. 15,424; and it is

FURTHER ORDERED, that PSNH is to pursue these options beginning with the most desirable so as to alleviate the Commission's concern relating to finance flexibility.

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1982.

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NH.PUC*02/05/82*[79192]*67 NH PUC 142*Kearsarge Telephone Company

[Go to End of 79192]

Re Kearsarge Telephone Company

DR 81-249, Order No. 15,481

67 NH PUC 142

New Hampshire Public Utilities Commission

February 5, 1982

ORDER implementing accounting changes for inside wiring and increasing station connection charge.

1. ACCOUNTING, § 54 — Telephone — Changes — Inside wiring — Flash-cut method.

[N.H.] The flash-cut rather than the phase-in method of accounting change was used to transfer inside wiring costs from being capitalized to being expensed. p. 143.

2. ACCOUNTING, § 54 — Telephone — Changes — Flash-cut method.

[N.H.] The flash-cut method of implementing accounting changes for inside wiring was held to be preferable to the phase-in method because the phase-in method would have required considerable additional return on the embedded costs remaining in rate base. p. 143.

3. RATES, § 257 — Kind and forms of rates and charges — Service connection charge.

[N.H.] To cover the costs incurred as a result of expensing, rather than capitalizing, the cost of inside wiring, the commission increased the station connection charge. p. 145.

BY THE COMMISSION:

REPORT

On September 1, 1981, Kearsarge Telephone Company (hereinafter referred to as "The Company") filed with this Commission its proposed revised NHPUC tariff No. 5 — Telephone, Section 3, Sheet 8A; Section 4, Sheets 1, 2, 3, 4, 5, 5A, 5A1, 5A and 6. These proposed tariff pages were designed to reflect an alteration by the Federal Communications Commission (F.C.C.) in its Uniform System of Accounts (said accounting system being adopted by the New Hampshire Public Utilities Commission as of January 1, 1969). These accounting changes were adopted in F.C.C. Docket No. 79-105 and provide for the expensing of the inside portion of the station connection costs, those costs formerly being capitalized. The change was based on the findings in principle that the burden of all costs associated with station connections should be placed on the causative ratepayer rather than all ratepayers, both present and future. The accounting change further requires that telephone companies separate the costs between outside and inside wiring with the former continuing to be capitalized and the latter to be expensed. The Company has submitted a cost study which indicates that 80% of station connection costs are attributable to inside wire and the balance (20%) attributable to outside wire. Those percentages were used to estimate the annual expense charge which is caused by this accounting revision.

In direct testimony, Company witness G. Geoffrey Lindemer presented an estimated annual increase in station maintenance

costs of \$72,128. He then offset this expense by the net estimated decrease in outside wire depreciation (from 9.92% to 5%), as recommended in the F.C.C. Order, over the increase in expense from a 10% amortization of embedded inside wire costs. This net amount equalled a \$29,580.00 decrease in depreciation and amortization costs. The resultant annual increase in expense was \$42,548.00.

Mr. Lindemer further explained that \$28,933.00 of this increase will be reduced through the Company's toll cost settlement procedures. The toll cost settlement is a procedure through which the Company's assets and expenses are divided between local service and long-distance service; the latter is considered the toll portion. Independent telephone companies in New Hampshire, such as Kearsarge Telephone Company, that are on a "cost settlement" basis with New England Telephone and Telegraph Company (N.E.T.) have the toll portion of operating expenses reimbursed immediately by N.E.T. In addition, the toll portion of the investment in rate base achieves an agreed return from N.E.T.

[1] The final estimation of costs to be passed on to local service customers within the jurisdiction of this Commission was \$13,615.00 using the "flash-cut" method for an accounting change. The F.C.C. has provided that individual state jurisdictions have an option to implement the station connection charge on a "flash-cut" or "phase-in" basis. The flash-cut method would increase rates based on the immediate transfer of inside wiring costs from being capitalized to being expensed.

[2] The phase-in approach would enable the Company to defer the full impact of the change over a four-year period. After changing the Company's calculation of depreciation for outside wire from 9.92% to 5%, their witness's analysis shows that annual expense will decrease by \$2,830.00 in the first year and increase thereafter by \$4,384.00 in the second year, \$11,019.00 in the third year, and \$17,077.00 in the fourth year. In addition, Mr. Lindemer continued his Exhibit 2 to complete a 14-year analysis. The final analysis revealed a \$9,810.00 increase in expenses using phase-in versus flash-cut. For prior cases with like telephone companies, Staff has made their own analysis. They have concluded that there will be approximately equivalent expenses over a 13-year period with both methods. However, they have determined that additional embedded costs, remaining in rate base with the phase-in method, would require a considerable additional return over the same period. Therefore, the Commission will allow the Company to use "flash-cut" as it appears to be in the consumers' and company's best interest. The only caveat this Commission has with the accounting method is that the Company must book the change as proposed, with a 5% depreciation rate on the remaining and future outside wire portion of station connections and a 10-year amortization of the embedded cost of inside wire.

As set forth by the F.C.C.:

"Our primary objection in this proceeding emanated from our desire to have these costs borne by the immediate cost causative customer. At first glance, we believed that expensing would accomplish this goal. However, our analysis in this proceeding has indicated that expensing alone would not accomplish this. Rather, it would only assure that the burden was placed on all customers at the time the expenditures were made (as opposed to present and future

customers

when the costs are capitalized). Expensing, coupled with appropriate tariff action by the state commissions, would, for the most part, impose this cost on the cost causative customer." (F.C.C. Docket No. 79-105, RM-3017, at p. 10 Par 33.)

In this spirit, the Company has requested changes in the rates for service connection charges in the amount of \$25,466.50. To support the rate change, the Company witness, Mr. Gerard P. Guertin, Jr., presented a cost study entitled *Multi-Element Service Cost Study*. Through direct testimony, Mr. Guertin described this as a study of 16 rural operating telephone companies located in Wisconsin, and purported the parallels that could be found between Meriden Telephone Co. and the companies used in the study. Staff brought out numerous issues regarding this study and the level of rates requested. One main concern of Staff's was the Company's request for an increase of \$25,466.50, yet only justifying in testimony increased costs of \$13,615.00, or an unsubstantiated difference of \$11,851.00. Further, Staff questioned the Company's need for this excess adjustment in light of its return achieved on common equity, 17% (DR 81-250, TR.62).

The final Company witness, Mr. Robert J. Collins, submitted direct testimony that broached these subjects. In his testimony, he represented that the study used in developing rates as Mr. Guertin presented is based on a level of costs for materials and labor, which is expected to increase in the future. In addition to this, he stated that the suppression of service requests due to the proposed increase in station connection rates was not taken into consideration in computing the rate level. These two items combined with the uncertainty of toll revenue in the future will quickly erode any excessive revenues that may be designed into the station connection's rate structure. We will accept this with two conditions; first, the approved increased rate level of \$13,615.00 will be effective as of the ratification of this order. However, the Company will start booking the approved accounting change as of the F.C.C. prescribed October 1, 1981 starting date. Second, Staff is to use the Company's filed quarterly reports to periodically monitor the Company's earned return. If an excessive return, such as reported during the hearing, perpetuated the Commission may see fit under R.S.A. 365:5 to initiate a review of the Company's entire rate structure.

As a result of the study preserved by Mr. Guertin, he has proposed new rates for station connection related costs broken down by element and subscriber class as follows:

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

| <i>Element</i> | <i>ResidenceBusiness</i> | |
|--------------------------------|--------------------------|---------|
| 1. Service Order: | | |
| a. Initial | \$ 9.00 | \$12.00 |
| b. Subsequent | 7.00 | 7.00 |
| c. Record | 5.00 | 5.00 |
| 2. Central Office Work Charge | 5.00 | 5.00 |
| 3. Line Connection Work Charge | 10.00 | 10.00 |
| 4. Wiring | 12.00 | 15.00 |
| 5. Connecting Device | 4.00 | 4.00 |
| 6. Station Set Handling | 3.00 | 3.00 |
| 7. Premises Visit | 10.00 | 10.00 |

Staff questioned the \$10.00 charge for Element #3. In cross-examination of Mr. Guertin, Staff pointed out the cost study displayed a \$17.00 weighted cost of this element which seemed over compensated by the charge proposed when it was considered that, with new installations, a portion of this cost will be capitalized. In written correspondence to Staff, the Company agreed on a lower charge of \$8.00 for this element. The Commission will accept this lower rate. However, the Commission has considered the proposed re-establishment of service rates and have determined them excessive. Citing the study by Mr. Guertin, it appears the cost of this activity (DR 81-249, Ex. 1, Attachment B, at 1) has been adequately reimbursed with the prior rate of \$10.00 without a premise visit and \$15.00 with. Additionally, we will exclude the \$5.00 surcharge. The Company will be requested to adjust their tariff accordingly. Hc. [3] Inasmuch as this Commission is in agreement with the aforementioned quote from F.C.C. Docket No. 79-105, we will approve the proposed rates inclusive of the agreed change in Element #3, and the required change for reestablishment of service. It is our hope that this application will effectively pass the increased station connection on to the proper cost causer.

The Company will file an accounting of the final figures used to book the split between inside/outside wire as of October 1, 1981.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Section 3, First Revised, Sheet 8A, and Section 4, Second Revised contents, Sheets 6 revised Sheet 1, Third revised Sheet 2, Fifth revised, Sheet 3, Second revised, Sheet, 4, Second revised, Sheet 5, Original sheet 5a-1, Original Sheet 5a-2, and Third revised sheet, 6 of the Kearsarge Telephone Company tariff NHPUC No. 5 — Telephone be and hereby are accepted; and it is

FURTHER ORDERED that Section 4, First revised, Sheet 5a, be and hereby is rejected; and it is

FURTHER ORDERED, that Kearsarge Telephone Company file with this Commission for effect on the date of this Order, a new Section 4, Second revised, Sheet 5a, said sheet to reflect the rates proposed in company's first revised sheet 5a, with the following exception:

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

Element 3: Line Connection\$8.00 (residents and business)

E. Re-establishment of Service
 2. A service charge ... so interrupted.
 If a premise visit is required, the service
 restoration charge is \$15.00

and it is

FURTHER ORDERED, that the request for a surcharge of \$5.00 for service restoral at timers other than business hours is denied; and it is

FURTHER ORDERED, that Kearsarge Telephone Company give public notice of this Order by a one time publication of the approved service connection charges.

By Order of the Public Utilities Commission of New Hampshire this fifth day of February, 1982.

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NH.PUC*02/05/82*[79193]*67 NH PUC 146*Meriden Telephone Company

[Go to End of 79193]

Re Meriden Telephone Company

DR 81-250, Order No. 15,482

67 NH PUC 146

New Hampshire Public Utilities Commission

February 5, 1982

ORDER implementing accounting changes for inside wiring by the flash-cut method and increasing station connection charges.

1. ACCOUNTING, § 54 — Telephone — Changes — Inside wiring — Flash-cut method.

[N.H.] The flash-cut method, rather than the phase-in method, was adopted to implement accounting changes that expensed rather than capitalized inside wiring on the grounds that to do so would avoid additional return on embedded costs and thus be in the best interests of consumers. p. 147.

2. RATES, § 257 — Kinds and forms of rates and charges — Service connection charge.

[N.H.] Station connection rates were increased to cover the cost of expensing inside wiring costs on the grounds that such action attributed expenses to the proper cost causer. p. 148.

BY THE COMMISSION:

REPORT

On September 1, 1981, Meriden Telephone Company (hereinafter referred to as "The Company") filed with this Commission its proposed revised NHPUC tariff No. 4 — Telephone, Section 3, Sheets 1, 2, 3, 3-1, 3-2, 3-3, 3-4 and D-4. These proposed tariff pages were designed to reflect an alteration by the Federal Communications Commission (F.C.C.) in its Uniform System of Accounts (said accounting system being adopted by the New Hampshire Public Utilities Commission as of January 1, 1969). These accounting changes were adopted in F.C.C. Docket No. 79-105 and provide for the expensing of the inside portion of the station connection costs, those costs formerly being capitalized. The change was based on the findings in principle

that the burden of all costs associated with station connections should be placed on the causative ratepayer rather than all ratepayers, both present and future. The accounting change mandated that the policy be placed into effect as of October 1, 1981.

The accounting change further requires that telephone companies separate the costs between outside and inside wiring with the former continuing to be capitalized and the latter to be expensed. The Company has submitted a cost study which indicates that 73% of station connection costs are attributable to inside wire and the balance (27%) attributable to outside wire. Those percentages were used to estimate the annual expense charge which is caused by the accounting revision.

In direct testimony, Company witness, G. Geoffrey Lindemer, presented an estimated annual increase in station maintenance costs of \$7,574. He then

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offset this expense by the net estimated decrease in outside wire depreciation (from 9.92% to 5%), as recommended in the F.C.C. Order, over the increase in expense from a 10% amortization of embedded inside wire costs. This net amount equalled a \$181.00 decrease in depreciation and amortization costs. The resultant annual increase in expense was \$7,393.00.

Mr. Linemer further explained that \$5,545.00 of this increase will be reduced through the Company's toll cost settlement procedures. The toll cost settlement is a procedure through which the Company's assets and expenses are divided between local service and long-distance service, the latter is considered the toll portion. Independent telephone companies in New Hampshire, such as Meriden Telephone Company, that are on a "cost settlement" basis with New England Telephone & Telegraph Co. (N.E.T.) have the toll portion of operating expenses reimbursed immediately by N.E.T. in addition, the toll portion of investment in rate base achieves an agreed return from N.E.T.

The final estimation of costs to be passed on to local service customers within the jurisdiction of this Commission was \$1,848.00 using the "flash-cut" method for an accounting change. The F.C.C. has provided that individual state jurisdictions have an option to implement the station connection charge on a "flash-cut" or "phase-in" basis. The flash-cut method would increase rates based on the immediate transfer of inside wiring costs from being capitalized to being expensed. The phase-in approach would implement this change over a four-year period.

[1] The phase-in approach would enable the Company to defer the full impact of the change over a four-year period. After changing the Company's calculation of depreciation for outside wire from 9.92% to 57%, their witness's analysis shows that annual expense will only increase by \$499.00 in the first year, \$1,091.00 in the second year, \$1,636.00 in the third year, and \$2,132.00 in the fourth year. In addition, Mr. Lindemer continued his Exhibit 2 to complete a 14-year analysis. The final analysis revealed a \$806 increase in expenses using phase-in versus flash-cut. For prior cases with like telephone companies, Staff has made their own analysis. They have concluded that there will be approximately equivalent expenses over a 13-year period with both methods. However, they have determined that additional embedded costs, remaining in rate base with the phase-in method, would require a considerable additional return over the same period. Therefore, the Commission will allow the Company to use "flash-cut" as it appears to be

in the consumers' and company's best interest. The only caveat this Commission has with the accounting method is that the Company must book the change as proposed, with a 5% depreciation rate on the remaining and future outside wire portion of station connections and a 10-year amortization of the embedded cost of inside wire.

As set forth by the F.C.C.:

"Our primary objective in this proceeding emanated from our desire to have these costs borne by the immediate cost causative customer. At first glance, we believed that expensing would accomplish this goal. However, our analysis in this proceeding has indicated that expensing alone would not accomplish this. Rather, it would only assure that the burden was placed on all customers at the time the expenditures were made (as opposed to present and future customers

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when the costs are capitalized). Expensing, coupled with appropriate tariff action by the state commissions, would, for the most part, impose this cost on the cost causative customer." (F.C.C. Docket No. 79-105, RM-3017, at p. 10 Par 33.)

[2] In this spirit, the Company has requested changes in the rates for service connection charges in the amount of \$2,243.00. To support this rate change, the Company witness, Mr. Gerard P. Guertin, Jr., presented a cost study entitled *Multi-Element Service Cost Study*. Through direct testimony, Mr. Guertin described this as a study of 16 rural operating telephone companies located in Wisconsin, and purported the parallels that could be found between Meriden Telephone Co. and the companies used in the study. Staff brought out numerous issues regarding this study and the level of rates requested. One main concern of Staff's was the Company's request for an increase of \$2,243.00, yet only justifying in testimony increased costs of \$1,848,00, or an unsubstantiated difference of \$395.00. Further, Staff questioned the Company's need for this excess adjustment in light of its extraordinary return achieved on common equity, 22 to 23 percent (DR 81-250, TR. 62).

The final Company witness, Mr. Robert J. Collins, submitted direct testimony that broached these subjects. In his testimony, he represented that the study used in developing rates as Mr. Guertin presented is based on a level of costs for materials and labor, which is expected to increase in the future. In addition to this, he stated that the suppression of service requests due to the proposed increase in station connection rates was not taken into consideration in computing the rate level. These two items combined with the uncertainty of toll revenue in the future will quickly erode any excessive revenues that may be designed into the station connection's rate structure. We will accept this with two conditions: first, the approved increased rate level of \$2,243.00 will be effective as of the ratification of this order. However, the Company will start booking the approved accounting change as of the F.C.C. prescribed October 1, 1981 starting date. Second, Staff is expected to use the Company's filed quarterly reports to periodically monitor the Company's earned return. If an excessive return, such as reported during the hearing, perpetuates, the Commission may see fit under R.S.A. 365:5 to initiate a review of the Company's entire rate structure.

As a result of the study preserved by Mr. Guertin, he has proposed new rates for station connection related costs broken down by element and subscriber class as follows:

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

| <i>Element</i> | <i>ResidenceBusiness</i> | |
|--------------------------------|--------------------------|---------|
| 1. Service Order: | | |
| a. Initial | \$ 9.00 | \$12.00 |
| b. Subsequent | 7.00 | 7.00 |
| c. Record | 5.00 | 5.00 |
| 2. Central Office Work Charge | 5.00 | 5.00 |
| 3. Line Connection Work Charge | 10.00 | 10.00 |
| 4. Wiring | 12.00 | 15.00 |
| 5. Connecting Device | 4.00 | 4.00 |
| 6. Station Set Handling | 3.00 | 3.00 |
| 7. Premises Visit | 10.00 | 10.00 |

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Staff questioned the \$10.00 charge for Element #3. In cross-examination of Mr. Guertin, Staff pointed out the cost study displayed a \$17.00 weighted cost of this element which seemed over compensated by the charge proposed when it was considered that, with new installations, a portion of this cost will be capitalized. In written correspondence to Staff, the Company agreed on a lower charge of \$8.00 for this element. The Commission will accept this lower rate.

Inasmuch as this Commission is in agreement with the aforementioned quote from F.C.C. Docket No. 79-105, we will approve the proposed rates inclusive of the agreed change in Element #3. It is our hope that this application will effectively pass the increased station connection expense on the proper cost causer.

The Company will file an accounting of the final figures used to book the split between inside/outside wire as of October 1, 1981.

Our Order will issue. accordingly.

ORDER

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

ORDERED, that Section 4, Second Revised Sheet 1, Second Revised Sheet 2, Second Revised Sheet 3, First Revised 3-1, Original Sheet 3-3, Original Sheet 3-4, and Section 3 Second Revised Sheet D-4 of the Meriden Telephone Company Tariff, NHPUC No. 4 — Telephone, be and hereby are accepted; and it is

FURTHER ORDERED, that Section 4 First Revised Sheet 3-2, be and hereby is rejected; and it is

FURTHER ORDERED, that Meriden Telephone Company, file with this Commission for effect on the date of this Order, a new Section 4 Revised Sheet 3-2, said sheet to reflect the rates proposed in company's First Revised Sheet 3-2 with the following exceptions:

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

Element 3 Line Connection work charge\$8.00 (residential and business)

and it is

FURTHER ORDERED, that Meriden Telephone Company give public notice of this Order by a one time publication of the approved service connection charges.

By Order of the Public Utilities Commission of New Hampshire, this fifth day of February, 1982.

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NH.PUC*02/08/82*[79194]*67 NH PUC 149*Northern Utilities, Inc.

[Go to End of 79194]

Re Northern Utilities, Inc.

DF 82-24, Order No. 15,476

67 NH PUC 149

New Hampshire Public Utilities Commission

February 8, 1982

ORDER authorizing utility company to renew notes.

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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 27, 1982, filed with this Commission a petition to extend the \$8,000,000 short-term borrowing limitation from 12/31/81 as ordered in Order No. 14,592 issued 12/01/80 (65 NH PUC 605); and

WHEREAS, expiration of Order No. 14,592, places the Company under Supplemental Order No. 7,446, which authorizes the Company to issue and have outstanding aggregate short-term indebtedness in amount not to exceed 10% of its net fixed capital account rounded to the next highest \$10,000; and

WHEREAS, as of 11/30/81, the net fixed capital of the Company computed from its balance sheet was \$22,023,734; and

WHEREAS, as of 12/31/81, the Company in fact had \$5,600,000 of short-term notes payable; and

WHEREAS, such extension is in the public good; 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 note or notes payable less than 12 months after the date thereof in an aggregate principal amount not exceeding \$8,000,000; and it is

FURTHER ORDERED, that authority to renew these rates up to an aggregate amount of \$8,000,000 shall expire as of 12/31/82, at which time the aggregate limit will again be governed

by the Commission's Supplemental Order No. 7,446; and it is

FURTHER ORDERED, that the notes shall bear interest at the most economical rates the Company can obtain; and it is

FURTHER ORDERED, that the Company shall endeavor through all channels to reduce or delay its borrowings until the prime rate has dropped significantly; 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 have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this eighth day of February, 1982.

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NH.PUC*02/08/82*[79195]*67 NH PUC 151*Granite State Electric Company

[Go to End of 79195]

Re Granite State Electric Company

DR 81-86, Fifth Supplemental Order No. 15,479

67 NH PUC 151

New Hampshire Public Utilities Commission

February 8, 1982

ORDER directing company to apply credit received from its supplier as a refund of purchased power costs.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No. 15,474 issued February 4, 1982 (67 NH PUC 138), authorized the Granite State Electric Company to credit its customers' February bills with monies it had received from its supplier as a refund in purchased power cost; and

WHEREAS, that Order was received too late to be implemented with the first two billing cycles of February; it is hereby

ORDERED, that Granite State Electric Company apply the credit of \$0.00074 per KWH to those bills rendered to customers of billing cycles 1 and 2 during March 1982.

By order of the Public Utilities Commission of New Hampshire this eighth day of February, 1982.

=====

NH.PUC*02/08/82*[79196]*67 NH PUC 151*Lifeline Rates

[Go to End of 79196]

Re Lifeline Rates

Intervenor: Volunteers Organized in Community Education

DP 80-260, Sixth Supplemental Order No. 15,480

67 NH PUC 151

New Hampshire Public Utilities Commission

February 8, 1982

MOTION for rehearing on lifeline rates denied.

1. PROCEDURE, § 34 — Rehearings — Time limitation.

[N.H.] Motions for rehearings on final commission orders must be filed within twenty days after the decision is made by the commission under N.H. Rev Stat Ann § 541.3. p. 53.

2. RATES, § 72.1 — Jurisdiction of state commissions — Statutes — Federal legislation — Public Utility Regulatory Policies Act — Lifeline rates.

[N.H.] The commission decided that hearings held on lifeline rates complied with Public Utility

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Regulatory Policies Act requirements where: (1) the proceeding was open to the public; (2) parties were given notice; (3) opportunities to present testimony, rebuttal evidence, and cross-examination were provided; (4) the report and order were written and based on evidence appearing in hearing transcripts; and (5) a statutory mechanism existed for judicial review. p. 153.

3. RATES, § 125 — Reasonableness — Ability to pay — Lifeline rates.

[N.H.] The commission held that it acted within its discretion in setting 200 kilowatt-hours per month as a block for lifeline service. p. 154.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

Section 114 of the Public Utility Regulatory Policies Act of 1978 (PURPA) requires that within two years after the enactment of that Act, state regulatory commissions shall determine, after an evidentiary hearing, whether a lower rate for the essential needs of residential consumers

(i.e., a "lifeline" rate) should be implemented. In accordance with this provision, the Commission sent an order of notice apprising all interested parties of its intention to hold hearings in the matter of lifeline rates.

Pursuant to the Investigation into Lifeline Rates (DP 80-260) the Commission issued a Report and Order No. 14,872 on April 30, 1981 (66 NH PUC 166), which was based on four days of hearings and 457 pages of sworn testimony with 13 exhibits and briefs filed by the various parties and Staff. The Report summarized the Commission's findings and set forth the legal basis for the adoption of a lifeline rate in New Hampshire. The Commission chose a non-targeted rate for all residential customers; the level of usage to which this rate was applicable set at 200 KWH per month. The Order further stated that additional hearings will be held to consider the implementation of this lifeline rate by each of the utilities. It was further ordered that any revenue lost because of the lifeline tariff was to be spread evenly on a per-KWH basis to all other usage levels within the residential class.

Because of the specialized nature of utility ratemaking and rate design and the fact that retail tariffs are unique to each utility, the Commission Staff, the electric utilities and the consumer intervenors took part in negotiations in the Fall of 1981, which culminated in an agreement among all parties, except VOICE, as to the implementation of the lifeline order on a utility-by-utility basis.¹⁽¹⁷⁾

On November 27, 1981, almost seven months after the April 30, 1981 Order, VOICE (Volunteers Organized In Community Education) a party to the original proceedings, filed a motion for rehearing and further hearings on DP 80-260. The substance of VOICE's motion was that: (a) the record in the docket contained little or no competent evidence concerning the level at which lifeline rates should be established; (b) the record contained no support for the Commission's order in regard to the appropriate recovery method for any loss of revenues; (c) that the Commission had not yet ordered further hearings on DP 80-260, but instead held informal settlement hearings in October (in which VOICE participated) and that such a procedure contravened PURPA;

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(d) the above actions violated VOICE's rights to adequate hearings under PURPA and the state and federal constitutions; and (e) VOICE requested that further hearings be ordered to investigate the above issues and other issues which it deemed had not been adequately addressed in this docket to date.

In response to VOICE's motion, the Business and Industry Association (BIA) another party to the above-captioned proceedings filed an objection to VOICE's motion for rehearing and further hearings on the grounds that VOICE's motion was not filed until long after the statutory period of 20 days within which motions for rehearing must be filed (RSA 541:3). BIA also asserted that VOICE is not raising any new matters in their motions which require further hearings.

The Commission regrets the fact that a substantial amount of time has passed since these motions were filed. However, the unique nature of the VOICE motion, as well as the present heavy docket load facing the Commission, made it impossible for more expeditious action. It is

anticipated that this order will clarify the status of proceedings regarding the implementation of lifeline rates.

II. *THE VOICE MOTION FOR REHEARING*

[1] The BIA is correct; motions for rehearing are governed by RSA 541:3 and must be filed within 20 days after any decision or order made by the Commission. VOICE's motion for rehearing on the level of usage to which the lifeline block is applied (200 KWH) and the manner of recovery were final orders and, therefore, ripe for review within the statutory time limits of RSA 541:3. The Commission's order referred to further hearings, which would be held regarding the application of the established lifeline rate to the various utilities; it was not the Commission intention, nor could any reading of the order indicate, that the further hearings would address the appropriateness and feasibility of the three determinations set forth in the Report and Order.²⁽¹⁸⁾ Review of the items set forth in VOICE's motion for rehearing was appropriate, if ever, within the statutory provisions of RSA, Chapter 541. VOICE by its petition of November 27, 1981, seeks in part a rehearing of issues that should have been addressed within 20 days of the Commission's order and to that extent VOICE's motion is denied.

III. *THE COMMISSION'S ACTIONS HAVE MET OR EXCEEDED THE REQUIREMENTS OF SECTION 114 OF PURPA*

[2] In spite of the fact that VOICE is estopped by the provisions of RSA 541:3 from bringing a motion for rehearing on the April 30, 1981 order, the Commission is nevertheless concerned with the serious allegations in the VOICE motion that the order did not have a basis in the record and that the Commission failed to provide a proper evidentiary hearing as required by Section 114 of PURPA and the state and federal constitutions. The Commission has already devoted much Staff time and resources to the question of the appropriateness of lifeline rates in New Hampshire. Last year four days

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were devoted to public hearings and several informal sessions were held by Staff with representatives of both utilities and consumer intervenor groups in an effort to develop the most efficient and equitable method of implementing lifeline rates. In light of all of this, the Commission feels it is necessary to address the merits of the VOICE motion, which alleges that the order issued April 30, 1981 was not a product of an evidentiary hearing or based on the record.

Section 114 of PURPA provides that state regulatory commissions must determine after an evidentiary hearing whether a lower rate for the essential needs of residential customers than a rate calculated according to cost of service principles should be implemented. This Commission provided an evidentiary hearing in accordance with the statute and instituted lifeline rates pursuant to Supplemental Order No. 14,872.³⁽¹⁹⁾

To determine if the Commission procedures (i.e., 4 days of hearings) met the requirements of § 114 of PURPA in regard to an evidentiary hearing, one must look to the definition of evidentiary hearing set forth in Section 3 (6) of PURPA.

"evidentiary hearing means:

"(A) in the case of a state agency, a proceeding which (i) is open to the public, (ii) includes notice to the participants and an opportunity for such participants to present direct and rebuttal evidence and to cross-examine witnesses, (iii) includes a written decision based upon evidence appearing in a written record of the proceeding, and (iv) is subject to judicial review."

Upon review of the record, it is clear that Commission proceedings culminating in Supplemental Order No. 14,872 did comply with the above provisions:

- (i) the proceeding was open to the public;
- (ii) an order of notice was sent to the parties and publisher and opportunity to present testimony, rebuttal evidence and cross-examination were provided;
- (iii) the report and order are written and based upon evidence appearing in the transcripts of testimony and briefs submitted by the parties; and
- (iv) RSA, Chapter 541 provided the mechanism for judicial review of the Commission's order.

VOICE's allegation that the Commission's order was not based on the record is without merit. The Commission chose to apply a non-targeted rate for all residential customers; the usage level to which the lifeline rate applied was set at 200 KWH/month. The record is replete with testimony supporting the Commission's establishment of a rate to apply to that level of electrical energy usage which represents the essential human needs of the consumer, i.e., light, cooking, hot water, etc. (*See e.g.* testimony of Ms. Besser, Transcript — Day IV, p. 75; testimony of Ms. Wilbur, Transcript — Day IV, pp. 87, 90, 110 and brief of VOICE prepared by New Hampshire Legal Assistance, pp. 12, 13, 14 and 15).

[3] VOICE further alleges in its motion that the Commission denied it the opportunity to submit testimony as to what it believed was an appropriate level of usage for the application of a lifeline rate. This allegation is clearly contradicted by the record; VOICE had the opportunity and did in fact present testimony as to the appropriate usage level. VOICE witness, Ms. Sakowicz, submitted

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testimony that 400-500 KWH per month should be the applicable lifeline block. (*See* Exhibit C — p. 3 — Transcript — Day IV p. 13) However, other testimony revealed that 400-500 KWH per month was not the essential level of usage, but rather an average amount used by residential customers (Transcript — Day IV at 21). Section 114 of PURPA required the Commission to investigate the feasibility of a lower rate for minimum, essential usage; not Tower rates for average usage. Inquiries were made to several witnesses as to what they considered were the minimum essential uses of electricity. *See e.g.* Transcript-Day IV, p. 75. The record also shows that there are no studies of appliance usage in relation to income (Transcript, Day I, p. 137 — *See also* transcript — Day III, p. 9) testimony of Mr. King that not all residential customers have the same essential needs. The Commission, cognizant of the above testimony and the fact that lifeline rates have a dual purpose of promoting conservation, rejected the average usage level (i.e. 500 KWH) as the appropriate level for the application of a lifeline rate. In consideration what uses were deemed essential by the witnesses and the alternative purpose of conservation,

the Commission chose 200 KWH/ month for the applicable block. The Commission was fully within its discretion when it rejected the 400 — 500 KWH level because it was based on average usage as opposed to essential usage. In all hearings and proceedings held before the Public Utilities Commission, the Commission is given discretion to evaluate the record based upon its own expertise. When the Commission sets rates and allocates revenues among classes, it is acting in a legislative capacity, and thus is granted the necessary discretion to formulate policy in those areas. See *Davis Administrative Law Text* § 6.01; *Hibbing Taconite Co. v Minnesota Pub. Service Commission* (Minn Sup 1980) 302 NW2d 5, 9. The New Hampshire Supreme Court has recognized that such discretion is essential:

"Because ratemaking involves a highly technical and complicated process calling for an expertise which frequently taxes the experience and knowledge of members of the (Commission), we have held that whether the Commission bases its decision on the testimony of one expert instead of another, or on its own staff testimony is a matter for its judgment based on the evidence presented." *Legislative Utility Consumers' Council v Public Service Co. of New Hampshire* (1979) 119 NH 332, 339, 31 PUR4th 333, 337, 402 A2d 626.

The Commission properly exercised its discretion in establishing the 200 KWH level for the application of lifeline rates. The record and the Commission's evaluation of the testimony indicate that the most feasible way to collect revenues cost by the lifeline tariff is to spread such losses evenly on a KWH basis to all other KWH usage levels within the residential class (Transcript Day IV pp. 118 — 4119). Ratemaking involves a complex series of determinations. The calculation must be made of the amount of revenues which must be raised to operate the utility and allow the opportunity for a fair return to the utility's owners. The second determination involves calculations as to how the revenue requirements should be allocated among different classes of consumers. Once allocation of revenue responsibility is completed, specific cases must be designed which meet and promote certain criteria established by precedent, by practice and by sound review, that is conservation of resources, equity among ratepayers, economic efficiency,

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customer acceptance and rate continuity. Among the vast literature regarding ratemaking, it is clear that the complexity of rate design requires, it is done conscientiously, with tremendous work and careful application of judgment. Because considerations as to the implementation of a lifeline rate are so fundamental to the design rates phase of a rate case, this Commission exercised its discretion when it decided that the implementation of its April 30, 1981 order was to be on a utility-by-utility basis. In the area of innovative rate structures, the need for Commission discretion to experiment and to base decisions on little evidence in order to evaluate the new rates designs is manifest: See *Re Potomac Electric Power Co.* (DC 1979) 31 PUR4th 219 where the record contained little evidence that Pepco's larger customers will reduce energy use due to the imposition of lifeline rates. Where there is no abuse of discretion, the Commission's order will stand *Legislative Utility Consumers' Council v Public Service Co. of New Hampshire*, *supra*, 119 NH at p. 340, 31 PUR4th at p. 338.

IV. VOICE'S MOTION FOR FURTHER HEARINGS

VOICE has requested further hearings in regard to the adequacy of Commission's Supplemental Order No. 14,872 issued on April 30, 1981. Public utility regulation is a continuous process since conditions which make one "rate desirable for one period of time may be undesirable for another period" *Davis Administrative Law Text*, § 18.08 at 368 (1972) Accord *Re Granite State Electric Co.* (1981) 121 NH 787, 435 A2d 119. RSA 365:5 gives the Commission authority to make independent investigations as to "any rate charged, or proposed, or as to any act or thing done, or omitted to be done or proposed by any public utility ... " Under this authority and Order No. 14,872 (66 NH PUC 166), the Commission will consider issues pertaining to the adequacy of the April 30th Order. The Commission will hold further hearings to determine the following:

- (1) Whether the 200 KWH usage level adequately reflects minimum essential usage;
- (2) Whether it is feasible to provide protection against future rate increases in the lifeline block, and, if so, to what extent should the Commission provide such protection.
- (3) Whether the current lifeline rates burden electric space heating customers, and water heating customers and whether there is a means to minimize any such burden; and
- (4) Whether the lifeline rates filed by the utilities are adequate.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that VOICE's Motion for Rehearing is approved in part and denied in part pursuant to the attached Report.

By order of the Public Utilities Commission of New Hampshire this eighth day of February, 1982.

FOOTNOTES

¹Following this meeting, the Commission approved of the lifeline tariffs of the New Hampshire Electric Coop; Connecticut Valley Electric and Concord Electric.

²The 3 final determinations, which were reviewable under RSA 541:3 were: (1) the legality of the institution of lifeline rates in New Hampshire; (2) that such rates were to be non-targeted and apply to the first 200 KWH/month of usage; and (3) revenue loss would be made up from the residential class.

³It should be noted that the Commission was not required by PURPA to institute lifeline rates; it was merely obligated to consider this type of tariff. The Commission also went beyond the minimum PURPA requirement when it made the investigation into lifeline rates applicable to all utilities within its jurisdiction.

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NH.PUC*02/10/82*[79197]*67 NH PUC 157*Public Service Company of New Hampshire

[Go to End of 79197]

Re Public Service Company of New Hampshire

DR 79-187 Phase II, 56th Supplemental Order No. 15,486

67 NH PUC 157

New Hampshire Public Utilities Commission

February 10, 1982

ORDER accepting stipulations on outstanding issues on fuel adjustment charge.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission has reviewed the stipulated recommendations presented by Public Service Company of New Hampshire (PSNH) and the Staff as well as the final arguments presented by Community Action Program regarding the outstanding issues of the fuel adjustment charge in this docket; and

WHEREAS, the arguments of Community Action Program in favor of keeping the fuel adjustment charge on the customers bills and in favor of a quarterly fuel adjustment charge are not persuasive; however, CAP has presented several ideas including suggestions regarding consumer information programs which this Commission is willing to consider during the next proceeding regarding PSNH fuel costs; and

WHEREAS, the Commission finds the stipulated recommendations of PSNH and Staff to be responsive to the needs of the utility and the consumers and in their best interests; and

WHEREAS, the Commission intends to adhere to a procedure that adjusts fuel costs on a six-month forward looking basis; it is hereby

ORDERED, that the stipulated recommendations of PSNH and Staff regarding outstanding issues of the FAC in DR 79-187, Phase II, are hereby accepted.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 1982.

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NH.PUC*02/11/82*[79198]*67 NH PUC 157*Gas Service, Inc.

[Go to End of 79198]

Re Gas Service, Inc.

DR 81-285, Fourth Supplemental Order No. 15,485

67 NH PUC 157

New Hampshire Public Utilities Commission

February 11, 1982

ORDER implementing cost of gas adjustment and waiving public notice.

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BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, Order No. 15,284 issued by this Commission on November 6, 1981 (66 NH PUC 475), allowing Gas Service, Inc. to file revised tariff pages to reflect a cost of gas adjustment of \$.1325 per therm effective November 1, 1981; and

WHEREAS, a Motion for Rehearing was filed by the Company and public hearings were held thereon at the offices of the Commission in Concord; and

WHEREAS, the winter period is steadily progressing and adequate attention to these important issues will take a period of time; and

WHEREAS, the Commission finds that based on the record, it is in the public interest to fix a temporary rate to reflect a cost of gas adjustment now; therefore, it is

ORDERED, that Gas Service file revised tariff pages to reflect a cost of gas adjustment of \$.1625 per therm effective for February billings; and it is

FURTHER ORDERED, that public notice is hereby waived.

By order of the Public Utilities Commission of New Hampshire this eleventh day of February 1982.

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NH.PUC*02/12/82*[79199]*67 NH PUC 158*Mountain Springs Water Company

[Go to End of 79199]

Re Mountain Springs Water Company

D-E6481, 15th Supplemental Order No. 15,460

67 NH PUC 158

New Hampshire Public Utilities Commission

February 12, 1982

ORDER denying motion for rehearing.

COMMISSIONS, § 26 — Proceedings pending before other tribunals — Effect of existing commission orders.

[N.H.] A pending lawsuit does not excuse parties from complying with existing commission orders.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, customers of Mountain Springs Water Company have filed a Motion for Rehearing with respect to matters set forth in the Report dated November 9, 1981, and Supplemental Order No. 15,287, dated November 10, 1981 (66 NH PUC 487); and

WHEREAS, the Commission having reviewed the filings, testimony, and exhibits now makes the following findings and determinations:

The Commission finds that its determination that the customers wrongfully refused to comply with the Commission Order imposing a standby fee was correct. The fact that the customers had a pending law suit in the District Court or

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Superior Court involving title, rights or interest in real estate property did not directly affect the Order of the Public Utilities Commission. We find that at the time the Public Utilities Commission Order was issued the District Court had indicated that the issue before them might include title, rights, and interest in property and was properly the subject matter of a Superior Court litigation. At the time of our decision, the Superior Court had not acted upon same; and the customers were obligated to comply with the existing Orders.

The Commission has review the language referring to the so-called unique policy and the Commission's position with regards thereto. The Commission addressed this issue in its Report issued December 31, 1981, disposing of the Motion for Rehearing filed by the Company. The Commission affirms its position set forth in the above mentioned report and adopts the same language in response to the intervenors Motion for Rehearing.

The Commission has reviewed the allegation with reference to the Escrow Account and finds that the Commission's position is valid. The intervenors comments merely set forth their own views which reach different conclusions. The Commission determines the facts to be as set forth in the Report and Order.

The Commission finds that the arguments and allegations concerning Rate Base are similar to those set forth in the proceeding paragraph. The intervenor reaches a different conclusion from the Commission on facts set forth in the record. The Commission has reviewed its Report and finds that there is no reason to amend or modify same as to Rate Base calculations. Therefore, it is

ORDERED, that the intervenor's Motion for Rehearing is hereby denied.

By order of the Public Utilities Commission of New Hampshire this twelfth day of February, 1982.

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NH.PUC*02/16/82*[79200]*67 NH PUC 159*Manchester Water Works

[Go to End of 79200]

Re Manchester Water Works

Intervenor: Four-Town Water Study Committee

DR 81-388, Order No. 15,489

67 NH PUC 159

New Hampshire Public Utilities Commission

February 16, 1982

ORDER granting temporary rate increase.

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RATES, § 631 — Emergency rates — Temporary rates.

[**N.H.**] The standard for granting temporary rates is a showing by the petitioning utility that its overall rate of return is below that allowed by the commission.

APPEARANCES: Robert A. Wells for the petitioner; Armand A. Dugas, chairman of the Four-Town Water Study Committee.

BY THE COMMISSION:

REPORT

Manchester Water Works (MWW) is a municipal corporation which services the towns of Auburn, Bedford, Goffstown, Hooksett, and Londonderry, which are outside the corporate limits of Manchester and is subject to the jurisdiction of this Commission.

The Water Works filed certain revisions to its tariff NHPUC No. 3-Water on December 30, 1981, calling for annual rates to its non-Manchester customers of \$109,537, of 24%; and present rates as temporary rates effective with all service rendered on or after February 1, 1982. A duly noticed public hearing was held on January 29, 1982.

Our standard for temporary rates is a showing by the petitioning utility that its overall rate of return is below that allowed by the Commission. The Water Works submitted exhibits reflecting a rate of return less than 2%, rather than the 6% rate of return allowed by this Commission in the last rate case of Manchester Water Works.

The Commission's Staff expressed discomfort with looking at an overall rate, as the rates charged NHPUC jurisdictional customers are considerably higher than those charged customers

within the corporate limits of Manchester.

Bearing this concern in mind, the Commission will grant Manchester Water Work's request that current rates be made temporary rates for all service rendered on or after February 1, 1982 under RSA 378:27. This award provides the Water Work's the ability to recoup any rates allowed to it in excess of the present rates; and likewise, creates the possibility that a refund may have to be made to NHPUC jurisdictional customers if this Commission sets permanent rates at a lower level than present rates.

Our Order will issue accordingly.

The second subject addressed at the January 29, 1982 hearing was the establishment of a timetable upon which this docket will proceed. It is as follows, and is accepted by the Commission.

1. Data Requests of MWW must be submitted by February 16, 1982.
2. Data Responses by MWW must be submitted by March 1, 1982.
3. Staff and/or Intervenor Testimony must be filed by March 15, 1982.
4. Data Requests of Staff and/or Intervenor Testimony must be submitted by April 1, 1982.
5. Data Responses of Staff and/or Intervenor Testimony must be submitted by April 15, 1982.
6. First day of hearings in Concord at 10 a.m., April 28, 1982.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Manchester Water Works be, and hereby is, authorized to place present rates in effect as temporary rates on all services rendered after January 31, 1982, and it is

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FURTHER ORDERED, that the Procedural Schedule laid out in the attached Report will be followed by all parties.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of February, 1982.

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NH.PUC*02/16/82*[79201]*67 NH PUC 161*Union Telephone Company

[Go to End of 79201]

Re Union Telephone Company

DR 81-310, Fourth Supplemental Order No. 15,490

67 NH PUC 161

New Hampshire Public Utilities Commission

February 16, 1982

PETITION for rate increase granted, as modified.

1. RATES, § 630 — Emergency rates — Reasonableness.

[N.H.] The commission held that temporary rates set above existing levels were reasonable where revenue changes that were known and measurable were taken into account. p. 161.

2. RATES, § 151 — Factors affecting reasonableness — Former rates — Extent of change.

[N.H.] Where there was such a discrepancy between temporary rates and permanent rates filed by the company that an unreasonable expense would have been incurred in assessing recoupment amounts and refunding over-collections, the commission limited the rate increase to known and measurable changes in expenses. p. 162.

BY THE COMMISSION:

REPORT

On December 11, 1981, Union Telephone Company ("Company") filed a motion to amend the Commission's Report and Second Supplemental Order No. 15,308, dated November 20, 1981 (66 NH PUC 517). The petition claims that the temporary rate order takes into consideration pro forma revenue adjustments while ignoring pro forma expense figures for the same period. The Company asserts that the Commission's calculation violates the principle of matching revenues and expenses. The Company further claims that when the pro forma expenses are included, the temporary revenue requirement should be increased to \$192,605. Finally, the Company requests that the temporary rates be set to recover that level of revenue.

[1] On February 8, 1982, the Company filed a proposal to enter into an interim settlement agreement and to postpone the need to establish permanent rate relief. The proposal is based on two factors which have come to their attention which will bear upon the level at which permanent rates are to be set. First, a new average schedule has been received which pertains to the division of interstate toll revenues which the Company estimates will yield approximately \$70,000 on an annual basis. The new schedules, developed by USITA and the Bell System, are retroactive to October 1, 1981. Secondly, the Company expects

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to receive information on its request for REA financing sometime in April, 1982, which will provide the Commission with greater certainty in establishing permanent rates. Finally, the Company requests an indefinite suspension of due dates for responding to data requests until the Commission has had an opportunity to consider its proposal.

In its original Report and Order, this Commission took into account certain revenue adjustments which were known to have occurred, such as, a 10.75% interstate toll increase ordered by the FCC and an 8.5% intrastate toll increase as a result of N.H.P.U.C. Order No. 15,104 (66 NH PUC 365). The Commission had also previously granted the Company an increase in its station connection fees. At the time of our order, these revenue changes were known and measurable. The pro forma adjustments to expense were not definitely known and Staff had not yet had the opportunity for discovery. The Commission could have set temporary rates at the level of current rates while still affording the Company the right to recoupment when the permanent rates are determined. The Supreme Court in *New Hampshire v New England Teleph. & Teleg. Co.* (1961) 103 NH 394, 40 PUR3d 525, 173 A2d 728, found that the establishment of current rates as temporary rates was not an abuse of the Commission's discretion to fix reasonable temporary rates. In this case, we have granted rates at a level above existing rates and find that the rates were set at a reasonable level until such time as an investigation can be made of the claimed changes in expense. However, there was one area of expense for which a known adjustment should have been made, that being the expense change due to the change in accounting for station connections. Station connection expenses will increase by \$14,956. The changes which will occur due to the new average rate schedule for separations and the cost of capital due to REA financing will bear heavily upon the determination of the permanent rates and must be considered in determining the reasonableness of temporary rates.

[2] There is such a discrepancy between the temporary rates and permanent rates filed that unreasonable expense will be incurred in assessing recoupment amounts and refunding overcollections. For instance, the Company has asked that temporary rates be increased by 60% and in some instances, the permanent rates call for varying increases and decreases in rate classes. The application of final rates will have less impact on all customers based on the manner in which temporary rates have been applied.

The Commission will adjust temporary rates to take into account the \$14,956 expense increase for station connections. The adjusted level of temporary rates is calculated as follows:

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

| | | |
|---|-----------|-------------|
| Average Rate Base | | \$2,230,260 |
| Cost of Capital | x 12.90% | _____ |
| Required Net Operating Income | | \$300,604 |
| LESS: Net Operating Income | \$178,263 | |
| Increased Station Connec. Fees | 33,129 | |
| Known Revenue Charges | 71,109 | |
| Increased Station Connec. Expense | (14,956) | |
| Tax Effect | (30,787) | 236,758 |
| | _____ | _____ |
| Required Increase in Net Operating Income | | \$ 63,846 |
| Tax Effect | | ÷ 50.90% |
| Revenue Deficiency | | \$ 125,434 |

The Commission will accept a revised temporary rate level of \$125,434 or an increase of \$32,486 above the previously approved temporary rates. The Commission will extend the date for the submission of data responses to all parties to March 1, 1982. On or about March 15, 1982, all parties may begin meetings to attempt to agree on all of the issues, excepting the REA loan. When the "characteristic letter" is received from the REA, all issues can be finalized for submission to the Commission.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Union Telephone Company, be, and hereby is, granted temporary rates in the amount of \$125,434, representing an increase of \$32,486 over that authorized by Order No. 15,308 (66 NH PUC 517); and it is

FURTHER ORDERED, that said increase be applied in the same manner as the earlier increase; and it is

FURTHER ORDERED, that revised tariff pages be filed with the Commission reflecting said increase; and it is

FURTHER ORDERED, that public notice be given via the Company's selection of bill insert or one-time newspaper publication.

By Order of the New Hampshire Public Utilities Commission this sixteenth day of February, 1982.

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NH.PUC*02/17/82*[79202]*67 NH PUC 163*Exempt Railroad Crossings

[Go to End of 79202]

Re Exempt Railroad Crossings

DX 81-28, Fourth Supplemental Order No. 15,487

67 NH PUC 163

New Hampshire Public Utilities Commission

February 17, 1982

ORDER authorizing Department of Public Works and Highways to erect and maintain an exempt sign at a railroad crossing.

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BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Route 302 intersects the tracks of the Blackmount Bridge of the Boston and Maine Railroad at grate in Woodsville (Town of Haverhill); and

WHEREAS, operations over this section of railroad are practically nonexistent as there is no business being conducted on the line; and

WHEREAS, under present circumstances all motor vehicles carrying flammable or dangerous commodities or passengers are required to stop before proceeding over the said crossing; and

WHEREAS, this creates a hazard to highway traffic; it is hereby

ORDERED, that the New Hampshire Department of Public Works and Highways, be and hereby is, authorized to erect and maintain a standard "exempt" sign on the mast which supports the advance warning disc at each approach to said crossing, thereby eliminating the necessity for stopping vehicles before proceeding over said crossing; and it is

FURTHER ORDERED, that all train movements before passing over said crossing shall stop and a flagman shall warn highway traffic by displacing a red flag during the hours of daylight and a lighted red lantern during the hours of darkness, or poor visibility, and when highway traffic has stopped, the train movement shall then proceed over the crossing; and it is

FURTHER ORDERED, that the above Fourth Supplemental Order No. 15,487 hereby rescinds the Thirty-Third Supplemental Order No. 15,461 as issued in DT 80-259, dated January 28, 1982.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of February, 1982.

=====

NH.PUC*02/17/82*[79203]*67 NH PUC 164*Chichester Telephone Company

[Go to End of 79203]

Re Chichester Telephone Company

DR 81-282, Supplemental Order No. 15,491

67 NH PUC 164

New Hampshire Public Utilities Commission

February 17, 1982

ORDER adopting flash-cut method for accounting changes and increasing station connection charges.

1. ACCOUNTING, § 54 — Telephone — Changes — Inside wiring.

[N.H.] The flash-cut method for changing accounting procedures was adopted in changing

from capitalizing to expensing inside wiring. .Pg p. 165.

2. ACCOUNTING, § 54 — Telephone — Changes — Inside wiring — Flash-cut method.

[N.H.] Use of the flash-cut method for accounting changes was held to be in the best interest of consumers where the phase-in method would have required considerable additional return on embedded costs. p. 165.

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3. RATES, § 257 — Kinds and forms of rates and charges — Service connection charge.

[N.H.] The commission approved an increase in station connection charges based on the belief that the increase would pass on the cost of expensing inside wiring to the proper cost causer. p. 166.

BY THE COMMISSION:

REPORT

On September 29, 1982, Chichester Telephone Company (hereinafter referred to as "The Company") filed with this Commission its proposed revised NHPUC tariff No. 3 — Telephone, Section 4, Sheet 1D. These proposed tariff pages were designed to reflect an alternation by the Federal Communications Commission (F.C.C.) in its Uniform Systems of Accounts (said accounting system being adopted by the New Hampshire Public Utilities Commission as of January 1, 1969). These accounting changes were adopted in F.C.C. Docket No. 79-105 and provide for the expensing of the inside portion of the station connection costs, those costs formerly being capitalized. The change was based on the findings in principle that the burden of all costs associated with station connections should be placed on the causative ratepayer rather than all rate-payers, both present and future. The accounting change mandated that the policy be placed into effect as of October 1, 1981.

The accounting change further requires that the telephone companies separate the costs between outside and inside wiring with the former continuing to be capitalized and the latter to be expensed. The Company has submitted a cost study which indicates that 55% of station connection costs are attributable to inside wire and the balance (45%) attributable to outside wire. Those percentages were used to estimate the annual expense charge which is caused by this accounting revision.

In direct testimony, Company witness Crandell R. Wallenstein presented an estimated annual increase in station maintenance costs of \$5,459.00. He then offset this expense by the net estimated decrease in outside wire depreciation (from 9.9% to 5%), as recommended in the F.C.C. Order, over the increase in expense from a 10% amortization of embedded inside wire costs. This net amount equalled a \$835.00 decrease in depreciation and amortization costs. The resultant annual increase in expense was \$4,624.00.

[1] This final estimation of costs to be passed on to local service customers within the jurisdiction of this Commission of \$4,624.00 was developed using the "flash-cut" method as an

accounting change. The F.C.C. has provided that individual state jurisdictions have an option to implement the station connection charge on a "flash-cut" or "phase-in" basis. The flash-cut method would increase rates based on the immediate transfer of inside wiring costs from being capitalized to being expensed. The phase-in approach would implement this change over a four-year period.

[2] The phase-in approach would enable the Company to defer the full impact of the change over a four-year period. A staff analysis performed for other companies shows that, with all other factors remaining constant, annual operating expenses will usually decrease, with phase-in, in the first year, and increase rapidly in the second, third, and fourth year. In addition, they have concluded that there were approximately

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equivalent expenses over a 13 year period with both methods. However, they have determined that additional embedded costs, remaining in rate base with the phase-in method, would require a considerable additional return over the same period. Therefore, the Commission will allow the Company to use "flash-cut" as it appears to be in the consumers and company's best interest. The only caveat this Commission has with the accounting method is that the Company must book the change as proposed, with a 5% depreciation rate on the remaining and future outside wire portion of station connections and a 10-year amortization of the embedded cost of inside wire.

As set forth by the F.C.C.:

"Our primary objective in this proceeding emanated from our desire to have these costs borne by the immediate cost causative customer. At first glance, we believed that expensing would accomplish this goal. However, our analysis in this proceeding has indicated that expensing alone would not accomplish this. Rather, it would only assure that the burden was placed on all customers at the time the expenditures were made (as opposed to present and future customers when the costs are capitalized). Expensing, coupled with appropriate tariff action by the state commissions, would, for the most part, impose this cost on the cost causative customer." (F.C.C. Docket No. 79-105, RM-3017, at p. 10 Par. 33)

[3] In this spirit, the Company has requested changes in the rates for service connection charges to the approximate amount of \$4,500.00. Unlike a majority of independent telephone companies in the state which are on a "cost settlement" basis with New England Telephone and obtain a percentage of cost increases, such as station maintenance costs, through cost settlements, Chichester Telephone Company is on an "average schedule" settlement procedure and it is unclear whether a portion of the increased costs will be realized in future settlement process. Therefore, the Company is compelled to pass the entire increase onto local service customers, who, in effect, are the cost causers.

The Company has proposed to acquire the aforementioned level with the following rate structure:

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

ELEMENT

CHARGE

| | |
|---------------------------------|---------|
| 1. Service Order | \$ 9.00 |
| 2. Central Office Work | 5.00 |
| 3. Premise Visit | 10.00 |
| 4. Wiring | 4.00 |
| 5. Connecting Device | 3.00 |
| 6. Station Set Handling | 4.00 |
| Maximum Charge for all Elements | \$35.00 |

Staff raised concerns about having only one element charge for service orders. The point Staff made centered on the premise that after an initial service order is made, a second service order initiated by the same customer should not, in most cases, require as much work both at the Company and on the customer premises. The Company claimed this was not true, every order issued accumulates the same costs. The Commission, in reviewing like cases for other telephone companies, has in the past accepted the breakdown in service order charges into at least two elements and for the sake of continuity, we will continue this practice. We, therefore, will separate the service order element between (a) a \$9.00 initial order charge (b) a \$7.00 subsequent order charge, and (c) a \$5.00 record order.

Inasmuch as the Commission is in agreement with the aforementioned quote from F.C.C. Docket No. 79-105, we will approve the proposed rates inclusive

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of the change in Element #1. It is our hope this application will effectively pass the increased station connection expense on to the proper cost causer.

The Company will file an accounting of the final figures used to book the split between inside/outside wire as of October 1, 1981.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Section 4 Sheet 1D of the Chichester Telephone Company Tariff No. 3 — Telephone be and hereby is rejected; and it is

FURTHER ORDERED, that Chichester Telephone Company file with this Commission for effect on the date of this Order a new Section 4, Second Revised Sheet 1D, said sheet to reflect the rates proposed in Company's Sheet 1D with the following exceptions:

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

| | |
|-------------------------|--------|
| Element 1 Service Order | |
| a. Initial | \$9.00 |
| b. Subsequent | 7.00 |
| c. Record | 5.00 |

and it is

FURTHER ORDERED, that Chichester Telephone Company give public notice of this Order by a one time publication of the approved service connection charges.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of February, 1982.

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NH.PUC*02/18/82*[79204]*67 NH PUC 167*Bedford Water Corporation

[Go to End of 79204]

Re Bedford Water Corporation

DR 81-333, Second Supplemental Order No. 15,493

67 NH PUC 167

New Hampshire Public Utilities Commission

February 18, 1982

ORDER directing company officials to respond to commission inquiry.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No. 15,374, dated December 18, 1981 (66 NH PUC 569), Ordered that Bedford Water Corporation shall contract with a water development company for the search and development of an additional source and other stipulations; and

WHEREAS, it was and is the Commission's intention that these stipulations shall apply equally to the officers/owners of the Bedford Water Corporation and that such officers ie: Henry R. Beique, President, and Clarence Blevens, Vice-President and Treasurer, shall be held accountable under New Hampshire statute RSA 365:42; it is

ORDERED, that Henry R. Beique and/or Clarence Blevens shall respond

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in accordance with this Commission's Order No. 15,374 and to the inquiry from this Commission dated February 2, 1982, and addressed to Henry R. Beique, by March 1, 1982, or this matter shall be referred to the Attorney General of New Hampshire under RSA 365:42.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of February, 1982.

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NH.PUC*02/18/82*[79205]*67 NH PUC 168*Small Energy Producers and Cogenerators

[Go to End of 79205]

Re Small Energy Producers and Cogenerators

DE 79-208, Ninth Supplemental Order No. 15,495

67 NH PUC 168

New Hampshire Public Utilities Commission

February 18, 1982

ORDER setting requirements to be met by limited energy producers generating electricity from solid waste in consideration for qualification for sale of electricity.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on July 23, 1979, this Commission issued Supplemental Report and Order No. 13,744 in DE 78-232 and DE 78-233 (64 NH PUC 244) setting forth standards to determine eligibility of rates paid for power produced by limited hydro-electric generating facilities; and

WHEREAS, this Commission now determines a need for standards applicable to electrical energy generated by qualifying solid waste facilities; it is

ORDERED, that the following shall be met by limited energy producers engaged in generating electricity from solid waste in consideration of qualifications for sale of electric energy:

1) A generating station will undergo an audit, initiated by the producer, during the period November 1 through February 28 to determine its estimated capability. The capacity rating of a solid waste facility shall be determined by calculating the average output achieved over a continuous six-hour (6) interval during the period noted above. The audit shall be performed under the direction of this Commission.

2) Monthly production reports indicating the total production during the given month shall be submitted to this Commission by the fifteenth day following the end of the month. In addition, for producers of limited electrical energy greater than one megawatt, generation output shall be recorded at least hourly.

3) Each producer of over 100-kilowatt capacity shall implement procedures which will provide immediate notification to the purchaser in the event of plant shutdown and re-start.

4) Accuracy of the metering equipment shall be the responsibility of the

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qualifying producer, and shall be verified annually to this Commission; and it is

FURTHER ORDERED, that all electricity sold to the purchaser during a twenty-four (24) hour period up to and including the amount determined by the six-hour (6) capacity audit shall be paid by the purchaser at the rate set for reliable energy as established by this Commission; and it is

FURTHER ORDERED, that all electricity generated and sold in excess of that proven during the six-hour (6) capacity test shall be paid by the purchaser at the rate prescribed for unreliable energy.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of February, 1982.

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NH.PUC*02/18/82*[79206]*67 NH PUC 169*Concord Steam Corporation

[Go to End of 79206]

Re Concord Steam Corporation

DE 81-308, Supplemental Order No. 15,496

67 NH PUC 169

New Hampshire Public Utilities Commission

February 18, 1982

ORDER directing company to file a fixed capital and depreciation study.

RETURN, § 20 — Amount to be allowed — Excessive return.

[N.H.] The commission held that a rate of return on a steam plant in the range of 42 per cent was excessive and put the company on notice that rates could be reduced with refunds made to customers.

APPEARANCES: Charles E. Leahy for Concord Steam Corporation.

BY THE COMMISSION:

The Commission, on its own motion, opened this case and investigated into certain areas of concern regarding the Concord Steam Corporation:

1. Lack of plant records
2. Depreciation lives
3. Main extension plan
4. The construction schedule at New Hampshire Hospital and service to the Concord Hospital
5. The present status of the Ward Avenue Steam Plant
6. Purchase of the steam plant at Hall Street
7. Return on common equity

A duly noticed hearing was held on January 5, 1982 to address these concerns.

Lack of Plant Records/Ward Avenue

In a recent case, DF 80-128, Concord Steam was directed to file a, fixed capital and depreciation study to correct the lack of record in this office as to the original cost of the existing plant and of the undepreciated value of certain fixed capital that is to be, or has been, retired.

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The absence of this information and its importance is accentuated with the Company's retirement of Ward Avenue and the transfer of certain portions of its plant to the leased facility at New Hampshire Hospital. The Commission has no basis of its own to make, or certify, the adjustments to the books of account that must now be made.

Depreciation

The Commission Staff has disagreed with the service or depreciation lives used by Concord Steam for its wood burning plant, and in DF 80-128, the Company was notified that "Further documentation is necessary to substantiate a continuation of this practice". Such documentation has not been provided. It was brought to the Company's attention that any depreciation life or rate must be approved by the Commission.

Main Extension Plan/Tariff

Testimony and discussion has shown a need for clarification and some revision of Concord Steam extension plan and other tariff provisions. The Company has stated its intention to make certain revisions at a filing to be made in the near future. We recommend Staff review and assistance in this matter.

Construction Schedule at N. H. Hospital and Service to Concord Hospital

Testimony and discussion has resolved all concerns in this area.

Purchase at Hall Street

Still in effect is the Commission's requirement in DR 80-128, that Concord Steam shall seek letter approval prior to purchasing this facility.

Return on Common Equity

One of the areas of concern to the Commission which led to Order No. 15,203 was the "excessive" return on common equity earned by the Company in 1980, which is calculated to be in the range of 4270.

Enclosed with the Company's responses to the Commission Staff was a revised 1980 Annual Report. The reasons for the revision were delved into in detail during the course of the hearing, and the responses are satisfactory with one exception.

Based on the 1980 adjustments, a tax adjustment relating to 1980 of approximately \$7,500 is called for. This amount was not taken into account in revising the 1980 return on common equity from \$146,337 to \$56,654. With the additional tax adjustment, the Company's 1980 return on common equity falls in the 19 to 20% range.

The Commission considers that return bordering on excessive. The Commission also recognizes that the recently revised 1980 figures represent stale data; i.e., no salary for the Company's President, disputed depreciation rates, and zero interest loans from the Company's

President, so rather than acting on such data, the Company is put on notice that its 1981 Annual Report will be closely analyzed and if the return remains high, it will be ordered to explain why the rates should not be reduced with refunds made to customers for 1980 and 1981.

It is the Commission's opinion that the area of concern noted in this report must be addressed and resolved by Concord Steam and that better communication must exist between the Commission Staff and the Company. Further, that before any depreciation or amortization accruals are made or recorded for the calendar year 1982, a fixed capital and depreciation study must be filed and Commission written approval granted and filed in this case.

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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 Concord Steam Corporation shall file a fixed capital and depreciation study as noted in this Report; and it is

FURTHER ORDERED, that all other areas of concern in this case shall be addressed and resolved as also noted in this Report.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of February, 1982.

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NH.PUC*02/18/82*[79207]*67 NH PUC 171*Nuclear Emergency Planning

[Go to End of 79207]

Re Nuclear Emergency Planning

DE 81-304, Supplemental Order No. 15,497

67 NH PUC 171

New Hampshire Public Utilities Commission

February 18, 1982

ORDER denying motion for rehearing and motion to stay execution of previous order.

PROCEDURE, § 33 — Rehearings — Grounds for granting — Denial of motion.

[N.H.] A motion for rehearing and a motion to stay execution of a previous order were denied where the commission chairman determined, by weighing the issues presented, that the order was reasonable and lawful.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, the Chairman, having before him a Motion for Rehearing on Order No. 15,412, and motions to stay execution of order pending rehearing and/or stay execution of Order No. 15,412 (67 NH PUC 4) pending formulation of issues for appeal to the New Hampshire Supreme Court and Certification thereof, presented on behalf of Representatives Beverly Hollingsworth and Roberta Pevear, by their attorney Robert A. Stein, Esquire, has fully considered the allegations and arguments set forth in the Motions; and

WHEREAS, after weighing the issues presented in the Motions and review of RSA 107-B, the Chairman is of the opinion that Order No. 15,412 is reasonable and lawful; it is therefore ORDERED, that the Motions be denied; and it is

FURTHER ORDERED, that notwithstanding, the denial of the above motions, the Chairman shall consider certification of issues for appeal when movants formulate an appropriate legal question for certification; and it is

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FURTHER ORDERED, that to the extent that the Attorney's General objection to the motions to stay is consistent with this order it is granted.

By order of the Chairman of the Public Utilities Commission of New Hampshire this eighteenth day of February, 1982.

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NH.PUC*02/18/82*[79208]*67 NH PUC 172*Nuclear Emergency Planning

[Go to End of 79208]

Re Nuclear Emergency Planning

DE 81-304, Second Supplemental Order No. 15,498

67 NH PUC 172

New Hampshire Public Utilities Commission

February 18, 1982

ORDER denying motion for rehearing on the assessment of personnel expenses.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, the Attorney General, on behalf of the New Hampshire Civil Defense Agency, has entered a Motion for Rehearing on Order No. 15,412 (67 NH PUC 4) to have certain

personnel expenses considered in the assessment against the utility; and

WHEREAS, the Chairman having carefully reviewed the above Motion and RSA 107-B *et seq.*, is of the opinion that Order No. 15,412 is a reasonable lawful assessment; it is therefore

ORDERED, that the Motion is denied.

By order of the Chairman of the Public Utilities Commission of New Hampshire this eighteenth day of February, 1982.

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NH.PUC*02/22/82*[79209]*67 NH PUC 172*Public Service Company of New Hampshire

[Go to End of 79209]

Re Public Service Company of New Hampshire

DR 81-87, DR 79-187 Phase II, 13th Supplemental Order No. 15,499

67 NH PUC 172

New Hampshire Public Utilities Commission

February 22, 1982

Order incorporating report as a response to a motion for clarification.

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BY THE COMMISSION:

DISPOSITION OF MOTION FOR CLARIFICATION OF REPORT AND ORDER

Public Service Company of New Hampshire (PSNH) filed a Motion for Clarification of the Commission's Report and Order No. 15,425 (67 NH PUC 97) in regard to the acceptance of the parties' Stipulation in DR 79-187, Phase II and language *supra*, of the Commission's report, 67 NH PUC 25, 53, 54. As stated in the report, this Commission was not privy to the negotiations which led to the Stipulation, but must nevertheless make a judgment that the terms of the agreement do meet the ratemaking objectives established by this Commission. The Commission has accepted the ratemaking objectives presented in the Stipulation, and also preserves the rights of all parties to argue for or against additional ratemaking objectives and interpretations of the agreed upon objectives in future proceedings.

The Commission further notes that the Stipulation includes a proposal for lifeline rates, which the Commission has accepted. Clearly, the parties must believe that lifeline rates meet the ratemaking objectives they have set forth, although they apparently did not agree that those objectives include the concept that essential services be provided at an affordable cost. The Commission has no objection to this position. However, this Commission must point out that *its* adoption of the lifeline rates concept in DP 80-260 and its acceptance of the lifeline rates recommended in the Stipulation is based in part on a desire to assure that essential services be

provided at affordable costs.

The language of this Commission at pp. 53, 54 of NH PUC, *supra*, in DR 81-87 and DR 79-187, Phase II, was intended to explain the Commission's thinking and not to undermine the Stipulation or to force a particular interpretation on any of the parties of the ratemaking objective which they adopted in the Stipulation. The Commission approves and accepts the Stipulation in its entirety and without change or condition by the Commission.

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 incorporated Report is a response to the Motion for Clarification.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of February, 1982.

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NH.PUC*02/23/82*[79210]*67 NH PUC 174*Sunapee Hills Water Company

[Go to End of 79210]

Re Sunapee Hills Water Company

DR 81-367, Supplemental Order No. 15,500

67 NH PUC 174

New Hampshire Public Utilities Commission

February 23, 1982

ORDER accepting tariff; rate increase granted, as modified.

VALUATION, § 38 — Value for rate making — Purchase or sale price.

[N.H.] Where a transfer petition was granted on the basis of consideration of one dollar and no other value for the transaction was established, the commission refused to accept the company's purported value at the time of purchase for rate base.

APPEARANCES: James C. Hood for the petitioner; Ernest Colacito and Thomas Fucarile for the community association.

BY THE COMMISSION:

By Petition filed on 11/25/81, duly suspended by Order No. 15,344 (66 NH PUC 528) on December 1, 1982, the Sunapee Hills Water Co. requested a revenue increase of \$20,039. Hearings were held on this matter on December 29, 1981, and January 12, 1982.

Numerous exhibits were submitted by the Company and substantial cross-examination was conducted by the Commission staff members Lessels, Sullivan, and Traum as well as by representatives of the Community Association.

Rate Base

This filing included a purported \$2,500 as the original purchase price or investment by Mr. Seymour. This \$2,500 was not a cash transaction, but an exchange for snow plowing services rendered to the previous owner, Fred W. Klose.

Probing by the Commission staff into the investment uncovered the fact that Exhibit I in this docket extends a previous agreement signed in November, 1980. The November agreement was submitted as Exhibit 4 in DE 81-67. It was signed by Fred Klose and Donald Seymour. Among the conditions of this agreement are:

"1. That Fred W. Klose/Kearsarge Land Co., Inc. sell to Donald Seymour/Sunapee Management and Maintenance the Sunapee Hills Water System at Sunapee Hills, Newbury, New Hampshire, for One Dollar (\$1.00) on or about 15 April, 1981."

"3. That Donald Seymour/Sunapee Management and Maintenance provided snow plowing services for Sunapee Hills ... "

The exhibit also supports the Company's contention in DR 81-367, that snow plowing was done in exchange for the water system, but does not place a value on the snow plowing. In that regard, the Commission does not feel that the Company has met its burden of proof, although given ample opportunity to do so. The testimony given in the prior dockets was that the consideration for the transfer was \$1.00 not \$2,500 or any other figure. The transfer petition was approved on this basis and the same standard will be used for ratemaking.

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With that aspect attended to, we now turn to the actual rate base of \$13,906 as shown in Exhibit R, and developed through Exhibits M and O.

Exhibit Q shows rate base of January 1, 1981 of \$7,658 comprised of the \$2,500 original investment plus 3 months of Operation and Maintenance Expense. The O & M expense as developed elsewhere in this report was pro-formed to be \$12,104 for 1982. One quarter of this is \$3,026 which when added to the \$1.00 previously established, yields a rate base as of January 1, 1981 of \$3,027.

The rate base shown by the Company on Exhibit Q as of December 31, 1981, was \$20,154. The amount is comprised of 3 months of O & M or \$5,158, plus Utility Plant and Equipment net of depreciation of \$14,996 (\$15,281 — \$285) as of December 31, 1981. The \$15,281 figure was developed through Exhibit M, and is made up of the \$2,500 so-called initial investment, \$9,506 for a "new drilled well", \$280 for a manhole, and \$2,995 for a "new dug well". The \$2,500 has been reduced to \$1.00. The "new drilled well" is not operating and at present is of marginal value to the water system. The expense of \$9,506 was made in good faith by Mr. Seymour who was aware that the system urgently needed an additional source of supply. The well, at this time, is unproductive, however, we believe that the expense incurred must and should be accounted for

immediately. There is a possibility that a dynamiting procedure would make the well productive, and it is our opinion that the water company should fully investigate the economics of this procedure against the possible need for financing further well exploration costs. We cannot allow the cost of drilling this well to be included in rate base as New Hampshire statutes provide that no utility rate or charge shall be based upon any costs associated with construction work that is not completed or is not used and useful to the customers of the utility.

The third subtotal in the December 31, 1981 rate base filing is \$280 for a manhole installation is accepted.

Next and last is \$2,995 for a "new dug well". Exhibits now filed in this case show that a part of this investment relates to the installation of land fill over portions of the distribution piping, which amounts to \$1,170, which is currently allowable for rate base purposes. When state approval for this well is obtained, including a pump test to determine its sustained yield, we will allow the addition of \$1,825 to rate base. This addition should be made at the same time as the adjustment for the "new drilled well", if any is needed.

In summation, the Commission will accept \$1,451 as the figure for rate base for total utility plant and equipment as of December 31, 1981. To this is added the Working Capital of \$3,026. Averaging the total of \$4,477, as of December 31, 1981, with the previously computed January 1, 1981 figure of \$3,027, yields an accepted average 1981 rate base of \$3,752.

Rate of Return

The Company in Exhibit R showed a capital structure of 100% common equity with a cost rate of 13.0%. The Commission accepts the 13.0% and recognizes that any change in the total dollars of equity, based on changes noted elsewhere in this report, will not alter this capital structure.

At the time the Company petitions for an update to rate base, it will be granted the opportunity to also update its calculation of rate of return.

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Rate Case Expense

Exhibits and evidence given, show the following expenses related to the presentation of this rate case:

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

| | |
|---------|-----------------------|
| \$3,000 | Legal and Accounting |
| 51 | Advertising - notices |
| 92 | Travel Expenses |

\$3,143 TOTAL

We will allow the amortization of this amount to be collected as a surcharge against each customer, over a two year period.

Operating Expenses

From evidence and testimony presented, we have set the following:

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

| | |
|-------------------------|-------------|
| Insurance | 597.00 |
| Office Rent | 351.00 |
| Office Supplies | 102.00 |
| Payroll Taxes | 448.00 |
| Professional Fees (1) | 250.00 |
| Repairs and Maintenance | 2,000.00 |
| Salary (2) | 5,475.00 |
| Storage | 600.00 |
| Telephone | 230.00 |
| Travel | 60.00 |
| Truck Expense | 680.00 |
| Utilities | 1,311.00 |
| | <hr/> |
| | \$12,104.00 |
| Depreciation (3) | 19.00 |
| Amortization (4) | 675.00 |
| | 246.00 |
| | 317.00 |
| | <hr/> |
| | 1,238.00 |
| Taxes | 316.00 |

NOTES

(1) Preparation of Annual Report, Income Tax (2) The superintendence or operation of a system serving less than 100 customers should not require more than an average of 11/217, hours per day, 365 days, at \$10 per hour. (3) Based on plant at \$281. and depreciation lives shown on Schedule A, Sunapee Hills Water Co. Inc. Utility Plant and Equipment. (4) \$3,372 non-recurring maintenance of main expense amortized over 5 years: \$675 \$1,232 organizational costs amortized over 5 years: \$246 \$9,506 cost of drilled well amortized over 30 yrs.: \$317

Revenue Requirement

Based upon standard utility regulatory format, the annual revenue requirement is calculated below:

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

| | |
|-----------------------------|-------------|
| Approved Rate Base | \$3,752.00 |
| Times: Approved Rate | x 13% |
| | <hr/> |
| of Return | \$488.00 |
| Net Operating Income | |
| Plus: O & M | 12,104.00 |
| Depreciation Exp. | 19.00 |
| Amortization Exp. | 1,238.00 |
| | <hr/> |
| Taxes | 316.00 |
| Total Revenue Requirement | 14,165.00 |
| Rate Case Exp. Amortization | 1,572.00 |
| | <hr/> |
| Required Operating Revenues | \$15,737.00 |
| | ===== |

Billing to Customers

Currently, the Company bills customers once a year, in January, for the year just ended. In this case, requests were made to go to a quarterly billing and for the January, 1982 billing to be

at the new rates.

The request to move to quarterly billings should improve the Company's cash flow and since the billings will be made after the service is provided, the Commission will approve the request.

Rates

Sunapee Hills is an unmetered water system, at this time, and on such systems it is difficult to achieve equitable revenue recovery from the utility's customers. It is our judgement that under these circumstances, a flat equal charge to all customers must be applied.

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Amortization to Borrow Funds

The Company is seeking authority to borrow \$30,000 to be used for various capital improvements and plant additions. We concur in the eventual completion of the total proposal as shown on Schedule B, Projected Utility Plant and Equipment, December 31, 1982. However, with the present high level interest rates and the present financial condition of the Company, it is our judgement that the Company's program should be segmented. We will authorize the borrowing of \$10,000 to be allocated as follows:

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

| | |
|-------------------------------------|---------------|
| Master Meter | \$ 850.00 |
| Transfer Pump (stand by) | 1,000.00 |
| Finishing Well & Circulation System | 8,150.00_____ |
| | \$10,000.00 |

Transfer of Franchise to Sunapee Hills Water Corporation

No Objection to this transfer.

Temporary Rates

The Company filed a petition for temporary rates on November 25, 1982, seeking the permanent rates also filed on that date as temporary rates, retroactive to January 1, 1981.

A duly noticed hearing on the temporary and permanent rate petitions was held on December 29, 1981. On January 5, 1982, the petitioner filed a motion to amend its petition for temporary rates and now seeks an effective date of November 25, 1981, or the date when its original petition was filed.

In its recent decisions on this issue, the Commission has attempted to establish a uniform procedure. Re Hudson Water Co. (1981) 66 NH PUC 303 and Re Hampton Water Works Co. (1981) 66 NH PUC 561. In both cases, the Commission has found that a just and reasonable result is most likely to occur if temporary rates are established after notice and public hearing so that the consumer is aware of proposed alterations to the billed amount used.

We will allow the permanent rates authorized in this report and order to be effective as temporary rates for all service rendered on or after December 29, 1981.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Tariff NHPUC No. 1 — Water, Sunapee Hills Water Co. Inc. which was suspended by Commission Order No. 15,344 (66 NH PUC 528), is accepted and shall bear the effective date of December 29, 1981; and it is

FURTHER ORDERED, that Sunapee Hills Water Co. shall file a revised Page 6 of its Tariff NHPUC No. 1 — Water, which shall bear the designation '1st Revised Page 6, Issued in lieu of Original Page No. 6, and which shall set forth an annual charge, billed equally to all customers, which will recover annual operating revenues of \$14,165.00; and it is

FURTHER ORDERED, that 1st Revised Page No. 6 shall bear the effective date of December 29, 1981; and it is

FURTHER ORDERED, that the title page and 1st Revised Page No. 6 shall bear the designation "Authorized by NHPUC Order No. 15,500 in case No. DR 81-367, dated

FURTHER ORDERED, that Sunapee Hills Water Company shall apply a surcharge equally to all customers bills, that will recover rate case expenses of \$3,143 over a two year period; and it is

FURTHER ORDERED, that Sunapee Hills is authorized to borrow \$10,000, which authority shall remain in effect for six (6) months from the date of this

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Order and the terms and conditions of such borrowing shall be submitted to the Commission prior to execution of the debt; and it is

FURTHER ORDERED, that these borrowed funds shall be used for fixed asset additions and accounts payable for such additions already incurred and the Company shall file a disposition of proceeds statement, duly sworn to, on July 1 and January 1 of each year until the expenditures of the whole of said securities being authorized shall have been fully accounted for; and it is

FURTHER ORDERED, that Sunapee Hills Water Company is authorized to transfer all of its assets to the New Hampshire Corporation by the name of Sunapee Hills Water Company, Inc. subject to the filing of a certificate of incorporation from the N.H. Secretary of State, with this Commission.

By Order of the Public Utilities Commission of New Hampshire this twenty-third day of February, 1982.

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NH.PUC*02/24/82*[79211]*67 NH PUC 178*Lifeline Rates

[Go to End of 79211]

Re Lifeline Rates

Intervenor: Volunteers Organized in Community Education

DP 80-260, Seventh Supplemental Order No. 15,504

67 NH PUC 178

New Hampshire Public Utilities Commission

February 24, 1982

Motion for continuance, granted.

BY THE COMMISSION:

REPORT

VOICE (Volunteers Organized in Community Education), through its attorney New Hampshire Legal Assistance, has entered an objection/exception in the above-captioned docket. The VOICE objection can be divided into two categories: (1) issues raised in its motion of November 27, 1981, which were addressed at length in the above-captioned order of the Commission; and (2) an objection to the dates established for prefiling testimony and hearings on issues set forth in the Order, *i.e.* VOICE alleges that the February 19, 1982 deadline for prefiled testimony and the subsequent hearing dates of March 2, 3, 4, 5 failed to provide adequate time for preparation.

The Commission, having reviewed the VOICE objection in regard to the issues raised in its November 27, 1981 motion and addressed in Supplemental Order No. 15,480 (67 NH PUC 151), is of the opinion that said order is lawful

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and reasonable and that the Voice objection be denied.¹⁽²⁰⁾

Voice's objection to the date for prefile testimony and the hearing dates set forth in the Sixth Supplemental Order is essentially a motion for a continuance and shall be treated as such. The New Hampshire Supreme Court has held that there is no absolute right to a continuance in an administrative proceeding, unless its refusal would constitute a denial of procedural due process or an abuse of discretion. *Hanover Convalescent Center v Town of Hanover* (1976) 116 NH 142, 143, — A2d —.

This Commission has liberally granted continuances where a need has been shown. The Commission recognizes the necessity of obtaining the assistance of expert witnesses and welcomes adequately prepared testimony, therefore, in so far, as VOICE has moved for a continuance, it is granted. The deadline for prefile testimony shall be extended for all parties to Monday, March 22, 1982. There shall be a procedural hearing on Tuesday, March 2, 1982 to clarify issues and procedures for hearing on April 13, 14, 15, and 16, 1982. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that there shall be a procedural hearing on Tuesday, March 2, 1982; and it is

FURTHER ORDERED, that hearings shall be held April 13, 14, 15 and 16, 1982, beginning at 10 o'clock in the forenoon; and it is

FURTHER ORDERED, that all prefile testimony be submitted to the Commission by Monday, March 22, 1982, at 4:30 p.m.; and

WHEREAS, VOICE's objection/exception is contrary to the foregoing Report and Order; it is

ORDERED, that the objection is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of February, 1982.

FOOTNOTE

¹As stated on pp. 152 and 153 of 67 NH PUC in the above captioned Order, the issues raised by VOICE in their November 27; 1981 motion were ripe for review, if ever, within the statutory time frame of RSA, Chapter 541. In Commission initiated further hearings on its own authority to determine the adequacy of its original Order. The scope of these further hearings is solely within the discretion of the Commission and not subject to objection by VOICE. To spite of the fact that VOICE's motion was deemed untimely as well as without merit, the Commission discussed in some detail its compliance with Section 114 of PURPA in the Report accompanying the Sixth Supplemental Order. The the extent the issues were the same as those set forth in VOICE's motion should be considered a matter of coincidence.

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NH.PUC*02/24/82*[79212]*67 NH PUC 180*Concord Natural Gas Corporation

[Go to End of 79212]

Re Concord Natural Gas Corporation

DR 81-284

67 NH PUC 180

New Hampshire Public Utilities Commission

February 24, 1982

ORDER affirming disallowance of penalties.

FINES AND PENALTIES, § 1 — Gas — Disallowance.

[N.H.] The commission affirmed its past decision that penalties incurred in connection with fuel costs are not a legitimate expense to be charged to the ratepayer, but are the responsibility of management and should be borne by the stockholders.

BY THE COMMISSION:

MOTION FOR CLARIFICATION AND OTHER RELIEF

Concord Natural Gas Corporation on February 17, 1982 filed a motion for clarification of the Commission's Report on Rehearing, dated February 2, 1982, and Order No. 15,471, dated February 2, 1982 (67 NH PUC 113). The Company's motion asserts that the Commission is incorrect in its disallowance of penalties incurred by the Company and that findings in the Summer Cost of Gas Report and Order No. 14,879 were not final with regard to those penalties.

In the revised Report and Order No. 15,471, this Commission arrived at an adjusted cost of gas rate for the winter period from February through April 1982. In that decision, the Commission affirmed the disallowance of penalties that had been previously included in the prior summer CGA. The Commission, however, did not account for that disallowance in the winter CGA and stated that it would be reconciled in the summer 1982 CGA. The Company has submitted an accounting by its certified public accountant to confirm that the second penalty assessed by Tennessee had not been paid in the period from October 1, 1980 to December 31, 1981 and was not an outstanding obligation as of December 31, 1981.

The cost of gas adjustment for gas companies and the fuel adjustment clauses were set up originally to allow companies to collect highly volatile changes which were occurring in fuel costs. Those clauses operate outside of the basic rates which are decided in basic rate cases. The clauses operate to allow companies to collect legitimate fuel costs. When the cost of gas revenues and costs are confirmed by an audit by the Commission staff, the Commission will consider the issue finalized. Commission files and decisions will confirm that refunds have been ordered for discrepancies which have occurred in both purchasing and accounting for fuel adjustment costs. Therefore, this Commission reaffirms the previous decision that penalties incurred in connection with fuel costs are not a legitimate expense to be charged to the ratepayer and finds that they are the

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responsibility of management to be borne by the stockholders. The Commission will also direct staff auditors to perform a complete audit of all fuel clauses. The Commission is still studying the new concept of two sets of books by Concord's gas supplier. When a final verdict is possible of determination, the Company will be so informed. However, in the interim, the first penalty is to be booked below the line and the second penalty remains under evaluation as to whether it was paid in some form.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of February, 1982.

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NH.PUC*02/25/82*[79213]*67 NH PUC 181*Connecticut Valley Electric Company, Inc.

[Go to End of 79213]

Re Connecticut Valley Electric Company, Inc.

DR 82-40, Order No. 15,506

67 NH PUC 181

New Hampshire Public Utilities Commission

February 25, 1982

ORDER approving recovery of cost of purchased power.

BY THE COMMISSION:

ORDER

WHEREAS Connecticut Valley Electric Company, Inc., an electric public utility providing retail sales of electricity within certain portions of the State of New Hampshire now purchases its power from its supplier under the FERC-approved RS-2 rate; and

WHEREAS, this rate does not provide separate billing of the fuel adjustment charge; and

WHEREAS, Connecticut Valley Electric Company, Inc. proposes to extract from its average energy billed costs that unit amount designated formerly as its base cost of fuel, viz \$0.0129424 per kilowatt hour, using the balance to calculate its retail fuel adjustment charge; and

WHEREAS, the Commission finds this calculation method acceptable; it is

ORDERED, that First Revised Page 16 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 — Electricity, be, and hereby is, approved for effect March 1, 1982; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company, Inc. file with this Commission, for effect with bills rendered during March, 1982, 61st Revised Page 18, documenting the March FAC calculation.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of February, 1982.

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NH.PUC*02/25/82*[79214]*67 NH PUC 182*Gilford Forest Estates Water Company

[Go to End of 79214]

Re Gilford Forest Estates Water Company

DE 82-47, Order No. 15,507

67 NH PUC 182

New Hampshire Public Utilities Commission

February 25, 1982

Order revoking public utility status.

BY THE COMMISSION:

ORDER

WHEREAS, Gilford Forest Estates Water Company, is a public utility operating under the jurisdiction of this Commission in limited areas in the Town of Gilford; and

WHEREAS, Gilford Forest Estates Community Association has notified this Commission that it has acquired ownership of the Gilford Forest Estates Water Company; and

WHEREAS, the water system, as owned by the Community Association, will be providing water service only to members of the Association; it is

ORDERED, that Gilford Forest Estates Water Company, as of January 1, 1982, will no longer be a public utility under the jurisdiction of this Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of February, 1982.

=====

NH.PUC*02/25/82*[79215]*67 NH PUC 182*Continental Telephone Company of New Hampshire

[Go to End of 79215]

Re Continental Telephone Company of New Hampshire

DR 82-56, Order No. 15,508

67 NH PUC 182

New Hampshire Public Utilities Commission

February 25, 1982

Order allowing company to forgo service connection charges.

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BY THE COMMISSION:

ORDER

WHEREAS, ON February 1, 1982, Continental Telephone Company of New Hampshire requested approval to forego service connection charges relative to customer transfers from rotary dial to touch tone calling; and

WHEREAS, the Company requested that the waiver period extend from February 3, 1982 through April 9, 1982; and

WHEREAS, the Company proposes that implementation of this waiver will encourage customer acceptance of touch tone calling; and

WHEREAS, the Commission after investigation finds that approval of such a waiver will

contribute to customer awareness of the opportunities afforded by touch tone calling; it is

ORDERED, that Continental Telephone of New Hampshire be authorized to forego those service connection charges associated with customer transfers from rotary dial to touch tone calling during the period February 3, 1982 to April 9, 1982; and it is

FURTHER ORDERED, that the Company provide adequate notice of this offer to assure wide customer awareness of the program.

By Order of the Public Utilities Commission of New Hampshire this twenty-fifth day of February, 1982.

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NH.PUC*02/26/82*[79216]*67 NH PUC 183*Sunapee Hills Water Company

[Go to End of 79216]

Re Sunapee Hills Water Company

DR 81-367, Third Supplemental Order No. 15,509

67 NH PUC 183

New Hampshire Public Utilities Commission

February 26, 1982

ORDER authorizing increase in borrowing.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, this Commission in its Report and Order No. 15,500, dated February 23, 1982 (67 NH PUC 174), authorized Sunapee Hills Water Company to borrow \$10,000; and

WHEREAS, this amount will not be sufficient to discharge certain debts already incurred by the water company for fixed asset additions in addition to carrying out the capital improvements and plant additions as defined in the Report; it is

ORDERED, that Sunapee Hills Water Company is authorized to increase the borrowing authorized in Order No. 15,500 to the total amount of \$22,286, which amount shall be subject to the same stipulations as noted in our authorization in Order No. 15,500.

By Order of the Public Utilities Commission of New Hampshire this twenty-sixth day of February, 1982.

=====

NH.PUC*02/28/82*[79217]*67 NH PUC 184*New England Power Company

[Go to End of 79217]

Re New England Power Company

DF 81-59, Second Supplemental Order No. 15,463

67 NH PUC 184

New Hampshire Public Utilities Commission

February 28, 1982

ORDER extending company's authorization to issue, sell, or pledge securities.

SECURITY ISSUES, § 44 — factors affecting authorization

[N.H.] A company's authority to issue, sell, or pledge securities was extended by the commission where unfavorable market conditions caused the company to be unable to sell securities in the authorized amounts during the initial time granted.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by Order No. 14,836 of this Commission dated April 10, 1981 (66 NH PUC 127), (as amended by Order No. 15,249 dated October 30, 1981 [66 NH PUC 444]), New England Power Company (Company) was authorized, inter alia, to issue and sell one or more series, aggregating not exceeding \$100,000,000 principal amount of General and Refunding Mortgage Bonds (G & R Bonds), and issue and pledge one or more additional series, aggregating not exceeding \$100,000,000 principal amount, of First Mortgage Bonds, and issue and sell Preferred Stock with an aggregate par value of not exceeding \$50,000,000; and

WHEREAS, such authority to issue the above-entitled securities was to be exercised on or before December 31, 1981, and not thereafter, unless such period was extended by order of this Commission; and

WHEREAS, due to unfavorable market conditions only \$50,000,000 of the G & R Bonds have been issued and sold, and only \$50,000,000 of the First Mortgage Bonds have been issued and pledged, and none of the Preferred Stock has been issued and sold; and

WHEREAS, the Company still desires to issue said securities if the market condition should become suitable; it is

ORDERED, that the Company's authorization to issue, sell or pledge the above-entitled securities is extended to June 30, 1982 (unless a subsequent order of the Commission approves a later date); and it is

FURTHER ORDERED, that, except as expressly modified hereby, the authorization contained herein shall be subject to all the terms and conditions stipulated in our other orders in this proceeding.

By order of the Public Utilities Commission of New Hampshire this 28th day of January,

1982.

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NH.PUC*03/02/82*[79218]*67 NH PUC 185*Fuel Adjustment Clause

[Go to End of 79218]

Re Fuel Adjustment Clause

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

DR 82-18, Order No.15,510

67 NH PUC 185

New Hampshire Public Utilities Commission

March 2, 1982

ORDER permitting fuel surcharge to become effective.

APPEARANCES: Philip Cahill and Michael Flynn for Granite State Electric Company; Warren Nighswander for Concord Electric Company and Exeter and Hampton Electric Company; Gerald Eaton for Community Action Program.

BY THE COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing on the fuel adjustment clause filings of Granite State Electric Company, Concord Electric Company and Exeter and Hampton Electric Company, for March, 1982, at its offices in Concord on February 18, 1982.

The first Company to testify, Granite State Electric Company (GSEC), had filed its nine (9) exhibits on February 16, 1982 and presented three witnesses at the hearing. The GSEC requested a change in its FAC from \$1.01/100 KWH as initially approved for January, February, and March, 1982, to \$1.40/100 KWH for the four month period, March, 1982 through dune, 1982. The Company also requested a change in its Oil Conservation Adjustment Clause from \$0.04/100 KWH for January, February, and March, 1982, to \$0.08/100 KWH for March, 1982 through dune, 1982. Since the four month period acts to levelize customer bills, the Commission accepts the approach.

The FAC increase is due mainly to undercollection in December, 1981, January and February, 1982, due to delays in putting Brayton Point #3 unit on line burning coal.

The OCA increase is due to expected commencement in March, 1982, of generation by coal at New England Power Company's Salem Harbor Units 1, 2, and 3.

The Commission wishes to point out that by the structuring of the OCA clause, an \$0.08/100

KWH OCA charge automatically means the FAC is approximately \$0.12/100 KWH lower than without the coal conservation, resulting in approximately a \$0.04/100 KWH net savings to customers. We say approximately because of Mr. Traum's cross-examination of Mr. Morrissey and the resultant admission of Exhibit 10, which

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was used to illustrate that the customers don't retain one-third of the avoided costs due to conversion, but slightly less. Since these costs are reconciled regularly, the point is to address further.

The Commission believes the filing meets the public good, and our Order will issue accordingly.

Concord Electric Company and Exeter and Hampton Electric Company were represented by one witness, Peter Stulgis. Concord had a FAC rate of \$1.78/ 100 originally approved for the first quarter of 1982, while Exeter and Hampton Electric Company had a rate of \$1.60/100 KWH. Since both Companies' tariffs contain provisions calling for an interim filing during the effective period of an average fuel adjustment rate, if a deviance of 10% in the collection of fuel expense occurs, both Companies filed for reductions for March, 1982. For Concord Electric Company, the reduction would be from \$1.78/100KWH to \$1.56/100 KWH. For Exeter and Hampton Electric Company, the reduction would be from \$1.60/100 KWH to \$1.45/100 KWH. The adjustment is mainly attributable to lower than estimated FAC rates billed by the Companies' supplier, Public Service Company of New Hampshire, and less lost and unaccounted for.

The total amount of the overcollections in December, 1981, and January, 1982, are not being used to adjust the March rate, but only one-third of it. The balance will act to stabilize the rate for the 2nd quarter of 1982, which we believe is in the public good.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 4th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 7 — Electricity, providing for a fuel surcharge of \$1.56 per 100 KWH for the month of March, 1982, be, and hereby is, permitted to become effective March 1, 1982; and it is

FURTHER ORDERED, that 18th Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 14 — Electricity, providing for a fuel surcharge of \$1.45 per 100 KWH for the month of March, 1982, be, and hereby is, permitted to become effective March 1, 1982; and it is

FURTHER ORDERED, that 61st Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 — Electricity, providing for a fuel surcharge of \$0.75 per 100 KWH for the month of March, 1982, be, and hereby is, permitted to become effective March 1, 1982; and it is

FURTHER ORDERED, that Original Page 51A of Granite State Electric Company tariff,

NHPUC No. 9 — Electricity, providing for an oil conservation adjustment surcharge of eight cents (\$0.08) per 100 KWH for the month of March, 1982, be, and hereby is, permitted to become effective March 1, 1982; and it is

FURTHER ORDERED, that First Page 17B of Granite State Electric Company tariff, NHPUC #9 — Electricity, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Granite State Electric Company file Original Page 17B based on a fuel surcharge for the month of March, 1982 of \$1.40 per 100 KWH; and it is

FURTHER ORDERED, that 12th Revised Page 15 of the N.H. Electric Cooperative, Inc. tariff, NHPUC No. 10 -Electricity, providing for a fuel surcharge of \$2.77 per 100 KWH for the month of March, 1982, be, and hereby is, permitted

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to become effective March 1, 1982; and it is

FURTHER ORDERED, that 14th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$2.60 per 100 KWH for the month of March, 1982, be, and hereby is, permitted to become effective March 1, 1982; and it is

FURTHER ORDERED, that 98th Revised Page 6 of Littleton Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$2.38 per 100 KWH for the month of March, 1982, be, and hereby is, permitted to become effective March 1, 1982; and it is

FURTHER ORDERED, that 66th Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of \$0.04 per 100 KWH for the month of March, 1982, be, and hereby is, permitted to become effective March 1, 1982.

By order of the Public Utilities Commission of New Hampshire this second day of March, 1982.

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NH.PUC*03/02/82*[79219]*67 NH PUC 187*Exeter and Hampton Electric Company

[Go to End of 79219]

Re Exeter and Hampton Electric Company

Intervenors: Community Action Program and Office of Consumer Advocate

DR 81-317, Supplemental Order No. 15,511

67 NH PUC 187

New Hampshire Public Utilities Commission

March 2, 1982

ORDER fixing temporary rates

 RATES, § 630 — Emergency rates — Factors to be considered.

[N.H.] The financial condition of a company and its ability to attract long-term financing are considered for determining whether it is in the public interest to grant temporary rates.

APPEARANCES: Warren C. Nighswander for Exeter and Hampton Electric Company; F. Joseph Gentili, Consumer Advocate; Gerald Eaton for Community Action Program.

BY THE COMMISSION:

REPORT

On November 13, 1981, Exeter and Hampton Electric Company (hereafter referred to as the Company), a public utility, serving electric to customers in a portion of the State, filed a new tariff N.H.P.U.C. No. 15 providing for increased revenues in the amounts of \$871,695.00 or 5.83% to become effective on December 13, 1981. On the same day the Company filed a petition for

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temporary rates pursuant to RSA 37-:27 requesting that the Company's rates as set forth in tariff N.H.P.U.C. No. 14 effective December 1, 1982, be fixed and determined as temporary rates for the duration of this proceeding.

The Commission directed that the request for permanent rates be published by two public notices. An affidavit of publication was filed on December 14, setting forth that the publication was made in the Exeter News Letter on December 2, 1981, and December 9, 1981.

On November 23, 1981, the Commission issued Order No. 15,321 (66 NH PUC 523) suspending Tariff N.H.P.U.C. No. 15 until such rates were investigated. On November 25, 1981, the Commission issued an Order of Notice setting a public hearing on January 6, 1982, at Concord for the purpose of fixing temporary rates. Said Order of Notice was published in the Exeter News Letter on December 16, 1981.

The Company presented witness Frank L. Childs, Vice President, Treasurer and Chief Financial Officer. Mr. Childs submitted prefiled testimony with four (4) exhibits attached thereto. He stated that he analyzed the Company's financial performance for the 12 month period ended August 1, 1981 (the test year for permanent rates) and determined that the return on Common Equity during that period was 12.0% which was substantially lower than the 13.5% allowed by the Commission in the Company's last rate case (DR 79-91) He further testified that the return on common equity for the most recent 12 month period ended November 30, 1981 was 11.8% and the rate of return will continue to deteriorate as long as existing rates remain in effect. The Company could not anticipate earning the allowed return on Common Equity of 13.5% without rate relief.

Eugene Sullivan, Commission Finance Director inquired as to what assumptions the

Company made with regard to the effects of the present economy in general during the period in question. Witness Childs stated that looking forward into 1982, the Company foresees basically flat sales even lower than sales in 1980 primarily in the industrial areas. The decline of industrial sales are primarily related to the decline in the automobile industry.

Mr. Sullivan confirmed that the Staff's review of the Company's financial records show that the Company has in fact earned less than the allowed rate of return. The Finance Department tracked the over-all rate of return as follows:

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

| Allowed ROR | August | September | October | November | December |
|-------------|--------|-----------|---------|----------|----------|
| 9.86 | 9.0 | 9.13 | 8.98 | 8.98 | 9.15 |

Consumer Advocate, F. Joseph Gentili, inquired into the decision of the Company not to issue any financings in its first quarter of 1982. The prefiled testimony originally set forth that the Company was planning a one million to one million five hundred thousand dollar issue of First Mortgage Bonds in its first quarter of 1982. Apparently the Company's cash flow improved a bit and it was determined that with proper rate relief financing may not be needed. The Consumer Advocate argues that the financial condition of the Company

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should be considered in determining whether or not it is in the public interest to grant temporary rates.

The Commission agrees that the condition of the Company and its ability to attract long-term financing is a consideration in determining if it is in the public interest to grant temporary rates. However, the record reflects that the Company at this time does not intend to seek long-term financing. However, the public interest requires a balance between fair rates charged to customers and the obligation to have public utility companies to earn a reasonable over-all rate of return at least close to that allowed in the Company's last rate case. Taking all factors into consideration, i.e., the financial condition of the Company, the present earnings, conditions of the market place; the Commission finds it is in the public interest to fix the existing rates being collected by N.H.P.U.C. No. 14 as temporary rates for the duration of these proceedings. Effective for service rendered on or after January 6, 1982. 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 existing rates being collected by N.H.P.U.C. No. 14 are hereby fixed as temporary rates effective for service rendered on or after January 6, 1982.

By order of the Public Utilities Commission of New Hampshire this second day of March, 1982.

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NH.PUC*03/08/82*[79220]*67 NH PUC 189*Public Service Company of New Hampshire

[Go to End of 79220]

Re Public Service Company of New Hampshire

DR 82-61 Order No. 15,516

67 NH PUC 189

New Hampshire Public Utilities Commission

March 8, 1982

ORDER opening docket for consultative process.

BY THE COMMISSION:

ORDER

WHEREAS, the parties in DR 79-187 Phase II, presented stipulated recommendations on Rate Design which this Commission accepted by Order No. 15,425 on January 11, 1982 (67 NH PUC 97); and

WHEREAS, the stipulation called for a Consultative Process to address certain unresolved issues and further implementation of rate design changes; and

WHEREAS, this Commission supports the Consultative Process and

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wishes to provide a proper forum for the results of the Process; it is

ORDERED, that Docket No. DR 82-61 be, and hereby is, opened for the purpose of accepting such filings and hearing such matters as the parties to the Consultative Process on Rate Design may wish to bring to our attention.

By order of the Public Utilities Commission of New Hampshire this eighth day of March, 1982.

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NH.PUC*03/09/82*[79221]*67 NH PUC 190*Granite State Electric Company

[Go to End of 79221]

Re Granite State Electric Company

DR 81-86, Seventh Supplemental Order No. 15,567

67 NH PUC 190

New Hampshire Public Utilities Commission

March 9, 1982

ORDER denying motion for reconsideration of fuel surcharge.

BY THE COMMISSION:

REPORT

Granite State Electric Company, (GSE) has filed a motion for reconsideration of a single issue addressed in Commission Report and Sixth Supplemental Order No. 15,452 (DR 81-86) (67 NH PUC 117). The motion for reconsideration was timely filed, therefore, the motion is properly before the Commission.

Granite State Electric Company asserts that denial of their request for a surcharge while allowing similar requests by other New Hampshire electric utilities results in undue discrimination. The Commission finds the argument in support of this assertion to be unpersuasive.

Supporting the allegation of discrimination with a recitation of surcharges previously allowed by this Commission suggests that Granite State Electric Company and the other electric utilities were comparably situated in requesting unrecovered fuel expense surcharges. The Commission finds, as it has found in the past, that this is not the case, and observes that Granite State's failure to distinguish its situation arises primarily from a problem with definitions. Granite State's attempted clarification with witness McDade's testimony regarding the purported "lag", is discussed on page 3 of the motion for reconsideration and is found to be unenlightening.¹⁽²¹⁾

As to the problematic definitions, the Commission's recent orders relating to Granite State notwithstanding, confusion

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apparently persists relative to the meaning of "lock-up" and "2-month lag", the basis upon which requests for the unrecovered fuel expense surcharge were granted to other utilities. The Commission squarely addressed this issue in its initial decision in the Fuel Clause Investigation (DR 79-214). On page 1 of Report and Order No. 14,308 (DR 79-214) (65 NH PUC 311) it is clearly stated that: "... the '2-month lock-up;' is the 'lag' in the billing of the FAC due to a two-month delay in that billing."

A brief glimpse at the history of the FAC is helpful in distinguishing Granite State's circumstances. Concord and Exeter & Hampton delayed collection of fuel cost revenues when the FAC originally went into effect. These companies did not begin to collect the FAC revenues until the third month after it became effective; thus in March 1972 these companies began collecting the FAC revenues based upon figures reflecting January 1972 fuel costs. This delay in implementation created the 2 month lag. At the same time, fuel costs were deferred to match revenues and expenses. This resulted in a "lock-up", i.e. the amount of un-collected fuel expense then remaining in the deferred fuel account when the FAC was changed to a forward-looking quarterly fuel clause.

In contrast, Granite State began collecting FAC revenues in January 1972 based on figures

reflecting December 1971 fuel costs. The December costs were used as a surrogate upon which to base FAC revenues for the current month (January 1972), enabling Granite State to begin collecting the FAC revenues immediately. The revenues being collected in January 1972 were not expenses incurred in December 1971. The revenues being collected were January costs, using December figures as a basis for the January collection. This method of calculation and collection does not constitute a "lag", as it has been considered in previous cases. Nor was a "lag" created in 1975 when July's costs were used as the basis for September's collection of FAC revenues. The second preceding month (July) was used as a surrogate upon which to base FAC revenues for the current month (September), as was done in January 1972 using the first preceding month as a surrogate. Thus, we concur in Granite State's judgment (page 3 of the motion) that "It is not important that July's costs were used twice ... " A lag is not created by using costs from a surrogate month to reflect current month's costs.

An additional distinction is observed in the treatment of Public Service Company. (PSNH) The allowance by the Commission of PSNHs requested surcharge was also based on a determination found to be fundamentally different than that applicable to Granite State. PSNH initiated the collection of FAC revenues in month "one", as did Granite State. However, as a result of a 1975 financing hearing, and the finding that PSNH was not matching revenues with expense, PSNH was ordered by the Commission to institute corrective accounting changes which effectively created their 2-month lag. As has been noted earlier, all of the aforementioned companies have consistently matched fuel revenues and expenses by deferring fuel costs.

Granite State, never having deferred fuel costs and revenues, showed any resulting variances in their operating results. These variances were then funded each time a rate increase was granted. Additionally, any shortfall would necessarily affect reported rate of return and

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would thus be factored into cost of common equity and attrition allowances. Having found Granite State and the other companies to be dissimilarly situated, the Commission finds the assertion of undue discrimination to be without merit. *Locke v Ladd* (1979) 399 A2d 962. Because of these differences in implementation of the FAC, accompanied by different methods of accounting for fuel costs, it has always been the finding of this Commission that Granite State has not been subject to the 2-month lag which would justify the granting of the surcharge. We re-affirm that finding today.

Accordingly, Granite State's motion for reconsideration of the company's request for a surcharge is 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 Granite State Electric Company's Motion for Reconsideration is denied.

By order of the Public Utilities Commission of New Hampshire this ninth day of March, 1982.

FOOTNOTE

1"Examination of that full question and answer, however, reveals that Mr. McDade's 'a lag in the opposite direction' reference was to the effective date of the fuel adjustment clause, not to the company's shortfall in revenues. His statement is clear that collection lagged behind payment of expense. Simply because Granite started billing a fuel factor in January 1972 (the first month in which the clause was effective) does not change the fact that recovery lagged one month behind incurrence of expense. In short, a one month lag was created because December 1971 costs were not recovered until bills issued in January 1972 were paid."

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NH.PUC*03/10/82*[79222]*67 NH PUC 192*Keene Gas Corporation

[Go to End of 79222]

Re Keene Gas Corporation

DR 81-305, Second Supplemental Order No. 15,522

67 NH PUC 192

New Hampshire Public Utilities Commission

March 10, 1982

ORDER revoking revision of cost of gas adjustment.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in DR 81-305 of Keene Gas Corporation in its Report and Order dated 1/13/82 (67 NH PUC 99), approved, based on an agreement entered into by all parties in the case, a revision to the Corporation's CGA from a 6-month estimated basis to a monthly actual basis; and

WHEREAS, this aspect of the settlement was entered into to help the Corporation over its early winter cash flow problems; and

WHEREAS, the Commission, after further investigation, is in agreement with Keene Gas Corporation that while the change would benefit its cash flow in a short-term basis, it would cause great fluctuations in customer bills and might compel ratepayers to abandon Keene Gas Corporation's utility business for an unregulated bottled propane competitor; it is therefore

ORDERED, that Supplemental Order No. 15,431 (67 NH PUC 99), dealing

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with a revision of the CGA to a monthly basis is revoked; and it is

FURTHER ORDERED, that Keene Gas Corporation shall continue to bill customers the

CGA for the remainder of the Winter Period 1981-82 at the rate previously approved for that period.

By order of the Public Utilities Commission of New Hampshire this tenth day of March, 1982.

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NH.PUC*03/11/82*[79223]*67 NH PUC 193*Gas Service, Inc.

[Go to End of 79223]

Re Gas Service, Inc.

Intervenor: Office of Consumer Advocate

DR 80-179, Fifth Supplemental Order No. 15,532

47 PUR4th 262

67 NH PUC 193

New Hampshire Public Utilities Commission

March 11, 1982

ORDER approving rate increase.

1. RETURN, § 8 — Basis for computation — Property value distinguished from capitalization — Market-to-book ratio.

[N.H.] Where there are a small number of shareholders and infrequent trading of the company's stock, market-to-book ratios are artificial; therefore, they cannot be used as a measurement of risk in determining the rate of return. p. 196.

2. RETURN, § 26.4 — Reasonableness — Cost of equity — Discounted cash-flow formula.

[N.H.] Use of an adjusted yield in a discounted cash-flow analysis is appropriate when new common equity is being sold. p. 196.

3. RETURN, § 25 — Reasonableness — Returns of other enterprises.

[N.H.] The commission disregarded a risk premium analysis where the market-to-book ratio had been disputed and electric utilities had been used in developing a proxy rate of return for a gas company. p. 197.

4. RETURN, § 35 — Reasonableness — Economic conditions — Attrition.

[N.H.] Instead of allowing an attrition factor to be added to the cost of capital, the commission allowed a step increase for actual increases expenses. p. 199.

5. ACCOUNTING, § 49 — Gas — Pipeline refunds.

[N.H.] Refunds associated with natural gas pipeline refunds and attributable to interruptible and seasonal sales were added back into test-year revenues where they were originally booked

under nonutility operations. p. 201.

7. ACCOUNTING, § 49 — Gas — Pipeline refunds.

[N.H.] Refunds associated with natural gas pipeline refunds and attributable to interruptible and seasonal sales are related to utility operations. p. 201.

7. EXPENSES, § 19 — Country club expenses.

[N.H.] Country club expenses were recognized and booked below the line and charged to stockholders because, historically, the public interest has been defined to include only the expenses that are necessary for the deliverance of energy and other commissions have excluded expenditures for clubs as not being properly chargeable to the ratepayers. p. 201.

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8. EXPENSES, § 82 — Officers' expenses — Moving expenses.

[N.H.] Motel costs and other moving expenses for a company officer were booked below the line. p. 202.

9. EXPENSES, § 19 — Automobile expenses — Commuting expenses.

[N.H.] Automobile expenses were reduced by 10 per cent as a first step toward halting ratepayer subsidization of commuting utility employees. p. 202.

10. EXPENSES, § 19 — Computer expenses.

[N.H.] Where the company had not acquired hardware, software, or a programmer, a pro forma adjustment for these expenses was disallowed, but a step increase was permitted. p. 203.

11. RATES, § 380 — Gas — Special factors affecting rates — Rate design factors.

[N.H.] The commission considered three factors in deciding that rate design changes were necessary: (1) price increases in response to the deregulation of gas, (2) economic efficiency, and (3) giving consumers the correct pricing signals. p. 204.

APPEARANCES: Charles Toll for the petitioner; Gerald Lynch and F. Joseph Gentili for the Consumer Advocate.

BY THE COMMISSION:

On August 1, 1980, the Company filed with the Commission certain proposed pages in its Tariff No. 5 to be effective September 1, 1980 providing for rates designed to yield an annual increase in base revenues of \$943,954.

On August 18, 1980, the Commission issued Order No. 14,439 (65 NH PUC 387) suspending the proposed tariff pages until otherwise ordered and on August 21, 1980, the Commission rejected the proposed tariff pages in its Report and Supplemental Order No. 14,462 (65 NH PUC 405). The Company filed a Motion for Rehearing and Other Relief on September 18, 1980 which was denied by the Commission in Supplemental Order No. 14,504 issued September 29, 1980 (65 NH PUC 456).

On October 28, 1980, the Company filed with the New Hampshire Supreme Court a Petition for Appeal seeking a review of Report and Supplemental Order No. 14,462. On June 26, 1981, the Supreme Court reversed the Commission's order and remanded the case to the Commission for a hearing on the merits and the taking of additional evidence on the Company's request for basic rate relief.

The Company placed the proposed tariff in effect under bond filed with the Commission on July 7, 1981 and on July 9, 1981 petitioned for temporary rates. Following a hearing on August 26, 1981, the Commission issued Report and Third Supplemental Order No. 15,078 dated August 31, 1981 (66 NH PUC 328), establishing the bonded rates as the Company's temporary rates effective July 7, 1981.

Also, on August 31, 1981, the Commission issued Fourth Supplemental Order No. 15,079 (66 NH PUC 329) establishing a procedural schedule to be followed in this case, including hearing dates on September 21 and 24 and October 2, 1981. Prepared testimony and exhibits were filed by the Company on September 4, 1981. The rate relief sought by the Company in its prepared testimony and exhibits was \$2,040,538. Pursuant to the procedural schedule, data requests were submitted to the Company and responded to. Additionally, members of the Staff Finance Department conducted a partial audit of the Company's books and records.

Representatives of the Company and the Staff and the Consumer Advocate met to discuss issues in this proceeding on September 11, 17, 21, 23 and October 2, 1981. Settlement Agreements I

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and II were the result of those conferences and had been arrived at in light of the entire record in the proceeding through October 2, 1981. The Settlement Agreements provided for an increase in rates of \$1,415,727 plus step increases in February 1982 and February 1983.

After review, the Commission split as to whether the settlement package was acceptable.

Accordingly, duly noted public hearings were held at the Commission's offices on January 18 and 19, 1982.

During the course of those hearing dates, numerous additional exhibits were submitted including the Settlement Agreements and Exhibit 20, updating the Company's request and revising it to \$1,842,800. The request was reduced to \$1,725,104 in the Company's reply brief of February 17, 1982.

In the balance of this Report, the Commission will discuss the positions of the Company, Consumer Advocate, and our Staff, beginning with the request for \$2,040,538, as well as the evolution of those positions and our findings.

I. Supreme Court Actions — Overview

The Supreme Court overturned the Commission's decision to deny Gas Service Company a forum to litigate another rate case within months of a Commission decision involving another Gas Service rate petition.

The Court noted in its decision that the Company alleged that for the past seven years it has

not earned and has not been able to earn the reasonable rate of return to which it is legally entitled due to the inadequate rate increases approved by the Public Utilities Commission. Further, the Court appeared to find persuasive the Company's claim that there was a possibility of unconstitutional confiscation of its property. Such a possibility was found to justify a hearing. The remand to the Commission was for the taking of additional evidence on the merits of the Company's claim as to confiscation and inadequate rate awards by the Commission.

The Commission has dutifully examined the Company and provided numerous hearings to allow for the proper presentation of its case. Furthermore, the record of this proceeding has been enlarged to include the record in the most recent cost of gas adjustment proceeding involving Gas Service, Inc.

The Commission has also become concerned with another Supreme Court decision involving Gas Service issued September 16, 1981. The case, No. 80-425 (-NH-, 435 A2d 126), was decided by the Court in which it chose to uphold the Commission's earlier decision. Gas Service has not as of yet complied with either the Commission's decision or the Court's decision upholding that decision. This decision will also be addressed within the context of this opinion.

II. Rate of Return

The Company, through Mr. Mancini's Exhibit 14, requested a capital structure based on 50.2% long-term debt, 14.1% preferred stock, and 35.7% common stock as of 4/30/81. This structure was also utilized in Exhibit 19, Schedule 4, Schedule 5, of Settlement Agreement #1, and Exhibit 23. Since no parties have objected to this structure, the Commission will accept it, as well as the uncontested rates of 11.65% on long-term debt and 13.47% on preferred stock.

The only difference is in the cost rate of common equity, which was shown by the Company to be 17.0% in Exhibits 14

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and 19, and 15.9% in the Settlement Agreements.

No other parties testified on a proper rate, but the Consumer Advocate through brief developed arguments supporting no more than a 15.25% return on equity.

The Company's most recent witness on the cost rate for common equity, Mr. Robert S. Jackson, utilized 3 methodologies to arrive at his 17.0% recommendation. The approaches were discounted cash flow (DCF), risk premium, and comparable earnings.

In his DCF analysis, Mr. Jackson chose a sample of 10 gas distribution companies; Alagasco, Bay State Gas, Conn. Natural Gas, Indiana Gas, Michigan Energy, New Jersey Natural,, Piedmont Natural, Providence Energy, Public Service Co. of North Carolina, and Valley Resources. With this sample, he developed four dividend yields ranging from 10.54% to 13.93% utilizing market to book ratios of 1.10 to 1.20 as shown in Schedule 2, page 2 of 2. To this, he added his derived average of weighted and arithmetic averages of growth rates, or 5.00% to derive an estimated cost of common equity under this approach of 15.54% to 18.93%.

Interestingly, looking further at his comparison companies, the most recent rates of return on common equity awarded by their Commission's varied from 13.0% to 16.47%, as shown in the

following table:

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

| <i>Company</i> | <i>Regulatory Commission</i> | <i>Latest Return Awarded on Common Equity</i> | <i>Docket #</i> | <i>Date</i> |
|--------------------------|------------------------------|---|---------------------------|-------------|
| Alagasco | Alabama | 14.00% | 18046 | 7/03/81 |
| Bay State Gas | Massachusetts | 14.00% | 777 | 1/11/82 |
| Conn. Nat. Gas | Connecticut | 14.25% | 791202 (37 PUR4th 287) | 6/25/80 |
| Indiana Gas | Indiana | 16.47% | 36117 | 12/08/80 |
| Michigan Consol. | Michigan | 13.25% | U-6372 | 1/30/81 |
| New Jersey Nat. | New Jersey | 14.75% | 815-458 | 12/81 |
| Piedmont Nat. | North Carolina | 6.24% | G9, Sub 212 | 2/02/82 |
| Providence Energy | Rhode Island | 13.00% | 1398 | 9/27/79 |
| P.S. Co. of No. Carolina | North Carolina | 14.95% | G57, Sub 1576 | 15/02/81 |
| Valley Gas Co. | Rhode Island | 14.20% | 1497 | 1/02/81 |

The Commission recognizes that basing a funding solely on this information could lead to circularity arguments, so we have conducted other analyses.

[1] In the Company's last rate proceeding, DR 79-129, Report and Order No. 14,062 ([1980] 65 NH PUC 76), the Commission stated, "where there is only a small number of shareholders and an infrequent amount of trading of the Company's stock, the Commission believes that market-to-book ratios are extraordinarily artificial ... this finding precludes any use of market-to-book ratios as a measurement of risk in this instance." (65 NH PUC at p. 86.)

[2] The Commission also stated in the previously cited docket, "As to the DCF analysis, the Commission does not feel that the adjusted dividend yield should be used. The adjusted yield is appropriate for a situation when new common equity is being sold." (65 NH PUC at p. 80.)

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This Commission feels those statements are equally applicable to this docket and will revise Exhibit 19, Schedule 2, page 2 of 2 accordingly.

The resulting DCF cost rate, exclusive of any upward adjustment to a market-to-book ratio of 1.10 or 1.20, is 14.49% to 16.14% on common equity.

Mr. Jackson's risk premium analysis compared the return earned on equity over the 20 years, 1960-1980 of Moody's gas distribution companies' with the 24-month moving average of Aa-rated¹⁽²²⁾ public utility bonds, which include electric, gas, and combination utilities, although Mr. Jackson acknowledged that electric utilities are riskier than natural gas utilities (Tr 29-30).

Probing deeper into Mr. Jackson's analysis, he again utilized a market-to-book ratio of 1.10 to 1.20, to arrive at a recommended range of 18.25 to 18.62.

[3] The Commission, based on the rationale utilized to dispute the market-to-book ratio approach previously mentioned, and our disagreement with using electric utilities in developing a proxy rate of return for Gas Service, leads us to disregard Mr. Jackson's risk premium analysis. This is further strengthened by Mr. Jackson's statement on page 7, lines 10 and 11 of his direct testimony, Exhibit 19: "Q. Is the cost of common equity directly tied to interest rates? A. It is not."

Mr. Jackson's third method, comparable earnings used the sample of ten utilities previously listed, but only for a five-year period, as opposed to 20 years, which was utilized under his risk premium analysis. Based on his five-year sample, the average return earned on book value ranged between 11.4% and 13.2% while the market/book ratio ranged between 0.86 and 0.95 during the five-year period averaging 0.89.

Interestingly, after conducting this analysis, Mr. Jackson doesn't make a recommendation based on comparable earnings. As an academic exercise, this Commission generally followed the formula utilized by Mr. Jackson to develop a range from the comparable earnings approach, even using a market/book ratio of 1.1, which we do not accept but are utilizing for conceptual purposes.

[Equation below may extend beyond size of screen or contain distortions.]

$$11.4\% \div 0.95 = 12.0\% \div .9 = 13.33\% \text{ (M/B 1.10)}$$

$$13.2\% \div 0.86 = 15.3\% \div .9 = 17.05\%$$

The range so derived is 13.33 to 17.05%, which encompasses the full range we developed earlier under the DCF method of 14.49 to 16.14%, as well as the rate recommended by the Consumer Advocate of 15.25%, and the rate utilized in the Settlement Agreement of 15.9%. In determining which figure within this range to accept, the Commission has decided upon 15.5%, which also falls within the upper half of the range awarded to Mr. Jackson's comparison utilities.

Plugging 15.5% for common equity into the previously accepted capital structure,

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

Capital Ratio Cost Rate Wgtd.

| | | | |
|-----------------|--------|--------|------|
| Long-Term Debt | 50.2% | 11.65% | 5.85 |
| Preferred Stock | 14.1 | 13.47 | 1.90 |
| Common Equity | 35.7 | 15.50 | 5.53 |
| | <hr/> | <hr/> | |
| | 100.0% | 13.28% | |

The Commission accepts a cost of capital of 13.28%.

III. Attrition

Attrition, as usual, is a very difficult figure to pinpoint and takes in such

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varied areas as management efficiency, customer growth patterns, conservation, proforma adjustments, inflation, etc. The requested adjustment for attrition varies from 80 basis points supported by Mr. Mancini in Exhibit 18, pages 10-12, to zero in the Consumer Advocate's brief. Settlement Agreement #1 did not include a provision for attrition initially, however it did make provision for step increases in Jan-Feb, 1982 and 1983.

The 1982 step increase was to cover \$85,115 for wage and salary increases, \$15,242 for pension accruals, any rate case expense over \$46,985, the change in actual property taxes,

\$75,000 for attrition, \$7,955 for increased payroll taxes, and a reasonable amount for computer operations. Of these amounts, Mancini's Exhibit 20 incorporated the payroll increases, the actual pension accrued, actual property taxes, and an amount for computer operations.

Once the Company knows and the Commission approves of the actual amount incurred for rate case expenses over \$62,985, the amount may be surcharged to customers over a two-year period.

This leaves the \$75,000 shown in the Settlement Agreement for attrition in the first step.

This compares with 0.8% most recently requested by Mr. Mancini, which corresponds to a \$170,000 rate increase based on Exhibit 20, Schedule C.

In reviewing Mr. Mancini's development of the 0.80% attrition factor on Exhibit 18, page 12 of 16, it is evident that he makes adjustments to net utility operating income only for the elimination of the appliance sales loss and a one-time special service fee. He failed to update the computation to recognize many of the items he included in Exhibit 20, Schedule A. These items include \$47,992 of additional revenue related to a Triangle Pacific adjustment, and numerous expenses which were incurred by the choice of management and booked originally to utility operations, which now at the Company's request are being removed from test year utility operations for rate case purposes. In addition to this oversight are the operating expense adjustments noted by the Commission elsewhere in this Report.

We note these concerns because attrition or the erosion in earnings is due to many factors. Some beyond the bounds of Company control and other factors within management and the Board of Director's control; i.e., wage increases. For the Company's officers, the pay raises effective 5/01/81 averaged 12%, based on Exhibit 26, relating to a period during which the Company was claiming an unacceptable rate of return. This Commission must question such raises to management in that situation. Beyond the pay raises, Company vehicles continue to be provided to most Company officers for their personal use and to union employees for commuting and work purposes.

This generosity in our viewpoint has certainly contributed to the erosion in Company earnings.

Attrition has also resulted from inflation which is one factor this Commission sees as having decreased in the last year and expects to continue to decline.

Another case of attrition is the growth in interest costs incurred by the Company. Particularly with regards to short-term debt, the fuel inventory financing trust which the Company is planning to enter into should go a long way towards eliminating this source of attrition, by putting the costs directly on the backs of the Company's customers through the mechanism of the CGA. For purposes of

common equity risk, this mechanism reduces the risk to common stockholders.

[4] Taking all of these concerns into consideration, as well as the proforma adjustments allowed, this Commission will not allow a factor to be added to the previously determined cost

of capital, but will allow a Step Increase as of January, 1983, for the increases or decreases in actual property taxes; insurance over \$209,009 as shown in Exhibit 4-B, Line 14 as applied to insurance coverage in force of the date of this Order; in the public utility tax assessment (including any assessment to cover the Governor's Council on Energy) over the \$65,854 shown on Exhibit 4-16; updated cost of capital and capital structure, but holding the cost of common equity at 15.5%; wage increases if considered reasonable by this Commission and corresponding changes in pension accruals, BC/BS, dental plan premiums, and payroll taxes; and approved amounts for the net increases in computer hardware, software, and/or a programmer.

In addition, the difference in rate case expenses between the \$62,985 pro-formed in Exhibit 4-H and the actual amount, approved by this Commission, should be surcharged over a two-year period beginning after the date of this Order.

V. Rate Base

The Company originally requested a rate base of \$11,000,314, which was based on the 13-month average ending April 30, 1981. Through the settlement process, this was reduced to \$10,971,765, which was the amount the Company requested in its revised filing, Exhibit 20, Schedule D.

Based on the issues of Seasonal Sales and Fuel Inventory Trust Financing, the Consumer Advocate in brief requested rate base be reduced by \$24,000 and \$197,505, respectively, to \$10,750,260.

Seasonal sales are discussed elsewhere in this Report, but as Attorney Gentili points out, the Company does have fixed assets dedicated to serving seasonal customers. To correctly determine the amount of fixed assets dedicated to serving seasonal customers, a full allocation study is required, but one was not done in this docket, and will be handled through a separate docket on interruptible or seasonal sales.

The \$197,505 arose due to testimony by the Company and cross-examination and requests by Mr. Traum of the PUC Staff, the Consumer Advocate's Brief on the issue of the Fuel Inventory Trust Financing, and the Company's compliance in reply brief.

This Commission will reduce rate base by \$197,505 as all parties recommend and allow the CGA adjustment as outlined above, but with the caveat that once the Financing Plan is completed, it must be submitted to this Commission for careful scrutiny and approval, if in fact it results in net savings to utility ratepayers.

In summation, the Commission will accept a rate base figure of \$10,774,260.

VI. Seasonal Sales

The Company, in its initial filing, requested a pro forma adjustment to exclude test year revenues and the applicable cost of gas from utility above-the-line operations, with no corresponding rate base or CGA adjustments.

The Settlement Agreement addressed this area and went along with the pro forma adjustments to exclude base year revenues and cost of gas associated with seasonal sales, and "the parties agree(d) that commencing November 1, 1982,

gross margins earned on seasonal sales will, up to a level of \$86,000 during the preceding November 1 through October 31 year, be split, with 50% of the margin earned on seasonal sales being retained by the Company and 50% of the margin earned on seasonal sales being refunded to customers as an offset in the cost of gas adjustment ("COGA") during the winter COGA period. Commencing November 1, 1982, to the extent gross margins earned on seasonal sales during the preceding November 1 through October 31 year exceed \$86,000, those margins will be completely refunded to customers as an offset in the winter COGA. The refund amount will be shown as a separate line item in the calculation of the COGA. No interest will be paid on the amount to be refunded. The parties agree that gross margins earned to seasonal sales will not be considered in computing working capital for ratemaking purposes in this proceeding."

During the course of the January 18 and 19, 1982 hearing dates, the Company revised its initial request to conform with the Settlement Agreement in Exhibit 23.

The Consumer Advocate in brief went along with the Agreement as negotiated by his predecessor, but suggested two additional items. The first, a \$24,000 adjustment to rate base was addressed in the rate base section of this report. The second, "in the event the Commission accepts any variant of the second stage updating the Company's rates (see Exh. 16, page 12 and TR 2-70), it is submitted that seasonal sales should be reviewed. The purpose of the review should be to examine the workings of the aforesaid proposal and to consider whether the aforementioned crediting methodology or cost allocation methodology would be more appropriate."

Since the Commission has a separate docket on the subject of seasonal or interruptible sales, these sales and related costs will be investigated, and the Commission will then take any action which it deems appropriate.

However, since this Commission does not adhere to the concept of retroactive rate making and feels we have sufficient information in this record, we will basically accept most aspects of the Settlement Agreement #1 on seasonal sales until a decision is reached in the previously mentioned docket.

The Company proformed all revenues and costs of gas related to seasonal customers, which had been booked above the line, out of the test year and didn't make any other corresponding expense or rate base proformas. Due to these adjustments, or lack of such, the seasonal sales profit margin and recoupment of the Company's temporary rates would result in a double return to the Company from July 7, 1981 to date.

In the Settlement Agreement, the Company had waived its rights to any temporary rate recoupment from July 7, 1981 through the November, 1981 billing cycle, and for the reasons noted above, we will not allow any recoupment prior to November, 1981.

Commencing November 1, 1982, and until a decision is reached on the newly opened docket on seasonal and interruptible sales in which the proper allocations will be developed, all gross margins earned on seasonal sales will be refunded to customers, on a lagging basis, through the next winter COGA. No interest will be paid on the amount to be refunded and the amounts will not be considered in computing working capital for rate making purposes.

The issue of past Tennessee Gas Pipeline refunds related to interruptible or seasonal customers will be handled through the COGA report and order, as the subject was addressed in greater depth in those hearings.

VII. Revenues

A. Refunds Attributable To Interruptible/Seasonal Sales

[5, 6] As the Commission noted in Gas Service — DR 81-285, refunds associated with natural gas pipeline refunds relate to utility operations. Gas Service booked these revenues under non-utility propane operations, which is in violation of Commission directives and proper accounting procedures. Since interruptible and seasonal customers' revenues and expenses are booked above-the-line and obviously in accounts related to utility operations, the refunds must be added back into test year revenues. For twelve months ended April 30, 1981, the additional revenue is \$110,444. This figure is found appropriate; whereas twelve months ended October, 1981 yields approximately the same figure, \$111,828. This adjustment to test year revenue is found to be appropriate, both as to accounting practice and as to a fair representation into the future.

B. Triangle Pacific, etc.

The Company, initially, in Exhibit 1 of Mancini's proformed test year operating revenues to a level of \$17,319,213. This was arrived at by adjusting actual test year revenues of \$20,578,204 downwards for removal of \$3,356,991 of Seasonal Sales, and upwards by \$98,000 to recognize revenue to come from a meter account charge. The Settlement Agreement raised adjusted test year revenues by \$47,992 to \$17,367,205 to adjust for the billing adjustment to Triangle Pacific.

The revenues for the test year were discovered to be \$47,992 lower than tariffed rates would require due to a billing adjustment to Triangle Pacific for over billings in prior periods. This adjustment was included in the settlement agreements after being pointed out as a result of a PUC audit of the Company.

This \$17,367,205 was then utilized by the Company in Exhibit 20.

During cross-examination of Company's witnesses, the PUC Finance Staff introduced Exhibit 27 relative to the revenue to be received by the Company from the institution of a 1 1/2% monthly interest charge for late payments, which the Commission accepts and our Order will issue accordingly. Since both the Company and Consumer Advocate in brief state that \$61,617 should act to reduce the amount of rate relief required in the instant proceeding.

C. In summation, the Commission accepts \$17,539,266 as the test year proforma revenue.

VIII. Expenses

A. Country Club Expenses

[7] The Gas Service filing submitted after the Supreme Court decision requested an increase in rates of \$2,040,538. Included in this request for an increased revenue level was approximately \$4,999 of expenses and dues associated with activities at a local private country club. In the

settlement provision only \$811 of these expenses were excluded. The remainder were sought to be recognized as a legitimate operating above-the-line expense chargeable to ratepayers.

The settlement was rejected in part because of the inclusion of this provision

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in test year expenses. Historically, the public interest has been defined to include only expenses that were necessary for the deliverance of energy. *Legislative Utility Consumers' Council v Public Service Co. of New Hampshire* (1979) 119 NH 332, 31 PUR4th 333, 402 A2d 626.

Nationwide, public utility commissions have excluded expenditures for social and service clubs as being not properly chargeable to the ratepayer. *Re South Carolina Electric & Gas Co.* (SC 1979) 34 PUR4th 458; *Re Ohio Edison Co.* (Ohio 1980) 33 PUR4th 435; *Re Atlanta Gas Light Co.*, Docket No. 3167-U, Jan. 30, 1980; *Re Laclede Gas Co.* (Mo 1978) 27 PUR4th 241; *Re Inter-mountain Gas Co.* (Idaho 1979) 30 PUR4th 231. These expenses are recognized and booked below the line and thereby chargeable to stockholders. *Re South Carolina Electric & Gas Co.* (SC 1979) 34 PUR4th 458.

Initially, Gas Service placed all of these expenses above the line. In the settlement, \$811 of these expenses were properly related to a retirement party. However, the settlement continued to include \$4,188 for rooms, meals and dues at the local country club. In reducing their request in subsequent hearings, Gas Service again agreed to lower the level of these expenses by another \$807. This left a remainder of \$3,381, which Gas Service sought to be included in test year expenses and chargeable to ratepayers.

There has not been a demonstration that these expenses were beneficial to ratepayers. Nor can this Commission envision a necessity for these type of expenses to be incurred when due to deregulation, natural gas ratepayers are already being subjected to large increases in rates outside their control or the control of this Commission. The Commission will remove all expenses associated with the local country club. Gas Service Company is ordered to book these expenses below the line and revise all of its 1980 and 1981 annual reports to reflect these expenses below the line.

B. Officer Relocation Expenses

[8] During the course of the test year, Gas Service Company hired a new vice-president. The new vice-president could not immediately settle into the service territory. Consequently, motel costs for over eleven months, \$2,568, were incurred. In addition, \$2,075 worth of renovations and inspections for his new home were booked above the line.

The Commission auditors discovered these expenses as being booked above the line and thus chargeable to ratepayers. These staff members properly challenged their placement above the line and part of the revenue level originally sought. Gas Service to its credit agreed to remove from test year level expenses all of the renovation expenses and 50% of the motel costs. These expenses were removed in both the settlement agreements and the final submission by the Company. While appreciating the good faith effort of Gas Service on these matters, the public good requires the removal of all expenses associated with the relocation based on the standard

regulatory principle that these expenses will not be recurring and thus should properly be excluded. These expenses should be booked below the line.

C. Automobile Expenses

[9] Based on the record in this case, the Commission understands that the Company leases 65 vehicles of which 19 are garaged at the plant and approximately

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46 are taken home each night by employees.

If we were to estimate that only 42 of these are used for commuting an average of 24 miles each way from employee's homes to work places and back and at lunchtime, and used 217 days a year at a conservative cost to the Company of \$0.23 per mile²⁽²³⁾, the cost comes out to \$50,309 annually.

Even recognizing that some of these estimated costs are capitalized, and may be in lieu of wage increases, quoting the recommendations of the Governor's Task Force:

"Eliminate Use of State Vehicles for Commuting.

"More than 350 state vehicles are used for daily commuting to Concord offices. Most states prohibit such practices except in unusual circumstances. Enforcing a non-commuting policy would reduce current operating expenses by an estimated \$411,000 per year"

This results in a savings of \$1,175 per vehicle on average.

If such a large savings is available to the State Government, it is clearly a prudent policy of cost savings for utilities and Gas Service in particular.

As a first step along the route towards halting the ratepayer's subsidization of commuting to Company employees, this Commission will reduce proforma expenses by 10% of the \$50,309 noted above, or \$5,030 rounded.

D. Computer Expenses

[10] In the Company's Exhibit 10, \$30,021 is still included, in spite of the fact that the Company readily admits in its reply brief, "the Company has not yet acquired its computer hardware, software, or programmer." The brief goes on to state "that expenses with respect to the computer will be incurred this year." (1982). Referring back to a footnote in Exhibit 4, Schedule I, "the new staff would assist in the selection and design of the system during the fall of 1981."

Since the computer expenses have already been substantially delayed, and the affiliation with Manchester Gas Company may further delay incurring those costs, the Commission will not allow a proforma adjustment, but has made allowance in the Step Increase for such costs.

E. Wages Overbooked

This item relates to a \$10,000 overcharge in test year expenses of Mr. Kelley's salary which was attested to by the Company's Treasurer.

F. Summation

The Company in Exhibit 1 showed actual test year revenue deductions to be \$19,612,441,

performed to \$16,881,004. Settlement Agreement #1 further revised this figure to \$16,742,017. Company Exhibit #20, then performed it to \$16,831,353.

Adjustments A — E further revise this figure downwards by \$49,716 prior to making the tax adjustment as follows:

In order to calculate the corresponding tax adjustments, we will summarize our changes from Exhibit 20.

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

| | <i>Exh. 20</i> | <i>Adjustments</i> | <i>Adjusted Total</i> |
|-------------------------|----------------|---|---------------------------|
| Oper. Rev. | \$17,367,205 | \$ + 172,061 | \$17,539,266 |
| Rev. Deds. | 16,831,353 | - 49,716 | |
| | | + 107,584 | |
| | | (tax adjusted per Exhibit 20, Sch. B) | |
| | | | 16,889,221 |
| | | | |
| Gas Op. Inc. | \$ 535,852 | \$ 114,193 | \$ 650,045 |
| Appliance Rental Income | 119,362 | - | 119,362 |
| Net Utility Oper. Inc. | \$ 655,214 | \$ 114,193 | \$ 769,407 |

Based on this computation, the Commission will accept \$769,407 as the pro-formed test year net utility operating income.

Revenue Increase Required

The Company's revenue increase required is \$1,284,550 as calculated in accordance with Mancini's Exhibit 20, Schedule C.

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

CALCULATION OF RATE INCREASE

Cost of Capital percent
ADD: Attrition rate

Rate of Return to be Applied to Rate Base

Rate Base

Required Net Utility Operating Income

Net Utility Operating Income Pro Forma

Deficiency in Net Utility Operating Income

Rate Increase (\$661,415 divided by .5149)

Our Order will issue accordingly.

IX. Rate Design

[11] This Commission is extremely concerned with the issues of rate design for the Company

for several reasons. First and most importantly, gas industry prices, as a result of the Natural Gas Policy Act and possible deregulation scenarios, are rapidly approaching market clearing levels. The AGA predicts real price increases of between 22 percent and 82 percent by 1985³⁽²⁴⁾, which may well make gas non-competitive with certain types of oil, particularly if oil prices continue to decline and then remain stable through 1985. Exhibit 21, Schedule 2, shows gas to be highly competitive at present prices except for industrial heating; thus past "conservation" efforts reflected in Company sales experience must reflect primarily life-style changes and energy efficiency improvements, and not fuel substitution. What is going to happen to this Company and this industry if gas becomes non-competitive for heating and possibly other uses? The threat is very real and is recognized by Mr. Inglis (TR 2-86); utilities should be prepared to experience a revenue erosion of tremendous magnitude during

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the adjustment period when supplies and demands become balanced at the higher prices. The Commission is also particularly concerned by this problem at the present time because of the prospects for new long-term supply contracts, such as with Boundary Gas and others, at much higher prices and with Take-or-Pay contract provisions. If the bottom is going to fall out of the retail gas market, better for all concerned, including ratepayers and stockholders, if it happens before such take or pay provisions become effective.

Secondly, this Commission believes a major function of rate design should be to promote economic efficiency. Clearly, the costs of gas have been held artificially low for many years; deregulation is intended to remedy this situation and to allow gas supplies to be priced at their true economic costs.⁴⁽²⁵⁾ Such a policy is consistent with the deregulation of oil in this country and the consequent free market pricing of oil, which we have recently seen work to the disadvantage of OPEC. The Commission reviewed the economic theory of pricing policy quite extensively in DR 79-187, Phase II, and found that such policy should be based upon marginal cost analysis, as opposed to embedded accounting cost analysis⁵⁽²⁶⁾, precisely because of the objective of promoting economic efficiency. Two conclusions must be pointed out. First, the marginal cost of new supplies of gas are very expensive. Second, the cost of service analyses prepared by the Company and presented in Exhibit 17, Schedules B-1 and B-2, being embedded accounting cost studies, are unpersuasive.

In layman's terms, the concept of marginal costs and pricing policy boils down to giving customers the correct price signals in order to allow them to make the proper decisions about purchases. Consider, for example, someone who is building a house and must decide whether to use gas, oil, or electric heat (let us ignore for purposes of the example the complications of insulation, passive solar or wood heat). That customer should be seeing marginal costs for all three options, as these represent the true costs of his added demand. If one option is priced below the cost of providing the incremental supply (even if the offered price is at the average embedded cost), the customer may select that option because it is the least costly, even though it actually *costs* more to supply than he would be willing to pay.

Thirdly, the Commission is concerned with rate continuity and revenue stability. Rate continuity does not imply keeping prices low, it means attempting to stabilize billing impacts to

customers over time. Given that gas prices are going up dramatically, the Commission is concerned that the customers for whom such impacts are potentially most difficult, be aware of the problem. Revenue stability for the Company is also a particularly significant problem with large and continuous increases in retail prices; it is potentially dangerous when competing fuels are available at attractive prices. These problems are unavoidable, given the trajectory of gas supply prices; the best we can do is to anticipate these problems and make controlled changes now that will prevent real difficulties later.

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Based on the foregoing, this Commission finds that substantial changes in rate design for the Company are needed in order to best prepare for the future. The rate design changes proposed by the Company, both before and after the proposed settlement, do not go far enough to address the concerns of this Commission. In particular, the proposal to virtually double the customer charge fails to address these concerns; the charge increase would produce a small increase in revenues not subject to conservation but would at the same time penalize the smallest customers and understate the benefits of conservation. In addition, the customer charge is a pricing signal that offers customers no information on the issues of gas supply and that has no counterpart in the oil market with which gas competes. The proposed charge is not supported by the record in this case. The Commission will allow a modest increase in the customer charge, to \$3.10, the level currently in effect for Northern Utilities. In addition, the meter account charge proposal will be accepted. The proposed \$0.1532 roll-in of the CGA is also approved.

The rate for domestic and general service shall each contain two blocks, set at 80 and 200 therms, respectively. The charges for these blocks will be established on the basis of a three-and-one-half-cent differential, one-half of the differential proposed in settlement and by the Company in Exhibit 21. These rates will be significantly flatter than those proposed by the Company; the action is required, in the Commission's judgment, by the prospects of dramatically higher gas costs in the future, and the need to provide proper price signals to the Company's customers.

In recognition of the potential revenue impact of these sales, this Commission will accept documentation by the Company of revenue erosion occurring as a result of this rate structure change prior to the step increase, and will allow an appropriate adjustment at the time of the step increase.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that as of the date of this Order the Company shall reflect in its bills to tariffed customers an annual increase of \$1,284,550; and it is

FURTHER ORDERED, that the Company shall recoup over a 12-month period the shortfall in revenue levels between the currently effective temporary rates and the newly approved permanent rates since the November 1981 billing cycle; and it is

FURTHER ORDERED, that Seasonal Sales shall be accounted for as laid out in the attached

Report; and it is

FURTHER ORDERED, that preliminary approval to the Company's inventory trust financing and temporary flow through of financing costs through the CGA until implementation of the Company's inventory trust financing is granted; and it is

FURTHER ORDERED, that approximately one year from the date of this Order the Company shall file for a step increase based on the items noted in the attached Report; and it is

FURTHER ORDERED, that the Company shall surcharge over a two-year period the approved amount of rate case expenses as referred to in the attached Report; and it is

FURTHER ORDERED, that the Company shall commence billing accounts which are thirty (30) or more days

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late at 1 1/2% per month, after proper notice; and it is

FURTHER ORDERED, that the Company shall file Section 2, 12th Revised Pages 4 and 5 superseding Section 2, 11th Revised Pages 4 and 5; and it is

FURTHER ORDERED, that these tariff pages are to comply with the rate design set forth in the Order.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1982.

FOOTNOTES

¹As stated in the Company's reply brief, Gas Service bonds are not rated by Moody's, but that in itself cannot be taken they are not of Aa quality.

²The rate State employees are reimbursed for the use of their personal vehicles on State business.

³Exhibit 28, AGA Energy Analysis, page 8.

⁴This Commission recognizes the potentially disastrous impacts of Indefinite Gas Price Escalator Clauses cited in Exhibit 28, and maintains that such clauses do not represent true economic costs.

⁵Report and Order Nos. 15,424 (67 NH PUC 25) and 15,425 (67 NH PUC 97).

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NH.PUC*03/11/82*[79224]*67 NH PUC 207*Gas Service, Inc.

[Go to End of 79224]

Re Gas Service, Inc.

DR 81-285, Fourth Supplemental Order No. 15,533

67 NH PUC 207

New Hampshire Public Utilities Commission

March 11, 1982

ORDER revising cost of gas adjustment.

1. ACCOUNTING, § 49 — Gas — Cost of gas refunds.

[N.H.] Refunds associated with the cost of natural gas should be booked above the line since below-the-line treatment creates an artificial impression that the utility is less profitable than it actually is, pushes down the rate of return, and leads to more frequent rate increases. p. 208.

2. RATES, § 303 — Fuel clauses — Overcollections — Interest rate.

[N.H.] The commission found it was reasonable to use an 8 per cent interest rate for over- and undercollections in its cost of gas adjustment where there was no evidence that the company had to borrow to finance undercollections, and required customer deposits accrued interest at the same rate. p. 209.

BY THE COMMISSION:

DISPOSITION OF MOTION FOR REHEARING AND OTHER RELIEF

On November 25, 1981, Gas Service, Inc. ("the Company") filed a motion for rehearing and other relief on the matter of the 1981-82 winter cost of gas adjustment. The Commission issued Order No. 15,284 (66 NH PUC 475) on November 6, 1981 which rejected the 24th Revised Page 3 of Section 2 of the Petitioner's Tariff NHPUC No. 5 — Gas for an adjustment of \$.2021 and ordered the Company to file tariff pages reflecting an adjustment of \$.1325 per therm effective November 1, 1981.

In the motion for rehearing, the Company claims that the Commission's order is erroneous and unlawful. The Commission will address each of the disputed items claimed by the Company.

1. The Company claims that reductions in the anticipated cost of gas for its 1981-82 winter period sales on account of portions of refunds received from its pipeline gas supplied are unjust, unreasonable, unlawful, and discriminatory. The refunds which the Company objects to being included as a reduction of the 1981-1982 winter cost of gas are related to 1978 refunds and April 1, 1980 to

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October 31, 1981 refunds which they claim are attributable to interruptible or seasonal sales. They further claim that it is retrospective ratemaking to include deductions which were previously adjudicated in prior cost of gas adjustment hearings and were either approved or acquiesced in by this Commission. They further claim that treatment of the aforementioned refunds is properly "below-the-line" because they are related to contracts which cannot be

changed when the cost of gas from its supplier increases and do not relate to firm year-round customers. Gas Service states that interruptible and seasonal sales benefit firm year-round customers because they enable the Company to avoid penalties, are profitable and reduce the cost of gas to the firm year-round customers.

The Company has in the past submitted data that placed the costs and subsequent refunds applicable to interruptible and seasonal customers outside the cost of gas adjustment. While there has been no serious questioning of this practice, nor a definitive Commission opinion, data excluding interruptible and seasonal customers has been accepted by the Commission in the past.

[1] What was never accepted was the concept that refunds associated with the costs of natural gas should be booked "below-the-line" or in non-utility operations. Every year the Commission requires that both the costs of gas and any associated refunds to be included in "above-the-line" or utility operations.

The placement of interruptible refunds either below-the-line or in non-utility operations is against proper accounting practices, the Commission chart of accounts and the principle of equity. Such a procedure artificially creates an impression that utility operations are less profitable than they are in actuality. Such a procedure artificially pushes the return from utility operations down and leads to more frequent rate increases. To characterize interruptible refunds as extraordinary and therefore non-recurring is contrary to the continuous flow of these refunds over the years.

The placement by Gas Service of these refunds in non-utility operations is directly against the explicit directives by this Commission. The Commission issued a directive in March, 1965, revised in June, 1969 requiring all companies to record refunds paid or accrued during the current accounting period on the appropriate operating revenue and operating expense accounts. It is further improper to expect from year-round customers to carry the costs of facilities used to supply interruptible customers without allocating any costs to those customers for ratemaking purposes. The Company's claim to keep the money through booking the refunds in non-utility operation rests on an allegation that it has absorbed price increases by its pipeline suppliers without being able to pass those costs through to interruptible customers because their rates are generally tied to the cost of No. 6 oil is without foundation. The Commission is aware that in comparisons between the price of oil and the cost of pipeline gas, the former has witnessed a phenomenal increase in the former as compared to the later.

These refunds are to be restated on all year end financial statements going back to 1965 as utility revenue. The Commission will expect such revised year end reports within forty-five (45) days of the date of this order.

The Commission will remove these refunds from consideration within the context of the cost of gas adjustment. However, correspondingly a pro-forma

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revenue adjustment must be made to rate case revenue to reflect these as utility revenues. Such action will reduce the rate increase allowed. Further, previous refunds now properly placed above-the-line increases the overall rate of return earned over previous years, some in a significant fashion.

[2] The Company claims that the adoption of a compound rate of interest of 8% per annum for computing interest on over/under collections and Tennessee refunds constitutes an unconstitutional taking of their property and in violation of the due process clauses of the Federal and State Constitutions. The Commission finds this claim to be unfounded in fact. In the past, the Company has been in an overcollected situation more often than not and has not objected to that interest rate. Furthermore, there is nothing in the record to prove that the Company has had to borrow short-term funds to carry undercollections. A review of the Company's annual records would find that funds are supplied by depreciation and deferred taxes which are accrued during winter periods when capital outlay is reduced. Depreciation funds are provided by the capital structure at rates far less than the short-term cost of debt and deferred taxes are provided at zero-cost to the utility. Utilities require customer deposits which accumulate interest at 8%. The Commission finds it reasonable to use that same rate on over/under collections.

The Company objects to the use of summer 1981 overcollections to offset the anticipated winter cost of gas unless the Commission uses an interest rate higher than 8%. It further claims that the Commission used an incorrect amount of \$587,176 for the summer period overcollections and that amount should be \$108,685. The matter of interest has been previously addressed except for the fact that the Company has the use of the summer overcollection to reduce its borrowing needs. The Commission finds it reasonable to provide for an early payback of that overcollection to its customers to reduce the burden of costs during the winter heating season, and the \$108,685 will be used in our calculation. Such a procedure more properly amortizes significant or unusual over or undercollections.

The Company further argues that the Commission's order is erroneous regarding several of the adjustments which were made. The first claim is that the \$130,955 adjustment in the cost of propane, representing a loss of \$125,000 on the sale of propane in March and April, 1981, with \$5,955 interest, was unjust, unreasonable, unlawful and contrary to the evidence and should not be made. Gas Service has filed documentation to show that the propane sales to Concord Gas and seasonal customers was not included in the reconciliation on the 1980-81 winter cost of gas adjustment. A review of the data furnished in the Company's outstanding rate case shows that an adjustment was made to proform the loss from utility operations for ratemaking purposes. The Commission will expect this to be reported in all financial statements as below-the-line. The Commission further notes that the sales at a [loss contributed to the deficiency in the earned rate of return, by \$122,850 (Exhibit 10 to the motion for rehearing). The loss adjustment from the previous order will be amended in our calculation of the cost of gas adjustment rate for the remainder of the winter period.

The Company objects to the Commission's reduction of \$398,056 in propane costs for the winter 1981-82. The Company's cost was based on a price of \$0.68

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per gallon which the Commission reduced to \$0.586 per gallon based on the price to Keene Gas. Both companies have the same type of contracts for propane supply from Warren Petroleum. The Company claims that the only difference between the prices paid by both

companies is for transportation. The Company further claims that it has an additional contract for propane storage and that the price of storage adds to the propane cost while increasing reliability of winter supply by providing an additional source of propane. They further argue that it is unreasonable for the Commission to substitute its judgement for the Company's judgement and that it would be more costly for the Company to provide its own storage capability. In our report in this case, the Commission has stated that it will open hearings to review decisions on supply mix and the subject of the cost of gas adjustment. Until those hearings are held and a full investigation is completed, the Commission will use the actual propane costs booked by the Company for November and December, 1981, and January, 1982 and use the propane cost of \$0.64 per gallon which the Company included in its revised calculation of the cost of gas adjustment for the remainder of the winter period rather than for the Company's original 68¢ a gallon or the Commission's previously lower number.

The Company objects to the treatment of an expected January 1, 1982 increase in Tennessee Gas rates. The Commission in its previous order stated that it would consider that subject if subsequent events resulted in a known change. Tennessee's filing is now in place and the Commission will accept that rate for the period from January through April, 1982. The Commission, however, will expect Gas Service and all of the other affected utilities to actively participate in Tennessee's rate filings before the Federal Energy Regulatory Commission (FERC) and protect their customers.

As the actual sales are now known from November, 1981 through January, 1982, the Commission will not address the Company's objection to the transfer of expected sales from January, 1982 to November, 1981.

For the balance of the winter period, the Commission will allow a revised cost of gas adjustment of \$0.2410 per therm, calculated as follows:

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

| | |
|--|-------------------|
| Purchased Gas, 2-1-82 through 4-30-82: | \$ 55,414 |
| Gas Service Charge | 3,681,076 |
| Gas Charge | |
| Propane | 878,616 |
| LNG | 154,070 |
| Storage Gas | 433,735 |
| November-January Actual Costs | 6,882,914 |
| Total Estimated Cost of Gas | <u>12,585,825</u> |
| LESS: Recovered Costs, 11-1-81 through 1-31-82 | 5,781,263 |
| Net Estimated Costs | <u>6,084,562</u> |
| Tennessee Refunds and Undercollections | 337,832 |
| LESS: Interruptible/Seasonal Refunds May 1981-October 1981 | 48,639 |
| | <u>7,093,755</u> |
| Net Cost Recoverable, 2-1-82 through 4-30-82 | 7,093,755 |
| Projected Sales, 2-1-82 through 4-30-82 | 13,781,350 |
| Unit Cost of Gas | \$.5147 |
| LESS: Base Cost of Gas | .2745 |
| | <u>\$.2402</u> |
| COST OF GAS ADJUSTMENT, FEBRUARY-APRIL 1982 | |

The \$0.2402 per therm rate is greater than the originally approved rate of \$0.1325. The new rate will be effective for the remainder of the winter period, effective with all bills issued after the date of this order. The actual sales and costs for January, 1982 are based on estimates submitted by the Company. This Commission will expect a detailed reconciliation of the costs of gas for the winter period which will be thoroughly audited by the Commission Staff.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Gas Service, Inc. file with this Commission revisions to its tariff, NHPUC No. 5 — Gas, providing for a Cost-of-Gas Adjustment of \$0.2402 per therm, said adjustment to become effective with all bills rendered on and after the date of this Order.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1982

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NH.PUC*03/11/82*[79225]*67 NH PUC 211*Public Service Company of New Hampshire

[Go to End of 79225]

Re Public Service Company of New Hampshire

Intervenors: Community Action Program, Business and Industry Association, and Office of Consumer Advocate et al.

DR 79-187 Phase II, 57th Supplemental Order No. 15,534

67 NH PUC 211

New Hampshire Public Utilities Commission

March 11, 1982

ORDER adopting an energy cost recovery mechanism.

1. RATES, § 303 — Fuel clauses — Commission authority.

[N.H.] The basis for the commission's authority with respect to the fuel adjustment charge is found in its plenary rate-making authority granted by statute. p. 213.

2. RATES, § 120 — Reasonableness.

[N.H.] The predominant standard in fixing public utility rates is that they be just and reasonable. p. 213.

3. RATES, § 303 — Fuel clauses — Purposes and function.

[N.H.] The purpose of the fuel adjustment charge is to provide a mechanism that is more flexible than a regular rate case to recover rapidly changing fuel costs. p. 213.

4. RATES, § 303 — Fuel clauses — Hearings.

[N.H.] The advantages of semiannual fuel adjustment charge hearings delineated by the commission were: (1) improvement in the quality of scrutiny; and (2) a more predictable pattern of rate changes. p. 217.

5. PAYMENT, § 21 — Billing — Form and sufficiency of statement.

[N.H.] The commission found that an energy cost recovery mechanism did not violate a rule requiring bills to show factors necessary to readily compute the charges. p. 219.

APPEARANCES: Martin L. Gross and Eaton W. Tarbell, Jr., for Public Service Company of New Hampshire; Gerald Eaton for Community Action Program; Dom D'Ambruso for the Business and Industry Association; Captain Joseph Boury and Captain Robert Bersak for the Federal Executive Agencies; and Gerald Lynch, Consumer Advocate.

BY THE COMMISSION:

REPORT

I. Procedural History

The Commission's Thirty-Fifth Supplemental Report and Order No. 14,271, in DR 79-187 (65 NH PUC 251) formally relegated to Phase II of DR 78-187 the issues of rate design. A procedural hearing for DR 79-187, Phase II, was held on June 30, 1980, and formal proceedings were initiated with the Commission's Forty Sixth Supplemental Order No. 14,645 of January 6, 1981 (65 NH PUC 653). The scope of issues included revenue allocation, rate design, the PURPA Section III standards, and the fuel adjustment clause. The Commission additionally expanded the scope of Phase II in Supplemental Order No. 14,861 (65 NH PUC 161), wherein the issue of an annual fuel adjustment charge was specifically incorporated into 79-187 Phase II.

All issues except the fuel adjustment charge were resolved by the Commission's acceptance in Supplemental Order No. 15,425 (67 NH PUC 97) of the stipulated recommendations of the parties filed October 26, 1981. The design of the fuel adjustment charge received special attention by the Commission in Report and Order No. 15,424 of DR 81-87 (67 NH PUC 25), but a final decision was withheld pending settlement or final arguments in DR 79-187, Phase II. The fuel adjustment charge has also received attention during the course of the regular quarterly fuel adjustment hearings held during the recent past, including dockets: DR 81-384, DR 81-357, DR 81-311, DR 81-255, DR 81-227, DR 81-198, DR 81-132, DR 81-108, DR 81-63, DR 81-39, DR 81-19, DR 80-262, DR 80-158, and DR 80-46. The formal records for all of the aforementioned dockets are hereby administratively noticed.

Report and Orders No. 14,424 and No. 14,425 instructed the parties in DR 79-187 Phase II to settle the fuel adjustment charge issues by January 20, 1982, or file final arguments by January 27, 1982. PSNH and staff filed stipulated recommendations on the issue, and CAP submitted a

final brief as well as an Exception to Portions of Report and Order No. 15,424. The Commission issued Order No. 15,459 in Docket No. DR 81-384 (67 NH PUC 107) allowing Fuel Adjustment Charges for the month of February for all electric utilities except Public Service Company of New Hampshire and later issued Fifty-Sixth

Page 212

Supplemental Order No. 15,486 (67 NH PUC 157) accepting the stipulated recommendations of PSNH and Staff in DR 79-187 Phase II. On February 16, 1982, CAP filed a Motion for Rehearing in Docket No. DR 81-384 on the basis that the fuel adjustment charge for PSNH "cannot and has not been eliminated."

This Report is intended to supplement Report and Orders No. 14,424 and No. 14,425, to further explain the Commission's decision in Order No. 15,486, and to provide the basis for the Commission's response to CAP's outstanding motion in DR 81-384, and Exceptions in DR 81-87. It should be noted that all of the above mentioned proceedings have contributed to the Commission's judgement concerning the FAC. Both in the context of consumer complaints and requests for information and in the context of formal proceedings, the attention of the Commission has been continually directed towards the FAC, its design, its impact on consumers, and its operation. The cases referenced above constitute over one hundred hearing days, thousands of pages of testimony and exhibits and innumerable hours of deliberations and preparation of orders by the Commission, all directed to the design and operation of the FAC. In addition, the Commission and Staff have been handling perhaps 100 consumer requests and complaints per week, many of which concern the FAC charges. It is on the basis of this experience that the Commission has formed its judgment and opinion on the FAC issues.

II. Basis of the FAC

[1, 2] The legal basis for the Commission's authority with respect to the Fuel Adjustment Charge (FAC) is found in the plenary ratemaking authority granted in RSA 378:7. *New Hampshire v New England Teleph. & Teleg. Co.* (1961) 103 NH 394, 40 PUR4th 525, 173 A2d 728. The predominant standard reaffirmed time and time again, in fixing public utility rates is that they be just and reasonable. *New England Teleph. & Teleg. Co. v New Hampshire* (1953) 98 NH 211, 99 PUR NS 111, 97 A2d 213. As to the reasonableness of a fuel adjustment charge, the New Hampshire Supreme Court provided guidance in remanding the decision of the Commission in Order No. 10,679:

"for consideration of cost figures developed since the test year ended in August 1971, and provision of appropriate allowance for current costs in some form, whether by fuel clause or otherwise, if the evidence is found to demonstrate the necessity therefor." *Public Service Co. of New Hampshire v New Hampshire* (1973) 113 NH 497, 2 PUR4th 59, 64, 311 A2d 513.

The only specific statutory language regarding the fuel adjustment charge is found in RSA 378:3-a, enacted in 1976. RSA 378:3 previously had required thirty (30) days notice to the Commission before any change in rates, unless otherwise ordered by the Commission. RSA 378:3-a requires a public utility to secure approval from the Commission subsequent to a public hearing held at least seven (7) days prior to the first day of the month in which the fuel adjustment charge is to be levied. RSA 378:3-a, thus established certain procedural requirements

regarding fuel adjustment charges, but did not limit the plenary powers conferred in RSA 378:7, and did not require that a fuel adjustment charge mechanism as defined be provided.

[3] 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.

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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 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.

III. Analysis

A. Commission Findings

The Commission analyzed the FAC mechanism for PSNH in its report accompanying Orders No. 14,424 and No. 14,425. The findings can be summarized as follows:

1. Since November of 1980, the cost of oil and coal delivered to PSNH generating stations have stabilized in comparison to the dramatic changes of other periods during the past decade.
2. In recent years, PSNH has petitioned for rate relief quite frequently, and will continue to do so.
3. The FAC has caused great confusion for consumers. In particular, the FAC offers consumers no information as to the many complex reasons, some of which are under the control of consumers, as to why fuel costs change; the FAC does not represent total fuel costs although most consumers apparently believe it does; the FAC mechanism implies that the Commission examines only a portion of fuel costs in the FAC hearing and not the total fuel costs: the hostility and lack of understanding by consumers creates unnecessary work for the Commission and the utilities, and creates unnecessary resistance by consumers to changes in rates and rate structures.
4. The FAC mechanism has failed to provide incentives to PSNH for an improved generation mix.

On the basis of these findings, the Commission concluded that abolishing the existing FAC for PSNH was in the best interests of the consumer, but withheld final disposition of many FAC issues pending settlement or final arguments on the FAC from the parties in DR 79-187 Phase II. In the interim, the Commission allowed the existing FAC of 1.75 ¢/KWH billed for January, 1982 and ordered the same amount rolled-in to the basic rates as of February 1, 1982.

B. Position of PSNH and Staff

Subsequent to the Commission's Order in DR 81-87, PSNH and the Commission staff filed Stipulated Recommendations of the Parties regarding resolution of the Fuel Adjustment Issues in DR 79-187 Phase II. The stipulation contained recommendations which are consistent with the

interim treatment provided for in Order No. 14,424 of the Commission, and which propose a comprehensive mechanism for treating energy costs in the context of the semi-annual rate adjustments envisioned by the Commission in Report and Orders No. 14,424, and No. 14,425. CAP did not sign the agreement, although they participated in the negotiations, but rather, filed final arguments which disputed the findings of the Commission in DR 81-87. The other parties in DR 79-187 Phase II did not participate

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in the settlement negotiations or file final arguments on the issues.

The stipulated recommendations outline a basic understanding of PSNH and Staff and describe in greater detail proposals for the treatment of energy costs. This basic understanding provides for the elimination of the existing FAC and the adoption of a semi-annual adjustment of basic rates on the basis of forward looking estimated energy costs reconciled for differences between actual and estimated costs in the prior period, accomplished in separate, expedited proceedings. The specific proposals in the agreement refer to the definition of the energy costs to be included in basic rates, the provision of incentive features in the treatment of energy costs, and miscellaneous issues.

The definition of energy costs expands on the costs previously included in the FAC, and includes fossil and nuclear fuel costs (less costs associated with system power sales), the energy costs of secondary purchases (less sales), the cost of purchases from Qualifying Small Power Producers and Cogenerators (QF's) and the full costs of short term power purchases which are fully justified on the basis of fuel savings. These costs will be estimated for a six month period, and adjusted in accordance with the reconciliation of the prior period estimated and actual energy costs. Interest at the annual rate of eight (8) percent will be applied monthly to any overcollections or undercollections that occur and included in the reconciliation.

The proposed incentive features include: an unscheduled outage adjustment which adjusts by ten (10) percent the reconciliation of actual versus estimated unscheduled outage costs in order to encourage better management of facilities by PSNH the inclusion of the full costs to the Company of purchases from QF's to encourage the development of QF's and the pursuit of long term contracts by PSNH; a secondary purchase incentive which allows the full cost of short term secondary purchases to be included in energy costs if such costs are less than the fuel costs avoided; a possible provision to include some portion of the costs of converting Schiller Station to coal in energy costs after conversion in order to assist in the financing of the conversion; and other incentives which may be proposed in the future.

The only significant item in the miscellaneous provisions of the agreement is the requirement that PSNH continue to file information on its actual energy costs on a monthly basis for the information of the Commission and interested parties.

As a whole, these provisions offer a detailed procedure for treating energy costs in a manner that provides some stability in the Company's rates, some protection for the Company and its customers against changes in energy costs, and some incentives for better management and operation of the Company's facilities. The proposal conforms with the findings of the Commission in DE 81-87 and addresses many of the concerns this Commission had expressed in

DR 81-87 and in other dockets. In particular, the proposal offers a respite for this Commission, the Company and its customers from continued, uncoordinated changes in the Company's rates; we are all assured that the rates now in effect should not change at least for five months. In addition, the proposal offers, for the first time, some concrete incentives for improved management and operation of company facilities; implementing

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such incentives has been a goal of this Commission for several years, but the mechanisms for such incentives were not sufficiently developed in the past. The incentives proposed by PSNH and Staff and others that may be developed are extremely important regulatory tools that can provide explicit economic signals, in the form of both carrot and stick, to the Company. These signals, when properly designed, will improve the efficiency of the Company's operations by reflecting in the regulatory treatment of costs, the economic implications, both short and long term, of Company behavior. The four specific incentives proposed effectively accomplish this end. The Unscheduled Outage Incentive and the Secondary Purchase Incentive encourage improved company performance in the short term; the Small Power Producers and Cogenerators Incentive and the Schiller Station Conversion incentive encourage more long term improvements in the Company's fuel costs.

C. Position of CAP

The position of CAP is presented in CAP's Final Arguments, Docket No. DR 79-187, Phase II, in Cap's Motion for Rehearing, Docket No. DR 81-384, and in CAP's Exemption to Parties of Report and Order No. 15,424, Docket DR 81-87. In these documents, CAP asserts the following:

1. Some indication of the cost of fuel should continue to appear on customer's bills.
 - a. the present practice of only printing the FAC on the bill violates Commission Rule 303.05 (c)
 - b. Order No. 14,424 removing the FAC from customer's bills also violates Commission Rule 303.05 (c)
 - c. Customers should receive more information about fuel costs, not less.
2. The Commission cannot and has not eliminated the FAC at this time.
 - a. Fuel costs must be treated differently from other costs, and oil and coal costs continue to exhibit volatility.
 - b. The Commission has not eliminated the FAC, but is merely lengthening the period to six months and taking the FAC rate off the bill.
3. A six-month design for fuel cost recovery is not in the best interest of consumers.
 - a. A six-month design will reduce the scrutiny applied to PSNH fuel costs.
 - b. An abrupt change in rates every six months may be too drastic for consumers to absorb, and the six-month procedure is no guarantee against more frequent rate changes.
4. CAP recommends continuing the quarterly estimated forward-looking fuel adjustment design with some improvements.

5. PSNH should implement a practice of alerting consumers when generating costs are expected to rise significantly.

6. The record is unclear with respect to the inclusion of nuclear fuel costs in the FAC.

7. The full costs from purchases from QF's should be included in the FAC, but delay in full-cost recovery for contracts signed in a particular quarter acts as an incentive for rapid execution of such contracts.

8. The Secondary Purchase Incentive of the Stipulated Recommendations should be investigated, and penalties imposed on PSNH for missed opportunities to lower costs.

9. Insufficient evidence exists concerning interest on over and undercollections, and, therefore, no interest should be awarded at this time.

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10. Clear standards regarding incentives and penalties must be developed and implemented.

11. As the FAC has not been eliminated, the failure to hold a hearing at least seven days prior to February 1, 1982 contravenes RSA 378:3-a, and implies the collection of the folded-in \$1.75 per 100 kwh is illegal.

In responding to these assertions, the Commission notes the following. (Items addressed in reverse order). With respect to item (11), the Commission holds, as reasoned later, that the FAC as defined in RSA 378:3-a no longer exists and no hearing was therefore required; even if an FAC still existed as per such definition, this Commission would have the right to roll into basic rates 100 percent of the established fuel revenues, thus reducing such FAC to \$Zero and therefore avoiding the need for a hearing in accordance with RSA 378:3-a.

The Commission agrees with Item (10), and will develop such standards as incentives or penalties are implemented. The standards for the incentives proposed by PSNH and Staff will be addressed by the Commission during the proceeding on PSNH energy costs beginning in May, and appropriate testimony and exhibits are invited from all parties. Item (8) is also answered by providing opportunity to present appropriate evidence in said proceeding.

The Commission disagrees with Item (9) in that a great deal of testimony is provided on the record. The Commission also notes its acceptance of eight (8) percent interest with respect to customer deposits and the Cost of Gas Adjustment (CGA). Finally, the Commission points out that failing to allow any interest on over or under collections will definitely be harmful to utility and consumer alike; setting the interest rate at 8% *may* be harmful, but in all probability will be less harmful.

The Commission agrees with the first part of item (7) and sees merit in the treatment of contracts with QF's proposed; the issue raised will be ripe for review in the proceeding on PSNH's energy costs beginning in May.

Item (6) is incorrect. The Commission has accepted the proposed treatment of energy costs, which by definition will include the costs of nuclear fuel, and need not be concerned with the volatility of nuclear fuel costs.

Item (5) is an interesting proposal-which the Commission will consider at the proceeding on PSNH energy costs beginning in May, if appropriate testimony and exhibits are presented.

The Commission disagrees with item (4) for the reasons enumerated in Report and Order No. 14,424 and below.

[4] CAP argues (Item 3) that a quarterly FAC is better than the six-month procedure because of the constant scrutiny afforded, because the changes in rates are likely to be more gradual, and because there is no guarantee anyway that rates will not change more frequently. The question of scrutiny is valid and important, and the Commission considered the issue in its deliberations. However, we are of the opinion that a six-month procedure will tend to improve the sophistication with which the Commission, the Staff and the intervenors scrutinize the Company's energy costs. The "quantity" of scrutiny may be reduced somewhat but the "quality" of scrutiny will improve. In addition, the Stipulated Recommendations provide for a continuation of monthly informational filings which allow detailed scrutiny of the Company's costs on a monthly basis by all parties even in the absence of a formal hearing. A six-month time

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frame will also allow greater attention to be placed on establishing the targets and standards required under the incentive features; performing these tasks on a quarterly basis would be burdensome on all parties.

The argument that a six-month procedure is preferable because it will involve less frequent rate changes is not based on any presumption that rate stability can be guaranteed; such a guarantee is simply not possible. Rather, what we hope to achieve is a more predictable pattern of rate changes, one that consumers, the utility and intervenors alike can plan for. Extraordinary circumstances that require immediate action with respect to energy costs or other costs may arise; however, by planning for semi-annual rate changes, we expect that such extraordinary circumstances are less likely to occur, and will be less disruptive when they do occur. With respect to energy costs, the predictability of semi-annual changes must be balanced against the risk that substantial over or under collections will occur. Because of the general recent stabilization of fuel costs, in comparison with price volatility in prior years, we are of the opinion that the increased predictability is worth the risk.

Finally, CAP argues that a six month change in rates may be too abrupt for consumers, particularly if substantial over or undercollections have occurred. In this case, the question boils down to whether more frequent ups and downs are better than less frequent, but perhaps more dramatic, ups and downs. In the first place, a six month time frame may tend to balance out the ups and downs better than a quarterly time frame due to fluctuations that occur seasonally, that result from scheduled or unscheduled outages, or that otherwise balance off from one quarter to the next. Secondly, we must consider again the value of predictability, and the corresponding improvements in the ability to plan a budget, versus the risk of dramatic changes in energy costs or substantial balances of over or under collections, which will cause more dramatic semiannual changes or a need for a more frequent change. The Commission considered these issues and again, our opinion is that the predictability offered by six month proceedings is worth the risk. The Commission also notes that if the information filed by PSNH on a monthly basis shows that

dramatic changes are occurring, any party may petition the Commission to initiate an investigation, and the Commission may on the basis of such investigation, take appropriate action, including the revision of the Company's rates. CAP's constituents are thus protected against undue harm whether the Commission plans for semi-annual rate revisions or not.

In Item (2), CAP maintains that the Commission cannot eliminate the FAC because fuel costs are still volatile, and that the Commission has not abolished the FAC but merely changed its terms. We disagree. The Commission recognizes its responsibilities as set forth by the Supreme Court (*Public Service Co. of New Hampshire v New Hampshire* [1979] 113 NH 497, 2 PUR4th 59, 311 A2d 513), but notes that that decision does not require a fuel adjustment clause and specifically leaves open the possibility that some other mechanism might suffice. The Commission has chosen to exert its plenary ratemaking authority under RSA 378:7 and design such a mechanism, one that incorporates energy costs fully in the Company's basic rates, but that also provides for the appropriate matching of energy costs

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with Company revenues as provided for in a specific set of procedures and definitions. This mechanism is more comprehensive than an FAC, incorporating as it does all of the Company's energy costs, and is not merely a device to reflect "increases and decreases in the delivered cost of fuel", as the FAC is defined in RSA 378:3-a (I). This mechanism provides a comprehensive approach to regulatory treatment of the Company's energy costs including incentive features. It is clearly a new approach, and is substantially different from standard regulatory treatment of utility operating costs. Although the mechanism devised borrows certain procedural and methodological elements from the previous FAC, it cannot thereby simply be proclaimed a FAC. An overall context of semi-annual rate changes for PSNH was presented by the Commission in Report and Order No. 14,424, in recognition of the extraordinary financial circumstances of the Company. The energy cost mechanism recommended by PSNH and Staff is premised upon that concept, and not the concept of an FAC, which is designed to address increases or decreases in the costs of fuel over and above the costs of fuel previously included in basic rates. Instead, for PSNH, all energy costs, including fuel costs, will now be included in basic rates.

The Commission also disagrees with CAP's contention that oil and coal costs continue to exhibit volatility. It is true that such costs are variable, and have varied in the recent past. However, the magnitude of these variations are less than they were at times in the past. The period of law 1979 and early 1980 is an example of a dramatic period in the world oil markets, and prices were, indeed, quite volatile. In the opinion of this Commission, prices are more stable now, and are likely to be more stable in the future. The variability of fuel costs has not disappeared, but is reduced. As support for this opinion, the Commission takes administrative notice of the latest forecast by Wharton Econometric Forecasting Associates,¹⁽²⁷⁾ which indicates a stable world oil market in the near term.

[5] In Item (1), CAP argues that the Commission actions violate Commission Rule 303.05 (c), and that consumers should receive more information about fuel costs, not less. CAP's contention that Commission Rule 303.05 (c) is being violated is clearly incorrect. The rule merely states that the bills show meter readings and other factors necessary to readily compute the charges, but does not require any distinction between fuel related charges or other charges

billed on the same KWH basis. In the case of PSNH, the elimination of the FAC and the inclusion of the related energy costs in base rates in no way constitutes a violation of Rule 303.05 (c). The Commission does agree with CAP that consumers should receive more information about fuel costs, not less. However, that information should be provided in a manner that informs rather than confuses. CAP fails to convince us that having a separate item on the bill for fuel or FAC can inform consumers as to the myriad complex factors which influence fuel costs (and other costs). The FAC is an improper and illusory price signal. It represents average cost, is not differentiated by time period, and merely confuses the pricing signals which should be inherent in the rate structure and the consumer's total bill. Such a signal does

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not meet the test of CAP's own stipulation in DR 79-187 Phase II to marginal costs as the appropriate basis of pricing policy. In the opinion of this Commission, the FAC has confused rather than educated consumers, and the net effect of a separate, specifically highlighted notation of the fuel costs on customer's bills is to oversimplify, confuse, and irritate. Other means of informing consumers must be developed and in that regard we are quite receptive to the suggestions presented by CAP. The Commission invites CAP and other parties to present further information on customer alert programs or similar programs during the next proceeding on PSNH energy costs beginning in May.

Our Order will issue accordingly:

SUPPLEMENTAL ORDER

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

ORDERED, that the foregoing Report is adopted as Supplemental to Commission's Fifty Sixth Supplemental Order No. 15,486 (67 NH PUC 157).

By Order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1982.

FOOTNOTE

¹Wharton Econometric Forecasting Associates, Inc. The Wharton Quarterly Model Forecast. January 27, 1982. Pre-meeting Forecast Review

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NH.PUC*03/11/82*[79226]*67 NH PUC 220*Fuel Adjustment Charge

[Go to End of 79226]

Re Fuel Adjustment Charge

DR 81-384, Supplemental Order No. 15,535

67 NH PUC 220

New Hampshire Public Utilities Commission

March 11, 1982

ORDER denying motion for rehearing.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

Upon consideration of the Supplemental Report in Docket No. DR 79-187, Phase II, which is made a part hereof; it is

ORDERED, that CAP's Motion for Rehearing is denied.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1982.

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NH.PUC*03/11/82*[79227]*67 NH PUC 221*Public Service Company of New Hampshire

[Go to End of 79227]

Re Public Service Company of New Hampshire

DR 81-87, 14th Supplemental Order No. 15,536

67 NH PUC 221

New Hampshire Public Utilities Commission

March 11, 1982

ORDER noting and preserving exceptions to report.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

Upon consideration of the Supplemental Report in Docket No. DR 79-187, Phase II, which is made a part hereof; it is

ORDERED, that CAP's Exception to Portions of Report and Order No. 15,424 (67 NH PUC 25) are noted and preserved within the limits prescribed by statute.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1982.

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NH.PUC*03/22/82*[79228]*67 NH PUC 221*Sunapee Hills Water Company

[Go to End of 79228]

Re Sunapee Hills Water Company

DR 81-367, Fourth Supplemental Order No. 15,539

67 NH PUC 221

New Hampshire Public Utilities Commission

March 22, 1982

ORDER denying motion for rehearing.

BY THE COMMISSION:

DISPOSITION FOR MOTION FOR REHEARING

A Motion for Rehearing was filed by Donald Seymour d/b/a Sunapee Hills Water Company on March 15, 1982. The Motion was filed to take additional evidence and argument on (1) the salary level allowed; (2) the purchase price paid by Donald Seymour for the water system; and (3) the effective date at which the recovery of allowed operating revenues shall commence.

The determination of the salary allowed in this case is based on testimony presented and on the expertise and experience of the Commission and its staff. We have allowed an hour and one half per day for superintendence and such bookkeeping as is necessary on a water

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system serving 60 customers. We believe that on most days the allowance of 1 1/2 hours is not, and will not be necessary to check the pump house and any other areas of this water system. It was not intended to include time necessary for a daily inspection of the roads over each water line in this system nor do we consider such an inspection necessary. The time we have allowed is an average allowance and if on rare occasions it should be exceeded, those occasions when such an allowance is not needed will more than be offsetting. The time required to bill 60 customers, four times a year, at a single and equal charge, cannot be considered as a factor to change this allowance.

Our allowance of funds under Repairs and Maintenance is intended to recover the cost of materials and labor for such activities based on an ongoing average. The accounting and recovery for any extraordinary expense would be in accordance with the Commissions system of accounts.

As we have stated in the Report dated February 23, 1982, in this case, " ... The testimony given in the prior dockets was that the consideration for the transfer was \$ 1.00, not \$2,500 or any other figure." Our opinion in this matter is unchanged, based upon previous dockets and decisions and testimony presented in the instant case.

Our allowance of temporary rates and their effective date and the subsequent allowed effective date of permanent rates are in accordance with previous Commission decisions in this matter and as cited in our Report of February 23, 1982.

Based upon consideration of all arguments offered, the Motion is 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 Motion of Rehearing filed by Donald Seymour d/b/a Sunapee Hills Water Company on March 15, 1982, be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of March, 1982.

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NH.PUC*03/24/82*[79229]*67 NH PUC 223*Public Service Company of New Hampshire

[Go to End of 79229]

Re Public Service Company of New Hampshire

Intervenors: Community Action Program and Office of Consumer Advocate et al.

DF 82-63, Order No. 15,543

67 NH PUC 223

New Hampshire Public Utilities Commission

March 24, 1982, dissenting opinion April 6, 1982

ORDER authorizing stock issue.

1. RATES, § 120 — Reasonableness — Basis for increase.

[N.H.] Rate increases must be based on a return to rate base that is just and reasonable and not based on financing requirements for construction programs or coverage ratios. p. 231.

2. RETURN, § 44 — Risks or hazards of enterprise.

[N.H.] The commission cannot allow a return on common equity on speculative enterprises. p. 232.

(MCQUADE, commissioner, dissents, p. 235.)

APPEARANCES: Martin L. Gross and Frederick J. Coolbroth on behalf of Public Service Company of New Hampshire; Gerald Eaton for Community Action Program (CAP); F. J. Gentili, Consumer Advocate; Mary Metcalf, limited appearance.

BY THE COMMISSION:

REPORT

This is a petition for authority by the Public Service Company of New Hampshire (PSNH) to

issue common stock at a level not exceeding three million shares, 3,000,000. On March 3, 1982 after the petition was filed the Commission issued an order of notice setting a hearing for March 10, 1982 at 10:00 A.M., together with publication. The order of notice required PSNH to provide the Commission with all relevant documents pertaining to offers or inquiries to sell a portion of PSNH's interest in Seabrook I and/or Seabrook II.

The Commission in a previous docket, DR 81-87, stated that if PSNH's bond rating was lowered that the Commission would attach a condition to subsequent financings to prevent the proceeds from new debt or equity to be used for further work at the Seabrook second unit. The Commission through its subsequent clarification orders stated that the fate of the second unit was in the hands of PSNH's Seabrook partners. The Commission found that some major steps were needed to be undertaken by PSNH to preserve its financial integrity. This condition imposed by the Commission and activated by the Standard & Poor's downgrade was clarified in a subsequent order. The Commission stated that in the event of a bona fide positive response by other utilities to PSNH's efforts to reduce its ownership interest and

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consequently to reduce the current burden of Unit II construction, and in the event of sustained progress in achieving these goals, the Commission would be prepared to suspend that portion of the order that conditioned the financing.

The Commission's imposition of the condition reflected concern over PSNH's lack of financial flexibility. PSNH, which has made repeated ventures into the securities market, faces a future of substantial additional financings. These proposed additional financings, if not altered either as to their level or their time frame, will continue to dilute the interest of stockholders. Furthermore, the rates to sustain such an extended and expensive financing program are not attainable by employing the rate-making standard of just and reasonable rates. Finally, the ability to defer a financing because of adverse market conditions is totally absent for PSNH. Such a situation results in higher financing costs, as well as decreasing the benefits and proceeds from these financings.

Because of the Commission's statutory obligations to protect the stockholder from unnecessary dilution, the ratepayer from unreasonably high rates and the Company from financial instability, the Commission found it necessary to require a major change in the Company's construction and related financing programs. The options to alleviate PSNH's financial problems were either reduction in the construction program through divestiture or a delay in the second unit. The record in this proceeding provides the response by other New England utilities to PSNH's plight.

The Commission finds that the responses presented by PSNH in DF 82-63 do not constitute a bona fide positive response by other utilities as outlined in DR 81-87 and the Commission's response to PSNH's Motion for Clarification, Order No. 15,477 (67 NH PUC 139). In addition, the Commission finds that the responses by the New England utilities do not meet the requirement set forth, in the above Order of prompt substantial progress.

PSNH alleges that it is proceeding in compliance with the January 11, 1982 Order. Pursuant to the Order, the Company sent a letter on January 29, 1982 to the Seabrook participants,

NEPOOL Members, other New Hampshire utilities and certain New York utilities soliciting interest in the purchase of additional ownership shares in Seabrook. In addition to the outright purchase of all or a portion of the 7.56942% interest in both units being offered by PSNH, the letter also solicited indications of interest in purchasing Seabrook capacity on a term basis, in a prepayment purchase arrangement of unit capacity and in any other arrangements other companies might suggest for acquiring Seabrook Project capacity.

In response to its January 29 letter, PSNH received two expressions of interest in additional ownership. Commonwealth Electric Company, in a letter dated February 18, expressed interest in acquiring an additional 0.25% interest in Units 1 and 2. However, the expression of interest was conditioned by several factors including PSNH's ability to sell the entire 7.5694270 ownership interest referred to in the January 29 letter.

The second expression of ownership interest came from Newport Electric Corporation, also dated February 18. In this letter, Newport expressed an interest in the outright purchase of 10 MW of Seabrook capacity, 5 MW in each unit. However, in testimony before this Commission, Mr. Tallman indicated that he had been notified by phone that the

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Company was now only interested in 5 MW. Subject to clarification by Newport, it appeared their present interest was in acquiring 5 MW from Seabrook Unit I.

The Commission notes that these expressions of interest in further ownership comprise in total less than a 1% interest. Furthermore, the viability of both proposals is in doubt at this time. Commonwealth Electric conditioned their interest on the ability of the Company to sell all of the 7.56942% ownership. In testimony before the Commission, Mr. Tallman indicated that he personally had substantial reservations about the sale of PSNH ownership in Unit 1 and subject to an economic analysis would not recommend such sales to the PSNH Board at this time. Thus, although Mr. Tallman, in a clarifying letter sent on March 4, solicited "ownership interest in either Unit 1 or Unit 2 as distinct from an acquisition of an interest in the entire Seabrook Plant", whether PSNH would favorably receive the Newport Electric interest or other offers for Unit 1 purchases remains in doubt. For these reasons, the Commission does not find the expressions of ownership interest to be a bona fide positive response.

PSNH also presents as evidence of a bona fide response efforts toward obtaining construction advances to offset PSNH's cash requirements for Unit 2 prior to Unit 1 coming on line. The first construction advance proposal was initiated by Massachusetts Municipal Wholesale Electric Company (MMWEC) at a meeting of the Joint Owners held on January 22 and subsequently referred to in their letters of February 18 and March 4. In substance, the MMWEC proposal for construction advances called for the Joint Owners to advance PSNH the additional construction funds required to maintain the present schedule for Unit 2 at a rate of prime plus 2% and on the basis that the Joint Owners would receive PSNH's share of power from Seabrook 2 for a period equivalent the fixed delay period. Mr. Tallman indicated that PSNH had two basic problems with this proposal. First, if the Joint Owners were to receive PSNH's share of Unit 2 power, it was uncertain whether Unit 2 plant could be included in PSNH's rate base for that period. Second, Mr. Tallman expressed the feeling that this proposal was too favorable to

MMWEC, in that they would profit by borrowing at the municipal rate while receiving prime plus 2% for construction advance money in addition to receiving Unit 2 power for the delay period.

Consequently, PSNH offered a counter proposal set forth in their letter of March 8. In lieu of offering to sell PSNH's Seabrook 2 capacity for the delay period, the Company offered the sale of system capacity to those willing to provide construction advances. The March 8 letter, included as Exhibit 7, sets forth the proposal in some detail.

The Company has received responses to its March 8 letter from three companies. MMWEC has orally expressed an interest in construction advances in the range of \$10 — 20 million. In a letter dated March 12, Vermont Electric Cooperative has expressed an intention of making construction advances in the approximate amount of \$10 million. And in a letter dated March 10, N. H. Electric Cooperative, Inc. expressed interest in construction advances, and orally has indicated an amount on the order of \$6 million.

The Commission finds that these construction advance expressions of interest do not constitute a bona fide response in

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two respects. First, the total amount of \$26 — 36 million is too small to substantially alleviate the problem. Second, the timeliness of the advances is very uncertain. MMWEC notes in its letter of March 4, that its interest in construction advances is necessarily subject to obtaining all necessary approvals from "local authorities, MMWEC Board of Directors, Massachusetts DPU and others as appropriate". The Commission is mindful of previous experience when it took MMWEC nearly two years to acquire the necessary approvals to purchase additional ownership. It was thought that advances might not require all of these approvals. Thus, the Commission must view the present construction advance proposals as being too little and too late to be of substantial help.

MMWEC has also suggested another plan involving the swap of ownership shares in one unit for ownership shares in the second unit. Under this plan, PSNH would swap some of its interest in Unit 1 for MMWEC's or potentially another owner's interest in Unit 2, thus reducing PSNH's construction cash commitments. In discussing this concept before the Commission, Mr. Tallman expressed an initial negative opinion based upon reluctance to give up ownership in Unit 1. Given his testimony and the vagueness of the proposal at this time, the Commission does not consider this option a bona fide response.

Despite finding that the efforts to date do not constitute a bona fide response, the Commission wishes to compliment PSNH on its efforts. In addition, the Commission also wishes to take note of the Company's other efforts to improve its cash position. As outlined in the testimony of Mr. Bayless, these efforts include additional financings through a nuclear fuel lease and a construction trust and the sale of tax benefits associated with the Garvin Falls plant. While PSNH has endeavored to provide a bona fide response, their efforts have been frustrated by the unwillingness of their partners to address the situation and, in particular, the total lack of any response from their sister investor-owned utilities.

The history of the Seabrook project reveals a consistent pattern of non-support by the other

New England investor-owned utilities. Many of these New England utilities have consistently been bystanders rather than participants. Others can be viewed as actively working against the project.

The Commission's concern for the financial flexibility of PSNH is in part related to the consistently negative actions taken by PSNH's Seabrook partners whenever the project and PSNH face financial problems.

The history of negative actions by PSNH's sister investor-owned utilities dates back to 1966. At that time, PSNH in studying its power needs for the mid-1970's concluded that it would have a deficiency of 400 MW in 1974. The Company tentatively decided upon an 850 MW nuclear unit to be located first in Newington and later at Seabrook. Because PSNH could not finance such a large unit, they sought other participants, but found only Central Maine and United Illuminating interested in proceeding with an ownership level of approximately 45%

During the spring of 1968, there commenced a series of events which ultimately resulted in the abandonment of the first Seabrook project for the then immediate future. A meeting was held between Mr. Nichols, CEO for New England Electric System (NEES), Mr. Galligan, CEO for Boston Edison Company (BECO) and Mr. Tallman of PSNH to

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discuss the Seabrook proposal on March 18, 1968. During this time period regional planning groups were discussing the possibility that this first Seabrook project be scheduled for 1975 instead of 1974. Such a delay projected to result in an estimated 1974 deficiency of 400 MW for PSNH. There was also a concern for obtaining additional partners in the project. These two areas were the subject of the meeting on March 18, 1968 initiated at the request of NEES and BECO.

At that meeting, BECO and NEES, through the chief executive officers, stated a willingness to own 50% of the project and satisfy PSNH's power needs in 1974 if PSNH would renig on their agreement with Central Maine and United Illuminating. Failure to agree to these terms led to the suggestion that the project might not proceed. Mr. Tallman became incensed with this power play and indicated that he believed that the "Big 3" — New England Electric, Boston Edison and Northeast Utilities — were discriminating against smaller utilities and squeezing them out of large projects.

PSNH rejected the NEES-BECO proposal and then both United Illuminating and PSNH were faced with problems as to energy deficiencies in 1974 and despite NEES' projected surpluses, none were offered.

In August of 1969 financial difficulties were occurring for both PSNH and United Illuminating, which required them to seek to divest themselves of not less than 28% so as to continue the unit on its 1975-76 completion schedule. Due to projected surpluses even with a reduced ownership level, unit power sales for a term of years were also offered. The offer went to all New England utilities. On September 24, 1969, a second letter was sent indicating that the necessary levels of ownership participation and unit sales had not been achieved and asking for further expression of interest. In that letter, PSNH and United Illuminating forecast that unless additional ownership and unit power sales were agreed to there would be a "further postponement of Seabrook". All of the entities that agreed to take either an ownership interest or

to purchase power on a unit sale basis were either cooperatives or municipalities. Prominent among these were the Vermont Electric Cooperative, the New Hampshire Electric Cooperative and a large number of Massachusetts municipalities that eventually joined together to form MMWEC.

Not one investor-owned utility sought to buy any additional ownership in the project or to purchase power for a set number of years. Each turned down the opportunity offered by the August letter and did so again despite the potential for postponement of the unit after the September letter. On November 7, 1969, United Illuminating and PSNH cancelled the unit.

The reasons given were as follows:

1. The lack of sufficient interest in ownership participation in the unit, which interest became essential with the postponement of the unit from 1974 to 1975. Referring to information furnished with our letter of September 24, VELCO has now reduced its interest in the unit to a maximum of 115 MW. On this basis, we have expressions of interest in ownership totalling approximately 170 MW, or 20% of the unit, instead of the minimum of 28% additional ownership participation specified as necessary in our letter of August 6.

2. Difficulties experienced by PSNH and UI in attempting to purchase capacity to meet their load requirements for 1974 on a short-term basis necessitates

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their meeting these requirements by some other means.

3. The lack of a New England power pool agreement.

The first Seabrook project was scrapped due to the financial difficulty that Public Service Company and United Illuminating had in maintaining lead ownership status. The other electric utilities stood by and allowed the project to go under. NEES, BECO and Northeast Utilities effectively blocked PSNH from succeeding because of PSNH's admirable decision not to exclude an already committed partner, UI. Furthermore, by refusing to sell power to PSNH and UI and not buying into the project, both utilities had to scrap the nuclear project and instead built two additional oil fired units to meet peak demands. Both PSNH and UI experienced a tax loss and had their earnings significantly reduced. The reluctance of NEES, BECO, Northeast Utilities and the other New England utilities to step forward and share ownership resulted in worsening the oil dependence of New England. We see a similar pattern of response today.

History has a way of repeating itself, and this is certainly the case with the present Seabrook project; I and II. When in 1979 PSNH was forced because of financial considerations to divest itself of an ownership interest, the New England investor-owned utilities were not supportive. Most chose not to become further involved. The same result occurred when United Illuminating attempted to divest as well for financial reasons. These two largest owners found almost no interest among New England investor-owned utilities. What interest was expressed came from either municipals or cooperatives.

NEES again made an oral offer to purchase additional interest, but again attached conditions that were so one-sided and onerous that no rational bank or utility would find them acceptable. When NEES was again turned down based on less than a reasonable offer, they repeated their

prior performance of not assisting. A subsequent short-term cash crisis began to have a potential impact on the completion dates of both units. The other participants responded albeit at prime plus 2% interest. NEES refused to do so despite available cash substantially in excess of those of the other participants.

The lack of support by the other investor-owned utilities and, in particular NEES, is especially striking given the already attractive terms from a buyer's standpoint. In 1979, PSNH offered ownership interest for just the construction costs and did not insist or receive the accumulated AFUDC. Or to state it more bluntly, PSNH offered an ownership interest in the base load plant that will be the least expensive of any other option (Pilgrim I, Sears Island, Millstone III, or some new project) at one-third off and found the investor-owned utilities refusing any interest. This occurred despite the occurrence of a doubling of oil prices in that year, 1979. Thus, as with the first unit financial trouble occurred and the investor-owned utilities chose to do nothing or to worsen the situation.

As before, another offer of ownership eventually was made after the January 11, 1982 order. Again, the investor-owned utilities failed to meaningfully respond. This occurred despite the cancellation of Pilgrim II and the imminent cancellation of Sears Island. Boston Edison, which had initially raised the potential of buying into Seabrook at the time of cancellation of Pilgrim II, chose to buy into a Canadian nuclear unit. NEES and Northeast Utilities were the only

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partners to respond negatively to additional ownership, but refused to provide a waiver to their right of first refusal. Failing to provide this waiver effectively precludes immediate action on expressions of interest by present non-Seabrook participants, such as Newport Electric. If PSNH should somehow achieve an arrangement with any other utility, the absence of the waiver could preclude transfer or sale of a Seabrook interest for at least an additional sixty days at a period when time is of the essence.

It is interesting to note that NEES, Northeast Utilities in their responses and NEES and Boston Edison in the press all claim that they have their power needs handled to the year 2000. Yet, NEES and Northeast fail to provide waivers as to additional ownership interest and Boston Edison fails to respond by letter at all. It is interesting to note that NEES has PSNH in a situation that if PSNH needs additional capacity between now and the estimated in-service date of Sea-brook I, they must buy that capacity from NEES at costs set by NEES. Yet NEES failed to respond to the potential for delay of a unit by purchasing additional ownership.

Those that have at least offered counter suggestions for solving PSNH's financial difficulties are again the region's co-ops and municipalities. These were the same entities that attempted to keep the first Seabrook project afloat and chose to receive additional ownership interest when the plant was offered in 1979.

It is difficult to interpret the mixed signals being sent by the other New England investor-owned utilities. When both PSNH and later United Illuminating reached financial difficulties in 1979, the other investor-owned utilities in essence did nothing positive and thereby created a major negative in the financial community. The contrast between this record and that of the Canadian transmission line docket is inevitable. In the transmission docket, the New England

utilities through NEES are claiming a need for additional capacity from Canada in Phase I of 600 MW and potentially a need for 2,000 MW in Phase 2.

It is not within the expertise of this Commission to state whether or not antitrust or anti-competitive practices are occurring within the New England investor-owned electric utility community. However, this record would appear to require the raising of this issue by some responsible entity before the Securities and Exchange Commission.

Given the lack of a bona fide response, the Commission finds it necessary to condition the present financing to insure the objective of reducing PSNH's cash financing requirements. The Commission, in its decision in DR 81-87, stated that PSNH had to have a greater degree of financial flexibility. The Commission set forth that either further divestiture or a delay of the second unit was necessary if PSNH was to achieve this goal. As to our concern about financial flexibility, the record reveals that Standard & Poor's expressed similar concerns. Furthermore, the record reveals that PSNH recognized the need to reduce its financial obligations and planned between January and the present to attempt further divestiture.¹⁽²⁸⁾

As to delay, the record reveals that in its September, 1979 prospectus, PSNH made the following declaration to its bond holders.

"The Company believes it can finance about a 35% ownership interest in the

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Seabrook plant assuming that the completion of Unit #2 currently scheduled for 1985 is deferred four years."²⁽²⁹⁾

Testimony given by witness Bayless stated that there was a level of stockholder dilution that would be so great that it would be more appropriate to delay the second unit rather than issue further common stock. The Commission is not unmindful of the costs of delaying Unit II. While the Commission finds that PSNH's failure to discount the costs of delay to reflect present value overstates these costs, it is evident that delay does ultimately result in increased costs.³⁽³⁰⁾

The Commission also notes that PSNH itself has incurred delay costs in the past to avoid excessively high current costs. In 1980 conditions in the financial markets and high interest rates resulted in a one year slowdown. The Company has also endured strikes and the resulting delay and increased costs to the project rather than accept union demands. Obviously, there are other factors which may outweigh the costs of delay.

The Commission is also mindful of the course taken by Northeast Utilities in the construction of the Millstone III project. As testimony indicates, Millstone III is being constructed according to a fixed budget rather than to a schedule based upon ever increasing costs. Northeast Utilities has apparently determined that a slower construction schedule is the appropriate response to slower growth in power demands. Obviously, Northeast Utilities has also determined that a slower schedule better meets the interests of its stockholders and ratepayers. Northeast Utilities' March 18, 1982 letter states they are seeking to reduce their ownership in Millstone III and dispose of their Seabrook interest because of their concern over potential financing problems. In this regard, the Commission has to ask if delay of the second unit is so bad, why are not the other utilities jumping in to help?

The difficulty in attempting to effectively channel a course for PSNH is that they are not the only utility associated with the Seabrook project that is experiencing financial difficulties. United Illuminating would appear to be in greater financial difficulty due to its historically low bond ratings and market-to-book ratios. Maine Public Service is also experiencing great difficulties in obtaining financings. Clearly the difficulties of maintaining the present construction schedule for Seabrook extend beyond the border of one company's income statement. More companies than just PSNH would appear to need relief from extensive capital attraction programs in the near term.

The need for a conditioned order as to the second unit is not found solely on the basis of needed financial flexibility for PSNH and its partners. Rather, the Commission must also by statute protect stockholders from dilution and ratepayers from unreasonable rates.

PSNH's common stock had been diluted over the past few years. Continuous sales of stock at below book value have contributed to this dilution. As Witness Bayless noted, this dilution has occurred in almost every electric utility common stock. Comparatively, PSNH has had to issue a larger number of shares than the average electric utility. In 1978, PSNH had less than ten million shares of common stock outstanding.

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That level has been raised to twenty-five million by this issuance with a PSNH estimate of ten million more shares by the date of operation of Seabrook I in 1984.

PSNH has expressed considerable confidence in the February, 1984 completion date for Unit I. The Company *increases* its confidence level from 90% to 95% as to the May, 1986 date for operation for Unit II. These projections assume (1) no labor strikes, (2) no material delays, (3) no regulatory delays, (4) a four month hearing before the NRC, (5) little if any new retrofitting ordered on the basis of safety by the NRC, and (6) no delays occasioned by financial markets or other partners. Yet the witness provided from Yankee admitted that there was no possible way to accelerate in service dates. Therefore, the Commission finds that our finding in DR 81-87 that Seabrook II cannot become operational before May of 1986 is well supported by this record. Since the factors outlined have caused delays in the past, it would appear reasonable to assume that some of these factors may again cause delay especially as to the second Unit because of the greater length of time and thus the greater likelihood of problems arising.

If either Seabrook I or II is more likely to become operational at a date later than shown by PSNH, PSNH's financial problems increase between now and 1984.⁴⁽³¹⁾ Not only will there be less financial flexibility but the size of the financial burdens increase from already lofty plateaus of \$250 million and \$280 million in 1982 and 1983 respectively. Since such increases in capital already require major additions of common stock, due to coverage problems, any further delay in the first Unit will result in additional common stock being issued.

If divestiture or advances are not possible then a delay of Unit II is the only other available option to the Commission. There exists the very real possibility that continuation by PSNH at a 35% level in both Units would eventually allow the construction of Unit II to delay the operation of Unit I. This event, should it occur, would require further common stock increases and result in

further dilution.

To protect the stockholder from a continual drop in price, some extension of the second Unit would appear to be justified. After the first Unit is operational, common stock should sell at a rate nearer to book value than less dilution would occur. Stockholders are ill served by a financial plan that increases dividends and thus temporarily the price of the stock only to see the price plummet as issuance after issuance dilutes the value of a share. If dividends are increased at a rate necessary enough to alleviate this recent trend then the negative cash flow becomes extraordinary in scope. Either way some alteration in the construction program would appear to be justified to protect the stockholders interest.

[1] As to the ratepayer the Commission must restate its position outlined in DR 81-87, that rate increases must be based on a return to rate base and be justified according to the just and reasonable standards established by Blue-field (290 US 679, PUR1923D 11, 67 L Ed 1176, 43 S Ct 675) and Hope (320 US 591, 51 PUR NS 193, 88 L Ed 333, 64 S Ct 281). The Commission will not

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place itself in the position where it must grant rate increases based upon PSNH's financing requirements for its construction program. The Commission reiterates its position that the level of rates will not be determined by the coverage ratio the Company requires to issue G & R Bonds.

The Company's financing plans as outlined in Exhibit 13 and as incorporated in the financial model scenario Common 1, are achievable within the rates the Commission can grant only under the most optimistic circumstances. The Commission is deeply concerned about the revenue requirements that would arise under less optimistic assumptions. Critical among these assumptions are (1) the operation date for Unit I; (2) the sales growth of PSNH; (3) the financial ability of other partners, especially United Illuminating, to meet their obligations; and (4) the overall cost of the project.

The Commission has already discussed the problems with later operational dates. However, the sales growth projections are also critical to the Company's financing program. Financial scenario Common 1 assumes retail sales growth between 1981 and 1982 of 2.1%, between 1982 and 1983 of 3.16% and between 1983 and 1984 of 4.3%. Given the actual performance of 1980 and 1981 when sales were virtually flat and the experience of January 1982 when retail sales declined by 10.6%, the Commission has serious concerns about the achievability of the sales forecast. Slower growth or no growth will mean significantly reduced revenues and insufficient earnings to meet the projected G & R requirements. Rate increases to offset lagging growth unfairly penalize the conservation efforts of consumers and cannot be justified by normal rate making standards.

The Commission must underscore the revenue requirements and rate increases implied in the continuance of the present construction and financing program. The Commission does not and cannot set rates on the need to maintain coverage ratios under all circumstances. PSNH's estimates as to rate increases for 1982 — 1984 are artificially plugged numbers. These numbers are not an output of PSNH's sophisticated financial model. Rather, revenue requirements

properly worked through the financial model would yield either much higher rate increases or conversely much lower coverage ratios. The Commission and the Federal Energy Regulatory Commission discussed returns on common equity of between 25 and 30%. We will not and cannot establish rate increases on such levels.

[2] An analysis of the revenue requirements of PSNH demonstrates that with a fairly stagnant rate base and expenses being a one for one concept, rates can only be affected by changes in the return on common equity. The Commission cannot allow returns associated with speculative enterprises. The standards of Hope and Bluefield as well as those set forth in RSA 378:30 must be and will be adhered to by this Commission.

This Commission is not stating that it won't give timely and adequate rate relief. The procedures developed in DR 81-87 should considerably reduce the time devoted to a case while increasing the quality of the record. What we are saying is that timely and adequate rate relief will not be enough if a 35% ownership level is adhered to and the construction schedule is pursued at its present rate.

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The Commission must conclude from all of these factors that conditioning this and future financings to reduce PSNH's cash requirements is the only prudent course to take at this time. Within the present legal framework and the standards for just and reasonable ratemaking the Commission cannot be looked to for solving all of PSNH's problems. In order to avoid delay the Company must look to the other utilities or to the legislature.

The Commission will condition the use of the proceeds from this issuance as they relate to Unit II.

The Commission finds that if it were to absolutely prohibit the use of proceeds from the common stock issue to meet existing obligations for progress payments and nuclear fuel payments under the contracts listed by the Company, the Company would be exposed to claims for damages and potential increases in costs that would not be consistent with the object of controlling the costs of the Seabrook project nor the public good. On the understanding that the Company will use its best efforts to seek deferrals of such payments on reasonable terms, the Company is authorized to use the proceeds of the financing to meet existing obligations for progress payments and nuclear fuel payments associated with Seabrook II.

The Company can use the proceeds of this issuance to meet any *existing* short term debt related to Seabrook Unit II, and *existing* contractual obligations for materials or nuclear fuel related to Seabrook Unit II (even if the aforementioned will be delivered in the future) and any existing expenditures related to the construction of Unit II that have been incurred as of the date of this Order. Furthermore, the proceeds of this issuance can be used for work occurring before or after this date related to the containment liner at Seabrook Unit II.

The Company cannot use these proceeds for any additional commitments of materials, labor, or services related to Seabrook Unit II not agreed to by contract as of the date of this Order unless allowed by the previous paragraph. If there is a question it should be immediately sent to the Commission for an advisory opinion.

The Commission will impose this condition as to Seabrook Unit II on this financing and as to any other PSNH financing issued between now and July 11, 1982. Prior or on that date the Commission will again evaluate the responses by the other New England utilities to see if a bona fide response and sustained progress has been made.

If the Commission should again find that no bonafide response has been made or sustained progress has failed to be achieved, the Commission will order a delay of any further work on Seabrook II until February 27, 1984. In either event this will provide better insurance against Unit II construction impacting negatively on Unit I completion.

The Commission must note at this point that Unit II is not isolated from other energy projects planned or under construction for New Hampshire and the region. If we are required to issue an order delaying Unit II until February, 1984, this lack of action can be interpreted as a signal from the other New England utilities. It may be inferred from this signal that New England utilities are not in need of additional capacity or additional sources to backout oil. This Commission is aware that the arguments raised to support Unit II, the Hydro-Quebec Transmission Line, coal conversion, conservation and other sources of renewable energy are based on the need

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to backout oil in New Hampshire and New England. The Commission notes that the need for power issues and, hence, the need to backout oil are the subject of at least two open dockets in which the Commission is involved; DSF 81-349 (Hydro-Quebec Transmission Line Docket) and DE 81-312 (the Supply-Demand Docket). The issues of oil backout and the need for power will be examined in those dockets, and the Commission fully intends to assure that those issues are fully addressed by the parties on the record in those proceedings.

This Commission's primary concern is with the impact of energy projects and other energy supplies on New Hampshire's consumers and its economy. The Commission, of course, is mindful of the apparent joint planning and participation activities of NEPOOL and the needs of the region as a whole. But it bears repeating, this Commission must be concerned in the first instance with impacts on New Hampshire's consumers and economy. Accordingly, this Commission cannot permit New Hampshire to carry burdens for the region unless these burdens have articulated, demonstrated and measurable benefits for New Hampshire and its citizens.

CAP asks the Commission to exercise its judgement pursuant to RSA 369:4 and determine whether this issuance is for the public good. The Commission finds that PSNH's financial strategy of adhering to a capital structure including short term debt where common equity represents 40% or more is sound financial planning. Furthermore, while CAP and the Commission are concerned with the cumulative effect and costs of continuous issuances, the Commission finds that the manner in which we have conditioned these proceeds should minimize future costs to ratepayers and give greater protection to stockholders.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue and sell not exceeding three million shares of common stock, \$5 par value for cash in accordance with the foregoing Report and as set forth in its petition; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall submit to this Commission the number of shares of said common stock to be sold and the purchase price thereof after which a supplemental order will issue approving the number of shares of said common stock to be sold and the purchase price thereof; and it is

FURTHER ORDERED, that the proceeds from the sale of said common stock can be used for the purpose of discharging and repaying a portion of the outstanding short term notes of said Company and to finance the purchase and construction of Seabrook Unit I; and it is

FURTHER ORDERED, that the proceeds cannot be used for any new commitments related to Seabrook II not already contracted for as of the date of this Order; and it is

FURTHER ORDERED, that except as authorized in the foregoing Report none of the proceeds from the common stock shall be used to further the construction of Seabrook II; and it is

FURTHER ORDERED, that on January 1st end July 1st in each year, Public Service Company of New Hampshire shall file with this Commission a detailed

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statement, duly sworn to by its treasurer or assistant treasurer, showing the disposition of the proceeds of said securities 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 twenty-fourth day of March, 1982.

Dissenting opinion of McQUADE, Commissioner: I.

The petition by Public Service Company of New Hampshire to issue common stock, not to exceed 3 million shares, is prudent, reasonable and in the best interests of its customers and should be allowed to go forward as planned.

This stock issue is part of the overall plan of PSNH to raise fresh capital for construction purposes. This overall plan of construction at Seabrook has had the support of the SEC, Public Utilities Commission, and the Legislature since its inception in 1974, when, after much deliberation, it was determined that a need for an alternate and independent source of energy to meet required capacity levels, was necessary and desirable for the public good.

This Commission on January 11, 1982, issued a decision that severely and negatively impacted PSNH's bond rating. It undermined the Company's financial standing and placed uncertainty on the Seabrook project. Our Order determined that PSNH should prepare itself to delay Unit II of Seabrook in the event outside interests did not, in effect, rescue PSNH's position from its 35% ownership of Seabrook. This Commission offered PSNH five options to alleviate its financial condition or suffer the consequences. The effect of that order was negative, and, when it was followed by the Commission Order of March 24, 1982, placed PSNH in an awkward

position because we appear to be turning our back on an investment that is acknowledged by so many as essential for the well being of New Hampshire people's energy needs.

One of the PUC's prime objectives for many years has been to make New Hampshire independent of foreign oil and to protect it from the instability which resulted from global tensions, oil cartels, and the greed of the oil industry. Subsequently, the Commission supported alternative energies such as nuclear, hydro, coal, wind, gas and, of course, conservation. New Hampshire utilities have worked diligently to cooperate with this Commission in these areas and have, in fact, sponsored nuclear, coal and hydro with the full support of this Commission.

Our attitude expressed on January 11, 1982 was swift and clear to all except, it appears, our Commission that we might renege on our support of nuclear power.

The March 24, 1982 decision, in which the Commission added Canadian hydro to its list of questionable support construction projects must be considered arrogant or an attempt at blackmail with the people of New Hampshire as hostage. This attitude must be stopped and reversed if we are to fulfill our obligations to provide the people of New Hampshire with dependable and reasonable sources of alternative energy.

My reading of the transcripts of the hearings held by the Commission convinced me that PSNH is on a reasonable but admitted tight financial and operational schedule. The record shows that PSNH has the continued support of the financial and banking community because

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PSNH has successfully marketed securities since the year 1979 when CWIP was outlawed. This was an acknowledged difficult year but PSNH, with Commission support, has overcome the crisis of adjustment by being innovative, flexible, and imaginative in its dealings. Public support for Seabrook, due to the need for dependable alternative energy, has quickly grown. Financial support has grown for Seabrook due to realistic scheduling of money and time, although such scheduling has been admittedly tight. The manner in which the forced slowdown and delay of Seabrook in 1980 was handled demonstrated to all the PSNH was a responsible, well managed Company. It was at that time that the impact of the cost of delay became fully known and understood by the people in all walks of life.

Now comes the PUC in its Order of March 24, 1982 and suggests that a delay may be desirable to prevent stock dilutions. It is common knowledge that stock dilution always take place when any utility or private corporation is heavily committed to an ambitious growth program, in this case Seabrook Station Nuclear Power Plant. Expert testimony confirmed that this stock dilution is a natural phenomenon that corrects itself upon completion of the project. The Commission stated that it is concerned about the stockholder, but the stockholder has presented nothing to show that a need for such concern exists. The stockholder has; in fact a profitable venture because he is buying cheap, getting strong dividends and has guaranteed growth in the long run when the Seabrook project is completed.

The PUC then suggests that the financial burden of Seabrook construction might be eased if a sell down took place or was at least considered as an alternative. We rightfully ordered PSNH to investigate that alternative and to report back to the Commission. There has been talk of sell-down from 35% ownership in Seabrook to 28% ownership since CWIP was outlawed in

1979.

We must realize that PSNH was only able to sell down from 50% ownership to 35% ownership in its last offering of Seabrook shares in 1979. This offering took 2 1/2 years to accomplish and was a difficult move for the seller and buyers due to state regulation which, in the process, caused questionable reflection on Seabrook's ability to survive by those outside our state.

As I stated earlier, Seabrook has regained the confidences of the people, financial organizations and the banking community as well as its general partners who already own 65% of Seabrook and who are looking for completion and the resulting benefits in 1984.

The Commission's January 11, 1982 Order questions PSNH's ability to continue financing Seabrook at present levels and used such unfortunate words as "bankruptcy", "cancel", "slow down", and "sell down" all of which added fuel to the fire by suggesting that the partners, who came forward and purchased an additional 15% in 1979 to help PSNH out on its previously ordered "sell down", are the real culprits. We created havoc and uncertainty in the eyes of the Seabrook investors, which continued after we issued our clarifying Order.

The March 24, 1982 Order of the PUC further undermined the confidence of the Seabrook partners, who already own 65% by blaming them for PSNH's financial problems and threatening them with retaliation if they do not respond to our demands to purchase added ownership interests in Seabrook, even though they are mostly out of state utilities over

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which we have no control and whose good will is essential if Seabrook is to be completed.

The PUC has to recognize that PSNH's share of ownership in Seabrook Unit I is over 70% committed, and that Unit II is 40% committed. A lowering of PSNH ownership to less than 35% should not be acceptable to the people of New Hampshire. The project is located in New Hampshire; we must demand reasonable ownership on the basis that New Hampshire, not another state, should retain the majority of its generated power. We should be thankful that there are few additional buyers for Sea-brook shares, even though the lack of buyers may be due to our own mixed, confusing and threatening signals.

I have no intention of supporting the Commission selling New Hampshire energy needs down the drain. Remember, Unit I is 20 months away from completion and Unit II will be completed 24 months after Unit I. Surely our responsibility to the people of New Hampshire demands that this project, faced with difficult times, be supported to completion, so that the long range dependable and economic energy needs, which our State so desperately craves, will be met.

By completing Seabrook I and II we are not carrying the burden for the other states in New England, but we are, for the first time, keeping our energy in New Hampshire. We should not forget the lesson learned after allowing Connecticut River power to be exported from the State.

These are difficult financial times for all our people in New Hampshire, including government, but the long term benefits of completing Seabrook as soon as possible, through flexible and imaginative financing, transcends any short term discomfort. I strongly believe it is

a responsibility I have to protect our people's energy needs for the next 30 — 40 years, as well as overnight, if New Hampshire is to be a viable state to live and work in.

The Seabrook need can be best illustrated by summarizing testimony before the PUC in this proceeding:

"Seabrook is justified solely on oil back out economics. Estimated savings after 14 years of operating to N.H. customers is 1.4 billion dollars. This is more than the total cost of project to PSNH.

"Savings are overwhelming, just as present costs are overwhelming.

"It would be a calamity to cancel Unit II because it is the pay off. It represents 1/2 of Seabrook capacity yet only costs 20% of the total project due to common costs of project already spent to complete Unit I."

I call upon my fellow Commissioners to join with me in supporting the steps taken by PSNH over the past 10 years to serve the people of New Hampshire in a positive and prudent manner as regards our needs for dependable, efficient and affordable energy.

The decisions and tone of our Orders on January 11 and March 24 of 1982 and the negative responses by utilities, financial interests, and banking circles, have caused bewilderment in the general public. These concerns of the financial community and the general public must be addressed before PSNH's stock offering is made public or we face the consequences of a lack of support for further construction dollars for Seabrook with the resulting consequences:

1. We will leave a monument to our ineptness in firm decision-making of a needed project that would have assured New Hampshire of a reliable, dependable, less expensive electrical energy.

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2. If the Seabrook project is not completed all monies approved by the PUC for Seabrook construction to date may be paid for by the customers the plant was meant to serve. This burden is unacceptable to me and the people of New Hampshire whom we represent.

3. The other participants will have the opportunity to purchase PSNH's share of Seabrook ownership at auction prices since they are the only interested parties. The loss between the bid price for PSNH Seabrook ownership and the investment will be charged to the customers.

4. Most importantly, our Seabrook Nuclear Stations will go on line and the power owned by out of state utilities will be sold back to us at exorbitant prices, as they are doing now with our hydro power along the Connecticut River.

I find these consequences unacceptable!

CONCLUSION

1. The sale of 3 million shares of PSNH common stock has been determined to be for the public good. Unreasonable restrictions on application of these funds is contrary to the facts established on the record and will result in loss of confidence of investors. The Commission has been aware for the last two years of the dollar commitment that PSNH has to make for Seabrook

completion. Restriction of funds at this late date is foolhardy, expensive and can only lead to more costly rates to New Hampshire customers.

2. The stock dilution referred to in this hearing is a natural phenomena and is a fact experienced in all major corporate stock offerings. It is accepted by the financial community and has its rewards upon completion. In fact, the investor gets a good deal rather than being hurt if you follow the whole transaction.

3. Delay or cancelling of Seabrook Unit II will result in huge unnecessary rate increases to New Hampshire rate-payers in the amount of 200 million. Clearly, unplanned delays have been costly enough but to increase costs by a forced delay by this Commission is not in the best interests of the consumer and is untenable.

4. Seabrook Station is a fact. Based on expenditures and commitments to date unit I is 75% completed and Unit II is 41% completed.

The cost of Unit I is very high compared to Unit II because of the initial costs that are commonly shared with Unit II. It is a fact that Unit II represents one half of the total capacity of Sea-brook, yet it only costs 20% of the total project.

5. When Seabrook is completed on schedule it will save the ratepayers of New Hampshire 1.4 billion dollars over a 14 year period when compared to oil fired generating plants. The Seabrook Station is so valuable to the ratepayer of New Hampshire that the total cost of the project will pay for itself in only 14 years at current level of ownership.

6. Public Service Company continues to be a viable utility which finds itself in financial straits because of its commitment to safe, economical and dependable electric energy for the good of its customers. PSNH continues to be innovative in its financing and planning for completion of Seabrook. The Public Utilities Commission must continue to support this construction program as it has for the last eight years. To waiver now when the economic rewards are in sight is not in the best interests of ratepayers. Delay can only increase costs to consumers whom we all agree are faced with high energy and unstable energy costs.

FOOTNOTES

¹Transcript, page 4-27.

²Exhibit 39, page 5.

³The Commission also finds that PSNH's estimates as to the cost of delay are overstated to the extent that the Commission finds their assumptions as to load growth and oil prices are overstated.

⁴MMWEC assumes 1985 and 1987. While NEES assumes a late 1984 and 1988 date of operation for the two units.

7. Commissioners Love and Aeschliman failed in their responsibility to the ratepayers to assure dependable and economical energy in their Order of March 24, 1982 because it:

A. Allows out of state interests to dictate the future of the Seabrook project and the affects on the ratepayers of New Hampshire.

B. Suggests that blackmail of a proposed hydro-transmission line hearing process is the way to negotiate.

C. Influenced the stock and bond market adversely and undermines investor confidence in PSNH and Seabrook construction. Our previous Order dated January 11, 1982 gave a wrong signal, thus it had to be clarified and re-clarified for true signals and clear direction. The Order of March 24 will further adversely affect the cost of borrowing and the expense to our ratepayers.

8. The Order of March 24 further orders PSNH to reduce its ownership in Seabrook without recognizing the costs to our ratepaying customers. If we follow through with the July 11 deadline set by my fellow Commissioners, they will set in motion irreversible consequences that could mean the loss of control of any necessary electrical energy because it could be exported outside New Hampshire even though the plant is operating in New Hampshire. This possibility is intolerable to me. We didn't build Sea-brook so the power would be exported and then sold back to us at a higher rate, as we have done with the hydro power along the Connecticut River.

9. I do not support any more loss of ownership in Seabrook to outside utilities when this energy is desperately needed to kick our dependency on our imported oil habit. Why should New Hampshire have a nuclear plant within our State and on our shores, with the concerns associated with it, if the people of New Hampshire do not reap the benefits in rate payer savings. As I said before, this plant will pay for itself in 14 years. Only our determined commitment to finish that project will make it a reality. Your Commission must represent you in making sure that New Hampshire electric customers have dependable, economic energy for the next 30 — 40 years even though the short term costs may be costly.

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NH.PUC*03/24/82*[79230]*67 NH PUC 239*Transfer of Tax Benefits

[Go to End of 79230]

Re Transfer of Tax Benefits

Petitioner: Public Service Company of New Hampshire

DF 82-90, Order No. 15,544

67 NH PUC 239

New Hampshire Public Utilities Commission

March 24, 1982

ORDER permitting sale and lease-back of hydroelectric plant for tax purposes.

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BY THE COMMISSION:

ORDER

WHEREAS, by letter dated March 22, 1982, Public Service Company of New Hampshire (the "Company") has advised this Commission that the Company proposes to enter into a transaction transferring certain tax benefits associated with the recently completed improvements to the Company's Garvins Falls hydroelectric generating station; and

WHEREAS, the transaction contemplates a sale and lease-back of such facilities for tax purposes only with the Company retaining all other incidents of ownership including all rights of possession, control, use and operation of such facilities under all circumstances including any default under the proposed "lease"; and

WHEREAS, the Company has requested the approval of this Commission pursuant to RSA 374:30 with respect to the contemplated transaction; and

WHEREAS, the Commission, after investigation, has determined that the proposed sale and lease-back, for tax purposes only, will be consistent with the public good in that there will be no adverse impact on service or rates to the public and that the cash benefits to the Company will enhance the Company's financial flexibility in accordance with prior Commission orders; it is hereby

ORDERED, that the Company be, and it is hereby, authorized to sell and lease-back, for tax purposes only, the improvements at Garvins Falls hydroelectric generating station which became "in service" for tax purposes on or after December 28, 1981, it being understood that this Order does not constitute a determination of the accounting or rate making treatment associated with the proposed transaction.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 1982.

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NH.PUC*03/25/82*[79231]*67 NH PUC 240*Birchview by the Saco Water Company

[Go to End of 79231]

Re Birchview by the Saco Water Company

DR 81-235, Supplemental Order No. 15,549

67 NH PUC 240

New Hampshire Public Utilities Commission

March 25, 1982

ORDER granting rate increase, as modified.

1. RATES, § 120.1 — Test period.

[N.H.] A test year updated by estimates was used in a water company rate proceeding. p. 241.

2. VALUATION, § 202 — Abandoned property.

[N.H.] The cost of an abandoned water well was not allowed in rate base where it was not used and useful for customers but recovery of expended funds was allowed as an amortization expense over thirty years. p. 241.

3. REVENUES, § 2 — Test-year adjustments — Customer capacity.

[N.H.] Revenues were pro formed to reflect the ultimate customer capacity of a water system. p. 242.

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4. VALUATION, § 174 — Customer compensation for equipment — Contributions in aid of construction.

[N.H.] Customer contributions in aid of construction were used to reduce rate base so that only investor-supplied capital would be reflected in rate base. p. 242.

5. VALUATION, § 25 — Date of valuation — Average or year-end figures.

[N.H.] Average investment based on beginning and end-of-year figures was used to determine rate base. p. 243.

6. RATES, § 275 — Transition from flat to meter.

[N.H.] A water company was ordered to begin installation of meters where the commission determined that the flat rates charged by the company were unfair to small users and resulted in inefficient use of water. p. 244.

APPEARANCES: Carlton Bacon, president, for the petitioner; Raymond Raiche, C.P.A.

BY THE COMMISSION:

REPORT

Birchview by the Saco Inc., (hereinafter the "Company" or "Birchview") a New Hampshire water utility, filed revised tariff pages with this Commission on 10/26/81, seeking an increase in revenues allowed of \$7,575.

This filing was suspended on January 12, 1982, by Order No. 15,427. A duly noticed public hearing was held at the Commission's offices in Concord on February 25, 1982.

Prior to the hearing, the Company provided the Commission, through its original filing and response to PUC Staff data requests, information which became Exhibits 1 through 8. Mr. Traum of the Commission staff submitted another three exhibits during the course of the hearing.

[1] The Company utilized a 1980 test year updated to 1981 by estimates. During the hearing Mr. Raiche provided unaudited figures for 1981, which were updated by letter after the hearing at the request of Mr. Traum. The Commission's decision is derived from the updated actual figures as opposed to estimates made a year earlier. The Company, under cross-examination by

Mr. Traum, did not object to this approach.

Source of Supply

[2] Birchview is in need of additional source capacity and in 1979 expended \$8,320 in drilling a new well. The results of this effort concluded with an insufficient yield and the decision to abandon and seek other sources. Birchview has stated that it has recovered \$332 as a depreciation accrual in prior years, leaving a balance of \$7,988 to be amortized. We cannot allow this investment in rate base as it is not used and useful to the customers serviced by Birchview, but will allow the recovery of expended funds as an amortization expense over 30 years.

Evidence in this case has shown that Birchview is experiencing some difficulty in obtaining easements that are required to establish a protective radius around an area which appears desirable as a drilling site. To aid in this effort, the applicability of New Hampshire statute RSA38:21, which speaks to the right of eminent domain for the taking of property to protect the purity of a public water supply, should be explored by the water company.

Customer Count

Based on Company testimony, 81 customers are currently on line, with the capacity of adding 20 more.

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During cross-examination of Mr. Raiche, it was learned that for a new customer to begin receiving water, the Company will incur only minimal expense. This indicates that the distribution system is complete in terms of servicing customers, which are projected to eventually number 101. The unused capacity presents the Commission with the question whether to reduce rate base to correspond to the percentage of customers being served out of total capacity, i.e. 101, (a reasonable approach given the owners of the water system are also the developers of the area) or, to include excess capacity in rate base and to be consistent also pro form revenues as though there were 101 customers. The later was offered by the Company in Exhibit 3.

[3] The Commission will pro form revenues to reflect 101 customers because the outcome more accurately reflects future operations. In addition, since the system is unmetered, current customers may use 0 gallons or 10,000 gallons of water and pay the same amount. That amount goes in large part to cover the investment in rate base, depreciation, maintenance, etc. so the lot owners who are not yet receiving water, but are benefitting by the existence of the system. Such a situation increases the value of their land and thereby it is appropriate that they pay their fair share.

In summation, the Commission adopts 101 as the pro forma number of customers.

Revenue Deductions

In accordance with minimizing regulatory lag, the Commission will work from 1981 expense levels of \$7,044 for Operation and Maintenance Expense, which includes \$1,730 of regulatory commission expense which will be allowed. Additional expenses to be incurred in 1982 are: \$1,252 for Depreciation, and \$1,731 for Taxes — Other.

The Commission adopts these updated figures, as a proper measure for selling reasonable rates both for new and for the foreseeable future.

Rate of Return

Based on an updating of the Company's capital structure to 12/31/81, the structure is made up of 100% equity. The Company is requesting a return of 13.6% on this equity, which the Commission finds reasonable.

Contributions in Aid of Construction

[4] The Company refers to Contribution in Aid of Construction as hookups which currently cost a customer \$600. The Company has incorrectly been handling these contributions as non-operating water income. The contributions should have been credited to Account 265, Contributions in Aid of Construction and used to reduce the investment in rate base. Thus, a question arises as to the amount of Contribution in Aid of Construction which should be used as a credit to rate base. According to the Company, \$19,950 in total has been collected, but only \$11,200 of it subsequent to the time the Company was recognized as a utility. The balance was collected prior to the date at which the Company began adhering to the NHPUC Chart of Accounts, which they will do with increased diligence in the future. Prior to 1978, the Company has stated that many items which should have been booked as utility fixed assets were not. A review of the fixed asset accounts by the Commission bears this out.

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In conclusion, the Commission will adopt \$11,200 as the average contributions in aid of construction for rate base purposes for 1981. This level will be used to reduce rate base so as to reflect only investor related capital in rate base.

Rate Base

[5] The Commission will use an average of 1981 investments for rate base purposes. The average will be based on beginning and end of year, as that data is readily available, whereas a 13 month average is not ascertainable. Taking into account the Commission's handling of the "abandoned" well, and contributions in aid of construction, the computation is straight-forward with the exception of cash working capital. The Company bills customers annually in advance, so instead of the Company's investors having to forward the funds for working capital, they are provided such by customers with a lead of roughly five months. The five months is computed by taking the average date by which service will be provided (180 days) less an estimated 30-day lag in customer payments, bill processing, mailing, etc. This five month lead is then multiplied by a one-twelfth of the annual Operation and Maintenance expense of \$7,044. The above reasoning is included in the following calculation of rate base:

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

| | 12/31/81 | 12/31/80 | Average |
|---------------------------|----------|------------------|----------|
| Fixed Assets | \$44,787 | \$52,521 - 8.320 | \$44,494 |
| Depreciation | -16,741 | -17,321 + 332 | -16,865 |
| Contributions in Aid | | | 11,200 |
| Plant Held for Future Use | | | -0- |
| Cash Working Capital | | | -2,935 |
| Materials and Supplies | | | -0- |

| | |
|-----------------------|-----------------|
| Prepayments | -0- |
| Deferred Taxes | -0- |
| Investment Tax Credit | -0- |
| Customer Deposits | -0- |
| Customer Advances | -0- |
| Rate Base | <u>\$13,494</u> |

Revenue Requirement

By including the Commission's previous findings into the following simplified formula, the revenue requirement per customer is found to be \$120, as follows:

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

| | |
|----------------------------------|---------------|
| Rate Base | \$12,494 |
| Rate of Return | 13.6% |
| Operating Inc. Requirement | <u>1,835</u> |
| Operation and Maintenance | 7,044 |
| Depreciation | 1,252 |
| Taxes - Other | 1,731 |
| Amortization | 266 |
| Revenue Requirement | <u>12,128</u> |
| Number of Customers | 101 customers |
| Revenue Requirement per Customer | \$ 120 |

This rate shall be effective with all service rendered on or after the date of this Order.

Additional Commission Concerns

As discussed in this Report, the Commission is concerned with the utility's adherence to the NHPUC authorized Chart of Accounts, the utility's records from now on shall be kept on the accrual basis.

The Company is also put on notice that the Commission's Finance Department plans to audit the utility in the near future pursuant to RSA 374:18 which provides "the Commission, by order,

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may require any public utility to produce within the state, at such time and place as it may designate, any accounts, records, memoranda, books, or papers kept in any office or place without the state, or verified copies thereof, in order that an examination thereof may be made by the Commission or under its direction."

Along with a review of adherence to the PUC Chart of Accounts there shall also be a review of the continued reasonableness of the method of overhead allocation to the utility.

In order to avoid potential problems in the future, the Company is directed to review and adhere to RSA Chapter 369 dealing with the issuance of stock and other securities.

Meters

[6] The customers of Birchview are presently unmetered which allows for an unlimited use of water at a base or fixed price. This method is unfair to the small user and can and does result in less than efficient use of the product.

Commission policy is that all water service shall be metered and Birchview is hereby directed that it immediately begin a metering program in which at least thirty-five (35) meters are installed every year beginning with the date of this order.

It is also a Commission rule that a meter shall be installed to measure the quantity of water produced from each source of supply. The latter requirement shall be implemented within two months of the Order.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that 1st Revised Page 5 Tariff NHPUC No. 1 — Water of Birchview by the Saco Water Company, which was suspended by Order No. 15,427, be and hereby is rejected; and it is

FURTHER ORDERED, that Birchview shall file a new tariff page designated 2nd Revised page 5, Issued in lieu of 1st Revised Page 5 of NHPUC No. 1. - Water, which shall show the annual charge per customer unit at \$ 120.00; and it is

FURTHER ORDERED, that 2nd Revised Page 5 shall bear the further designation "authorized by NHPUC Order No. 15,549 in case DR 81-235, dated March 25, 1982" and the effective date which shall be the date of this Order.

By Order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 1982.

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NH.PUC*03/25/82*[79232]*67 NH PUC 244*Exempt Railroad Crossings

[Go to End of 79232]

Re Exempt Railroad Crossings

DX 81-28, Fifth Supplemental Order No. 15,548

67 NH PUC 244

New Hampshire Public Utilities Commission

March 25, 1982

ORDER authorizing exempt sign for railroad crossing.

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BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, Holderness Road in Plymouth; Blair Road, NH RT 49, and Owl Street in Campton; Cross Road in Thornton; North Station Road, South Station Road and NH RT 175 in Woodstock; and NH RT 112 in Lincoln intersect the tracks of the State of New Hampshire Concord-Lincoln railroad at grade; and

WHEREAS, under present circumstances all motor vehicles carrying flammable or dangerous commodities or passengers are required to stop before proceeding over the said crossing; and

WHEREAS, this creates a hazard to highway traffic; it is

ORDERED, that the State of New Hampshire Department of Public Works and Highways be, and hereby is, authorized to erect and maintain a standard "exempt" sign on the mast which supports the advance warning disc at each approach to said crossing, thereby eliminating the necessity for stopping vehicles before proceeding over said crossing; and it is

FURTHER ORDERED, that all train movements before passing over said crossing shall stop and a flagman shall warn highway traffic by displaying a red flag during the hours of daylight and a lighted red lantern during the hours of darkness, or poor visibility, and when highway traffic has stopped, the train movement shall then proceed over the crossing.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 1982.

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NH.PUC*03/25/82*[79233]*67 NH PUC 245*Manchester Gas Company

[Go to End of 79233]

Re Manchester Gas Company

Intervenors: Office of Consumer Advocate and New Hampshire People's Alliance

DR 81-234, Second Supplemental Order No. 15,551

67 NH PUC 245

New Hampshire Public Utilities Commission

March 25, 1982

ORDER authorizing temporary rate increase.

1. RATES, § 630 — Emergency rates — Statutory provisions.

[N.H.] Statutes providing for temporary and bonded rates were intended to protect utilities from regulatory lag occurring through no fault of their own but cannot be invoked by a utility that fails to present its case in a timely manner. p. 246.

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2. RETURN, § 26 — Cost of capital.

[N.H.] The commission used the prime lending rate to determine the cost of debt capital. p. 248.

3. VALUATION, § 290 — Working capital — Lag determination.

[N.H.] The 45-day convention was used in determining lag for working capital in fixing temporary rates pending the results of a lead-lag study. p. 248.

4. VALUATION, § 290 — Working capital — Adjustments.

[N.H.] Accrued taxes, customer deposits, and undercollected cost of gas adjustments were subtracted from working capital. p. 248.

5. RATES, § 630 — Emergency rates — Effective date.

[N.H.] Temporary rates will be fixed effective with the date of hearing unless the company demonstrates that the public has been given other adequate notice of the increase. p. 249.

APPEARANCES: G. Peter Guenther and James C. Hood representing Manchester Gas; F. Joseph Gentili as Consumer Advocate; and Mary Renfo on behalf of the New Hampshire People's Alliance.

BY THE COMMISSION:

REPORT

On August 28, 1981, Manchester Gas Company (the "Company") filed with the Commission revisions to its Gas Tariff N.H.P.U.C. No. 12 providing for an increase in rates to its customers designed to increase annual revenues by approximately \$1,839,915, to become effective as to bills rendered on or after September 27, 1981. By Order No. 15,105 dated September 18, 1981 (66 NH PUC 367), the Commission suspended the effective date of the proposed rates until further order from the Commission, and additionally ordered revisions to correct and update the tariff as well as to incorporate specific information. The combined filing with revisions then became proposed N.H.P.U.C. No. 13.

Subsequent to the August filing, the Commission heard nothing from the Company regarding its request until the Company responded to Supplemental Order No. 15,353 issued December 7, 1981 (66 NH PUC 555), whereby the Company was directed to file testimony and exhibits by December 15, 1981 or have its proposed tariffs as amended (No. 13) rejected.

After seeking and obtaining a delayed filing date the Company, on December 22, 1981, filed its evidence in support of its proposed tariffs. However, at the same time, the Company also filed a Petition For Temporary Rates, praying that,

"(t)he Commission, pursuant to RSA 378:27, issue such orders of notice as may be required, and, after such reasonable hearing as the Commission may order, determine the Company's existing rates to be temporary rates as of September 27, 1981, and for the duration of these proceedings, fix, determine and prescribe temporary rates sufficient to provide additional annual

revenues of not less than \$1,000,000 ... "

[1] In spite of the Company's evidence as to its need for retroactive temporary rate relief, the Company has failed to carry their burden of proof pursuant to RSA 378:8. The Commission's concern is that four months elapsed, and the Commission had not received any testimony or the necessary exhibits to evaluate the case before us. It was situations like these that led the Commission to adopt filing rules. The Commission demanded a case be filed and then after even further extensions a case was finally submitted.

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The Commission finds that the legislature intended the protection of temporary rates, RSA 378:27, and bonded rates, 378:6, to protect utilities against regulatory lag. It would be unreasonable to allow these provisions to be available when through no fault of the regulatory agency the Company's case was not presented for our consideration. The Commission finds that a utility that proceeds in a rate case in this fashion cannot expect expedited treatment. The Commission further finds that given the aforementioned circumstances, it would be unjust and unreasonable to permit retroactive temporary rates and denies that portion of petitioner's prayer for relief. Finally, the Commission finds that given the protection of temporary rates and the recoupment for any difference between temporary and permanent rates, a utility is protected from confiscation and regulatory lag. Furthermore, such granting of temporary rates is a Commission determination pursuant to RSA 378:6 and, therefore, Manchester Gas cannot put the new tariff rates into effect. As further evidence of the fairness and accuracy of this finding, the Commission would note the language of RSA 378:27, which states that temporary rates, when found to be necessary, are to exist for the duration of said proceeding. Thus, as argued by the Consumer Advocate, a finding of temporary rates precludes use of the provisions of RSA 378:6.

Although the Company presented a well orchestrated temporary case on January 25, 1982 (for which Petitioner's counsel may be commended) several hours of well-rehearsed testimony introducing (11) exhibits is not a situation calculated, nor intended, we must presume to give other parties a reasonable chance to respond. The Commission believes that a temporary case so well documented on the day of hearing should have been and probably was physically available to others at least one day prior to the hearing and directs the Company that in the future any but the most abbreviated presentation on temporary rates must be filed with all known parties at least one full business day prior to the day of hearing.

The Commission will now turn its attention to its calculation of temporary rates for the Company. Only those areas will be addressed which involve controversy or a finding by the Commission that differs from the Company's interim case. However, even though the Commission refuses to grant retroactive relief, the Commission is not unmindful of the deteriorating earnings of the Company and in an effort to match future costs as accurately as possible with future revenue requirements will grant interim relief based on a September 30, 1981 test year. The following calculations summarize the Commission's interim findings and will be discussed *infra*:

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

Manchester Gas Company
 Interim Relief
 Average Rate Base
 Twelve Months Ended 9-30-81
 Gross Utility Plant
 LESS: Construction-Work-In-Progress
 Depreciation Reserve
 Contributions in Aid of Construction

Net Plant in Service
 PLUS: Working Capital:
 Materials and Supplies
 Gas Stored Underground
 Prepayments
 45 Day Operation and Maintenance Exp.

LESS: Customer Deposits w/Accrued Interest
 Deferred Federal Income Taxes
 Investment Tax Credits
 Accrued Taxes

Total Average Rate Base
 Rate of Return
 Required Net Operating Income
 Net Utility Operating Income

Required Increase in Net Operating Income
 Required Increase in Revenue ÷ 49.1%)

Cost of Money

[2] The latest prime rate of record is 16.0%. Based on that prime, the Commission will use 16% for the cost of debt on the \$1,000,000 NEMB Note included in the Company's capital structure of September 30, 1981, as portrayed on Exhibit 3. Using prime plus one-half percent on the unsecured notes found on the same exhibit produces an overall cost of capital of 12.81% as opposed to 13.64%.

Rate Base

[3, 4] The Commission has used a rate base different in several respects from that proposed by the Company. Since the Company's lead lag study will require careful examination prior to the Commission's adopting it as an acceptable methodology, a more conventional approach to working capital has been adopted for interim relief. In this vein, O & M Expense used by the Commission is the conventional 45 days using a twelve-month average ending September 30, 1981. (See Attachment 1 to discovery provided this Commission by letter dated February 1, 1982.) Subtracted from working capital is \$305,931 of Accrued Taxes as derived from monthly reports normally required to be filed with this Commission. Subtracting Accrued Taxes has been done by this Commission in its final orders in other cases for working capital and is a means of recognizing them as an offset to working capital requirements while avoiding a Balance Sheet only approach to working capital. Another item of note in working capital is the recognition of \$49,152 of customer deposits. This differs from the twelve-month balance to the extent it includes accrued interest earned on those deposits,

as determined from monthly reports on file with the Commission.

The final item addressed in working capital involves the elimination from working capital of \$430,121 for under-collected cost of gas adjustments. This is eliminated because the Commission already allows an interest charge for those undercollections as part of the regular fuel adjustment charge, and also because pipeline refunds are being held to be flowed through the regular adjustment.

Net Utility Operating Income and Interim Rate Relief

Attachment 4, line 4, displays net utility operating income for the period ending September 30, 1981 as \$1,134,835. Using a tax factor of 50.9% produces an interim revenue deficiency of \$569,572.

Effective Date of Temporary Rates

The Company and Consumer Advocate submitted briefs on the law as to when temporary rates, if granted, should take effect. The Commission takes this opportunity to express its policy as to the appropriate time at which to implement temporary rates.

[5] The Consumer Advocate maintains that based on *Re Pennichuck Water Works* (1980) 120 NH 562, 419 A2d 1080, temporary rates may be prospective only, from the date of a hearing. The Company, based on the same case, takes the position that temporary rates in this docket may be implemented retroactively to the date of filing the permanent request.

The Commission observes that *Pennichuck, supra*, is founded in large part on the issue of adequate notice, recognizing consumers should not be forced to pay for a product without knowing its cost. The adequacy of notice generally depends on the particular facts in any given situation. Apparently in *Pennichuck* the Court found circumstances that supported adequate notice for an exceptionally early effective date. The facts in the instant case do not support an early effective date and clearly demonstrate inadequate notice, especially given a request that would require retroactive rates covering virtually the entire 1981-1982 heating season. Ratepayers have been afforded scant, if any, opportunity to arrange alternate heating for the 1981-1982 heating season. Retroactive rates under these circumstances is clearly unconscionable. In short, henceforth, the Commission will not permit rates for any period prior to a *hearing* unless it is clearly demonstrated that the notice given the public is adequate under the circumstances. It is difficult to envision this criteria permitting in any but the rarest instances, an effective date earlier than the date of the hearing on temporary rates, as it is only at that time the public has sufficient information to permit a reasonable purchase decision.

It is also apparent to the Commission that the New Hampshire Court shares the Commission's concern for adequate notice before rates are changed whereby the Court saw the need for consumers to be able to rely on "permanent" rates and as a result informed us that "final rates cannot be retroactively adjusted" without a statute. *Re Granite State Electric Co.* (1980) 120 NH 536, 538, 421 A2d 121.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Manchester Gas Company be, and hereby is, authorized

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to place into effect a temporary increase of \$569,572; and it is

FURTHER ORDERED, that such increase be protected by bond until a permanent increase in rates may be determined; and it is

FURTHER ORDERED, that Manchester Gas Company is to file revised tariff pages to implement the increase as set forth in the Report, which are to be effective as of January 25, 1982.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 1982.

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NH.PUC*03/25/82*[79234]*67 NH PUC 250*Pittsfield Aqueduct Company, Inc.

[Go to End of 79234]

Re Pittsfield Aqueduct Company, Inc.

DR 80-125, Ninth Supplemental Order No. 15,556

67 NH PUC 250

New Hampshire Public Utilities Commission

March 25, 1982

ORDER granting rate increase, as modified, and directing the installation of water meters.

1. VALUATION, § 25 — Date of valuation — Average or year-end figures.

[N.H.] An average rate base, utilizing beginning and end-of-year figures, was used in a rate-making proceeding. p. 252.

2. VALUATION, § 250 — Property furnished or paid for by customers.

[N.H.] A utility can neither earn a return on nor benefit from depreciation of customer contributed plant. p. 254.

3. RETURN, § 36 — Efficiency of management and character of service — Penalty.

[N.H.] Return on common equity was reduced as a penalty for poor management practices. p. 257.

4. EXPENSES, § 10 — Effect of price changes and abnormal conditions — Attrition adjustment.

[N.H.] A proposed attrition allowance was not granted where expenses were adjusted to cover increased taxes and a step increase was scheduled. p. 258.

BY THE COMMISSION:
REPORT

A "Motion for Rehearing and Other Relief was filed by Pittsfield Aqueduct Company, Inc. (the Company) on May 11, 1981. In its Order No. 14,973 (66 NH PUC 248), granting a rehearing, the Commission rescinded the requirement that Pittsfield install new water meters, the requirement to commence quarterly billing, and other stipulations relating to the installation of meters. Evidence relating to these matters was allowed and presented at continued hearings on February 5, 1982.

I. *METERS*

Our basic opinion is that the sale of any utility product should be by measured volume. An unmeasured sale of the product can, and does, result in the

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small subsidizing the large user. If we avoid the economics of the individual consumer, an equally important issue is conservation of natural resources which is unlikely to be addressed when the billed customer is allowed unlimited use of the product for a base cost. Water is a limited resource, and its use must be properly reflected in rates and billing.

The Company in its testimony and exhibits presented capital costs for purchase and installation of meters which were inflated to include excavation at each service entrance on the basis that some 50% of all curb stops/valves, that have been in service in excess of 15 years, cannot be shut off. There was no evidence submitted to support this contention, nor that this condition prevails in Pittsfield. If the Pittsfield Aqueduct Company truly believes that this condition exists, it seems reasonable to assume that the Company would, and should, submit plans to correct the situation whether this Commission orders the installation of meters or not. The Company's management has admitted that no such plans have been made, nor have they applied for a revision to the approved service life of this equipment, which stands at 60 years.

The Company filed exhibits to show increased billing expenses that it claims would be incurred with the addition of new meters. The expenses shown are not compatible with those filed in its annual report to the Commission.

Staff testimony and exhibits quoted the experience of a large and of a small water utility in New Hampshire; both of whom have installed costs of the meter and complete assembly at less than one-half the cost used by Pittsfield in its estimates. Staff also used notarized expense data from Pittsfield's annual report to show that the additional annual expense per customer, which would be incurred with the addition of 50 new meters, would be \$3.93 if billed quarterly or \$2.11 if the existing practice of semi-annual billing is continued. We are concerned that the inflated costs derived by Pittsfield have been used and accepted by members of the Pittsfield community, which has resulted in the opposition of some to a metering program. We believe that a review of the record in this case will more than support our continued order to the Pittsfield Aqueduct Company that it must immediately proceed with the annual addition of 50 new meters

until all customers are metered. 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.

The Company appears to be requesting the Commission to ignore, vacate or eliminate our rule and regulation which has been in place for twenty-two years. That rule, Section 603.05(b) states that:

"Where both metered and fixture rate services are provided, the utility shall include in its tariff an orderly program setting forth the basis on which meters will be installed."

The implementation of metered service at a time when other Commissions in New England and elsewhere are confronting droughts and poisoned water supplies would appear to be mandated by common sense, as well as equity among consumers.

II. *QUARTERLY BILLING*

In Order No. 14,660 (66 NH PUC 13), Pittsfield was directed to commence quarterly billing of its general service customers. Exhibits presented by the Company attempted to show that such a requirement is "unjust and unreasonable" because the increase thereby incurred

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in operation and maintenance expenses was ignored, or not taken into account in the increased revenues allowed in this proceeding. The costs used by the Company in developing its exhibits are not supported by the expenses claimed for many years in its annual reports submitted to the Commission.

Pittsfield presently bills semi-annually, and with quarterly billing we recognize that billing costs would increase, however slightly. It should be recognized that more frequent billing would increase cash flow which would seem to be a desirable aim of the Company management.

We believe that metering its customers and other system improvements are of a higher priority than quarterly billing and will withdraw its requirement at this time. This matter will be investigated further at the next rate proceeding with Pittsfield.

III. *RATE DESIGN*

Our Report and Order No. 14,660 discussed the current metered rate schedule and minimum charge and directed their redesign by April 1, 1981. This provision has not been complied with, and we will now direct that such redesign shall be undertaken and completed before any further rate adjustment is made beyond that made in this case.

IV. *LYFORD HILL — WATER QUALITY PROBLEM*

This Commission was first made aware of a water quality problem at the Richard Clark home on Lyford Hill in 1975. The history of this complaint, including responses by Pittsfield Aqueduct Company, are a part of Commission files, with the most recent 1981 and 1982 problem made a part of this case. Exhibits 10A and 11A are water samples taken by the Clark's at the filter cartridge which they have installed at their home. These samples contain water heavily laden with solids. Tests made at the New Hampshire water supply laboratory have shown that these solids and the water are satisfactory and potable. Similar samples were collected in 1975 and this past December and January 1982.

Though potable, we believe that any customer served by a water public utility under our jurisdiction should and must receive water of a quality and content that is superior to that presently being furnished to the Clark home.

We will order that the service from the Pittsfield mains to the Clark home and the Chase home on Lyford Hill, who has complained of similar quality problems, be changed and all costs for this construction shall be at no cost to the customers so served. This work shall be completed by June 1, 1982 and a report of such completion filed with this Commission.

The flushing of the main on Lyford Hill, as ordered in Supplemental Order No. 15,120 (66 NH PUC 374), shall continue until completion of the service relocation and demonstration by Pittsfield to this Commission Staff that this quality problem has been eliminated.

V. RATE BASE

In the Company's September, 1981 filing, the test year was updated from 1979 to 1980. The Commission had previously found the 1979 average rate base to be \$378,465.

[1] The 1980 rate base utilized beginning and end-of-year figures to develop an average in a consistent method with that approved by the Commission in its Report and Order of January 12, 1981. The only exceptions are the updating of the test year and a change in the number

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of months of O & M in working capital to seven (7) months based on semi-annual billing.

Since the Commission, elsewhere in this Report, has not required the Company to go to quarterly billing, the Working Capital will be based on 7 months of proformed O & M. The term "proformed O & M" is used since this Commission doesn't believe that \$26,927 is a reasonable proxy for the Company's ongoing level of O & M expenses, and instead will use 7/12 of \$18,263, as developed elsewhere in this Report.

The adjusted rate base thus accepted by this Commission is \$411,790 versus the \$416,844 requested in Company exhibit 6A, Schedule 1 of Mr. Bisson.

VI. OPERATING REVENUES

The Company updated its test year to 1980 and correspondingly utilized actual 1980 operating revenues of \$77,971. This figure reflects approximately a one percent increase from the prior year, and is roughly equal to the preliminary revenue figures for 1981.

This stability in revenues, net of the effects of rate increases, shows a company in a limited growth position, which for a utility in these times of the high costs of borrowing to new customers, means less risk of unstable earnings and affords the Company a better opportunity to maintain its allowed rate of return, assuming efficient management.

This Commission accepts the Company's figure of \$77,971.

VII. OPERATING EXPENSES

The Company testified to \$50,755 of 1980 revenue deductions, including taxes, but excluding interest expense. This figure came directly from its 1980 annual report as filed with this Commission.

In addition to this figure of \$50,755, the Company submitted Exhibits 8, Schedule 2, Exhibit 18A, and Exhibit 19A proforming rate case expense at an annual rate of \$2,750 per year for two (2) years corrected under cross-examination of Mr. Traum to \$2,250/year; and increasing property taxes, based on actual 1981 billings, by \$5,108.

The Company did not proform for any expense decreases.

Based on the record, this Commission continues to be concerned with the Company's management. Our concern accelerated as the Company Witness failed to have knowledge of what was happening financially within the Company. Numerous questions asked by the Commission's Finance Department of Mr. Bisson, who was serving as a consultant for the Company as a financial witness, had to be deferred to Mr. Stapleton, the Company's treasurer. He in turn gave many inaccurate answers and often failed to answer. One major area of concern was the Commission's quarterly report for the first nine months of 1981. This report showed O & M expense to be \$12,010; on an annual basis this would be approximately \$16,013. The corresponding non-proformed figure for 1980 was \$26,927. Staff simply asked why the large difference, for which the Company did not make a pro forma adjustment. Mr. Stapleton first tried to explain away the difference as due to the repayment of principle and interest of outstanding short-term debt in the fourth quarter of 1981. This response led to a revision of the Company's capital structure, but was not responsive to Staff's question and only indicated a disturbing lack of understanding of the Commission's chart of accounts.

When that explanation failed, Mr. Stapleton tried again with an explanation

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that the difference was due to installation of new mains and services. This response was also incorrect as new mains and services should be capitalized.

A third attempt to respond to Staff's initial question after two (2) incorrect responses resulted in the Company offering to supply that information later in the hearing. At the next hearing date, February 5, 1982, the Company stated mandated O & M expenses for 1981 were \$28,952. Mr. Stapleton went on to add that \$6,000 of this amount was due to rate case related expenses, and couldn't explain any of the other increases. The Commission is concerned that while attempting to provide current figures, the Company certainly did not meet its burden of proof in dispelling the questions raised by Staff and continued to show its management inefficiency in accounting matters by attempting to show O & M expenses for 1981 to correspond to 1980 levels, when the 1981 amounts include rate case expenses which the Company had already requested an adjustment. The Commission will not allow expenses to be recovered twice from the consumer.

Also, in the course of Staff's cross-examination of Mr. Stapleton, it was learned that a sewer project took place in Pittsfield around 1980, and resulted in non-recurring expenses for the Company. Since this Commission sets rates prospectively, we will exclude these nonrecurring expenses. We will proform O & M expenses to what we find a more reasonable ongoing level, or \$ \$16,013, annualizing the first 9 months of 1981.

This Company has not attempted to recoup from the Town of Pittsfield or the sewer contractor the additional costs incurred by the Company due to sewer construction. The

Commission has noted in other water utility proceedings that responsible management of a water system includes seeking proper legal remedies against those who damage the interests of stockholders and ratepayers. Failure to pursue proper legal remedies is not efficient or economical management. Nor does the Commission find reasonable the large salary increases awarded officers by the board of directors, where the record in this case reveals little understanding of the Commission rules, practices, procedures and little incentive to minimize costs.

VIII. DEPRECIATION

[2] The Commission's order of January 12, 1981 required the Company to alter its practices and not charge rate-payers for depreciation on their own contributed capital. Such an order was and is consistent with New Hampshire cases in which the Court has consistently held that utilities have a right to earn a return on their investment and not the customers. *Windham Estates Asso. v New Hampshire* (1977) 177 NH 419, 422, 374 A2d 645, 647; *Legislative Utility Consumers' Council v Granite State Electric Co.* (1979) 119 NH 359, 366, 402 A2d 644.

This Commission has historically held that if a utility cannot earn on the contributions made by customers, it logically follows that they cannot use the depreciation benefits. Pursuant to this historical position, the Commission Staff and the Commission have directed Pittsfield not to use depreciation on consumer contributed plant. This continuing failure to follow our orders is neither prudent nor reasonable. The Commission will consequently reduce depreciation expense from \$7,902 by 1.58% — \$7,977/501,549 — or \$125 to \$7,777.

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TAXES

Federal and State taxes will be adjusted along the lines of Mr. Bisson's exhibits, but the proforma adjustment for property taxes requires different handling. The Company has testified that as of January 26, 1982, the tax bill, for which the proforma was requested, still hadn'y' been paid because it was less expensive to incur a 9,% interest penalty from the town than to borrow funds from the bank. Based on this rationale, the Commission considered adding \$15,772 to the capital structure at 9.0,% as short-term debt, but has rejected that approach as non-recurring, and instead will allow the \$15,772 as a proforma expense adjustment for the future.

For purposes of recouping the difference between temporary and permanent rates, the Commission will not allow the Company to surcharge \$5, 108 of property tax related expense annualized, net. of taxes, which corresponds to the amount shown in Bisson Exhibit 8, Schedule I, and not paid as of 1/26/82.

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

Derivation of Profound Net Operating Income

Operating Revenues

Revenue Deductions:

Proformed O & M Expense

Proformed Depreciation

Amortization

FIT

NHBPT
Other Taxes

Total Proformed Revenue Deductions

Proformed Net Operating Income

- (1) Annualization of first 9 months of 1981 O & M Expense
- (2) Rate case expenses
- (3) See depreciation section
- (4) Traces Bisson's format
- (5) Traces Bisson's format
- (6) Property tax proforma

Cost of Capital. This Commission in its Order dated January 12, 1981, found for a rate of return on common equity of 14.0% reduced to 12.0% due to a lack of "efficient and economical management" and negligence on the part of the Company's Board of Directors. This 12.0% was then increased to 12.6% for an attrition allowance and put into the following capital structure:

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

| | | |
|-----------|-----------|--------|
| LTD | \$109,073 | 9.0% |
| STD | 25,000 | 14.0% |
| Equity % | | |
| Attrition | 266,568 | 12.6% |
| | <hr/> | |
| | \$400,641 | 11.71% |

As part of the process of updating the Company's test year, the capital structure was updated to January 31, 1980, as follows in Exhibit 7, Schedule 1 of Bisson:

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

| | | |
|--------|-----------|-------|
| LTD | \$104,067 | 9.0% |
| STD | 19,000 | 15.0% |
| Equity | 277,028 | 17.4% |
| | <hr/> | |
| | \$400,095 | 15.1% |

Based on Company testimony that the STD was paid off in October, 1981, and none is currently outstanding, the Commission in concurrence with Mr. Bisson, will exclude STD from the capital structure. The result is:

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

| | | | |
|--------|-----------|------|--------|
| LTD | \$104,067 | 9.0% | 27.3% |
| Equity | 277,028 | | 72.7% |
| | <hr/> | | |
| | \$381,095 | | 100.0% |

The Commission accepts that capital structure and cost of LTD, but not 17.4% or 18.37% as

developed in Company witness, Ringo's updated testimony, Exhibit 17A. The Commission will not place much weight on Mr. Ringo's testimony for numerous reasons. Nor will we agree to the Company's offer to settle on 15.5%.

1) The Commission in its previous R & O noted the thickness of the Company's equity. Since then the equity has thickened further, thus lowering risk. Mr. Ringo did not place emphasis on this in his testimony, nor interest coverage ratios which the Commission also noted in its January, 1981, R & O.

2) The Commission, in its Order cited several cases including Bluefield Water Works & Improv. Co. v West Virginia Pub. Service Commission, 262 US 679, PUR1923D 11, 67 L Ed 1176, 43 S Ct 675 in which the Court ruled that (262 US 679, 692, 693, PUR1923D at pp. 20, 21):

"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 right to profits such as are realized or anticipated 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 effecting opportunities for investment, the money market and business conditions generally."

The relevant comparisons in this case are investments in the same general part of the country, corresponding risk and uncertainties and "efficient and economical management."

For these comparisons, Mr. Ringo chose 8 water companies, all vastly larger than Pittsfield; the majority of whom are experiencing large growth rates in sales and/or customers, which is not the case with Pittsfield; several of whom are experiencing problems of inadequate water supplies, which is not the case with Pittsfield; all of whom must go regularly to the debt or capital markets for new issues; this is not the case with Pittsfield; the majority of whom have a debt equity ratio and coverage ratio considerably higher than Pittsfield; a lack of issuance costs and market pressure on Pittsfield as compared to the sample; etc.

3) This Commission in conclusion must go back to Bluefield and look at recent Commission decisions on return on common equity. This Commission has selected several water utilities operating in New Hampshire with corresponding overall risk for comparative

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purposes, and lengthy periods of establishment as utilities:

a) In DR 79-183, Hanover Water Works Company, decision issued Dec. 28, 1979, the cost of common equity approved was 13.0%. The Commission realizes this rate is lower than it might have been due to the municipal ownership and that the decision is over 2 years old, but the capital structure and customer growth of Hanover makes it riskier than Pittsfield.

b) In DR 79-51, Hampton Water Works, decision issued November 1, 1979; the cost of common equity was found to be 13.78%. In that decision, the Commission arrived at a "range of reasonableness between 13.78% and 14.01%." The Commission opted for the low end of the range due to the Company's limited construction program and to recognize the Company's parent subsidiary relationship.

Again Pittsfield's equity percentage of its capital structure makes it much less risky than Hampton.

c) In a more recent decision issued August 19, 1981, DR 80-218 of Hudson Water Company (66 NH PUC 303), the authorized rate for common equity was 14.50% with a 34.1% ratio of equity to the total capital. Again considerably below the 72.7% of Pittsfield.

In conclusion, this Commission feels that Pittsfield Aqueduct Co., Inc. if operating under efficient management would deserve a 14.0% return on equity.

4) The Company has stated that it believes that it has successfully responded to all of the Commission's concerns as to its Board of Directors, yet as noted numerous places in this Report, the Company's activities do not appear to be conducted in the most efficient manner for the purposes of its stockholders or ratepayers.

Another example of the Board's lack of action to make the Company's actions more believable deals with the Commission's required Chart of Accounts for Water Utilities. Mr. Lessels of the PUC Staff filed testimony which relied in part on figures taken directly from reports filed by the Company with this Commission and signed by their President and Treasurer. Then Mr. Traum of our Staff through cross-examination of Company witnesses on accounting practices brought out many questionable and initially unanswered items which finally resulted in the Board and/or Company President considering taking some action.

In 81-86, Granite State Electric Company, the "carrot and stick" approach was applied in the form of a carrot for efficient management. In that case, the Commission accordingly raised its findings on the cost of common equity by 50 basis points.

[3] We do not have evidence before us of good management practices by Pittsfield Aqueduct Co. In fact, the reverse is true, as pointed out in several areas in this Report. In addition, our Report accompanying Seventh Supplemental Order No. 15,243 (66 NH PUC 440), pointed out the excessive delay incurred by Pittsfield management in initiating the collection of additional authorized revenues, initially sought by the Company. The evidence in this case is of less than " ... good management practices." And for that reason, we will reduce Pittsfield's allowed return on common equity by 100 basis points.

In conclusion, the Commission revises its initial decision and will utilize a return on common equity of not 12.0%, but 13.0%.

This is not even taking into account the Company's apparent submittal of

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misinformation to the Town of Pittsfield as to the cost and impact of the Commission's previously ordered meter program.

The cost of capital is then computed as follows:

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

| | | | |
|--------|---------------|---------------|-------|
| LTD | 27.3% | 9.0% | 2.45% |
| Equity | 72.7% | 13.0% | 9.45% |
| | <u>100.0%</u> | <u>11.90%</u> | |

ATTRITION

[4] The Commission in its earlier Report and Order found for 0.6% attrition on equity. This was based on the Company's no growth position, numerous fixed costs, historical erosion of earnings, and "The Company is not requesting any proforma expense adjustments other than those which are tax related" (meaning income tax related). In this filing, the Company is requesting and the Commission has granted a proforma adjustment for property taxes. This increase, which is for \$5,108, represents a major portion of this rate increase, effectively eliminates property taxes represented approximately 20% of the Company's revenue deductions in 1980, and a larger percentage once pro-formed and provides substantially more revenues to the Company than 60 basis points added to the previous finding on equity.

In summation, this Commission will allow the proforma adjustment for property taxes, and due to recognition of the Company's no growth position, fixed costs, etc., will not allow any further attrition allowance, but as previously stated will accept a step increase by the Company after installation of 50 meters. *Revenue Requirement*. The Commission calculated the additional revenue required as follows, assuming no charge in billing policies or additional meters:

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

| | | | |
|---|-----------|--------------------------|----------|
| Approved Rate Base | \$411,790 | | |
| Approved Cost of Capital | 11.9% | Adj. Test Yr. Oper. R. | \$77,971 |
| Req. Net Operating Income | 49,003 | Adj. Test Yr. Oper. Ded. | 47,978 |
| Less: Adj. Test Yr. Op. Inc. | - 29,993 | Adj. Test Yr. Oper. Inc. | \$29,993 |
| Add'l Oper. Income Req. | 19,010 | | |
| Tax Effect (NHBPT & FIT) | 5,186 | | |
| Additional Revenue Req. above adjusted test yr. level of \$77,971 | \$24,196 | | |

Surcharge for Temporary Rates will be at \$24,196 - \$5,108 or \$19,088 annualized.

Our Order will issue Accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Pittsfield Aqueduct Company shall immediately begin the installation of 50 meters at the premises of customers presently being served under the General Service - Unmetered rate schedule and that such installation shall be complete by July 1, 1982; and it is

FURTHER ORDERED, that 50 additional meters shall be installed in each succeeding year until all customers served by Pittsfield are metered; and it is

FURTHER ORDERED, that Pittsfield shall file new tariff pages to collect the

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increased revenues allowed in this Report.

By Order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March 1982.

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NH.PUC*03/26/82*[79235]*67 NH PUC 259*Joy Manufacturing Company

[Go to End of 79235]

Re Joy Manufacturing Company

Intervenor: Connecticut Valley Electric Company, Inc.

DE 81-45, Order No. 15,550

67 NH PUC 259

New Hampshire Public Utilities Commission

March 26, 1982

ORDER directing electric company to make arrangements for time-differentiated pricing.

RATES. § 326 — Electric — Hours of use.

[NH] Changes in revenue requirements and rates to implement time-differentiated pricing of electricity are within the jurisdiction of the commission.

APPEARANCES: Richard B. Couser on behalf of Joy Manufacturing Company and Gerald Cook on behalf of Connecticut Valley Electric Company.

BY THE COMMISSION:

This case arises out of a complaint by Joy Manufacturing Company based on the refusal of Connecticut Valley Electric Company (the Company) to provide Joy a Time Differentiated Rate. It is Joy's position that the Company should provide a Time Differentiated option to Joy as a matter of law, or alternatively as a matter of Commission discretion, based on the economics of Time Differentiated Rates. The Company maintains there is currently no cost effective means available that would permit it to offer a Time Differentiated Rate to Joy.

Joy is a company engaged in smelting operations which demand large voltages and, therefore, takes electricity at 46,000 volts on a Transmission Rate. Connecticut Valley is a

subsidiary of Central Vermont and purchases well in excess of 90% of its electric needs from Central Vermont. Central Vermont is also a non-generating company and purchases its electric needs from approximately 12 electric generating companies. The Company witness, Mr. Gerald Cook, is employed as a Rate Manager by both Connecticut Valley and Central Vermont. Mr. J. P. Brannon, an employee of Joy responsible for energy costs, testified for Joy.

The inception of this controversy goes back a number of years and involves considerable correspondence between the parties. Of primary

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importance in the history of this controversy is the fact that on May 1, 1977, Connecticut Valley began service to Joy on a special one-year contract rate. That rate included a Time Differentiated provision. The Company views that one-year rate as a "test rate", believing it demonstrated a Time Differentiated provision was actually not feasible under the circumstances. Joy argues that the Time Differentiated rate did not harm the Company and Joy should be provided the same option on a permanent basis. The Commission will not attempt to decipher all that has transpired between the Company and Joy since it is not necessary to determine exactly what, in fact, did transpire but to determine what now needs to be done. The Commission finds that both parties failed to effectively communicate with each other.

Load Diversity as a Basis for Time Differentiated Rates

One reason the Company claims for not offering a Time Differentiated rate to Joy is that it will not reduce operating costs to the Company but may, however, reduce Company revenue that will then have to be made up by other ratepayers. The Company bases its conclusion on the fact that its wholesale purchase at the wholesale delivery point for Joy is not time differentiated; therefore, unless load diversity is involved, Joy could simply shift its peak to a lower cost time period, thereby saving Joy money but only reducing revenues to Connecticut Valley. And, unfortunately, no diversity is available because Joy is the only customer on the wholesale delivery point where Connecticut takes from Central Vermont to serve Joy. Joy argues that the Company or its parent, Central Vermont, can seek a revised rate from the FERC that would contain a Time Differentiated feature for the Company's wholesale purchase rate. The Company agrees this would present a solution and, in fact, has discussed the matter with FERC. FERC has even encouraged the proposing of such a rate. But FERC has also stated that Time Differentiated Rates are a new concept at FERC, and it will thoroughly investigate such a request; therefore, it is the Company's opinion that neither the Company nor its parent is sufficiently large enough to be an industry leader presenting an innovative rate design before FERC. In summary, the Company contends that making a proposal of this type to FERC is "not cost effective".

Joy offers that load diversity can be created by the use of a combined meter for Joy and a neighboring commercial facility, Elmendorff Board. In response, the Company states that Joy and Elmendorff cannot be on the same delivery point. No reason is given other than it would require a change in the rate and could possibly produce a change in the revenue requirement. The Commission notes that these changes are within the jurisdiction of the Commission.

Joy also offers a procedure whereby there would be a combined reading of several meters into one total by means of a paper transaction that would thus recognize the total system load

diversity. Connecticut Valley Electric responded that although the mechanics of such a transaction were possible, such a procedure would not yield rates that would recover investment costs for those who used the facilities. This option was not sufficiently developed, and the Commission would be willing to review such a proposal at a later time when sufficient facts can be presented by both parties.

Although this case arises out of a consumer complaint, several very important

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issues are involved, which relate to this Commission's desire to encourage economically efficient pricing policies. In particular, it is clear to this Commission that generation costs vary considerably by time-of-day and time-of-year, and that time-differentiated pricing is essential to reflect properly such variations. Time-differentiated pricing, which is encouraged by RSA 378:7a, is particularly important for the larger transactions involved in wholesale sales and retail sales to large customers. Unfortunately, in this case, and in relation to all other non-generating utilities in this State, this Commission is constrained by the inefficient pricing policies of FERC at the wholesale level that fail to reflect time-differentiated variations in costs.

Although this Commission cannot mandate changes in wholesale rates, a burden a non-generating utility with excessive losses of revenue due to imposition of retail pricing that conflicts with inefficient wholesale rates, we can encourage the utilities within our jurisdiction to pursue time-differentiated wholesale rates before the FERC. We do not accept the argument that a small utility cannot be an industry leader and urge the Company and CVPS to petition FERC for appropriate changes in the wholesale rates of their suppliers. Such action would be received quite positively by this Commission as an attempt to hold down future costs for the Company's ratepayers. Such a resolution would appear to be the only long-term and permanent solution to the problem posed in the docket.

In the short term, the Commission can only provide for efficient pricing mechanisms to the extent feasible by its limited authority. In this regard, the possibility of joint metering of Joy and Elmendorff must be considered. Although the diversity benefits of such an action are not known to the Commission at this time, it appears reasonable to expect some savings to be possible from a combination of joint metering and load shifting of one of both of the two firms. In addition, although the required tariff changes and any costs to the Company are also not known at this time, the possibility of costs savings and greater efficiency in the supply of electricity require that the option be fully investigated.

On this basis, the Commission will instruct the Company to offer the joint meter option to Joy and Elmendorff and to negotiate with both customers a reasonable arrangement whereby any diversity benefits to the Company arising from load shifting shall be reflected in the rate for the customer shifting load. We will request the Company to report to this Commission within 30 days on the success of the negotiations and to file with this Commission any materials regarding tariff changes, contract terms, changes in revenue or revenue requirements, or other changes that will be involved in implementing the arrangement.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the Company offer the joint meter option to Joy and Elmendorff and negotiate with both customers a reasonable arrangement whereby any diversity benefits to the Company arising

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from load shifting shall be reflected in the rate for the customer shifting load; and it is

FURTHER ORDERED, that the Company report to this Commission within thirty (30) days on the success of the negotiations and file with this Commission any materials regarding tariff changes, contract terms, changes in revenue or revenue requirements, or other changes that will be involved in implementing the arrangement.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1982.

FOOTNOTES

¹ In Report and Order No. 15,425 (67 NH PUC 97). this Commission ordered a two-year target for implementation of mandatory time-differentiated rates for large retail customers of PSNH.

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NH.PUC*03/26/82*[79236]*67 NH PUC 262*Fuel Clause Investigation

[Go to End of 79236]

Re Fuel Clause Investigation

DE 82-68, Order No. 15,554

67 NH PUC 262

New Hampshire Public Utilities Commission

March 26, 1982

ORDER opening docket for investigation of fuel adjustment clauses.

BY THE COMMISSION:

ORDER

WHEREAS, this Commission in Supplemental Report and Order No. found for Public Service Company of New Hampshire, the following:

1. Fuel costs have stabilized in comparison with the price volatility of the past and will most likely remain stable for some years into the future.

2. The laws of this State and the guidance of the Supreme Court do not require the use of a Fuel Adjustment Clause, but do require some procedure for recognizing current costs. and

WHEREAS, this Commission under the authority of RSA 378:7 and other statutes, wishes to investigate the possibility that a more just and reasonable method of recognizing current costs than the monthly or quarterly Fuel Adjustment Clause can be designed for the electric utilities that utilize an FAC; it is hereby

ORDERED, that Docket DE 82-68 is opened for the purpose of investigating alternatives to the existing FAC's for those utilities that do utilize FAC's, and it is

FURTHER ORDERED, that all potentially affected utilities, Commission Staff, and other parties may file twenty (20) copies of testimony and exhibits for distribution to all parties with this Commission by April 22, 1982 on the following questions:

1. Advantages and disadvantages of the FAC mechanisms utilized in this jurisdiction.
2. Ratemaking problems and issues involved in rolling fuel costs into or out of basic rates, including the issue of lagging revenues, treatment of working

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capital, determination of base fuel costs, etc.

3. Accounting problems and issues related to changing the FAC mechanism.
4. Advantages and disadvantages of incorporating fuel costs in basic rates every six months or on an annual basis.
5. Advantages and disadvantages of an. Annual or six month forward looking estimation of fuel costs.
6. Appropriate definition of fuel costs; and it as

FURTHER ORDERED, that hearings are scheduled for 10:00 a.m. May 12, 13, 14, and 18 at the offices of the Commission for hearing and cross-examination of the pre-filed testimony.

By Order of the Public Utilities Commission New Hampshire this twenty-sixth day of March, 1982.

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NH.PUC*03/26/82*[79237]*67 NH PUC 263*Littleton Water and Light Department

[Go to End of 79237]

Re Littleton Water and Light Department

DR 82-43, Order NO. 15,555

67 NH PUC 263

New Hampshire Public Utilities Commission

March 26, 1982

ORDER approving rate increase with rate design modifications.

BY THE COMMISSION:

ORDER

WHEREAS, Littleton Water and Light Department notified this Commission February 17, 1982 of a request for a six (6) percent increase in rates to be made effective on March 17, 1982 for the 45 customers served outside the municipal jurisdiction; and

WHEREAS, this Commission, upon review, finds the requested rate increase to be just and reasonable; and

WHEREAS, this Commission, upon review, finds the rate design contained in the filed tariff pages to be inconsistent with the rate designs now implemented or being implemented throughout the state, and to be unjust and unreasonable in regards to the treatment of smaller customers and the lack of encouragement for conservation, by virtue of the steep declining blocks employed in the rates; it is

ORDERED, that the request for a six (6) percent increase in rates is approved, and it is

FURTHER ORDERED, that Littleton shall file new tariff pages reflecting the following rate designs for those customers within NHPUC jurisdiction, said pages to be effective April 14, 1982,

Residential: \$3.71 Customer Charge Flat KWH Rate

General Service: a) No demand Meter (demand less than 3.0 KW) \$2.61 Customer Charge Flat KWH Rate

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b) Demand Metered (demand greater than 3.0 KW) \$2.61 Customer Charge \$3.55/KW Demand Charge Flat KWH Charge Small and Large Power: Flat KWH Rate with Minimum bill Water Heating: Flat KWH Rate

These rates and charges shall be designed to collect, for the customers within the NHPUC jurisdiction, the same revenues by class as would have been collected under the rate design in the filed tariff pages; and it is

FURTHER ORDERED, that if Littleton Water and Light Department wishes to contest this rate design, that they shall SHOW CAUSE in the form of written testimony and exhibits filed by April 1, 1982, as to why such a rate design is unjust and unreasonable; at which time a hearing on this matter will be scheduled by this Commission.

By Order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1982.

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NH.PUC*03/26/82*[79238]*67 NH PUC 264*New England Power Company

[Go to End of 79238]

Re New England Power Company

DF 79-33, Third Supplemental Order No. 15,556

67 NH PUC 264

New Hampshire Public Utilities Commission

March 26, 1982

ORDER continuing exemption from regulations requiring commission approval of indebtedness.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by Order No. 13,502 (DF 79-33) of this Commission dated February 27, 1979 (64 NH PUC 33), New England Power Company was granted an exemption from Commission Regulations permitting it to issue and renew, from time to time, its Bonds, Notes or evidence of indebtedness payable less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any time (not including any such indebtedness which is to be retired with the proceeds of any such issue or renewal) not in excess of seventy-eight million dollars (\$78,000,000) which exemption expired March 31, 1981, unless such period is extended by order of this Commission; and

WHEREAS, in Supplemental Order No. 14,141 (DF 97-33) of this Commission dated March 24, 1980 (65 NH PUC 137), the Commission authorized New England Power Company to increase its Notes Payable to one hundred forty-three million dollars (\$143,000,000) and extended the exemption to expire on March 31, 1981; and

WHEREAS, New England Power Company, in Second Supplemental Order No. 14,805 (66 NH PUC 98) requested

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authority to continue the exemption in said Order No. 13,502 (64 NH PUC 33) to March 31, 1982, but, to increase its authority to issue its Notes Payable in an amount not to exceed one hundred ninety-five million dollars (\$195,000,000); and

WHEREAS, in Second Supplemental Order No. 14,805, the Commission authorized an exemption to expire March 31, 1982, unless extended by order of this Commission, permitting it to issue and renew its Notes, Bonds and other evidence of indebtedness payable less than twelve (12) months from the date thereof, in an aggregate amount thereof outstanding at any one time (not including any such issue or renewal not in excess of one hundred ninety-five million dollars (\$195,000,000)); and

WHEREAS, New England Power Company, on February 26, 1982, requests authority to

continue the exemption in said Order No. 14,805 to March 31, 1983, but to increase its authority to issue its Notes Payable in an amount not to exceed two hundred thirty million dollars (\$230,000,000); and

WHEREAS, this request is made to coincide with their borrowing application filed with the Securities and Exchange Commission; and

WHEREAS, this request provides no rationale or support for increasing the level of short-term indebtedness; it is hereby

ORDERED, that New England Power Company's request for authority to continue the exemption is granted but the request to increase the level of short-term debt is denied on the failure to carry the burden of proof; and it is

FURTHER ORDERED, that New England Power Company be, and hereby is, authorized, from time to time, to issue and renew its Notes, Bonds or other evidence of indebtedness payable in less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any one time (not including any such indebtedness which is to be retired with the proceeds of any such issue or renewal) not in excess of \$195,000,000; and it is

FURTHER ORDERED, that the exemption contained herein shall expire on March 31, 1983, unless extended by order of this Commission; and it is

FURTHER ORDERED, that on 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; and it is

FURTHER ORDERED, that the docket DF 79-33 is officially closed and any further requests for increasing the level of short-term debt must be brought under a separate docket.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1982.

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NH.PUC*03/26/82*[79239]*67 NH PUC 266*Granite State Electric Company

[Go to End of 79239]

Re Granite State Electric Company

DF 79-38, Third Supplemental Order No. 15,557

67 NH PUC 266

New Hampshire Public Utilities Commission

March 26, 1982

ORDER authorizing continuing exemption from regulations requiring approval of indebtedness.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by Order No. 13,500 (DF 79-38) of this Commission dated February 27, 1979 (64 NH PUC 32), Granite State Electric Company was granted an exemption from Commission Regulations permitting it to issue and renew, from time to time, its Bonds, Notes and other evidence of indebtedness payable less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any time (not including any such indebtedness which is to be retired with the proceeds of any such issue or renewal) not in excess of two million dollars (\$2,000,000) which exemption expired March 31, 1980, unless such period is extended by order of this Commission; and

WHEREAS, by Supplemental Order No. 14,114 (DF 79-38) of this Commission dated March 6, 1980 (65 NH PUC 115), the Commission authorized Granite State Electric Company to increase its Short-Term Notes to two million five hundred thousand dollars (\$2,500,000) and extended the exemption to expire on March 31, 1981; and

WHEREAS, Granite State Electric Company, on February 23, 1981, sought authority to continue the exemption in said Order No. 13,500 to March 31, 1982, but, to increase its authority to issue its Short-Term Notes in an amount not to exceed three million five hundred thousand dollars (\$3,500,000); and

WHEREAS, in Second Supplemental Order No. 14,894 (66 NH PUC 194), the Commission authorized an exemption to expire March 31, 1982, unless extended by order of this Commission, permitting it to issue and renew its Notes, Bonds and other evidence of indebtedness payable less than twelve (12) months from the date thereof, in an aggregate amount thereof outstanding at any one time (not including any such issue or renewal) not in excess of three million five hundred thousand dollars (\$3,500,000); and

WHEREAS, in this same Order, that the aforementioned Docket DF 79-38, was amended so that more orderly accounting of these exemptions could be maintained; and

WHEREAS, Granite State Electric Company, on February 26, 1982, requests authority to continue the exemption in said Order No. 14,804 (66 NH PUC 97) to March 31, 1983, but to increase its authority to issue its Short-Term Notes in an amount not to exceed five million five hundred thousand dollars (\$5,500,000); and

WHEREAS, this request is made to coincide with their borrowing application filed with the Securities and Exchange Commission; and

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WHEREAS, the Commission, after investigation and consideration, finds that said request for increasing the level of short term debt has no foundation offer of proof or rationale; it is

ORDERED, that Granite State Electric Company's request for authority to continue the exemption is granted but the request to increase the level of short-term debt is denied on the failure of Granite State to carry its burden of proof; and it is

FURTHER ORDERED, that Granite State Electric Company be, and hereby is, authorized, from time to time, to issue and renew its Notes, Bonds or other evidence of indebtedness payable

in less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any one time (not including any such indebtedness which is to be retired with the proceeds of any such issue or renewal) not in excess of \$3,500,000; and it is

FURTHER ORDERED, that the exemption contained herein shall expire on March 31, 1983, unless extended by order of this Commission; and it is

FURTHER ORDERED, that on January First and July First of each year said Granite State Electric Company shall file with this Commission a detailed statement, duly sworn to by its treasurer, showing the disposition of proceeds of said Notes, Bonds or other evidence of indebtedness; and it is

FURTHER ORDERED, that the Docket DF 79-38 is officially closed and any further requests for increasing the level of short-term debt must be brought under a separate docket.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1982.

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NH.PUC*03/29/82*[79240]*67 NH PUC 267*Funding of National Regulatory Research Institute

[Go to End of 79240]

Re Funding of National Regulatory Research Institute

DF 82-85, Order No. 15,564

67 NH PUC 267

New Hampshire Public Utilities Commission

March 29, 1982

ORDER opening docket for resolution of issues concerning contributions to National Regulatory Research Institute.

BY THE COMMISSION:

ORDER

WHEREAS, the National Association of Regulatory Utility Commissioners (NARUC) passed Resolution #2 at its November, 1981 annual meeting, which requested that state regulatory commissions assist in the funding of the National Regulatory Research Institute; and

WHEREAS, the Ad Hoc NARUC Committee report called for contributions

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from New Hampshire in the total amount of \$20,587 consisting of \$8,954 related to electric utilities, \$804 for gas utilities, \$9,314 for telecommunication utilities and \$1,515 for water utilities; and

WHEREAS, the resolution stated that "the regulatory community has frequently expressed the need for an independent institute to analyze public policy issues, provide technical assistance to state commissions, and educational programs for regulatory commissions and their staff"; and

WHEREAS, the Commission finds that proper regulation requires examination into whether or not the NARUC resolution involving NRRI funding is in the public interest and thereby chargeable to utilities as an above-the-line expense; and

WHEREAS, the Commission also finds that a legal determination must be made as to the Commission's power to assess such costs if the aforementioned are found to be in the public interest; it is hereby

ORDERED, that Docket No. DR 82-85 is opened for resolution of these and any other relevant issues; and it is

FURTHER ORDERED, that this order is to be sent to all water, gas, electric and telephone utilities operating within the State of New Hampshire; and it is

FURTHER ORDERED, that there will be a hearing held on this docket on April 22, 1982 at 10:00 A.M. at the office of the Public Utilities Commission, 8 Old Suncook Road, Concord, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of March, 1982.

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NH.PUC*03/29/82*[79241]*67 NH PUC 268*Fuel Adjustment Clause

[Go to End of 79241]

Re Fuel Adjustment Clause

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

DR 82-59, Order No. 15,568

67 NH PUC 268

New Hampshire Public Utilities Commission

March 29, 1982

ORDER implementing fuel surcharges.

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APPEARANCES: Warren Nighswander for Concord Electric Company and Exeter and Hampton Electric Company; F. Joseph Gentili for the Consumer Advocate.

BY THE COMMISSION:
REPORT

The Public Utilities Commission held a duly noticed public hearing on the fuel adjustment clause filings of Concord Electric Company and Exeter & Hampton Electric Company, for April, 1982, at its offices in Concord on March 22, 1982.

Concord Electric Company and Exeter & Hampton Electric Company were represented by one witness, Peter J. Stulgis. Concord had a FAC rate of \$1.78/100 KWH originally approved for the first quarter of 1982, while Exeter & Hampton Electric Company had a rate of \$1.60/100 KWH. Since both Companies' tariffs contain provisions calling for an interim filing during the effective period of an average fuel adjustment rate, if a deviance of 10% in the collection of fuel expense occurs, both Companies filed for and received reductions for March, 1982. For Concord Electric Company, the reduction was from \$1.78/100 KWH to \$1.56/KWH. For Exeter & Hampton Electric Company, the reduction was from \$1.60/100 KWH to \$1.45/100 KWH. The adjustment was mainly attributable to lower than estimated FAC rates billed by the Companies' supplier, Public Service Company of New Hampshire, and less lost and unaccounted for energy.

The total amount of the overcollections in December, 1981, and January, 1982, were not used to adjust the March rate, but only one-third of it. The balance was used to stabilize the rate for the 2nd quarter of 1982, which it did. Concord Electric Company in Exhibit 2, of its March 16, 1982, filing, requested a rate for the second quarter of 1982 of \$1.34/100 KWH; while Exeter & Hampton Electric Company in Exhibit 3, requested a rate for the second quarter of 1982 of \$1.45/100 KWH.

The Commission believes these requested rates are in the public good and our Order will issue accordingly.

ORDER

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

ORDERED, that 5th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 7 — Electricity, providing for a fuel surcharge of \$1.34 per 100 KWH for the month of April, 1982, be, and hereby is, permitted to become effective April 1, 1982; and it is

FURTHER ORDERED, that 19th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 14 — Electricity, providing for a fuel surcharge of \$1.45 per 100 KWH for the month of April, 1982, be, and hereby is, permitted to become effective April 1, 1982; and it is

FURTHER ORDERED, that Original Page 51A of Granite State Electric Company tariff, NHPUC No. 9 — Electricity, providing for an oil conservation adjustment surcharge of eight cents (\$0.08) per 100 KWH for the months of March through June, 1982, be, and hereby is, permitted to remain in effect for April, 1982; and it is

FURTHER ORDERED, that Original Page 17B of Granite State Electric Company, NHPUC No. 9 — Electricity, providing for a fuel surcharge for the months of March through June, 1982, of \$1.40 per 100 KWH be, and hereby is, permitted

to remain in effect for April, 1982; and it is

FURTHER ORDERED, that 13th Revised Page 15 of the N.H. Electric Cooperative, Inc. tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of \$3.28 per 100 KWH for the month of April, 1982, be, and hereby is, permitted to become effective April 1, 1982; and it is

FURTHER ORDERED, that 15th 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 April, 1982, be, and hereby is, permitted to become effective April 1, 1982; and it is

FURTHER ORDERED, that 99th Revised Page 6 of Littleton Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$1.47 per 100 KWH for the month of April, 1982, be, and hereby is, permitted to become effective April 1, 1982; and it is

FURTHER ORDERED, that 67th Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of (\$0.62) per 100 KWH for the month of April, 1982, be, and hereby is, permitted to become effective April 1, 1982; and it is

FURTHER ORDERED, that 62nd Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for a fuel surcharge credit of (\$0.15) per 100 KWH for the month of April, 1982, be, and hereby is, permitted to become effective April 1, 1982.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of March, 1982.

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NH.PUC*03/31/82*[79242]*67 NH PUC 270*Meriden Telephone Company, Inc.

[Go to End of 79242]

Re Meriden Telephone Company, Inc.

DR 82-96, Order No, 15,570

67 NH PUC 270

New Hampshire Public Utilities Commission

March 31, 1982

ORDER authorizing calling service.

BY THE COMMISSION:

ORDER

WHEREAS, New England Telephone has opposed to implement Granite State Calling

Service for its residential customers, effective April 1, 1982; and

WHEREAS, Meriden Telephone Company, Inc. has proposed a similar service to become effective simultaneously with that of New England Telephone; and

WHEREAS, Meriden Telephone Company's proposal must become effective in less than the statutory 30-day filing period in order to conform with that of New England Telephone; and

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

ORDERED, that Section 5, Original Sheets 7 and 8 of Meriden Telephone Company, Inc., tariff, NHPUC No. 4 — Telephone, be, and hereby are, allowed to become effective with all service rendered on and after April 1, 1982.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of March, 1982.

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NH.PUC*03/31/82*[79243]*67 NH PUC 271*Kearsarge Telephone Company

[Go to End of 79243]

Re Kearsarge Telephone Company

DR 82-95, Order No. 15,571

67 NH PUC 271

New Hampshire Public Utilities Commission

March 31, 1982

ORDER implementing calling service.

BY THE COMMISSION:

ORDER

WHEREAS, New England Telephone has proposed to implement Granite State Calling Service for its residential customers, effective April 1, 1982; and

WHEREAS, Kearsarge Telephone Company has proposed a similar service to become effective simultaneously with that of New England Telephone; and

WHEREAS, Kearsarge Telephone Company's proposal must become effective in less than the statutory 30-day filing period in order to conform with that of New England Telephone; and

WHEREAS, the Commission finds such to be for the public good; it is

ORDERED, that Section 5, Original Sheets 13 and 14 of Kearsarge Telephone Company tariff, NHPUC No. 5 — Telephone, be, and hereby are, allowed to become effective with all

service rendered on and after April 1, 1982.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of March, 1982.

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NH.PUC*04/01/82*[79244]*67 NH PUC 272*Woodsville Municipal Electric Department

[Go to End of 79244]

Re Woodsville Municipal Electric Department

DR 81-290, Supplemental Order No. 15,575

67 NH PUC 272

New Hampshire Public Utilities Commission

April 1, 1982

ORDER authorizing purchased power adjustment.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Woodsville Municipal Electric Department, a public utility engaged in the business of supplying electric service in the State of New Hampshire, on October 1, 1981, filed with this Commission certain revisions of its tariff NHPUC No. 3 — Electricity, providing for an increase in the purchased power cost adjustment, effective October 26, 1981; and

WHEREAS, said filing was suspended under Order No. 15,185, dated October 13, 1981, pending investigation and decision thereon; and

WHEREAS, the Commission scheduled a hearing for ten o'clock in the forenoon of the twelfth day of January, 1982, at which time, the Company failed to appear due to reasons beyond their control; and

WHEREAS, by letter dated January 12, 1982, Commission staff requested certain data of the department which was provided to the Staff on January 25, 1982; and

WHEREAS, the Commission Staff has reviewed and analyzed this data and has determined that this increase is due to the higher cost of electricity from its supplier, Central Vermont Public Service Corporation and the increase was calculated in the proper manner; and

WHEREAS, the rates which cause the higher cost of electricity from the department supplier have been approved by the Federal Energy Regulation Commission: it is

ORDERED, that 3rd Revised Page 10A and 5th Revised Page 10A-1 of tariff, NHPUC No. 3 — Electricity, of Woodsville Municipal Electric Department be, and hereby is, approved to become effective as of the date of this Order; and it is

FURTHER ORDERED, that the Department give notice of this Purchased Power Adjustment

rate by bill inserts in all customer bills.

By order of the Public Utilities Commission of New Hampshire this first day of April, 1982.

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NH.PUC*04/12/82*[79245]*67 NH PUC 273*Public Service Company of New Hampshire

[Go to End of 79245]

Re Public Service Company of New Hampshire

DF 82-63, Supplemental Order No. 15,576

67 NH PUC 273

New Hampshire Public Utilities Commission

April 12, 1982

ORDER authorizing sale of common stock.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS our Order No. 15,543 dated March 24, 1982 (67 NH PUC 223), issued in the above-entitled proceeding, authorized Public Service Company of New Hampshire to issue and sell not exceeding three million (3,000,000) shares of Common Stock, \$5 par value, subject to further order of this Commission; and

WHEREAS, in compliance with said Order No. 15,543, following negotiations with underwriters, the Company has submitted to this Commission the details concerning the sale of said Common Stock, which contemplate the issue and sale of three million (3,000,000) shares of said Common Stock by the Company to underwriters who will make a public offering thereof, as set forth in the Underwriting Agreement between the Company and the underwriters, a copy of which is to be filed with the Commission, said Common Stock to be sold at a price to the Company of \$15.055 per share; and

WHEREAS, after due consideration, it appears that the issue and sale of said Common Stock upon the terms, including the price, hereinabove set forth or referred to, is consistent with the public good; it is

ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue and sell at a price of \$15.055 per share in cash three million shares of its Common Stock, \$5 par value, said stock to be sold at said price of \$15.055 per share to underwriters who will make a public offering thereof, as set forth in the Underwriting Agreement between the Company and the underwriters; and it is

FURTHER ORDERED, that all other provisions of said Order No. 15,543 of this Commission relating to the sale of Common Stock are incorporated herein by reference.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April,

1982.

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NH.PUC*04/12/82*[79246]*67 NH PUC 274*Readoption of Public Utilities Commission Rules and Regulations

[Go to End of 79246]

Re Readoption of Public Utilities Commission Rules and Regulations

Intervenors: Public Service Company of New Hampshire and Volunteers Organized in Community Education

DRM 81-373, Order No. 15,583

67 NH PUC 274

New Hampshire Public Utilities Commission

April 12, 1982

ORDER adopting rules.

APPEARANCES: Pierre Caron, Public Service Company of New Hampshire and Alan Linder for VOICE.

BY THE COMMISSION:

REPORT

On December 9, 1981, this Commission initiated a proposed rulemaking for the purpose of readopting its rules, Chapters 100 through 1600 of the New Hampshire Public Utilities Commission Rules and Regulations in their entirety. Notices were sent to Donald S. Jennings, Office of Legislative Services; M. Arnold White, Jr., Chairman, Science and Technology Committee; Conrad L. Quimby, Chairman, Commerce and Consumer Affairs Committee; Ward Brown, Chairman, Internal Affairs Committee; and the Office of Attorney General. Public hearings were scheduled and held on January 11, 1982 and March 24, 1982 in the Commission's Concord offices before Vincent J. Iacopino as a Hearing Examiner pursuant to RSA 363:17.

Hearing Examiner, Iacopino, announced that the purpose of the hearing was to comply with RSA 541-A:2, Subsection IV, which requires that no rules shall be effective for a period longer than two (2) years except that the agency may adopt an identical rule under RSA 541-A:3, I. The hearing was intended to readopt existing rules and, additionally, to correct certain spelling errors, numerical sequence mistakes, replace paragraphs which were inadvertently omitted in previous rulemakings, and incorporate into the main text, changes which have been incorporated through the rulemaking process since the last printing. It was acknowledged that the chapters pertaining to Motor Carriers and Transportation Rules incorporated substantial changes and it is now determined that those rules be bifurcated from these proceedings and a new docket be opened to receive comments specifically on the new proposed rules which will be distributed by the Commission; therefore, Chapters 700, 800 and 900 shall not be approved at this time.

The parties agreed to all but two (2) of staff's proposals. On January 25, 1982, Mr. Linder

responded by letter that he objected to two (2) provisions: (1) 303.05 (c): Deletion of sentence requiring utilities to print the PUC toll-free telephone number on customer bills. (2)

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303.08 (c) C.: Addition of sentence to "Medical Emergency" rule requiring that customers "Shall be required to negotiate a payment schedule pursuant to sub-section (e) below".

A second hearing on the two issues in question was held at the Commission's Concord office on March 24, 1982 at 10:00 a.m., after written notice of February 10, 1982 to Martin Gross, Esq., Alan Linder, Esq., New Hampshire Legal Assistance,; Gerald Eaton, Esq., Community Action Program,; and all Electric Utilities.

Mr. Linder presented Dorothy Martin, who read a prepared statement of VOICE. Her statement provided that the telephone number:

1. Should either be included on all bills, or should appear on periodic billing inserts.
2. Should be announced clearly and understandably to eliminate customer contusion.

She emphasized the toll-free numbers were necessary because:

1. All people should be aware of PUC, and encouraged to contact PUC, and how to contact PUC, and what kinds of issues PUC can be contacted regarding.
2. PUC should be as available to the public as it is to the utilities on an ongoing basis.
3. PUC can itself benefit from hearing from the public, as can be seen by input at public meetings and complaints, etc.
4. People should feel their government agencies are accessible.
5. People should be aware they can contact the PUC for other than just shutoffs.

Mr. William Moore, representing himself as a member of the New Hampshire Peoples Alliance, also spoke against the proposal.

Mr. Dean Mattice, Staff Consumer Assistant, provided testimony offering that the majority of calls received at the Commission on the toll-free number were mistakenly intended to be placed to the utility company. Except for one month (February) during a test period of October of 1981 through March 19, 1982, over 75% of all calls placed to the Commission were referred to the appropriate Company for resolution, since the calling customer either had not first called the Company in an attempt to resolve a problem, or thought that the toll-free call was actually being placed to the Company. Mr. Mattice testified that the time spent in transferring these calls to the appropriate Company was preventing his staff from providing more adequate assistance to those customers who were properly appealing after failing to resolve their problem with the Company. He indicated that the majority of those customers actually needing Commission assistance were those who had received disconnect notices, and he noted that staff recommended that the toll-free number be retained on all disconnect notices for customer convenience. Upon cross-examination he suggested that those customers who were unsuccessful in attempting to resolve problems with the Company prior to the issuance of a disconnect notice, were protected by other Commission rules which mandate that the Company advise the customer of the

Commission's opportunity to intervene prior to disconnect. In response to questions regarding the PUC's accessibility for general information, Mr. Mattice reminded the parties that the Commission number is listed in the front section of all telephone books.

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Medical Emergencies

Staff testified that the Commission had apparently inadvertently omitted a portion of a statement in Section 303.08 (c) C. which required that customers whose service was to be left on without payment following a medical officer's certification "shall be required to negotiate a payment schedule pursuant to subsection (e) below". Staff witness Bruce Ellsworth testified that the readoption of the phrase made no changes to the implementation of the medical rules since customers retained an obligation to negotiate payment schedules in accordance with other provisions of the Commission's rules. He suggested that restoring the missing sentence in this section of the tariff made the rule easier to understand and acted as a proper reminder that arrangements were necessary.

VOICE objected on the basis that it was not mere technical change but that it imposed new burdens which were unfair. VOICE offered new rules that assured that a customer qualifying under the medical emergency provision would be relieved of any responsibility to initiate arrangements until sixty (60) days from the receipt of the medical certificate.

Commission Findings

In the matter of the issue regarding the inclusion of the toll-free number on all utility bills, the Commission finds the most compelling evidence to be that which assures that staff's time is most beneficially used to assist those customers who need it most. There is little doubt that inclusion of the Commission's number on all bills increases its exposure and provides a more ready access to those customers wishing to make an assistance call. We cannot ignore the fact, however, that staff's time in explaining to many customers that they have simply dialed the wrong party, or in directing them to seek Company assistance before coming to the Commission, is not good utilization of time. We take notice of the fact that all telephone companies are responding to the need for adequate publication of our telephone number, and we note that New England Telephone Company has redesigned its "Customer Guide" in the front of each new directory to include not only the Commission's number, but also a summary of the Company's responsibility to notify customers of their right of appeal to the Commission. We are satisfied that retention of the Commission's number on all disconnect notices, when added to the other opportunities available to the customer to search out the number, provide ample access for Commission assistance.

In the matter of the medical provisions, we cannot accept VOICE's recommendation as a proper alternative to staff's proposal. VOICE's recommendation differs substantially from staff's proposal in that it makes a substantive change to the Commission's rule by inserting a sixty (60) day waiver period before a medically qualified customer must initiate negotiation plans. We find that staff's proposal makes no substantive changes. We concur with Staff's opinion that the reinsertion of the proposed statement will provide added clarification for customers.

Having considered the comments, testimony and exhibits submitted, the Commission

approves and adopts the proposed rules (Chapters 100 through 600 and Chapters 1000 through 1600) as submitted.

Our Order will issue accordingly.

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ORDER

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

ORDERED, that the attached Rules are adopted; and it is

FURTHER ORDERED, that a copy of same be certified to the office of Legislative Services pursuant to RSA 541-A to become effective in accordance throughout.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1982.

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NH.PUC*04/13/82*[79247]*67 NH PUC 277*Keld Agnar

[Go to End of 79247]

Re Keld Agnar

DE 82-32, Order No. 15,577

67 NH PUC 277

New Hampshire Public Utilities Commission

April 13, 1982

ORDER granting a license for installation and maintenance of submarine cables for utility service.

APPEARANCES: Keld Agnar, pro se.

BY THE COMMISSION:

REPORT

On January 26, 1982, Mr. Keld Agnar filed with this Commission a petition seeking licensing for submarine cables to be installed from an area off Fox Hollow Road in Moultonboro, N.H. to Little Badger Island in Lake Winnepesaukee. Said cables would provide Mr. Agnar with both electrical and telephone service to his home being built on that island.

An Order of Notice was issued on February 10, 1982, setting the matter for hearing on March 23, 1982, at 10 a.m. in the Commission's Concord offices, and directing public notice. In addition to Mr. Agnar, the Order of Notice was distributed to the following: William Chesley, New England Telephone and Telegraph Co.; New Hampshire Electric Cooperative, Inc.; George Gilman, Commissioner, DRED; John Bridges, Director, Safety Services; John R. Sweeney,

Director, Aeronautics Commission; Office of the Attorney General.

A duly noticed hearing was held at the Commission's offices on March 23, 1982, at 10 a.m. Mr. Agnar represented himself; no other intervenors were present. The Commission was represented by Vincent J. Iacopino as Hearing Examiner and by Engineering Department staff members Arthur C. Johnson, Electrical Engineer; and Edgar D. Stubbs, Jr., Telephone Engineer.

Original plans called for an overhead line starting at Pole 14410/28 and continuing to new Poles 28.1 and 28.2 on land owned by William C. Chesley and Ellen M. Chesley, who had granted Mr.

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Agnar an easement for such line. From Pole 28.2 the line would be a submarine cable extending approximately 1500 feet to serve Little Badger Island. Water Supply and Pollution Control had issued its Permit No. A-359 for such crossing. Letters were sent to all abutters, followed by telephone contact. None expressed any objection. (The package containing the letter of approval from WSPCC and its permit, the original Agnar plan, and letters to abutters was marked as Exhibit 4.) Shortly before the scheduled hearing, Mr. Agnar negotiated purchase of a five-acre plot adjacent to the Chesley property and proposed modification of his original plan such that the line would traverse his property rather than that of Mr. and Mrs. Chesley. While this purchase has not yet been consummated, Mr. Agnar has obtained an easement which would allow construction prior to the date of transfer. Under the new proposal the line would originate at Pole 14410/27, again requiring two added poles-presumably 27.1 and 27.2. From the latter, the submarine cable would extend approximately 1600 feet to Little Badger Island. The amended plan was presented to Water Supply and Pollution Control whereupon that agency issued a modified permit on March 16, 1982. (A copy of the modified permit was marked as Exhibit 5.)

Mr. Agnar indicated that the 15KV line would be constructed by his electrician, Robert Rowan, Center Sandwich, N.H., according to specifications provided by New Hampshire Electric Cooperative, Inc. and would be in compliance with the National Electrical Safety Code.

While part of the original petition, submarine cable for telephone service, was not discussed in detail at the hearing, Mr. Agnar did state that the installation of that cable would be by New England Telephone and Telegraph Company and that it would be handling all arrangements for licensing. Since such cable would follow the same itinerary the power cable, we find it appropriate to consider the dual utility installation as a package.

Staff has reviewed plans and finds them in compliance with all code requirements. There being no intervenors nor objections from abutters, this Commission finds the licensing of the installation to be for 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 Keld Agnar be, and hereby is, granted a license for the installation and maintenance of submarine cables for utility service between the area of Fox Hollow Road in Moultonboro, New Hampshire and Little Badger Island in Lake Winnepesaukee; said installations to conform to requirements of the National Electrical Safety Code.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of April, 1982.

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NH.PUC*04/13/82*[79248]*67 NH PUC 279*Woodsville Municipal Electric Department

[Go to End of 79248]

Re Woodsville Municipal Electric Department

DR 81-290, Second Supplemental Order No. 15,578

67 NH PUC 279

New Hampshire Public Utilities Commission

April 13, 1982

ORDER amending previous order.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

So much of Supplemental Order No. 15,575 (67 NH PUC 272), which reads " ... 5th Revised Page 10A-1 ... " is amended to read " ... 6th Revised Page 10A-1 ... "

By order of the Public Utilities Commission of New Hampshire this thirteenth day of April, 1982.

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NH.PUC*04/13/82*[79249]*67 NH PUC 279*Exempt Railroad Crossings

[Go to End of 79249]

Re Exempt Railroad Crossings

DX 81-28, Sixth Supplemental Order No. 15,579

67 NH PUC 279

New Hampshire Public Utilities Commission

April 13, 1982

ORDER authorizing exempt sign for railroad crossing.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Eastern Avenue, West Street, Bradford Road, and Witcomb's Mill Road

intersect the tracks of the Boston and Maine's Cheshire Branch at grade in the City of Keener; and

WHEREAS, operations over this section of railroad are nonexistent as there is no business being conducted on the line which has been abandoned; and

WHEREAS, under present circumstances all motor vehicles carrying flammable or dangerous commodities or passengers are required to stop before proceeding over the said crossing; and

WHEREAS, this creates a hazard to highway traffic; it is

ORDERED, that the City of Keene be, and hereby is, authorized to erect and maintain a standard "exempt" sign on the mast which supports the advance warning disc at each approach to said crossing, thereby eliminating the necessity

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for stopping vehicles before proceeding over said crossing; and it is

FURTHER ORDERED, that all train movements before passing over said crossing shall stop and a flagman shall warn highway traffic by displacing a red flag during the hours of daylight and a lighted red lantern during the hours of darkness, or poor visibility, and when highway traffic has stopped, the train movement shall then proceed over the crossing.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of April, 1982.

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NH.PUC*04/13/82*[79250]*67 NH PUC 280*Gas Service, Inc.

[Go to End of 79250]

Re Gas Service, Inc.

DR 80-179, Sixth Supplemental Order No. 15,582

67 NH PUC 280

New Hampshire Public Utilities Commission

April 13, 1982

ORDER authorizing miscellaneous customer charges.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the tariff of Gas Service Inc. is in need of updating and reorganization; and

WHEREAS, certain changes in the tariff proposed by Gas Service Inc, and also by the parties to the Settlement Agreement No. 2, were not specifically addressed by the Commission in

Report and Order No. 15,532 (67 NH PUC 193); it is hereby

ORDERED, that Gas Service, Inc. may require a bad check charge of \$5.00 and a seven (7) days' notice for discontinuance of service; and it is

FURTHER ORDERED, that the proposal of Gas Service Inc. on Terms and Conditions, 5-Credit and 15-Disconnection by the Company, as embodied in Exhibit No. 21, are hereby approved,; and it is

FURTHER ORDERED, that Gas Service Inc. is granted an exemption from the requirement of Rule PUC 505.04 specifying a \$5.00 charge for a second request meter test and is hereby authorized to levy a charge equal to the Meter Account Charge for such meter test, and it is

FURTHER ORDERED, that Gas Service Inc. shall file Tariff No. 6 in entirety for effect May 1, 1982 in conformance with the terms of this Order, and Report and Order No. 15,532.

By Order of the Public Utilities Commission of New Hampshire this thirteenth day of April, 1982.

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NH.PUC*04/14/82*[79251]*67 NH PUC 281*Walker's Crossing

[Go to End of 79251]

Re Walker's Crossing

DX 81-381, Order No. 15,565

67 NH PUC 281

New Hampshire Public Utilities Commission

April 14, 1982

ORDER directing installation of railroad warning signals.

BY THE COMMISSION:

REPORT

The Commission, on its own motion inspired by a complaint, opened a docket on December 12, 1981 and initiated an investigation and hearing into the adequacy of safeguards and protection of the railroad-highway grade crossing, known as Walker's Crossing, located on Route 11 in Farmington, identified as AARDOT 054289R. An Order of Notice was issued January 12, 1982 providing for a hearing to be held on January 28, 1982 at 10:00 A.M. at the Town Hall Auditorium on Main Street in Farmington.

Walker's Crossing AARDOT 054289R is located in Farmington on New Hampshire Route 11 which is a north south highway that crosses the Boston and Maine Corporation's (B&M) railroad track, known as the Farmington Branch, approximately .1 miles north of the Rochester-Farmington municipal line. The single line railroad track is also north and south by geographics; therefore, the crossing is at a very acute angle. In an effort to keep directions in a

proper prospective, the highway will be referred to as north and south, with the railroad east and west.

The present crossing was authorized by this Commission in D-T3740 under Order No. 7240 on December 21, 1958. The Order was a result of a petition by the New Hampshire Department of Public Works and Highways (DPW&H) for the relocation of an existing crossing. The project included a relocation of a section of railroad track to get the best angle possible, given the fact that both highway and track are generally parallel in the immediate area. At the time of Order No. 7240 highway speed was 50 MPH with a daily average of 3800 vehicles which was expected to reach 6000 by 1980. Rail traffic was three trains per week at 20 MPH, which usually occurred during daylight hours.

The B&M requested the crossing be protected with crew activated flashing lights. The DPW&H protested indicating low volume vehicle and train traffic could be adequately protected by manual flagging, i.e. stop and flag by the railroad. The Commission at that time agreed additional protection may be desirable sometime in the future when highway traffic has increased; however, manual flagging would be sufficient.

The investigation by Commission staff in the instant docket revealed the following facts, which were presented in testimony at the hearing:

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1. Rail traffic has increased to one train a day each way over the crossing consisting of 10 to 15 cars.
2. Train speed is 10 miles per hour with a stop and flag order at the crossing.
3. Highway speed is 55 miles per hour.
4. Highway vehicle official traffic count is 6600 per day with an unofficial count of approximately 8000 per day.
5. The crossing has passive protection, i.e. crossbuck advance warning discs and road surface markings on both approaches.
6. There is no visibility restriction due to obstructions, only the acute angle.
7. There are no stop signs at the crossing
8. Nighttime use has increased with no visibility improvement

The complaint alleges that many "close calls" or "near misses" have occurred because the motorists have been unable to detect a train occupying the crossing, particularly during the nighttime hours. There has been no accident directly with a train in the past ten years; however, a delivery truck tipped over trying to avoid hitting one. Thirteen, residents of the area, including a member of the Legislature, a selectman, the Police Chief and a representative of Davidson Rubber, one of the largest employers in the area and track user all reiterated the complaint and demanded something be done before a serious accident occurs. The only recommendation from the citizens was automatic flashing lights. The B&M representatives indicate an agreement to automatic flashing lights, as does the DPW&H. The cost of automatic flashers was placed in the area of fifty to fifty-five thousand dollars with maintenance costs of twenty-nine hundred dollars.

A crew activated or entrance system with stop posts would cost approximately thirty to thirty-five thousand dollars with maintenance costs of twenty-one hundred dollars. These figures were presented in testimony by the railroad.

The Commission staff recommendation is two part, immediate and long range. Recognizing something should be done immediately to make rail traffic more visible in hours of darkness, it is recommended that the crossing be illuminated with street lights. There are power and pole available at the crossing; therefore, an immediate installation could be arranged. The long range remedial action is train crew activated flashing lights. These could be put on a timing device so the train would be required to stop only once to activate the lights prior to entering the crossing. Inasmuch as the crossing is stop and flag at the present, this would not require any additional train or crew action. It, in fact, will increase the safety of all at the most economical expense. Highway traffic would then have the benefit of flashing signals warning of a train about to or now occupying the crossing. It will further assist the safety of railroad personnel by keeping the flagman out of the 55 MPH highway traffic.

The illumination recommendation met with some resistance from the citizens as not good enough. However, the railroad indicated studies show that crossing illumination is a valuable tool in the reduction of accidents between rail and highway vehicles. It was further pointed out that crossing signals could not be installed immediately, because of funding and weather. Therefore, the illumination appears to be the most reliable safety device available for immediate installation. Due to the heavy highway traffic and very light rail traffic, stop

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signs should not be installed at this crossing.

At the conclusion of the hearing, Commissioner Paul R. McQuade ordered immediate steps be taken to illuminate the crossing. This was completed through the efforts of this Commission and Public Service Company on February 1, 1982 when two (2) 70 watt high pressure sodium luminaires were installed. Order No. 15,472 on February 2, 1982 requires such temporary lighting with costs assumed by the New Hampshire Department of Public Works and Highways. It further requires the Boston and Maine Railroad to replace the existing crossbuck in the northwest quadrant and install an additional one in the southeast quadrant when ground conditions permit same.

Upon consideration of all the facts, the Commission is of the opinion that due to the increased highway traffic and the change in operational hours of the railroad there is definitely a need for a change of protection at Walker's Crossing to an active type, replacing the present passive devices. This active protection should consist of crew activated or entrance system of flashing lights with an automatic shut off or time out feature. The cost of installing should be borne by the New Hampshire Department of Public Works and Highways with maintenance the responsibility of the Boston and Maine Railroad pursuant to RSA 373:10. The Commission concurs with the immediate corrective action taken by the installation of illumination and new crossbucks at the crossing. The illumination should be removed when the active protection is operable.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Boston and Maine Railroad be and hereby is ordered to install crew activated flashing lights at Walker's Crossing on New Hampshire Route 11 in Farmington, in accordance with Commission Order No. 15,393 and the Manual of Uniform Traffic Control Devices; and it is

FURTHER ORDERED, that the New Hampshire Department of Public Works and Highways assume all costs of installation of said active protection and the Boston and Maine Railroad assume all costs of maintenance of said protection; and it is

FURTHER ORDERED, that upon the completion and operation of said active protection, the flagging procedure in Order No. 7240 dated December 31, 1958, and the illumination required in Order No. 15,472 dated February 2, 1982 be, and hereby is, revoked.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of April, 1982.

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NH.PUC*04/15/82*[79252]*67 NH PUC 284*Purchased Power Adjustment

[Go to End of 79252]

Re Purchased Power Adjustment

DR 82-115, Order No. 15,584

67 NH PUC 284

New Hampshire Public Utilities Commission

April 15, 1982

ORDER approving tariff changes pursuant to reduction of wholesale rates.

BY THE COMMISSION:

ORDER

WHEREAS, FERC has approved the settlement of the wholesale rate case of Public Service Company of New Hampshire which reduced wholesale rates to the New Hampshire Electric Cooperative, Concord Electric Company, and Exeter and Hampton Electric Company effective on April 1982 bills, and which provides a wholesale recoupment refund due May 2, 1982, and

WHEREAS, the Cooperative, Concord and Exeter and Hampton have filed for appropriate reductions in their retail Purchased Power Adjustment charges to reflect the new wholesale rates in accordance with accepted practice, it is hereby

ORDERED, that the thirty day notice provision for retail tariff filings is hereby waived and the following tariff pages approved:

First Revised Page 13a Superseding Original Page 13a NHPUC 10,

Near Hampshire Electric Cooperative
Second Revised Page 18A Superseding First Revised Page 18A,
NHPUC 7, Concord Electric Company
Second Revised Page 18 Superseding First Revised Page 18,
NHPUC 14, Exeter and Hampton Electric Company

FURTHER ORDERED, that the above utilities shall provide a one-time public notice of the above tariff changes in a newspaper of general circulation in their service territory.

FURTHER ORDERED, that the above utilities shall, on receipt of the refund from Public Service Company, file a complete accounting of the refund and their plan for crediting the refund to their customers.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of April, 1982.

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NH.PUC*04/19/82*[79253]*67 NH PUC 285*Manchester Gas Company

[Go to End of 79253]

Re Manchester Gas Company

DR 81-234, Third Supplemental Order No. 15,591

67 NH PUC 285

New Hampshire Public Utilities Commission

April 19, 1982

ORDER approving tariff revision.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Manchester Gas has filed original Page No 1 of Supplement No. 6 to Tariff NHPUC No. 12 — Gas requesting authority to bill a Temporary Rate Surcharge as of April 19, 1982; and

WHEREAS, such request complies with this Commission's approval of Temporary Rates in Order No. 15,551 (67 NH PUC 245), and simplifies the Company's billings; it is hereby

ORDERED, that Original Page No. 1 of Supplement 6 to Tariff NHPUC No. 12 — Gas, Manchester Gas Company is approved for effect on bills rendered on or after April 19, 1982; and it is

FURTHER ORDERED, that for the purposes of recoupment of revenues under permanent rates for Manchester Gas, when approved by this Commission, the rates in effect between January 25, 1982 to April 19, 1982 shall be considered Temporary Rates for that period.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1982.

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NH.PUC*04/21/82*[79254]*67 NH PUC 285*City of Laconia

[Go to End of 79254]

Re City of Laconia

Intervenors: Laconia Community Development Commission, Laconia City Planning Department, and New Hampshire Department of Public Works and Highways

DX 82-44, Order No. 15,594

67 NH PUC 285

New Hampshire Public Utilities Commission

April 21, 1982

ORDER authorizing construction of pedestrian railroad crossing.

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APPEARANCES: Charles Berube for the Laconia Community Development Commission; Morton Young for the Laconia City Planning Department; Kenneth Boehner, city manager, for the City of Laconia; John W. Clement for the New Hampshire Department of Public Works and Highways, railroad division.

BY THE COMMISSION:

REPORT

By petition filed February 12, 1982, the City of Laconia seeks authority to establish a public pedestrian crossing at grade across the tracks of the State-owned Concord-Lincoln Railroad Line from the end of Keasor Court to Bartlett Beach. Hearing thereon was held at Laconia in the Martha Prescott Auditorium of the Laconia Library on March 29, 1982, at which no one appeared in opposition to the granting of the petition.

The City of Laconia owns a parcel of land at the southeast corner of Lake Winnisquam with approximately 650 ft. of shoreline which serves as a bathing beach. It is bounded on the south by the right-of-way of the State-owned Railroad, on the east by land of Carpenter-Patterson, on the north by the land of Martel and on the north-west by Lake Winnisquam and Durkee Brook.

Access to the land for vehicular traffic is available via Winnisquam Avenue which is at the northerly tip of the land. There is no other public access to the property. Because Winnisquam Avenue is a circuitous route, with the nearest access to the Beach via Bay Street, the people in that section of the City along Court Street, which is quite heavily populated, can approach the Beach on foot via Keasor Court thus saving a much longer route.

The Keasor Court location was chosen for pedestrian access after hearings before the appropriate City Officials. The beach area is a development consisting of men's and women's bath houses and playground equipment and space for twenty-five (25) to thirty (30) automobiles. The City is to construct a ten foot fence around the property and provide a 4-foot gate for the pedestrian entrance. It is feared that if such access is not provided that there will eventually be a hole cut in the fencing material and unlawful trespassing will result.

The railroad road-bed is from four (4) to five (5) feet higher in elevation than the surface of Keasor Court. There is no objection to providing pedestrian steps at the edge of the road bed. It is not desired to have bicycles, mopeds or motorcycles use this approach.

The beach-side land is at a higher elevation than Keasor Avenue and presents no problem for a pedestrian approach.

The crossing will be used only during the periods of the year that the beach property is open and the gate will be locked during the remaining periods.

The Department of Public Works and Highways does not oppose the petition, but it desires the City to pay for the installation of the crossing and it's removal at the close of the beach season, and it's reinstallation each year. It also desires the City to provide for such liability insurance as will properly protect the railroad operations. Rail service on the line is now operated twice weekly.

The City Manager testified that the City is willing to assume these costs and to provide the insurance which is already carried for pedestrian crossings at Weirs Beach. All agree that one whistle signal given by approaching trains is adequate

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for proper warning to those using the crossing.

Upon consideration of all the facts the Commission is of the opinion that its consent should be given to permit the pedestrian crossing. Our Order will issue accordingly.

ORDER

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

ORDERED, that the City of Laconia, be, and hereby is, authorized to construct and maintain a public pedestrian grade crossing over the tracks of the State of New Hampshire Railroad in the City of Laconia at the terminus of Keasor Court in accordance with a plan on file at this office; and it is

FURTHER ORDERED, that the said New Hampshire Railroad shall provide a planked crossing 4-feet in length with suitable steps from the level of Keasor Court to that of the crossing; and it is

FURTHER ORDERED, that the cost of providing the said crossing, removal and re-installing and maintenance shall be borne by the City of Laconia; and it is

FURTHER ORDERED, that during the period that said crossing is open for use, all trains approaching shall give one blast of its horn at a distance of not more than 500-feet therefrom.

By Order of the Public Utilities Commission of New Hampshire this twenty-first day of April, 1982.

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NH.PUC*04/28/82*[79255]*67 NH PUC 287*Granite State Electric Company

[Go to End of 79255]

Re Granite State Electric Company

DR 81-86, Eighth Supplemental Order No. 15,602

67 NH PUC 287

New Hampshire Public Utilities Commission

April 28, 1982

ORDER approving recoupment plan.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Order No. 15,452 (67 NH PUC 117) of this Commission instructed Granite State Electric Company to file a plan for recoupment of revenues to May 13, 1981, and to file tariff pages in compliance with Commission policy regarding small power producers and cogenerators; and

WHEREAS, Granite State Electric Company has filed a satisfactory recoupment plan for effect June 1, 1982 and extending for one year; and

WHEREAS, Granite State Electric Company has failed to file tariff pages in compliance with Commission policy regarding small power producers and co-generators and is thereby in violation of Commission Order Nos. 14,797 in DE 80-246 (66 NH PUC 83) and No. 15,452 in DR 81-86; it is hereby

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ORDERED, that the recoupment plan proposed by Granite State Electric Company is approved; and it is

FURTHER ORDERED, that Granite State Electric Company must file by 4:30 p.m., May 3, 1982 said tariff pages to comply with Commission Order Nos. 14,797 and 15,452, or be deemed guilty of a felony in accordance with RSA 365:41 and face potential action in accordance with RSA 374:41.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of April, 1982.

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NH.PUC*04/29/82*[79256]*67 NH PUC 288*Fuel Adjustment Clause

[Go to End of 79256]

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 Water and Light Department, and Littleton Light Department

DR 82-91, Order No. 15,607

67 NH PUC 288

New Hampshire Public Utilities Commission

April 29, 1982

ORDER permitting fuel surcharges to remain in effect.

BY THE COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1982, 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 for those utilities which file monthly unless requested or needed by one of those utilities; and the Commission would 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 or needed to have a hearing scheduled; and

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

ORDERED, that 5th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 7 — Electricity, providing for a fuel surcharge of \$1.34 per 100 KWH for the month of April, 1982, be, and

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hereby is, permitted to remain in effect for the month of May, 1982; and it is

FURTHER ORDERED, that 19th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 14 — Electricity, providing for a fuel surcharge of \$1.45 per 100 KWH for the month of April, 1982, be, and hereby is, permitted to remain in effect for the month of May, 1982; and it is

FURTHER ORDERED, that Original Page 51A of Granite State Electric Company tariff, NHPUC No. 9 — Electricity, providing for an oil conservation adjustment of eight cents (\$0.08) per 100 KWH for the months of March through June, 1982, be, and hereby is, permitted to remain in effect for May, 1982; and it is

FURTHER ORDERED, that Original Page 17B of Granite State Electric Company, NHPUC No. 9 — Electricity, providing for a fuel surcharge for the months of March through June, 1982, of \$1.40 per 100 KWH be, and hereby is, permitted to remain in effect for May, 1982; and it is

FURTHER ORDERED, that 14th Revised Page 15 of the N.H. Electric Cooperative, Inc. tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of \$2.53 per 100 KWH for the month of May, 1982, be, and hereby is, permitted to become effective May 1, 1982; and it is

FURTHER ORDERED, that 16th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$2.45 per 100 KWH for the month of May, 1982, be, and hereby is, permitted to become effective May 1, 1982; and it is

FURTHER ORDERED, that 100th Revised Page 6 of Littleton Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$1.72 per 100 KWH for the month of May, 1982, be, and hereby is, permitted to become effective May 1, 1982; and it is

FURTHER ORDERED, that 68th Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of (\$0.84) per 100 KWH for the month of May, 1982, be, and hereby is, permitted to become effective May 1, 1982; and it is

FURTHER ORDERED, that 63rd Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge of (\$0.06) per 100 KWH for the month of May, 1982, be, and hereby is, permitted to become effective May 1, 1982.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of April, 1982.

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NH.PUC*04/30/82*[79257]*67 NH PUC 290*Exeter and Hampton Electric Company

[Go to End of 79257]

Re Exeter and Hampton Electric Company

Intervenors: Community Action Program and Office of Consumer Advocate

DR 81-317, Second Supplemental Order No. 15,609

67 NH PUC 290

New Hampshire Public Utilities Commission

April 30, 1982

ORDER approving rate increase.

1. EXPENSES, § 15 — Reasonableness.

[H.N.] The commission retains authority to disapprove, as a part of any step increase, any increase in expenses which it determines to be unjust or unreasonable. p. 291.

2. EXPENSES, § 114 — Taxes — Normalization.

[H.N.] A company was permitted to normalize taxes with deferred federal income tax expense allowed in the cost of service for rate-making purposes. p. 291.

3. RATES, § 278 — Inverted block rates.

[H.N.] Declining block rate structures were eliminated to encourage customers to implement conservation measures. p. 292.

APPEARANCES: Warren Nighswander for Exeter and Hampton Electric Company; Gerald Eaton for Community Action Program (CAP); F. Joseph Gentili, Consumer Advocate. Additional participants: Michael Dalton, president, Exeter and Hampton Electric Company; Peter Stulgis, manager, rates and cost allocation; Eugene Sullivan, commission finance director; George Gantz, commission rate design director.

BY THE COMMISSION:

REPORT

On November 13, 1981, Exeter & Hampton Electric filed with the Commission a proposed tariff to be effective December 13, 1981 that provided for a rate increase calculated to yield an annual increase in base revenues of \$871,398. Exeter & Hampton Electric (hereinafter referred to as "the Company") included in its proposal substantial revisions in the design of the rate structure. In addition, the Company sought a step-rate adjustment to become effective July 1, 1983. The amount of this second step increase was proposed to cover increases in actual expense rates expected to be incurred by the Company for payroll and related payroll taxes, pension expenses, property taxes and public utility assessment tax over the amounts allowed in the Commission decision.

Exeter & Hampton filed a petition for temporary rates requesting that the then effective rates be fixed as temporary rates for the duration of the proceedings. Appearances were subsequently filed by two parties, Community Action Program and the Office of the Consumer Advocate.

On January 6, 1982, the Commission held a hearing on the Company's petition for temporary rates. The Commission subsequently issued its Supplemental Order No. 15,511 (67 NH PUC 187), which made rates temporary effective as of January 6, 1982.

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Pursuant to the procedural schedule established at the hearing on January 6, 1982, data

requests were transmitted to the Company by Staff, by CAP and by the Consumer Advocate and duly answered by the Company. Three settlement conferences were held at the offices of the Commission. From these meetings came a settlement proposal as to the revenue level. Subsequent meetings led to a second settlement proposal offered as to rate design.

The Commission accepts the increase proposed in the settlement of \$623,625. The Commission further denies an attrition allowance but will allow a second step increase in the permanent rates as of July 1, 1983. This second step increase will be allowed to cover known increases in annual costs of the Company for the following four items of expense: (a) payroll and related payroll taxes; (b) pension expense; (c) property taxes; (d) public utility assessment. Neither the parties nor the Commission have agreed to allowing the Company any additional revenues to cover any expense increases other than those identified above, nor to provide for the return requirement of any rate base increases.

[1] The Company has not waived the right to seek additional revenues for such items at the time of the second step increase. Conversely, Staff has not waived the right to challenge any requests by the Company for such additional revenues and specifically has not waived without limitation the right to investigate the possible existence of any changes in revenue levels then being experienced by the Company compared with revenue levels as contemplated in the attached revised exhibits. Furthermore, the Commission is recognized by all parties to retain its authority to disapprove as part of any second step increase any increase in expense which the Commission determines to be unjust or unreasonable.

The Commission will allow the Company to recover by surcharge in accordance with RSA 378:29 the difference between the revenue level provided by the settlement and the actual revenue level collected during the time period of temporary rates.

[2] The Company is authorized to use the accelerated cost recovery system for calculating depreciation for income tax deduction purposes and is further authorized to use a normalization method for accounting as defined and prescribed in the Economic Recovery Tax Act of 1981 and as defined and prescribed in any rulings or regulations which might be promulgated to further explain or define the provisions of the Act; and further, said normalization will result in deferred federal income tax expense, which this Commission will allow in the cost of service for ratemaking purposes.

RATE DESIGN

With respect to rate design matters, the Company's original proposal included the filing of a complete new tariff, updating and improving a number of features, and implementing substantial rate design changes. The Company proposed allocating the rate increase equally to all classes, moving to three-part rate based on cost of service principles and implementing lifeline rates for residential customers. Settlement Agreement No. 2 maintains many of these proposals, but goes considerably further in certain areas. In particular, a dramatic restructuring of the General Service Rates and a complete redesign of customers' bills to promote consumer understanding are proposed. These

proposals are welcomed by the Commission. The most positive aspects of the proposals,

which are quite extensive, are highlighted below and provide the basis for the Commission's acceptance of Settlement Agreement No. 2.

The most dramatic rate structure changes will be for General Service Customers; particularly, the largest and smallest. For large customers, the outdated P-rate is discontinued, and a new rate G-1 is created for all 36 customers with loads consistently greater than 200 kilovolt amperes. These customers will be shifted in two steps from kilowatt-based demand billing to kilovolt ampere demand billing in order to encourage efficiency in power factor. This change is consistent with the kilovolt ampere demand billing the Company receives from Public Service Company; the new metering required will also accommodate time-differentiated rates if and when PSNH moves to time-differentiated rates at the wholesale level. The two-step process for changing the billing will provide ample time for customers to improve their power factors in order to avoid large increases and may allow some customers to reduce their bills.

[3] The small General Service customers with loads consistently less than 3.4 kilowatts (about 1,400 customers) will be placed in rate class G-3 and will receive an overall rate reduction. The rate design will be a three-part rate similar to that for the residential class; the proposal eliminates the declining block rate structure for this class and will thereby provide larger rewards to those customers that implement conservation measures. The smaller customers as a result of these changes will receive some relief from the unfair burden of high electric rates they have shouldered in the past.

The 1,200 or so remaining General Service customers will be in rate class G-2 and will receive standard three-part rates with kilowatt demand charges.

Two major changes are proposed for the residential class. First, a lifeline rate will be implemented that will reduce bills for customers using less than 300 KWH/month in spite of the overall rate increase. The lifeline revenues will be recovered from consumption between 200 and 500 KWH each month, which means the space heating customers will not see disproportionately large increases in their bills as a result of the lifeline rates.

Secondly, the rates for the 2,267 existing rate D-OP customers will be restructured to be more consistent with time-of-use principles. This change establishes a standard time-of-day rate for over 10 percent of Exeter & Hampton's residential customers (those with storage water heaters); this success should demonstrate to other utilities in the State that time-of-day rates can be successfully marketed to customers, to the long-run benefit of both customers and utilities.

The rate increase for outdoor-lighting is being applied to mercury-vapor fixtures only, and not to the more efficient sodium-vapor fixtures. In addition, the Company prepared an updated cost-of-service study for the 100-watt mercury-vapor fixtures, which further increases the rate for that very popular size and improves the economic competitiveness of the competing sodium-vapor fixture, which is almost twice as efficient.

The bill redesign, proposal eliminates most of the confusing features of the existing bills by incorporating all the various KWH charges, e.g., the base energy charge, the fuel adjustment charge, the purchased power adjustment and any appropriate customers credits,

into a single energy charge and by providing an explicit calculation of the bill. The particular terms and provisions of the charges, including changes in the fuel adjustment and other charges, will be noted separately as comments on the bill. Although the success of the bill redesign can only be judged on the basis of consumer reaction, the changes should increase consumer comprehension and understanding.

COST OF CAPITAL

The Company's original request was based on a test year ending August 31, 1981, a cost of common equity of 18.00% and an overall cost of capital of 12.47%. Settlement Agreement No. 1, signed by the Staff, the Company, the Consumer Advocate and CAP, utilized instead a test year ending December 31, 1981 and suggested a common equity rate of 16.00%, composed of a 15.8% cost of common equity and a .2% incentive allowance, and an overall cost of capital of 11.49%. The Commission also notes that the Company requested short-term debt at 18% and 4.28% of total capital, whereas Settlement Agreement No. 1 proposes a 16% cost rate and 2.58% of total capital.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that a rate increase of \$623,625 for Exeter & Hampton Electric Company is approved and proposed Tariff No. 15 shall take effect on bills rendered on or after May 1, 1982; and it is hereby

FURTHER ORDERED, that Supplement No. 3 of Tariff No. 15, designed to collect a Revenue Recoupment and Rate Case Expense Recovery Surcharge is also approved; and it is

FURTHER ORDERED, that Exeter & Hampton shall file information, documentation and appropriate tariff revisions pertaining to Rate G-1 adjustments for January 1, 1983 and June 1, 1983 and pertaining to a step increase to be proposed for July 1, 1983, at least 30 days in advance of those dates.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1982.

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NH.PUC*04/30/82*[79258]*67 NH PUC 293*Purchased Power Adjustment

[Go to End of 79258]

Re Purchased Power Adjustment

DR 82-115, Supplemental Order No. 15,610

67 NH PUC 293

New Hampshire Public Utilities Commission

April 30, 1982

ORDER waiving notice provision for refund tariff.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, Concord Electric Company and Exeter and Hampton Electric Company have filed, in compliance with Commission Order No. 15,584 (67 NH PUC 284), a plan for crediting to their customers the wholesale purchased power refunds to be received pursuant to FERC Docket No. ER 81-659 and such plan is found to be just and reasonable; it is hereby

ORDERED, that the thirty-day notice provision is hereby waived and the following tariff pages approved for effect May 1, 1982:

Concord Electric Company Tariff No. 7 — Supplement No. 2, 1st Revised Page 1
Supplement No. 2, 1st Revised Page 1A Exeter and Hampton Electric Company Tariff
No. 14 — Supplement No. 5, 1st Revised Page 1 Supplement No. 5, 1st Revised Page
1A; and it is

FURTHER ORDERED, that the above utilities shall provide a one-time public notice of the change in a newspaper of general circulation in their service territory.

By order of the Public Utilities Commission of: New Hampshire this thirtieth day of April, 1982.

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NH.PUC*04/30/82*[79259]*67 NH PUC 294*Keene Gas Corporation

[Go to End of 79259]

Re Keene Gas Corporation

DR 82-103, Order No. 15,614

67 NH PUC 294

New Hampshire Public Utilities Commission

April 30, 1982

ORDER approving cost of gas adjustment as proposed by a natural gas utility.

1. RATES § 303 — Fuel adjustment — Cost of gas adjustment — Summer period usage.

[N.H.] Where the commission accepted evidence presented by a natural gas utility indicating that volume of therm sales would remain the same as the previous summer period due to conservation and customer growth offsetting each other, the cost of gas adjustment proposed by

the utility was approved.

APPEARANCE: Kenneth Wood for the petitioner.

BY THE COMMISSION:

Keene Gas Corporation, a New Hampshire gas public utility, filed on April 1, 1982, its request for a Cost of Gas Adjustment for the Summer Period, 1982, of \$0.1285 per therm.

Duly noticed public hearings were commenced at the Commission's offices in Concord, New Hampshire on April

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21, 1982 and in this docket continued until April 30, 1982.

The Company's filing included 2 exhibits and 3 attachments. The filing followed the format developed in meetings between members of the Public Utilities Commission staff and representatives of the gas utilities, and has alleviated many comparative problems experienced in the past.

In this filing, the Company is estimating the same volume of therm sales as last summer's period due to conservation and customer growth offsetting each other, which the Commission accepts.

All other items of this filing appear reasonable to the Commission and accordingly, we will accept \$0.1285/therm as the Summer Period Cost of Gas Adjustment for 1982 and our Order will issue accordingly.

ORDER

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

ORDERED, that 3rd Revised Page 27 of Keene Gas Corporation, New Hampshire Public Utilities Commission No. 1 — Gas, providing for a Cost of Gas Adjustment of \$0.1285 per therm for the Summer Period, 1982, be, and hereby is, permitted to become effective May 1, 1982.

By Order of the Public Utilities Commission of New Hampshire this 30th day of April, 1982.

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NH.PUC*05/01/82*[79260]*67 NH PUC 295*Hampton Water Works Company

[Go to End of 79260]

Re Hampton Water Works Company

Intervenor: Town of Hampton

DR 81-283, Second Supplemental Order No. 15,619

67 NH PUC 295

New Hampshire Public Utilities Commission

May 1, 1982

ORDER approving a settlement agreement and granting an increase in water rates.

RATES, § 595 — Water — Rate design — Standards — Conservation.

[N.H.] The commission adopted rate design for a water utility designed to reflect revised standards for proper rate design; the progressive design adopted rewarded conservation and efficient use of water to a larger extent than the previous flat rates.

APPEARANCES: Dom S. D'Ambruso and Michael Lenehan; F. Joseph Gentili, as Commission Consumer Advocate; John Perrault, John McEachern, and Don Mitchell, for the town of Hampton.

BY THE COMMISSION:

On September 30, 1981, the Hampton Water Works Company filed with the Commission its

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proposed revisions to its tariff, NHPUC No. 7 — Water, to be effective October 30, 1981 providing for various changes in the terms and conditions of service, specified in the Company's tariff No. 7 and providing for a rate increase calculated to yield an annual increase in base revenues of \$309,166, or approximately a 27.4% increase.

The Commission, on October 13, 1981, issued Order No. 15, 184 (66 NH PUC 410) suspending the proposed effective date of the rate filing pending investigation.

The Company filed a petition on October 22, 1981, for temporary rates pursuant to RSA 378:27 requesting the Company's existing rates be temporary rates. The Commission by Order No. 15,363 dated December 11, 1981 (66 NH PUC 561), allowed temporary rates on all service rendered on or after December 11, 1981. Subsequent to the temporary increase, the Commission Staff and the State Consumer Advocate sought information from the Company through data requests. Numerous settlement hearings were conducted between the Commission Staff, the State Consumer Advocate and the Company, seeking to reach agreement on certain issues. The Commission also held public hearings in Hampton on April 1, 1982 to receive testimony from consumers and granted the Town full intervenor status. The Company, the State Consumer Advocate and the Commission Staff were able to agree on a proper revenue figure and a rate design to implement the revenue increase which was further explained to the Town's representatives in a meeting at the Commission's offices on April 12, 1982.

The settlement agreement was offered in total and a rejection of any portion by the Commission negated the effect of the entire settlement. The Commission upon review of the

settlement finds the settlement to be in the public good and does establish just and reasonable rates.

The acceptance of the settlement agreements results in an overall revenue increase to Hampton Water Works Company of 22%. The dollar level approved is \$252,361 in annual revenues, or \$56,805 less than requested. As was noted earlier, none of this increase was already in effect as temporary rates.

The rate design adopted is designed to reflect revised standards of a proper rate design. The rates will reward conservation and efficient use of water to a larger extent than the Company's previous rate design through flat rates. Both Commission Staff and the Company can take credit for the reasonableness and the direction of these progressive rates and the substantial movement towards having each customer class bear its fair burden of costs. The following table is illustrative of the varying effects of the rate action resulting from this order:

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

Customer Class Percentage Increase # of Customers

| | | |
|-------------------------|-------|-------|
| Residential | 7.9% | 3,576 |
| Commercial | 62.0% | 258 |
| Industrial | 86.8% | 3 |
| Public Authori- ties | 81.4% | 24 |
| Seasonal | 35.8% | 1,900 |
| Private Fire | 3.9% | 43 |
| Public Fire | 15.7% | 4 |

In addition, changes were made in the tariff for billing rates connected with reconnection charges, forfeited discounts and penalties imposed.

The Company will be allowed to collect: (1) the difference between the permanent rates and the temporary rates in accordance with RSA 378:29 and (2) the step increases as laid out in the settlement agreement with the caveat of Mr. Gentili that rate case expenses will be closely reviewed at the time of the first

Page 296

step increase. There is no precedent set by this acceptance of the settlement.

The Company's rate filing and supporting exhibits were prepared to allow the Company to qualify for the benefits of the Economic Recovery Tax Act of 1981 (ERTA). The data in said rate filing and supporting exhibits includes utility plant in service in 1981 and reflect the normalization accounting methods prescribed under ERTA. The Commission recognizes that according to the requirements of ERTA, a regulatory order approving full normalization treatment is necessary and it is our intention that the adoption of the Commission of this stipulation will satisfy the requirement of the transitional rule under ERTA that the "Company's first rate order" after the date of the passage of ERTA (August 13, 1981) reflect such approval.

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 Settlement Document No. 1, marked Exhibit No. 1 is hereby accepted by the Commission; and it is

FURTHER ORDERED, that 2nd Revised Page 11 and 3rd Revised Pages 12 — 15 of Hampton Water Works Company tariff, NHPUC No. 7 — Water, suspended by Order No. 15,184 (66 NH PUC 410), are hereby rejected; and it is

FURTHER ORDERED, that Hampton Water Works Company shall file revised tariff pages to recover an increase in gross revenues of \$252,361, through the rate schedules as set forth in Settlement Document No. 1; and it is

FURTHER ORDERED, that such revised tariff pages shall bear the effective date of the date of this Report and Order, and shall bear all further designation as set forth in this Commission's Tariff Filing Rules; and it is

FURTHER ORDERED, that a Second Step Increase, in accordance with the provisions of Settlement Document No. 1, shall be filed for effect on January 1, 1983; and it is

FURTHER ORDERED, that a Third Step Increase shall be allowed and become effective in accordance with the provisions of Settlement Document No. 1; and it is

FURTHER ORDERED, that Hampton Water Works Company shall collect the revenue deficiency between the temporary rates as allowed by Order No. 15,363 (66 NH PUC 561) and the permanent rates as allowed in this Report and Order, by means of a surcharge applied to all customer bills for service rendered during the balance of the year, 1982.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1982.

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NH.PUC*05/03/82*[79261]*67 NH PUC 298*Manchester Gas Company

[Go to End of 79261]

Re Manchester Gas Company

DR 82-104, Supplemental Order No. 15,611

67 NH PUC 298

New Hampshire Public Utilities Commission

May 3, 1982

ORDER revising cost of gas adjustment tariff.

RATES, § 303 — Fuel clauses — Cost of gas adjustment.

[N.H.] An amount representing unsold propane plus interest was deducted from the cost of gas adjustment where the company had not paid for the gas.

APPEARANCES: James C. Hood and Peter Guenther for the company; F. Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:
REPORT

Manchester Gas Company (hereinafter referred to as either "Manchester" or "the Company") filed a cost of gas adjustment (CGA) of \$0.4135 per therm for the time period of May 1, 1982 through October 31, 1982.

At the time of the duly noticed public hearings held at the Commission offices in Concord on April 21 and April 29, 1982, the Company lowered this request to \$0.4031 per therm due to a decrease by Tennessee Gas Pipeline in their estimated increase in their PPCA to be effective July 1, 1982 from 45¢ to 35¢ . This is partially offset by an increase of 7.2¢ per decatherm for BTU content surcharge to be effective July 1, 1982. The Company also increased the amount of Tennessee refunds by \$40,559 which will be received in May or June, 1982. This refund was pointed out to another company by a Staff data request which requested information on the refund on RP 80-97.

Staff has recently completed an audit of the Company as well as an audit of the last summer cost of gas adjustment. During the audit, Staff raised several points which will be addressed in the Report. First, during the audit, another refund in the amount of \$873.00 received in April of 1982 which was found not to have been included in this summer's cost of gas adjustment. The Commission will include this amount in the calculation of the CGA. The Commission Staff also inquired as to a refund received by the Company in FERC Docket No. RP 81-44-004 in the amount of \$5,059.09; of this amount, \$1,343 is applicable to the summer period and will be included in this summer's cost of gas.

The Staff revealed that the Company has included in its inventory 122,458 gallons of propane valued at \$60,767.56, which the Company states was received in November or December of 1978 and as of this date has not been paid for. When Staff inquired as to how this item will be resolved, the Company stated that they "didn't have specific plans as to how they are going to clear this matter". (T. at 41). We will expect that the Company will deduct this amount (\$60,767.56) as well as interest from the period this gas was billed ratepayers in

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the winter 1982 - 83 cost of gas adjustment. The Commission is also concerned that the Company would allow an item to appear as uncleared for such a long period of time and not be resolved. We would expect all companies to resolve these types of occurrences much more expeditiously in the future.

The next area of concern is Exhibit M-3 which shows the LP stock — Plant Inventory Reports restated for the purchase of gas in February and March 1981 from Connecticut Natural Gas and Petrolane, during the extreme cold weather of the winter of 1981. Staff during its audit of the Company determined that this amount was placed in a prepaid inventory account (Acct. No. 132-00-0) and completely charged to the utility customers. Staff's position is that it should

have been flowed through its inventory and charged to both utility and non-utility customers. The Company contends that its position is stated in a memo from Mr. Robert R. Giordano to file and Mr. LeBel submitted as Exhibit M-1, Attachment 3. The Company's position is that this purchase was for the utility customers and not the non-utility customer and that the LP Division was a supplier of propane to the utility. In reviewing this memo, it should be noted that the LP Division use exceeded its estimated requirements as of January 31, 1981, which was during the period of time when these purchases were being contracted for.

The Commission will accept Staff's position that these purchases should have been recorded through the regular inventory procedures. The next question is by what amount does this change in the Company's handling of this inventory affect the 1980 — 81 Winter Cost of Gas Adjustment. The Company submitted through direct testimony that the change was \$19,348 to peak shaving cost and therefore would change the CGA by \$19,348 (Exhibit M-1, Page 7). When the Company witness Skrzysowski was asked how this figure was calculated, he stated that "it was the effect that restatement had on the transfers to LP operations" (T. at p. 26). Staff submitted Exhibit M-4 which was a recalculation of the 1980 - 81 Winter Cost of Gas Adjustment using the same methodology of reconciling the cost of gas adjustment as used by the Company. Staff changed the cost of Air and Power (which is the Propane usage) for the months of February, March, and April of 1981 to restate those figures for the change on propane cost as shown in Exhibit M-3. This restatement shows a decrease in the total cost of gas by \$33,243 and therefore a decrease in the undercollection amount by \$33,243.00. The Commission will accept Staff's calculation of effect of this adjustment and will require the Company in the 1982 - 83 Winter Cost of Gas Adjustment to deduct \$33,243 plus interest at 8% from May 1, 1981 from its anticipated cost of gas.

The next area of concern is the Company's calculation of interest on last summer's undercollection and refunds starting as of November 1, 1981 at 8% compounded monthly, instead of as of May 1, 1981, net of the Summer's undercollection which also netted out the refunds received up to May 1, 1981. Staff submitted Exhibit M-6 which showed the calculation of interest on the beginning balance of refunds received to May 1, 1981 and the monthly over and under collection for the summer 1981 period. Staff states that this is the method which the Commission required in its Order No. 15,261. Staff's calculation of M-6 shows interest of \$15,007 versus the Company's interest calculation of

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\$7,848. The Commission will accept Staff methodology as shown in M-6, but will not accept the amount of \$15,007 as this amount must be changed due to the interest on the refund presented to this Commission at the hearing. The interest amount we will accept is \$15,570.

Our next area of concern is the high estimate Company usage of 12,827 therms in the month of July, which was questioned by Staff during their audit. The Company at the time of the audit and during cross-examination on this matter could not explain this high use concept that it was based upon actual experience in a previous period. In response to a hearing request, the Company states that the 12,827 forecast for July, 1982, resulted from an adjustment in a prior period to record usage of a newly installed meter at the Candia road meter station. The Company also states that the meter had been recording gas used for nine months before an adjustment was

made to pick up the gas used. The Company has estimated that the change in usage will affect the CGA by approximately \$0.0007. We will make this adjustment in the calculation of the CGA as we have already made other changes to this filing.

The Company originally submitted a total anticipated cost of \$2,846,185, and reviewed this estimate downward to \$2,792,786, in its May 3, 1982 filing which includes most changes noted in this Report. We will, however, further decrease this cost by \$7,123 for increased interest to arrive at an adjusted total anticipated cost of \$2,785,663.

We find that the cost of gas adjustment for the summer 1982 period to be \$0.4005 per therm calculated as follows:

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

| | |
|----------------------------------|----------------|
| Adjusted Total Anticipated Costs | \$ 2,785,663 |
| DIVIDE: Projected Firm Gas Sales | 4,939,589 |
| Unit Cost of Gas Sold | \$0.5639/therm |
| LESS: Adjustment for Company Use | \$0.0007/therm |
| Adjusted Unit Cost of Gas Sold | \$0.5632/therm |
| LESS: Base Unit Cost of Gas Sold | \$0.1627/therm |
| Cost of Gas Adjustment | \$0.4005/therm |

The audits conducted by Staff has resulted in a savings to consumers of \$53,399. The Commission appreciates the efforts of our auditors to assure compliance with proper accounting and regulatory procedures.

Our Order will issue accordingly. May 3, 1982

SUPPLEMENTAL ORDER

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

ORDERED, that all tariffs filed by Manchester Gas Company pursuant to this docket are hereby rejected; and it is

FURTHER ORDERED, that Manchester Gas Company is to file a revised set of tariff pages providing for a cost of gas adjustment of \$0.4005 per therm for the period May 1, 1982 through October 31, 1982.

By order of the Public Utilities Commission of New Hampshire this third day of May, 1982.

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NH.PUC*05/05/82*[79262]*67 NH PUC 301*Concord Natural Gas Corporation

[Go to End of 79262]

Re Concord Natural Gas Corporation

Intervenor: Office of Consumer Advocate

DR 82-106, Supplemental Order No. 15,615

67 NH PUC 301

New Hampshire Public Utilities Commission

May 5, 1982

ORDER establishing gas cost rate for natural gas distribution company with discussion of proper treatment of refunds and undercollections.

1. RATES § 303 — Fuel adjustment clauses — Cost of gas adjustment — Refund from supplier.

[N.H.] Where a refund received by a natural gas utility from its supplier pursuant to a Federal Energy Regulatory Commission order was capable of being divided based on the time purchases were made, the commission required the utility to pass a portion of the refund to ratepayers through the summer period cost of gas adjustment. p. 301.

2. RATES § 303 — Fuel adjustment clauses — Cost of gas adjustment — Undercollections.

[N.H.] When setting a cost of gas adjustment for a natural gas utility the commission passed through to ratepayers interest on refunds received by the utility from suppliers and on undercollections due to growing demand. p. 302.

APPEARANCES: David Marshall for Concord Natural Gas Corporation; and F. Joseph Gentili Consumer Advocate.

BY THE COMMISSION:

REPORT

Concord Natural Gas Company (hereinafter referred to as either "Concord" or "the Company") filed a cost of gas adjustment (CGA) of \$0.2568 per therm for the time period of May 1, 1982 through October 31, 1982.

At the time of the duly noticed public hearings held at the Commission offices in Concord on April 21 and April 30, the Company submitted Exhibit C-4B lowering this request by \$7,636 due to the decrease by Tennessee Gas Pipeline in the estimated increase in their PGA to be effective July 1, 1982 from \$0.45 to \$0.35 per MCF. This is partially offset by an increase of 7.2 cents per decatherm for a BTU content surcharge. The Company has included 2 refunds received by the Company in April of 1982 and a projected refund in the month of May 1982. One of the April refunds was pointed out by Staff during an audit of the cost of gas adjustment and per Staff's follow-through, it will be included in the CGA.

[1] At the hearing, the Commission Staff inquired about a refund to be made in May or June per FERC Docket RP 80-97. The Company Witness Bisson stated that he had no detailed information on this refund except that it was going to be 6.78 cents per MCF, and he estimated the refund would be about \$73,000, of which \$21,000 would pertain to the summer customers. After the hearing, Witness Bisson had learned from Tennessee

Pipeline Gas Company that the refund would be \$88,962.96, and it would appear on the May bill. Mr. Bisson stated that 29%, or \$25,800, of the refund belongs to the summer customers. We will, therefore, require the Company to pass this refund through this summer's cost of gas adjustment.

The Company has stated, and the Commission Staff has verified, that the amount charged during the past summer period for the additional gas cost due to the Company's overrunning its AVL has been removed.

Our next area of concern is the Company's purchases of gas from Manchester Gas Company and Commonwealth Gas Company. These purchases were made in October of 1981. The reason for these purchases, according to Mr. Dustin, was "we (the Company) were concerned that if we did not purchase additional supplies of gas from another source other than Tennessee, we might have an overrun penalty at one or both stations" (trans. at p. 17). We will reduce last summer's undercollection by \$33,265. The \$33,265 is the difference between the Company's average cost during last summer from Tennessee and the cost of the gas purchased from the two companies. The reason for this adjustment is that Concord is a growing Company, still taking on new customers and each new customer's needs only add to the increase needed to make these purchases in the future. The Company has in the past made a management decision not to participate in obtaining underground storage in order to meet their growing demands or change their contract with Tennessee Gas Pipeline and still has no future plans for storage or increased capability for supplemental fuels.

[2] The next area of concern is the Company's calculation of interest on last summer's undercollection and refunds. The Company Exhibit C-2, Attachment C, calculates interest on refunds received after May 1, 1981 at 8% compounded monthly. In November, they netted the prior summer's undercollections and refunds up to May 1981 and last summer's undercollections to which the Company has added interest and then compounded interest.

Staff submitted Exhibit C-7 which showed the calculation of interest on the beginning balance of refunds received to May, 1981 and the summer of 1980 undercollections and then showed the monthly over and under collection for the summer period. Staff states that this is the method which the Commission required in its Order No. 15,261 (66 NH PUC 454). The Company at the hearing stated that their method and Staff should agree but that Company and Staff could not reconcile their difference. After the hearing, the Company informed Staff that they agreed with Staff method and could reconcile the two methods to within \$85.00. We, therefore, will accept Staff's method of calculation but not the amount. The amount shown on Exhibit C-7 must be changed to include interest on the refunds mentioned above plus interest due to the decrease in last summer period's undercollection. We will, therefore, increase interest refundable to consumers by \$2,555.

We find that the anticipated cost of gas for the 1982 summer period to be \$1,330,506, when divided by the estimated therm sales of \$3,182,950 to arrive at a unit cost of gas of \$0.4180 and a cost of gas adjustment of \$0.2330 per therm for the Summer Period, 1982.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that 27th Revised Page 21 of Concord Natural Gas Corporation, NHPUC Tariff No. 13 — Gas, is rejected; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation file a revised page 21 to its Tariff NHPUC No. 13 — Gas, providing for a Summer Period, 1982 cost of gas adjustment of \$0.2330/therm.

By order of the Public Utilities Commission of New Hampshire this fifth day of May, 1982.

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NH.PUC*05/05/82*[79263]*67 NH PUC 303*Gas Service, Inc.

[Go to End of 79263]

Re Gas Service, Inc.

Intervenor: Office of Consumer Advocate

DR 82-102, Supplemental Order No. 15,616

67 NH PUC 303

New Hampshire Public Utilities Commission

May 5, 1982

ORDER setting gas cost adjustment upon consideration of issues concerning gas storage costs and previous undercollections.

1. RATES § 303 — Fuel adjustment clauses — Cost of gas adjustment — Storage costs.

[N.H.] The commission allowed a natural gas utility to pass to ratepayers, through a summer period cost of gas adjustment, a portion of the costs associated with the development of a gas storage program, even though stored gas would not be consumed in summer except in emergency, finding that most summer users are also winter users and to allow some costs to be recovered in summer to avoid excessive winter charges. p. 304.

2. RATES § 303 — Fuel adjustment clauses — Cost of gas adjustment — Undercollection.

[N.H.] In order to reduce the burden of winter bills incurred by natural gas users, the commission allowed a natural gas distribution company to pass the costs of a winter period undercollection to ratepayers (subject to refund) in the following summer period through a cost of gas adjustment. p. 305.

APPEARANCES: Charles H. Toll for Gas Service, Inc.; F. Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:
REPORT

Gas Service, Inc. (hereinafter referred to as "the Company" or "Gas Service") on April 1 originally filed with this Commission a cost of gas adjustment (CGA) asking for a surcharge of \$0.1643 per therm. Subsequently, as a result of two

Page 303

projected changes in Tennessee Gas Pipeline tariffs and the Commission auditors' request that the Company add a refund not included in their original filing, the Company revised its filing through prefiled testimony and asked for a decreased surcharge of \$0.1632 per therm (DR 81-102, Exhibit GS-7). Finally, because of a Staff data request relating another refund referred to, but included in, the aforementioned testimony and another projected change in Tennessee Gas Pipeline (TGP) tariffs, the Company again altered its CGA filing to reflect a new surcharge of \$0.1342 per therm (Exhibit GS-16). This filing can be compared with a summer 1982 CGA of 0.0076 per therm (Nashua plus \$0.0855 "roll-in"), a summer 1980 CGA of \$0.1337 per therm (Nashua), and a summer 1979 CGA of \$(0.0051) per therm (Nashua), bearing in mind that the current CGA has an additional cost of gas "rolled-in" to base rates of \$0.1532 per therm as part of a recent rate increase decision (DR 80-179).

[1] We have noted in other Summer 1982 CGA filings (DR 82-105) that the vast majority of the increasing cost of gas, as displayed in this docket by the summer CGA comparisons above, has been from the cost of natural gas, i.e., TGP. We will not go into our feelings on this again in this docket; however, we will note that in Gas Service's case the summer CGA increase is not solely from the cost of natural gas. In recent years, Gas Service has been (with the Commission's full support) initiating and utilizing a natural gas storage program. Part of the costs of this program are billed to the Company in the summer period (principally demand charges). These charges have been included in the summer CGA even though it is unlikely any of the gas stored in these facilities will be consumed in the summer period except in emergencies. This, therefore, also contributes to the increased cost of the summer CGA.

Staff has raised issue of these costs. It is their contention that these storage costs, as a proper accounting measure, should be booked into an inventory account and passed onto customers as it is used. Staff's point is valid; however, this Commission cannot be bound by proper or improper accounting methods when the development of rates for the protection of customer and company alike are at stake. The expenses in question equate to a \$328,320 increased cost of gas. This is perhaps an unusually large sum for the summer customers to bear when not directly related but yet indirectly related to their consumption; nevertheless, we find that the majority of the summer period customers are winter period customers also. If these costs were to be flowed through to an inventory account, most of the same summer customers would pay the same storage costs in the winter period, a period where larger consumption creates higher bills. We find the Company has demonstrated enough on the basis of this record to resolve this matter in their favor as to this record.

The next issue to be addressed is the Company's inclusion of the winter 1981/82 undercollections in this filing. Precedent has had all CGA over or under collections in the

winter/summer periods CGA recovered in the next corresponding winter/summer period CGA, reflecting a 6-month lag in collecting the over/under collection (accruing 8% interest of the balance during the interim). In DR 81-285 this Commission broke precedent and included an overcollection from the Summer 1981 period as part of the winter 1981/82 period filing

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due to unusual circumstances. The Company now believes that the winter 1981/82 undercollection is in the same category as put forth in DR 81-285, Report and Order No. 15,533 (67 NH PUC 207). Staff disagrees and, as with the storage demand charges, feels this is not a proper summer period CGA cost.

[2] We will allow this cost to pass through the summer CGA "to reduce the burden of costs during the winter heating season" (67 NH PUC at p. 209, *supra*). We must make it known, however, that this is not to set precedent and Staff's concerns as to timing of future winter/summer over/under collection recoveries are recognized and will continue to be an issue with this Commission. Our acceptance of estimated prior period recoveries, such as Gas Service has had to do with March and April 1982 in this filing, does not sit well with this Commission. To exemplify our concerns, through a hearing request the Company has submitted the actual March 1982 overcollection. The actual overcollection was \$39,832.00 more than the Company's estimate, which we will accept plus \$2,124 interest (simple 8% interest, 8 months). Under normal CGA applications, the rate payer could have waited a year to receive this overcollection, albeit accruing 8% interest. In addition to this, the estimated over/under collection adds another reconciling factor to be contended with at some future CGA filing, additionally complicating this already complex rate making tool. This is to be a main consideration in future CGA filings by this Company. Nor does this allowance in the summer CGA eliminate Gas Service Company's burden to demonstrate that these expenses were incurred in a just and reasonable fashion. The Commission does not find that these expenses or undercollections have been demonstrated to be just and reasonable and thus capable of being billed to consumers. Rather, due to the size of the proposed undercollection, the Commission is in essence allowing the collection subject to refund, review and a meeting by Gas Service as to burden of proof.

As a final item, we will take notice of DR 81-285, Report and Order No. 15,284, where the Commission speaks of an investigation docket to be opened, and we will add to the 11 issues, contained therein, these specific items brought out during cross-examination: 1) Gas Service's sale of gas to Concord Natural Gas Corp. for customers in the Loudon area; 2) the proper conversion factor to be used by all companies to convert MCF to thermal units; 3) an investigation into alternative CGA applications, i.e., annual vs. semi-annual, historical vs. forward-looking.

Taking into consideration the adjustment to actual of the March 1982 over-collection plus interest, we will adjust the Company filing Exhibit GS-16 to a surcharge of \$0.1293 per therm.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Gas Services, Inc. tariff, NHPUC No. 5 — Gas, Section 2, 28th Revised Page 3 and Attachments, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Gas Services, Inc., filed revised tariff pages to reflect a cost of gas adjustment of \$0.1293 per therm, effective May 1, 1982.

By order of the Public Utilities Commission of New Hampshire this fifth day of May, 1982.

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NH.PUC*05/05/82*[79264]*67 NH PUC 306*Northern Utilities, Inc.

[Go to End of 79264]

Re Northern Utilities, Inc.

Intervenor: Office of Consumer Advocate

DR 82-105, Supplemental Order No. 15,617

67 NH PUC 306

New Hampshire Public Utilities Commission

May 5, 1982

APPLICATION by natural gas utility seeking an increase in cost of gas adjustment; granted as modified.

1. RATES, § 262 — Cost elements — Pricing signals to consumers — Natural gas propane sales program.

[N.H.] At a proceeding to set a cost of gas adjustment for a natural gas distribution company, the commission ordered the company to phase out high use and discount customers from a propane sales program that spread the higher propane costs to all ratepayers finding that the program did not give proper pricing signals leading to wasteful consumption of high cost propane at natural gas prices. p. 307.

2. RATES § 303 — Fuel adjustment clauses — Cost of gas adjustment — Maintenance costs.

[N.H.] When setting a cost of gas adjustment for a natural gas utility the commission excluded an amount associated with gas blown into the atmosphere as part of a yearly procedure to prepare for incoming inventory, finding this "cool down" procedure routine maintenance to be considered in cost of service or as an inventory related cost, not a cost of gas item applicable to the period covered by the adjustment. p. 308.

APPEARANCES: Eaton W. Tarbell, Jr., for Northern Utilities, Inc., and F. Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:
REPORT

Northern Utilities, Inc. (hereinafter referred to as "Northern" or "the Company") on April 1, 1982, originally filed with this Commission a cost of gas adjustment (CGA) seeking a surcharge of \$0.3623 per therm. This was subsequently revised by the Company to \$0.3598 per therm to recognize a decrease in the projected cost of gas from Tennessee Gas Pipeline, a recently negotiated contract to purchase gas at a lower price, and items brought out through a Commission audit. This cost of gas adjustment compares to a 1981 summer CGA of \$0.2179 per therm, a 1980 summer cost of \$0.1847 per therm, and a 1979 summer CGA of \$0.0433 per therm.

As in the 1981 - 82 winter cost of gas adjustment (DR 81-288), this Commission continues to find the majority of increase due to the increasing price of natural gas. This Commission cannot emphasize enough the impact the deregulation of natural gas prices has had, and will continue to have, on both the gas

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industry in New Hampshire and the New Hampshire consumers. In our effort to combat these sudden shifts in price, we will continue our investigation into the CGA design and composition; i.e., annual CGA and gas supply mix. In the interim, as the effect of the increase applies pressure on the utilities and consumers alike, we would hope that these parties vent their feeling on federal and state legislators, with the same voracity that has been demonstrated before this Commission.

In addition to the aforementioned revised cost of gas adjustment, the Company has also submitted Exhibits N-10 and N-11 during the hearing held on April 22, 1982 at the Commission. These exhibits had the effect of decreasing the prior period undercollection by \$4,425. The Commission finds this a proper adjustment; however, in the future, we do expect to see this calculation in a form consistent with other gas utilities.

Through the course of this hearing, the Commission's Finance Staff presented numerous items found during a pre-cost-of-gas-adjustment audit. These items included: 1) the inclusion of costs other than gas costs in the "gas roots" program which were passed onto customers in the Company's CGA; 2) the inclusion of propane and LNG costs not applicable to summer CGA customers; 3) a cost mark-up of LNG by Bay State Gas Company as it is sold to Northern; and 4) the cost of summer 1981 interruptible gas sales at Granite State Pipeline commodity cost, when during the same summer period there was also a special purchase of gas at a higher price to make up for a projected overdraw on the Company's annual volume limitation.

[1] Taking these items in order, we will first address the issue of the "gas roots" cost of propane. The "gas roots" program was initiated as a lead for Northern's distribution system expansion more than ten years ago which has since been discontinued. Unlike other gas utilities in New Hampshire, who set up tank farm developments with an underground system, which were eventually to be connected to the Company's distribution system, Northern contracted propane servicing companies to deliver and service these customers and then bill Northern the

retail cost of propane plus service and rental fees. These costs are included in the cost of gas adjustment and passed onto all Northern customers while the "gas roots" customers pay what basically equals the cost of natural gas.

Aside from this obvious subsidation, Staff's revelation that the "gas roots" program includes residential, commercial, industrial, and Company employees eligible for employee discounts is a source of real concern to this Commission. In a period of rising costs and with a true need for customers to receive proper pricing signals of these costs, allowing a high use of customer such as a commercial or industrial class customer, or a customer whose rates have been artificially lowered such as an employee, to use high cost propane at a price near natural gas does not reflect proper present day cost allocation. Nor does it promote a proper pricing signal for the future. This improper pricing can only lead to wasteful consumption that could be prevented if these customers knew or were required to pay, the true cost of the commodity the consumed.

As a result of the analysis of this and of the record, we therefore will mandate that these customers are to be phased out over a period of a year and a half. This action will remove any cross subsidation

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in the 1983 - 84 winter cost of gas adjustment forward. During the "phase-out" of these customers, the Commission will no longer recognize the service and rent fees as part of propane costs. We therefore will price the projected propane use in the summer 1982 period at the average cost of propane as filed in other New Hampshire gas utilities CGA's for this summer period (DR 82-102, DR 82-103, and DR 82-104). This equates to \$0.5617 per therm for propane and computes to a \$39,553.00 decrease in the projected cost of propane for the summer period. Additionally, this measure will be consistent with our decision in the winter cost of gas adjustment (DR 81-288) for pricing of propane.

Consistency requires us to take note of Exhibit N — 15 as submitted by the Finance Staff and exclude the costs of rental of propane tanks from the prior summer period deficiency. This will decrease the cost of gas by \$2,895.50.

The next item brought out by the Commission auditors concerned the Company's method of passing costs of propane and LNG through the summer cost of gas which was not related to actual summer period consumption.

Exhibit N-12, submitted by Staff, presented a propane transportation charge of \$28,127.21, \$17,067.78 of which was passed through the cost of gas applicable to New Hampshire customers in August of 1981. These costs had no direct bearing on Summer 1981 customer consumption, and as agreed by the Company should be charged to inventory and passed onto customers who consume the product at the inventory and passed onto customers who consume the product at the inventory cost per gallon. As all parties are in agreement to this, we will exclude the \$17,062.78 from the Company's prior period deficiency and require the Company to include this amount in their propane inventory account.

[2] The next issue Staff presented dealt with 1338 MCF of LNG that was blown into the atmosphere in what is termed as a "cool-down". The "cool-down" represented a \$4,400 cost of gas to New Hampshire ratepayers in October 1981. The Company witness, Mr. Richard B.

Davis, testified that this blow-off of LNG related to a repair of an LNG tank during that period, and should be included in the period that the process took place as a cost of gas. Later in an addendum, the Company changed its position on this and stated that it was not a repair but a yearly procedure used to prepare the tanks for incoming LNG inventory. The Commission has reviewed this and finds that the cost is not a cost of gas item applicable to summer customer usage, instead we find it is a routine maintenance cost either to be considered in the Company's cost of service or as an inventory related cost. We therefore will exclude this \$4,400 cost from the Company's proposed cost of gas, and will further consider any proposal by the Company to include these costs in the 1982 - 83 winter CGA.

We will now address the issue of LNG sales by Bay State Gas Co. to Northern Utilities, Inc. Staff and Consumer Advocate questions the practice of these sales with a mark-up on top of carrying and transportation costs and questions whether an allocation of Bay State's LNG off-system facilities to Northern would be less expensive to the New Hampshire ratepayers than the cost of the mark-up paid on the product. The Company states this mark-up is non-discriminatory compared with charges to other New Hampshire utilities, and a study made 4

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years ago displayed the cost effectiveness of selling the LNG on a contractual basis with a mark-up as opposed to including an allocation of the LNG off-system facilities in Northern's rate base.

We find that we do not have enough information on record at this time to make an adequate determination on this subject. We therefore direct Staff to include a study of this in its investigation into gas supply and include their views, if finalized, in the 1982 - 83 winter period cost of gas adjustment where the cost of LNG has the greatest impact on New Hampshire customers. We will allow the difference in expenses subject to the review and potential refund. Additionally, henceforth, the Company will submit to this Commission all contracts and agreements relating to this subject on a perpetual basis. We will expand this to include all intercompany contracts between Northern and Bay State.

The final issue presented by Commission auditors is the costing of interruptible sales during the summer 1981 at Granite State Pipeline commodity price versus the cost of an off-system purchase of natural gas from New York State Electric and Gas Company. The off-system purchase was received during the same period as the interruptible sales occurred, which prompted Staff to question the cost of interruptibles, at the lower cost of Granite State commodity price. The Company contends that this is the proper method of determining the cost of interruptibles because a) the purchase of the off-system gas was contracted prior to the Company's knowledge that any excess gas would be available for interruptible sales; b) the interruptible sales were to Public Service to be used as fuel at their Schiller Station. If the cost of interruptible gas was priced at the off-system purchased gas price, the New England Power Pool may have restricted Public Service in running that station; c) the sale price of the interruptible gas was approximately \$3.60 per MCF and according to Staff's Exhibit N-16, the price of the off-system gas was \$3.71 per MCF creating a loss on the sale. To them, this was not logical.

Staff's Exhibit N-16 shows a decrease to the cost of gas by \$44,886 if the interruptible sales

were priced at the cost of the off system purchase. This was achieved by taking a recomputed cost of interruptible sales of \$513,703 and subtracting the Company's filed cost of interruptible sales of \$468,817.

This adjustment will be accepted on the basis of this record. The primary reason for disallowance is the failure of the Company to carry their burden of proof.

We cannot accept the Company's testimony on New England Power Pool's actions. The Company has not demonstrated that at the time of interruptible sale the cost of the off-system gas would not be acceptable by NEPOOL's economic dispatch system. Nor have they submitted a cost comparison demonstrating that the cost of this gas would have exceeded the cost of oil used by the Schiller Station during the period of the sale. There is clearly not enough evidence to support their claim.

The Company entered into the contract with Public Service Company with the full knowledge of their prior purchase from New York State Electric and Gas Company. Any gas available for sale to interruptible customers for that period due to an unexpected surplus of natural gas would not have been attributable to the normal supply of natural gas from Granite State Pipeline, but from an outside or off system special purchase of gas.

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The Commission finds it unreasonable as to firm customers for Northern to enter into a contract for interruptible sales, ignore the cost of the off system purchase and then seek to pass this higher cost through the cost of gas adjustment.

The Commission had attempted to encourage the use of natural gas in the Schiller Station. It did so on the belief that both electric and gas consumers would benefit. Since apparently this did not occur, the Commission's concern over the terms of this agreement is heightened. Because of PUC involvement, the Commission will provide another forum to resolve the issue. This is necessary if further misunderstandings are to be avoided.

A part of a letter addressed to the Commission responding to a number of hearing requests by Staff and Consumer Advocate, the Company has requested an increase in the cost of gas due to an error discovered by the Commission auditors. This error, in the amount of \$8,579.00, was related to the cost of interruptible sales. As it appears that the Commission auditors are in agreement with this, we will accept this adjustment. However, in reviewing Staff Exhibit N-16, we take note that an adjustment of the cost to interruptible sales of \$8,579.00 will have a like effect on the line termed "cost per company" (changing it from \$468,817, as noted on the previous page, to \$460,238) increasing the exhibits adjustment to \$53,465.00; we must take this into consideration also.

The concluding item deals with a refund expected from Tennessee Gas Pipeline's ("Tennessee") F.E.R.C. Docket No. RP 89-97. For this, we will take administrative notice of this Commission's docket, DR 82-102, where Staff in discovery submitted a data request questioning the timing on the above mentioned refund. It was then revealed that this refund was projected to be returned to Tennessee's customers in May or June. All of Northern's sister N.H. gas utilities have adjusted their summer 1982 CGA to reflect this refund on an estimated basis; Northern has not. These estimates range from \$27,000 to \$222,000. In consideration, we feel Northern, on a

comparison basis, should be on the low end of this range. Due to the magnitude of this refund, we feel it should be considered in Northern's summer CGA; we estimate this refund plus interest for this and all previous adjustments, at \$30,000, and will decrease the cost of gas accordingly. It is expected that upon filing their revised CGA tariff pages, the Company will adjust this estimate to a more precise amount, including all appropriate interest adjustments, and supply supporting documentation.

Based on the estimate above and the preceding adjustments, we will revise Company Exhibit N-6 to reflect a cost of gas adjustment of \$0.3428 computed as follows:

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

| | |
|---------------------------------------|-------------|
| Anticipated Costs of Gas Exhibit N-16 | \$4,362,063 |
| Net Adjustments | (143,222) |
| Adjusted Anticipated Cost of Gas | \$4,218,841 |
| Projected Gas Sales | \$8,411,600 |
| | ===== |
| Total Anticipated Cost Per Therm | .5016 |
| LESS: Base Unit Cost of Gas Sold | .1588 |
| Cost of Gas Adjustment | .3428 |

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Northern Utilities, Inc., tariff Page NHPUC No. 6 — Gas, Twenty-eighth revised page 22A, and attachments, be, and hereby are, rejected; and it is

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FURTHER ORDERED, that Northern Utilities, Inc. file revised tariff pages to reflect a cost of gas adjustment of \$0.3428 per therm, effective May 1, 1982.

By order of the Public Utilities Commission of New Hampshire this fifth day of May, 1982.

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NH.PUC*05/06/82*[79265]*67 NH PUC 311*Concord Electric Company

[Go to End of 79265]

Re Concord Electric Company

DE 82-39, Order No. 15,618

67 NH PUC 311

New Hampshire Public Utilities Commission

May 6, 1982

ORDER granting a permanent license to maintain an electric transmission line over land owned by the state.

APPEARANCES: John C. Ransmeier for Concord Electric Company; Peter C. Scott, assistant attorney general, for the state of New Hampshire.

BY THE COMMISSION:

On February 18, 1982, the Commission issued an Order of Notice setting a hearing on March 31, 1982 at 10:00 a.m. Said Order was duly served and published.

On March 30, 1982 a Motion to Amend the Petition was filed by the petitioner. The Motion requested that the petition be amended to correct the description of the actual land for which a license is necessary. The original petition having included a parcel of land no longer owned by the State.

At the hearing on March 31, 1982 no objections were raised to the Motion being granted and the Motion to Amend the Petition was granted.

The transmission line which is the subject of this docket was constructed in the early 1950's and was approved by this Commission in Docket No. DE3087 by report issued March 5, 1951. The original license was for a twenty year period, the maximum permitted by law at that time, which period expired on March 9, 1971.

Although said license expired on March 9, 1971, the petitioner continued to maintain and operate the transmission line with the knowledge of the State and without objection. The Company continued to pay the annual rental fee until 1973 at which time the State ceased to render invoices.

The purpose of this petition is to validate the maintenance and operation of the transmission line by having a new permanent license issued. A new license to the petitioner will allow it to continue to provide adequate electric service to the City of Concord and the residents thereof without affecting any substantial interest public or private.

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The lands affected by the proposed license are set forth in revised exhibits D and E.

All parties to this proceeding and staff agree to the necessity for the transmission line and that an appropriate rental fee would be \$200 per year to be payable from March 9, 1982 and in the sum of \$100 from March 9, 1972 to March 9, 1982.

Upon investigation and consideration of the filing, testimony, and exhibits in this docket, the Commission finds that the granting of a permanent license by the Governor and Council to the Concord Electric Co. to maintain and operate a transmission line over lands owned by the State of New Hampshire and described on revised exhibits D and E at an annual rental fee of \$200 per year will be just and consistent with the public good and grants said license.

A copy of this Report with a proposed license shall be forwarded to the Governor and Governor's Council to be executed pursuant to RSA 371:22.

The Secretary of the Commission shall forward the appropriate instruments in accordance with the direction set forth in this Report.

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 a license to maintain an electric transmission line over and upon land owned by the State of New Hampshire in Concord is hereby granted.

By order of the Public Utilities Commission of New Hampshire this sixth day of May, 1982.

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NH.PUC*05/07/82*[79266]*67 NH PUC 312*Keld Agnar

[Go to End of 79266]

Re Keld Agnar

DE 82-32, Supplemental Order No. 15,621

67 NH PUC 312

New Hampshire Public Utilities Commission

May 7, 1982

ORDER granting license to construct and maintain submarine cables for utility service.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No 15,577 (67 NH PUC 277), April 13, 1982, granted license to Keld Agnar for the construction and maintenance of submarine cables for utility service between the area of Fox Hollow Road in Moultonboro, New Hampshire, and Little Badger Island in Lake Winnepesaukee; and

WHEREAS, said cables were to be routed according to plans marked as Exhibit 3; and

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WHEREAS, inspection of the affected mainland following the melting of snow now reveals to Mr. Agnar and the Wet-lands Board that relocation westerly of the utility line to avoid wetlands would be desirable; and

WHEREAS, additional plans dated March 10, 1982 and furnished this Commission by Mr. Agnar on May 4, 1982 locate the revised line as "2", the originally approved line annotated as "1"; and

WHEREAS, avoidance of the wetland area is in the public good; it is

ORDERED, that so much of Commission Report and Order No. 15,577 be, and hereby is, amended to license the utility lines from Pole 14410/27 according to plans cited above.

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1982.

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NH.PUC*05/10/82*[79267]*67 NH PUC 313*Public Service Company of New Hampshire

[Go to End of 79267]

Re Public Service Company of New Hampshire

DR 79-187 Phase II, 58th Supplemental Order No. 15,625

67 NH PUC 313

New Hampshire Public Utilities Commission

May 10, 1982

ORDER denying request for compensation for participation by an intervenor in a Public Utility Regulatory Policies Act related proceeding.

COSTS — Intervenor compensation — Public Utility Regulatory Policies Act — Settlement agreement.

[N.H.] A motion for compensation brought by an intervening party for its alleged substantial contribution to the adoption of rate-making standards in conformance with the Public Utility Regulatory Policies Act of 1978 was rejected by the commission because the request was based on a statement in a settlement agreement adopted by the commission that all parties agree the intervenor made a substantial contribution; the commission found that it was not bound to find substantial contribution solely because it adopted the settlement stating that to adopt such a procedure would be a hindrance to professional and responsible regulation.

APPEARANCES: As noted previously.

BY THE COMMISSION:

REPORT

The Commission through its rule-making powers and the enactment of the Public Utility Regulatory Policies Act of 1978 (PURPA) has established a method by which responsible intervention in a PURPA-related proceeding may lead to compensation by the utility to the intervenor. This consumer compensation

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procedure applies solely to consumers of Public Service Company of New Hampshire and other utilities are not subject to such liability, either because of their size or their industry.

To qualify for compensation, an applicant or intervenor must demonstrate that they have "substantially contributed to the adoption, in whole or in part, in a Commission order or decision of a PURPA position advocated by the consumer relating to a PURPA standard."¹⁽³²⁾ "Substantial contribution" shall be that contribution which, in the *judgment of the Commission*, substantially assists the Commission to promote a PURPA purpose in a manner relating to a PURPA standard by the adoption, at least in part, of the consumer's position.²⁽³³⁾

The Business and Industry Association (BIA) has filed a motion for compensation pursuant to Section 205 *et al* of our rules. To satisfy the substantial contribution test, BIA cites the Commission's attention to the settlement agreement involving DR 79-187, Phase II, which has a section that states that "the parties agree that the BIA has made a substantial contribution in the determination of the recommendation contained herein in relation to the adoption and implementation of PURPA standards.

The BIA contends that since the Commission adopted the settlement agreement, which by its terms required acceptance without modification, the Commission is thereby bound to reach the conclusion that the BIA made a substantial contribution. We disagree.

The Commission is faced with a serious ethical problem, one that if either ignored or condoned would be a setback to professional and responsible regulation. The parties to this proceeding were quire literally forced to recognize the alleged substantial contribution of the BIA. To attempt to insure payment for legal and technical services by including a finding of substantial contribution in a settlement agreement sets a dangerous precedent if allowed to be established.

If such a procedure were condoned, then any person or group could effectively block settlements of any proceeding involving PSNH until they received an agreement as to their substantial contribution and thereby their payment. Such a procedure would tend to effectively destroy the settlement process and would, unfortunately, devote the question of who gets compensation over the more meaningful regulatory policy concerns.

Given the general breadth of PURPA as to pursuing conservation, efficiency, and equity could lead to fringe groups attempting to extract either irresponsible positions or compensation. Such a procedure would defeat orderly regulation, be adverse to the goals of PURPA and destroy the general professionalism of the regulatory system.

The regulatory system should function in a manner that commands public respect and fosters belief in the system. Participants in our proceedings are obliged to make efforts and take actions that improve our regulatory system. BIA's focus on compensation as a prerequisite to settlement of meaningful rate design questions cannot be condoned.

The Commission finds that the settlement agreement demonstrates a reasonable compromise between the progressive arguments offered by Commission Staff and the progressive arguments

offered by PSNH. The contribution of the BIA cannot be found to have "substantially contributed" to the result.

The BIA estimates for intervention in this case *alone* are substantial. Forty thousand, for example, is shown for legal services. Yet, there is not hourly submission by day or subject matter. Such a breakdown has been standard for this Commission in hiring attorneys in the past as well as approving rate case expenses by utilities. Other expenses, such as \$3,337 for disbursements related to consulting is never explained as to what they are or how they differ from the nearly \$30,000 in technical consulting. Both the magnitude of these expenses and the sparsity of information would require substantial additional information before this Commission could possibly consider allowing \$78,241.94 of costs even if a substantial contribution finding had been made.

The size of the dollars expended are significantly above those spent by most utilities before our Commission to present an entire rate case, revenue requirements and rate design. Only Public Service Company would consistently and historically incur such high costs for presentations before this Commission. Even New England Telephone's presentation in its last case spent less than half the BIA submission.

The Commission also finds that the BIA has failed to persuasively demonstrate significant economic hardships. That is not to say that a group of business consumers do not qualify because obviously representation of business interests can be onerous as well as that of residents. However, the Commission finds that something more than an affidavit from an employee of the BIA is needed to overcome the Commission's concerns. We would encourage the BIA to file more complete financial data as to their sources of income and expenses. Only in this way can the Commission more properly determine economic hardship.

The BIA motion for compensation is denied, and our Order will so reflect.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that BIA's Motion for Consumer Compensation is denied.

By order of the Public Utilities Commission of New Hampshire this tenth day of May, 1982.

FOOTNOTES

¹Rule 205.07.

²Rule 205.07.

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NH.PUC*05/10/82*[79268]*67 NH PUC 316*Public Service Company of New Hampshire

[Go to End of 79268]

Re Public Service Company of New Hampshire

DE 82-138, Order No. 15,639

67 NH PUC 316

New Hampshire Public Utilities Commission

May 10, 1982

ORDER directing that portions of nuclear plant safety assessment be treated as privileged and confidential.

BY THE COMMISSION:

ORDER

WHEREAS, Public Service Company of New Hampshire (the "Company") has provided the Public Utilities Commission (the "Commission") with a copy of the proposal by Pickard, Lowe and Garrick, Inc. for a Seabrook Probabilistic Safety Assessment (PLC — P152), pursuant to a letter from the Commission dated April 20, 1982 requesting this document; and

WHEREAS, the Company has requested that the portions of the Proposal PLG — P152 which are designated proprietary by Pickard, Lowe and Garrick, Inc. be protected from public disclosure by order the Commission; it is hereby

ORDERED, that:

1. All data and information contained in the Proposal PLG — P152 which is labeled "Proprietary", with particular attention given to pages 5-6 and 5-7 relating to standard fee schedules, shall be treated by all persons accorded access thereto pursuant to this Order, including Staff of the Commission, as constituting privileged commercial and financial information and shall be neither used nor disclosed.

2. All data and information protected by this Order will be segregated in the files of the Commission, and withheld from inspection by the terms of this Order, unless such Proprietary Information is released from the restrictions of this Order.

By order of the Public Utilities Commission of New Hampshire this tenth day of May, 1982.

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NH.PUC*05/11/82*[79269]*67 NH PUC 317*Compensation to Consumers in Electric Rate-making Procedures

[Go to End of 79269]

Re Compensation to Consumers in Electric Rate-making Procedures

Intervenor: Volunteers Organized in Community Education

DE 80-182, Third Supplemental Order No. 15,626

67 NH PUC 317

New Hampshire Public Utilities Commission

May 11, 1982

ORDER denying a request for compensation to intervenor pursuant to the Public Utility Regulatory Policies Act.

COSTS — Intervenor funding — Public Utility Regulatory Policies Act — Type of proceeding.

[N.H.] Participation by an intervenor in a proceeding concerning compensation to electric consumers was not enough in itself to persuade the commission to order a utility to pay compensation to the intervenor pursuant to the Public Utility Regulatory Policies Act (PURPA) because the commission found that compensation was connected to consideration of a specific PURPA purpose as specifically enumerated in the act.

APPEARANCES: As noted previously.

BY THE COMMISSION:

REPORT

On October 8, 1981, VOICE filed a petition in compliance with the Public Utilities Commission's Procedural Rules for compensation of intervenor costs in this docket. Public Service Company of New Hampshire filed an objection to this request on October 20, 1981.

The problem presented by compensation in this instance is whether this docket falls within the parameters of a PURPA proceeding as defined in Rule 205.01. It may be said that a docket covering compensation to consumers is a PURPA position, in that it is rationally related to the PURPA goal of equitable rates. However, it is clear from the Rules 205.01 (c), (d) and (e) that compensation is connected to consideration of specific PURPA purposes as specifically enumerated in the Rule. Since this compensation docket is not one encompassed by the definition of PURPA positions as set forth in 205.01, the Commission finds VOICE ineligible for compensation and sustains the objection of Public Service Company.

The VOICE motion for compensation is denied, and our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof, it is hereby ORDERED, that VOICE's Motion for consumer compensation is denied.

By order of the Public Utilities Commission of New Hampshire this eleventh day of May, 1982.

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NH.PUC*05/11/82*[79270]*67 NH PUC 318*Lifeline Rates

[Go to End of 79270]

Re Lifeline Rates

Intervenor: Volunteers Organized in Community Education

DP 80-260, 11th Supplemental Order No. 15,642

67 NH PUC 318

New Hampshire Public Utilities Commission

May 11, 1982

ORDER granting intervenor compensation to consumer group for participation in Public Utility Regulatory Policies Act related proceeding.

COSTS — Intervenor funding — Use of federally funded counsel — Right to employ other counsel.

[N.H.] The commission ordered intervenor funding for a consumer group advocating lifeline rates even though the consumer had been represented by a federally funded organization in the past because the consumer could not rely on federally funded representation and has a right to employ other counsel; the financial status of the federally funded group was not relevant to the petitioning party's eligibility.

APPEARANCES: As noted previously.

BY THE COMMISSION:

REPORT

The Commission through its rule-making powers and the enactment of the Public Utility Regulatory Policies Act of 1978 (PURPA) has established a method by which responsible intervention in a PURPA-related proceeding may lead to compensation by the utility to the intervenor. This consumer compensation procedure applies solely to consumers of Public Service Company of New Hampshire and other utilities are not subject to such liability, either because of size or their industry.

On October 8, 1981 Volunteers Organized in Community Education (VOICE) filed a petition in compliance with the Public Utilities Commission Procedural Rules for compensation of intervenor costs in this docket. Public Service Company of New Hampshire filed an objection to this request on October 20, 1981.

FINDINGS

1. Voice meets the criteria for eligibility under the definition of consumer. VOICE is a low-income advocacy group with long-time participation in Commission proceedings (pre-dating PURPA) on behalf of retail electric consumers in the Nashua area.

2. VOICE meets the eligibility requirement under the "significant financial hardship" criteria. VOICE estimates its annual income from dues and other sources to be approximately \$500 per year. VOICE receives no Federal or State funds. There is no funding available

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to hire expert witnesses or legal counsel.

3. Since VOICE, not NHLA, is the real party to the Commission proceedings, it is unnecessary to determine whether NHLA would meet the criteria for financial eligibility.

4. Investigation into lifeline rates clearly falls within the parameters of a PURPA proceeding as defined in Rule 205.01.

5. VOICE made a substantial contribution in presenting evidence supporting a non-targeted lifeline rate.

6. VOICE's motion petitioning the Commission to reconsider the 200 KWH level and other issues led to continuation of the lifeline docket.

7. In the renewed hearings in the lifeline case this spring, VOICE and the CAP seem to be raising similar issues.

DISCUSSION AND CONCLUSION

Public Service Company objects to compensation for VOICE in DP 80-260 on two grounds: (1) significant financial hardship does not exist because VOICE is represented by NHLA, and NHLA is primarily federally funded; and (2) VOICE has not made a substantial contribution in presenting evidence sufficiently different from Staff's position.

Given a finding that VOICE qualifies under the financial hardship criteria, NHLA's need is not at issue since VOICE is the consumer. It is clear that VOICE cannot rely on the availability of counsel from NHLA, and was prevented from participating in DR 79-187 because NHLA could not represent them in that case. If PSNH's argument were to be accepted, VOICE or a similar group would only be able to intervene if government-funded attorneys were available. The purpose of Rule 205.03 (f) was not to deprive VOICE of the option of employing other counsel. The intent of the rule regarding State or Federal funds was to prevent payment to an organization like the Legislative Utilities Consumer Council (LUCC) which has a staff attorney and is a government sponsored agency.

However, the Commission is mindful of the possibility of unnecessary expense and duplication when consumer groups advocate the same or similar positions with respect to any PURPA issue. It was for this reason that Section 205.06 (c) was adopted. Pursuant to this rule, the Commission will order the consolidation of presentations by VOICE and CAP in the continuation of the lifeline proceedings, as their positions appear sufficiently similar.

In order to restrict undue compensation, the Commission rules also require a demonstration of a substantial contribution to the proceedings. The Commission rejects PSNH's contention in this case that VOICE presented nearly the same evidence as that presented by Commission staff. The testimony of Lorraine Sakowicz was not the same as the Staffs, but emphasized the social effects of a lifeline policy. VOICE's participation was also largely responsible for the renewal of lifeline hearings at this time.

The Commission finds that VOICE is eligible for compensation under 205.02, and the Order will so reflect setting a time for a hearing on appropriate compensation.

SUPPLEMENTAL ORDER

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

ORDERED, that a hearing be set for Friday, May 21, 1982 at 10:00 A.M. at the Public Utilities Commission, 8 Old Suncook Road, Concord New Hampshire

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to determine fair compensation to VOICE under Rule 205.02 by Public Service Company of New Hampshire; and it is

FURTHER ORDERED, that VOICE and CAP consolidate their presentations henceforth in this docket pursuant to Rule 205.06(c).

By order of the Public Utilities Commission of New Hampshire this eleventh day of May, 1982.

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NH.PUC*05/11/82*[79271]*67 NH PUC 320*Information to Consumers

[Go to End of 79271]

Re Information to Consumers

DE 80-174, Third Supplemental Order No. 15,643

67 NH PUC 320

New Hampshire Public Utilities Commission

May 11, 1982

ORDER granting intervenor compensation to consumer group for participation in Public Utility Regulatory Policies Act related proceeding.

COSTS — Intervenor funding — Use of federally funded counsel — Right to employ other counsel.

[N.H.] The commission ordered intervenor funding for a consumer group advocating lifeline rates even though the consumer had been represented by a federally funded organization in the past because the consumer could not rely on federally funded representation and has a right to employ other counsel; the financial status of the federally funded group was not relevant to the petitioning party's eligibility.

APPEARANCES: As previously noted.

BY THE COMMISSION:

REPORT

The Commission through its rule-making powers and the enactment of the Public Utility

Regulatory Policies Act of 1978 (PURPA) has established a method by which responsible intervention in a PURPA-related proceeding may lead to compensation by the utility to the intervenor. This consumer compensation procedure applies solely to consumers of Public Service Company of New Hampshire and other utilities are not subject to such liability, either because of their size or their industry.

On October 8, 1981, VOICE filed a petition in compliance with the Public Utilities Commission's Procedural Rules for compensation of intervenor costs in this docket. Public Service Company of New Hampshire filed an objection to the request on October 20, 1981.

FINDINGS

1. VOICE meets the criteria for eligibility under the definition of consumer. VOICE is a low-income advocacy group with long-time participation in Commission proceedings (pre-dating PURPA) on behalf of retail electric consumers in the Nashua area.

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2. VOICE meets the eligibility requirement under the "significant financial hardship" criteria. VOICE estimates its annual income from dues and other sources to be approximately \$500 per year. VOICE receives no Federal or State funds. There is no funding available to hire expert witnesses or legal counsel.

3. Since VOICE, not New Hampshire Legal Assistance (NHLA), is the real party to the Commission proceedings, it is unnecessary to determine whether NHLA would meet the criteria for financial eligibility.

4. Information to Consumers is clearly one of those proceedings (§ 113 (b) (2) of PURPA) which the rules intend that compensation should be available.

5. VOICE made a substantial contribution toward developing a statement of Consumer Rights and Responsibilities which was incorporated in the subsequent version of the pamphlet for DRM 82-28.

DISCUSSION AND CONCLUSION

Public Service Company objects to compensation for VOICE in DE 80-182 on two grounds: (1) significant financial hardship does not exist because VOICE is represented by NHLA, and NHLA is primarily federally funded; and (2) VOICE has not made a substantial contribution in presenting evidence sufficiently different from Staff's position.

Given a finding that VOICE qualifies under the financial hardship criteria, NHLA's need is not at issue since VOICE is the consumer. It is clear that VOICE cannot rely on the availability of counsel from NHLA, and was prevented from participating in DR 79-187 because NHLA could not represent them in that case. If PSNH's argument were to be accepted, VOICE or a similar group would only be able to intervene if government-funded attorneys were available. The purpose of Rule 205.03(f) was not to deprive VOICE of the option of employing other counsel. The intent of the rule regarding State or Federal funds was to prevent payment to an organization like the Legislative Utilities Consumer Council (LUCC) which has a staff attorney and is a government sponsored agency.

While Public Service Company of New Hampshire contends that VOICE did not make substantial contribution in this docket, the Commission does not agree. VOICE made extensive suggestions concerning the language of the proposed Statement of Rights and Responsibilities, many of which were incorporated in the revised version.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that a hearing be set for Friday, May 21, 1982 at 10:00 A.M. at the Public Utilities Commission, 8 Old Suncook Road, Concord New Hampshire to determine fair compensation to VOICE under Rule 205.02 by Public Service Company of New Hampshire.

By order of the Public Utilities Commission of New Hampshire this eleventh day of May, 1982.

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NH.PUC*05/12/82*[79272]*67 NH PUC 322*International Generation and Transmission Company, Inc.

[Go to End of 79272]

Re International Generation and Transmission Company, Inc.

DSF 82-30

67 NH PUC 322

New Hampshire Public Utilities Commission

May 12, 1982

MOTION for disqualification of public service board chairman; dismissed.

COMMISSIONS, § 51 — Personal bias — Motion for disqualification of chairman from commission committee — Comments made at public meeting as a basis.

[N.H.] The fact that the public service board chairman made general statements concerning the goals of a board evaluation committee at a public meeting of an interstate utility group did not constitute personal bias warranting disqualification from the evaluation committee since it was clear the commissioner adhered to an informational role at the meeting.

RESPONSE BY CHAIRMAN J. MICHAEL LOVE TO MOTION FOR DISQUALIFICATION

International Generation and Transmission Company, Inc. (IGT) has filed on April 27, 1982 a "Motion for Disqualification" dated April 23, 1982 of myself from these proceedings on the basis of personal bias. This Motion refers to certain documents which are offered to support the contention.

The first document states as follows:

"At this point, Chairman Love of the New Hampshire Public Service Board and Mr. Ambrosino of the New Hampshire Energy Office joined the meeting. Chairman Love described the New Hampshire statutes and administrative regulations as they relate to the establishment and jurisdiction of the New Hampshire Bulk Power Supply Site Evaluation Committee Council and the process by which siting decisions are made in New Hampshire. He described the commitment in New Hampshire by law and policy to establish a fair process which would provide a siting decision as expeditiously as possible."

The excerpt from the NEPOOL meeting accurately reflects my presentation which dealt solely with the regulatory process in New Hampshire. Such activity is not precluded by any statute. Rather, RSA 363:12-a specifically authorizes speeches or presentations concerning the regulatory process in New Hampshire.

The second reference is to a letter I wrote in response to inquiries from the applicant. In the letter, I sought certain information so as to adequately respond to the concerns raised by this future applicant. The reference in my December 10, 1979 letter stated that IGT is not a utility. Such a statement was not a finding much less a permanent ruling or decision. Rather, it was simply a response based on the fact that no authorization as to a public utility status had been issued as of that point. Nor had there been any application. Since at that time IGT was not involved in the generation, transmission or sale of electricity

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ultimately sold to the public, it did not have a Commission Order recognizing it to be a utility.

IGT at that time did not have (a) a franchised area authorized by this Commission pursuant to RSA 374:22; (b) a capitalization authorized by the Commission pursuant to RSA 369; (c) any evidence given before the Commission as to their ability pursuant to RSA 374:1 that they would provide adequate and safe service; and (d) an assessment pursuant to RSA 363-A.

IGT had not come before this Commission in a formal capacity to obtain public utility status thus clearly the statement in December of 1979 reflected our formal records.¹⁽³⁴⁾ As noted, previously, this statement was not a finding but rather reflected the lack of any decision prior to December, 1979 granting public utility status.

The third letter signed by a Paul Ambrosino cannot be viewed as a proper subject for recusal. No Commission can be properly held to account for the letters of others. The purpose for my presentation to NEPOOL was to inform a largely out of state audience the regulatory process in New Hampshire. I described the statutes, the leading cases interpreting those statutes, and the roles of the Commission and the Site Evaluation Committee. My purpose was to inform and the minutes of the NEPOOL meeting demonstrate that I adhered to an information role.²⁽³⁵⁾

The Motion to Disqualify is dismissed.

FOOTNOTES

¹Whatever weight or interpretation is to be given to Chairman Kalinski's letter is not here relevant as Chairman Kalinski either destroyed or removed all of his correspondence prior to February 14, 1979.

²Although an expanded role would appear to be allowed pursuant to RSA 363-18a as amended.

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NH.PUC*05/17/82*[79273]*67 NH PUC 323*Gunstock Glen Water Company

[Go to End of 79273]

Re Gunstock Glen Water Company

DR 81-379, Supplemental Order No. 15,645

67 NH PUC 323

New Hampshire Public Utilities Commission

May 17, 1982

ORDER setting rates for a water utility and ordering installation of meters for all customers within one year.

1. EXPENSES, § 12 — Amortization of nonrecurring expense — Water utility — Pump costs.

[N.H.] In a proceeding to set rates for a water utility, the commission disallowed the portion of maintenance expenses attributable to costs for pumps which should have been capitalized since the costs would not recur on a regular basis. p. 324.

2. RATES, § 595 — Water — Basic rate versus metered rate.

[N.H.] In keeping with established policy, the commission ordered a water utility to meter all customers and install meters at each source of supply so as to encourage efficient use of the resource as well as cure unfairness to the small consumer forced to pay a fixed rate on an unmetered system. p. 325.

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APPEARANCES: Morris Paradise, Bernice J. Paradise, and Norman Simoneau for the petitioner. Limited appearance: Arthur Stern, ratepayer.

BY THE COMMISSION:

REPORT

Gunstock Glen Water Company, a public utility engaged in the business of supplying water

service in the State of New Hampshire, on 12/01/81, filed with this Commission certain revisions to its tariff, NHPUC No. 1 — Water, providing for increased annual revenues of \$3,221 (60%), effective 12/30/81.

The filing was suspended per Order No. 15,376 dated 12/21/81, pending further investigation and decision thereon.

A duly noticed public hearing was held at the Commission's office on 4/27/82.

On April 13, 1982, Mr. Lessels and Mr. Traum of the PUC Staff sent a data request to the Company which was responded to in a timely manner.

Three sets of exhibits were entered into the record:

(1) The Company's original filing of November 30, 1981 which was based on an estimated 1981 test year.

(2) The Company's responses to staff data requests

(3) The Company's 1981 PUC Report Mr. Stern, a ratepayer of the utility, made a statement for the record.

Operating Revenues

The Company had originally pro formed or estimated 1981 operating revenues to be \$5,344. Since the 1981 PUC report shows actual revenues to be \$5,321, and minimal if any customer growth is expected, the Commission will accept \$5,321 as an on-going revenue level.

Operating Expenses

[1] The total revenue deductions shown by the Company in Exhibit 2, estimated for 1981 were \$6,471. Per the Company's annual report, the actual for 1981 was \$6,201. The Commission will work from the actual as it chose to do with Operating Revenues.

The \$6,201 figure is made up of \$5,205 Operation and Maintenance, \$768 depreciation, and the balance real estate taxes.

Based on the Company's response to data requests and staff cross-examination, it was pointed out that at least \$762 of 1981 Operation and Maintenance expenses were pump costs which should have been capitalized; and will not be recurring on a regular basis. The Operation and Maintenance expenses on an on-going basis will thus be reduce accordingly, and adjusted for an additional \$76 of depreciation assuming a 10-year life for the asset.

Since the time the system was purchased by the present owners, the Commission is concerned that many costs which would have been capitalized were expensed. Since 1981 is the test year, we will not go back prior to then, but the Company is hereby notified that they are required to fully comply with the Commission's Chart of Accounts for Water Utilities, and are put on notice that the PUC Finance Department will endeavor to do an audit of the utility in the near future.

In summation, the Commission will accept $(\$6,201 - 762 + 76)$ or \$5,515 as the amount of revenue deductions on an on-going basis.

There are no income tax consequences in these actions.

Rate Base

The Company originally filed with a rate base of \$13,845, which was adjusted to \$13,185 in Response #3 in Exhibit 2, which updated the rate base to year end 12/31/81.

This Commission normally adopts a rate base calculated on an average for the year, but in this case, recognizing the Company mistakenly expensed at least \$762 which should have been capitalized just in 1981, and no additions or retirements to fixed assets have been booked since the present owners have taken over the system, the Commission will take the lowest rate base request of \$13,185 plus \$762 or \$13,947 and require the Company to adhere to the Commission's Chart of Accounts in the future, particularly regarding capitalization versus expensing.

Cost of Capital

The Company in its original filing requested a cost of capital of 12.1%, which was later revised to 9.55%. No

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

| | |
|-------------------------|----------------|
| Oper. Rev. Accepted: | \$5,321 |
| Rev. Deductions Accept: | 5,513 |
| Operating Loss | <u>\$(192)</u> |

supporting exhibits were provided to show how the 9.55% was developed according to standard regulatory procedures.

In order to calculate a cost of capital per standard regulatory principles, the Commission has gone back to the Company's capitalization as of 12/31/81.

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

| | |
|--------|--|
| Debt | \$9,227.81 at 8% |
| Equity | $\$(5,862.36 - 2,117.47) = \$3,744.89$ |
| TOTAL | <u>\$12,972.70</u> |

Based on several rate decisions recently issued by this Commission on several water systems; namely,

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

| | | |
|------------------------|-----------|-------|
| Sunapee Hills | DR 81-367 | 13.0% |
| Birchview by the Sacro | DR 81-235 | 13.6 |
| Pittsfield | DR 80-125 | 14.0 |

An average return granted on equity was 13.570, which is the rate we will accept in this case.

Applying 13.5% to the preceding capitalization yields a rate of return of 9.59% which the Commission will accept.

Revenue Increase Required

Based on the preceding portions of this report, the revenue increase to be allowed is \$1,532, calculated as follows:

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

| | |
|------------------------------|----------|
| Rate Base Accepted: | \$13,947 |
| Cost of Capital " : | x 9.59% |
| Net Income " " | 1,338 |
| + Oper. Loss | 192 |
| Revenue Increase Allowed: | \$1,530 |

Meters

[2] The customers of Gunstock Glen are presently unmetered, which allows an unlimited use of water at a base or fixed charge. This method is unfair to the small consumer who is billed at the same charge as the large consumer, and very often results in a wasteful or less than efficient use of the product.

Commission policy is that all water service shall be metered and Gunstock Glen Water Company is hereby directed to make very sure that its customers shall all be metered by December 31, 1982. It is also a Commission rule that a meter shall be installed to measure the quantity of water produced, or drawn, from each

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source of supply. This meter shall also be installed by December 31, 1982.

Construction Program

During the hearing and the prior investigation process, it was disclosed that there are several areas of the water system that are in need of fixed capital investment, i.e.: main replacement, pump house repairs, and the addition of a stand-by or reserve, booster pump and various distribution isolation valves..

Each utility must make such borrowing as is necessary to keep its system and product in good condition and supply. Gunstock Glen must explore the capital market to fund plant improvements, including meters as we have dealt with in this Report. It is not our intention to direct that all the heretofore mentioned capital and maintenance expenditures should be accomplished in one year but that beyond the meter installations, an orderly program should be developed for accomplishing the remaining items.

Rates

We will accept the basic design of the fixture rate schedule, filed in this case, adjusted for the increased revenue allowance of \$1,530.00, as an interim vehicle until the installation of meters.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that 1st Revised Pages 3,4,4A and 5 of Tariff NHPUC No. 1 — Water, Gunstock Glen Water Company, which were suspended by Order No. 15,376, be and hereby are rejected; and it is

FURTHER ORDERED, that Gunstock Glen Water Company shall file new tariff pages

designated "2nd Revised Page 3,4,4A and 5, Issued in lieu of 1st Revised Page 3,4,4A, and 5; and it is

FURTHER ORDERED, that 2nd Revised Page 5 shall be an unmetered rate schedule designed to recover additional revenues of \$1,530 as specified in this Report; and it is

FURTHER ORDERED, that all new tariff pages filed in accordance with this Order shall bear the designation "Authorized by NHPUC Order No. 15,645 in case DR 81-379, dated May 17, 1982, and the effective date which shall be the date of this Order.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1982.

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NH.PUC*05/18/82*[79274]*67 NH PUC 326*Lifeline Rates

[Go to End of 79274]

Re Lifeline Rates

DP 80-260, 12th Supplemental Order No. 15,648

67 NH PUC 326

New Hampshire Public Utilities Commission

May 18, 1982

ORDER denying intervenor funding requested by consumer group.

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COSTS — Intervenor funding — Contribution similar to presentation by commission staff.

[N.H.] The commission denied intervenor funding requested by a consumer group where the commission could not discern the testimony in question as being sufficiently different from the contribution made by the staff.

APPEARANCES: As noted previously.

BY THE COMMISSION:

REPORT

The Commission through its rule-making powers and the enactment of the Public Utilities Regulatory Policies Act of 1978 (PURPA) has established a method by which responsible intervention in a PURPA-related proceeding may lead to compensation by the utility to the intervenor. This consumer compensation procedure applies solely to consumers of Public

Service Company of New Hampshire and other utilities are not subject to such liability.

On October 20, 1982 the Conservation Law Foundation (CLF) filed a petition in compliance with the Public Utilities Commission Procedural Rules for compensation of intervenor costs in this docket. Public Service Company of New Hampshire filed an objection to this request on November 24, 1982. CLF filed a reply to Public Service Company's objection on December 8, 1981.

The main problem the Commission finds with compensation in this instance is whether CLF made a substantial contribution to the Commission Report and Order dated April 30, 1981. Since CLF has not entered an appearance in the renewed proceedings, compensation in this docket must be based upon a substantial contribution to the April 1981 report and order as defined by rule 205.07 and rule 205.11.

An award of compensation may be ordered only in those Commission proceedings "in which a consumer substantially contributes to the adoption by the Commission, in whole or in part, of a position advocated by the consumer in that proceeding." (Rule 205.02) A review of CLF's brief filed on March 6, 1981 reveals that CLF advocated a non-targeted lifeline rate, justified on principles of cost and the tendency to promote conservation. The Commission report and order in that docket does conclude that lifeline rates should be non-targeted and are justified in part because of conservation implications.

However, the Commission report on page 4 states,

"The Commission would like to make it abundantly clear that this Report and Order is addressed to Lifeline rates as defined in PURPA. This hearing does not deal directly with all the attributes and drawbacks of innovative rates or marginal cost rates which if adopted, might, as a byproduct, provide cost justified rates sufficient to provide 'essential needs' ".

Consequently, the Commission's adoption of a non-targeted lifeline rate was not based upon the cost-justified argument advanced by CLF.

In order to restrict undue compensation, the Commission rules also prohibit compensation to a consumer for advocating a position similar to staff's without providing evidentiary support for the position. CLF did not present any evidentiary testimony to support its belief. The Commission finds it difficult to

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discern the contribution of CLF to the Commission's order as being sufficiently distinct from Staff's contribution. Consequently, the Commission finds CLF ineligible for compensation in this docket.

The CLF motion for compensation is denied, and our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that CLF's Motion for Consumer Compensation is denied.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of May,

1982.

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NH.PUC*05/18/82*[79275]*67 NH PUC 328*Public Service Company of New Hampshire

[Go to End of 79275]

Re Public Service Company of New Hampshire

DF 82-141, Order No. 15,649

67 NH PUC 328

New Hampshire Public Utilities Commission

May 18, 1982

ORDER opening docket to receive information concerning an electric utility's financial integrity and appropriate commission response to financial problems caused by involvement in nuclear plant.

BY THE COMMISSION:

ORDER

WHEREAS, the Commission in a previous docket, DR 81-87, stated that if PSNH's bond rating was lowered that the Commission would attach a condition to subsequent financings to prevent the proceeds from new debt or equity to be used for further work at the Seabrook second unit; and

WHEREAS, the Commission, through its subsequent clarification orders, stated that the fate of the second unit was in the hands of PSNH's Seabrook partners; and

WHEREAS, the Commission has repeatedly found that some major steps were needed to be undertaken by PSNH to preserve its financial integrity; and

WHEREAS, Standard & Poor's downgrade activated the condition imposed and clarified by Commission orders; and

WHEREAS, the Commission has already found the necessity to condition financings due to the lack of bona fide responses by PSNH's Seabrook partners; and

WHEREAS, the Commission in its Report and Order No. 15,543 (67 NH PUC 222) stated that prior to or on July 11, 1982, the Commission would again evaluate the responses by the other New England Utilities to see if a bona fide

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response and sustained progress has been made; and

WHEREAS, the Commission stated that if the Commission should again find that no bona fide response has been made or sustained progress has failed to be achieved the Commission

would order a delay of any further work on Seabrook II until February 27, 1984; it is hereby

ORDERED, that docket No. DF 82-141 "PSNH Financial Integrity" is opened for the purpose of receiving any and all information on (1) the question of whether there have been bona fide responses and sustained progress by the other New England electric utilities in alleviating the PSNH financial problems stemming from their ownership in Millstone #3 and their level of ownership in Seabrook; (2) the immediate fate of Seabrook II as to whether to delay or not and if so how long; and (3) what if any conditions to impose upon future PSNH financings; and it is

FURTHER ORDERED, that the entire record of DF 82-63 is incorporated and made a part of the record in this proceeding; and it is

FURTHER ORDERED, that PSNH file any evidence, material, documents or testimony that it wishes to have the Commission consider as to the aforementioned concerns on or before June 2, 1982; and it is

FURTHER ORDERED, that hearings in this docket will be conducted beginning at 1:00 p.m., June 9, 1982, June 10, 1982, June 11, 1982 and at such other times as designated by the Commission; and it is

FURTHER ORDERED, that the hearings will be conducted at the Commission's offices at 8 Old Suncook Road, Concord, New Hampshire; and it is

FURTHER ORDERED, that all persons seeking "party status" are to notify the Commission by June 7, 1982, such notification must include a description of the reasons why party status should be conferred upon the applicant and how its interests will be affected by a decision in this proceeding. The Commission reserves the right to determine who will be viewed as parties; and it is

FURTHER ORDERED, that members of the Commission staff are to present an analysis of other electric utilities and their respective construction programs, attention should be given to rate of return earned, dividend policy, yield bond ratings, construction program versus existing plants, any recent postponements or alterations in those construction programs, % of AFUDC earnings and overall rate of return allowed; and it is

FURTHER ORDERED, that Staff is to file their analysis on June 7, 1982; and it is

FURTHER ORDERED, that this Order of Notice is to be published within seven days of the date of this Order in the following newspapers: Union Leader, Nashua Telegraph, Laconia Evening Citizen, Keene Sentinel, New Hampshire Times, and the Portsmouth Herald.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of May, 1982.

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NH.PUC*05/19/82*[79276]*67 NH PUC 330*Policy Water Systems, Inc.

[Go to End of 79276]

Re Policy Water Systems, Inc.

Intervenors: Office of Consumer Advocate et al.

DR 81-229, Third Supplemental Order No. 15,646

67 NH PUC 330

New Hampshire Public Utilities Commission

May 19, 1982

ORDER granting reconsideration of finding that bonded rates could be accepted by the commission even though temporary rates were in effect.

APPEARANCES: Daniel Laufer for Policy Water; F. Joseph Gentili, Consumer Advocate; Representative Ralph Blake.

BY THE COMMISSION:

CONSUMER ADVOCATE'S MOTION FOR RECONSIDERATION

The Consumer Advocate cites our attention to the Commission's decision in Manchester Gas, DR 81-234, in which the Commission found that if a utility had received temporary rates pursuant to RSA 378:27, then the utility was not eligible for consideration pursuant to RSA 378:6. The Consumer Advocate questions our decision in Order No. 15,558 accepting bonded rates pursuant to RSA 378:6 given the establishment of temporary rates pursuant to Order #15,322 (66 NH PUC 523). The Consumer Advocate notes an inconsistency and after review, we agree. Consequently the motion for reconsideration is granted and Supplemental Order No. 15,558 is vacated. 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 Consumer Advocate's motion for reconsideration is granted; and it is FURTHER ORDERED, that the Commission's Second Supplemental Order No. 15,558 is revoked.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of May, 1982.

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NH.PUC*05/19/82*[79277]*67 NH PUC 331*Energy Cost Adjustment

[Go to End of 79277]

Re Energy Cost Adjustment

DR 82-146, Order No. 15,650

67 NH PUC 331

New Hampshire Public Utilities Commission

May 19, 1982

ORDER setting proceeding to examine rate over- and undercollections.

BY THE COMMISSION:

ORDER

WHEREAS, the Commission by Fifty-Sixth Supplemental Order No. 15,486 (67 NH PUC 157) approved the establishment of a rate mechanism to adjust for energy costs for Public Service Company of New Hampshire (PSNH) on a six-month basis;

WHEREAS, the Commission, pursuant to the settlement agreement in DR 79-187, Phase II, and the Commission decision in DR 81-87, must examine and rule on the over/under collections that have occurred up to the present and through June 30, 1982; it is hereby

ORDERED, that Docket No. DR 82-146 is established for the purpose of resolving any questions related to over/under collections through June 30, 1982 and establishment of a new level of energy costs to be recovered in base rates for the time period July 1, 1982 through December 31, 1982; and it is

FURTHER ORDERED, that PSNH file testimony and exhibits in accordance with the settlement agreement approved in DR 79-187, Phase II, by Order No. 15,486; such filing to be made on or before May 20, 1982; and it is

FURTHER ORDERED, that hearings will commence in this docket at 9:30 A.M. on June 14, 1982 at the offices of the New Hampshire Public Utilities Commission; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire notify all persons desiring to be heard to appear at said hearing, when and where they may be heard upon the issues set forth above, by causing an attested copy of this order of notice to be published once in the Manchester Union Leader, New Hampshire Times and the Portsmouth Herald, such publications to be not later than June 1, 1982; such publications 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 of New Hampshire this nineteenth day of May, 1982.

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NH.PUC*05/19/82*[79278]*67 NH PUC 332*Wolfeboro Municipal Electric Department

[Go to End of 79278]

Re Wolfeboro Municipal Electric Department

DR 82-115, Second Supplemental Order No. 15,651

67 NH PUC 332

New Hampshire Public Utilities Commission

May 19, 1982

ORDER approving plan by utility to credit customers with purchased power refund and overcollection by reducing fuel adjustment charge.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Wolfeboro Municipal Electric Department has filed for a Purchased Power Cost Adjustment reduction corresponding to reduced wholesale rates from Public Service Company of New Hampshire; and

WHEREAS, Wolfeboro has also filed a plan for refunding Purchased Power overcharges for April 15 to May 15, 1982, and for crediting customers with the Purchased Power refund from Public Service Company by reducing the June fuel adjustment charge; and

WHEREAS, these proposals are found to be just and reasonable; it is

ORDERED, that 2nd revised Page 11B of Tariff NHPUC No. 6 of the Municipal Electric Department of Wolfeboro is hereby approved for effect May 15, 1982; and it is

FURTHER ORDERED, that Wolfeboro proceed with its plan for crediting customers with the wholesale refund and the one month over-collection of Purchased Power expense.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of May, 1982.

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NH.PUC*05/20/82*[79279]*67 NH PUC 332*Information to Consumers

[Go to End of 79279]

Re Information to Consumers

DRM 82-28, Order No. 15,644

67 NH PUC 332

New Hampshire Public Utilities Commission

May 20, 1982

ORDER finding that a consumer group requesting intervenor funding met financial eligibility standards.

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APPEARANCES: As noted previously.

BY THE COMMISSION:

REPORT

The Commission through its rulemaking powers and the enactment of the Public Utility Regulatory Policies Act of 1978 (PURPA) has established a method by which responsible intervention to a PURPA-related proceeding may lead to compensation by the utility to the intervenor. This consumer compensation procedure applies solely to consumers of Public Service Company of New Hampshire and other utilities are not subject to such liabilities.

On April 12, 1982, VOICE filed a petition in compliance with the Public Utilities Commission Procedural Rules for a finding of eligibility for compensation in this docket. Objections were filed by Public Service Company of New Hampshire on April 22, 1982, by Concord Natural Gas and Gas Service, Inc. On May 5, 1982, and by Manchester Gas on April 23, 1982.

FINDINGS

1. VOICE meets the criteria for eligibility under the definition of consumer. VOICE is a low-income advocacy group with long-time participation in Commission proceedings (pre-dating PURPA) on behalf of retail electric consumers in the Nashua area.

2. VOICE is the sole consumer party in this docket.

3. VOICE meets the eligibility requirement under the "significant financial hardship" criteria. VOICE receives no Federal or State funds. There is no funding available to hire expert witnesses or legal counsel.

4. Since VOICE, not New Hampshire Legal Assistance (NHLA), is the real party to the Commission proceedings, it is necessary to determine whether NHLA would meet the criteria for financial eligibility.

5. Information to consumers clearly falls within the parameters of a PURPA proceeding as defined in Rule 205.01.

6. A determination as to whether VOICE has made a substantial contribution to this docket cannot be made at this time.

7. Gas companies and electric companies other than Public Service Company of New Hampshire are not liable for compensation in this docket or in any other PURPA proceeding.

DISCUSSION AND CONCLUSION

The Commission finds that VOICE meets the eligibility requirements in this docket as to the criteria for a consumer and for substantial financial hardship.

Because this docket has not been completed, the Commission is unable to determine whether VOICE has made a substantial contribution. Rule 205.02 requires that an award of compensation may be ordered only in those Commission proceedings "in which a consumer substantially contributes to the *adoption* by the Commission, in whole or in part, of a position advocated by the consumer in that proceeding" (Emphasis added.)

Until the docket has been completed, whether the requirement of Rule 205.02 has been satisfied cannot be determined. Evidence supporting the requirement of "substantial contribution" must be submitted by VOICE at the close of the docket, at which time the Commission will rule on this criteria and will set a hearing on adequate compensation

should it find that VOICE has satisfied the requirement.

The Commission sustains the motions of Concord Natural Gas, Gas Service, Inc. and Manchester Gas. Since Rule 205.01(L) clearly defines utility to mean an electric utility to which Title 1 of PURPA applies, gas companies do not have any liability for compensation. Our Order will issue accordingly.

ORDER

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

ORDERED, that VOICE's Motion for Consumer Compensation applies solely to Public Service Company of New Hampshire and any claim against other utilities is denied; and it is

FURTHER ORDERED, that VOICE present evidence as to the criteria of substantial contribution upon the completion of this docket pursuant to Rule 205.02.

By order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1982.

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NH.PUC*05/21/82*[79280]*67 NH PUC 334*Public Service Company of New Hampshire

[Go to End of 79280]

Re Public Service Company of New Hampshire

DE 81-312, Eighth Supplemental Order No. 15,655

67 NH PUC 334

New Hampshire Public Utilities Commission

May 21, 1982

REQUEST for finding of eligibility for intervenor compensation; granted in part denied in part.

1. COSTS — Intervenor funding — Qualifying proceedings — Supply/demand investigation.

[N.H.] The commission found that a supply/demand investigation was a qualified proceeding for the purposes of intervenor compensation pursuant to the Public Utility Regulatory Policies Act of 1978 since the investigation encompassed both specific PURPA Subtitle B standards and the broad purposes of the act. p. 335.

2. COSTS — Intervenor funding — Qualifying organizations — Environmental groups.

[N.H.] While determining whether specific organizations qualified as consumers for the purpose of intervenor funding pursuant to the Public Utility Regulatory Policies Act the commission rejected a request to exclude automatically all environmental groups finding that

eligibility must be based on the testimony a consumer intends to offer on PURPA issues. p. 336.

BY THE COMMISSION:

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CLF, ET AL REQUEST FOR FINDING OF ELIGIBILITY FOR COMPENSATION

The Commission through its rulemaking powers and the enactment of the Public Utility Regulatory Policies Act of 1978 (PURPA) has established a method by which responsible intervention in a PURPA-related proceeding may lead to compensation by the utility to the intervenor. This consumer compensation procedure applies solely to consumers of Public Service Company of New Hampshire and other utilities are not subject to such liabilities.

On February 2, 1982, the Conservation Law Foundation of New England, Inc. (CLF), the New Hampshire Energy Coalition (NHEC), and the Union of Concerned Scientists(UCS) requested a finding of eligibility for joint intervenor costs in this docket pursuant to the Public Utilities Commission Procedural Rules for compensation. Public Service Company of New Hampshire filed an objection to this request on February 9, 1982. CLF filed a reply to Public Service Company's objection dated February 23, 1982.

FINDINGS

1. The supply and demand investigation, DE 81-312, is a PURPA proceeding and qualifies as an appropriate docket for PURPA compensation.
2. CLF and NHEC are "consumers" within the meaning of PUC Rule 205.01(F) in this docket.
3. The Union of Concerned Scientists ("UCS") is not a "consumer" within the meaning of PUC Rule 205.01 (F) and does not qualify for compensation.
4. CLF is qualified to receive funding, although not necessarily full funding, under the financial hardship criteria. Although CLF has substantial resources, the Commission recognizes that because of the extensive nature and cost of this investigation, participation by CLF may cause financial hardship. CLF has no State or Federal funds.
5. NHEC meets the eligibility requirement under the "significant financial hardship" criteria. NHEC is a non-profit, citizen organization which relies upon dues and small grants primarily from New Hampshire foundations. NHEC has no State or Federal funding. There is insufficient funding to participate in an investigation of this magnitude without compensation.

DISCUSSION AND CONCLUSION

[1] The Commission rejects PSNH's argument that this docket is not a PURPA proceeding, and finds that the supply/demand investigation encompasses both specific PURPA Subtitle B standards and the board purposes of PURPA.

Clearly, Docket No. DE 80-182 is undertaken pursuant to the goals of PURPA as set forth in 205.01 dealing with conservation, efficiency and equity. However, the Commission need not rely

on these broad purposes to find that this docket is a PURPA proceeding.

Section 122 of PURPA requires compensation to consumers in a proceeding "relating to any standard set forth in Subtitle B". The standards set forth in Subtitle B of PURPA are identical with the standards set forth in the Commission's Rules 205.01(D) and (E). The Commission's Order of Notice in this proceeding issued October 22, 1981, recognized that the PURPA standards

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regarding rate structure and load management opportunities were specific considerations of this docket.

PSNH argues that CLF does not qualify as a consumer under the Commission's Rule 205.01(F), because CLF's by-laws or articles of incorporation do not expressly authorize it to represent the interests of consumers. Certainly, the first part of the Commission rule "any retail electric consumer of an electric utility" does not require this strict interpretation but leaves the Commission discretion in determining consumer eligibility.

[2] PSNH further argues that the Commission Report setting forth the procedural rules for compensation excludes environmental groups, and that CLF is an environmental group. While the Commission in that report rejected CLF's request to automatically include environmental and conservation groups within the definition of consumer, it did not intend to automatically preclude a group from consideration because it was an environmental organization. Whether a group qualifies as a consumer under PURPA must be determined in large part by the testimony it intends to offer on PURPA issues. In this regard, the Commission finds that CLF and NHEC qualify in this docket as consumers.

The Commission also considers the New Hampshire membership of the organization to determine whether the group can reasonably be considered to represent New Hampshire electric consumers. While CLF is a regional group headquartered in Boston, it is a New England group with substantial New Hampshire membership. Given also that PSNH is a member of NEPOOL and that New Hampshire's energy supply and demand is to an extent interrelated with the rest of New England, some regional focus is not inappropriate. In this regard, there is no question concerning the NHEC.

However, the Commission finds that it is not reasonable to consider the UCS to be a group representing New Hampshire ratepayers. The UCS is a Washington based, national organization, and while it has 1,156 New Hampshire members, this is a very small portion of its 120,000 nationwide supporters.

On the question of financial hardship, the Commission recognizes that CLF has substantial financial resources. However, the Commission also acknowledges that CLF relies for funds upon private memberships and contributions and limited foundation monies. A group should not be penalized because it has achieved substantial voluntary support and donations. Such a ruling could have the perverse result of only funding groups with little support. A determination of hardship thus must be reviewed in each case in the context of the case. The Commission recognizes that the extent of this intervention may result in financial hardship to CLF, whereas participation in another docket might not present hardship. The Commission will reserve

judgment on the extent of compensation pending a presentation at the conclusion of the docket.

The Commission wishes to compliment the parties for consolidating their cases. Consolidation where possible is a goal of the Commission as indicated in the adoption of Rule 205.06(c).

Based on the foregoing report, the Commission finds that CLF and NHEC are eligible for compensation in DE 81-312. A finding of eligibility for the UCS to the extent of their participation in the joint presentation is denied. Final determination of compensation in this docket will be determined on the basis of a

Page 336

financial presentation at the close of the docket. The Commission also wishes to emphasize that any compensation is predicated on a finding by the Commission of "substantial contribution" as defined in rule 205.07 and rule 205.11. Our Order will issue according to these findings and conditions.

SUPPLEMENTAL ORDER

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

ORDERED, that in regard to compensation in this docket for the joint intervenors, eligibility is found for CLF and NHEC and denied for UCS; and it is

FURTHER ORDERED, that CLF and NHEC present financial records and documentation of financial hardship at the close of this docket; and it is

FURTHER ORDERED, that CLF and NHEC present evidence as to the criteria of substantial contribution pursuant to rule 205.07 and rule 205.11 upon completion of this docket.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of May, 1982.

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NH.PUC*05/21/82*[79281]*67 NH PUC 337*Transportation Rules 700, 800, and 900

[Go to End of 79281]

Re Transportation Rules 700, 800, and 900

DRM 82-100, Order No. 15,657

67 NH PUC 337

New Hampshire Public Utilities Commission

May 21, 1982

ORDER adopting rules and regulations for common and contract carriers of passengers, property, and household goods.

BY THE COMMISSION:
REPORT

This Commission initiated this rule-making docket by complying with the requirements of RSA 541 on or about April 9, 1982. A rulemaking notice form was filed with the Office of Legislative Services and the time for written comments was scheduled at the same time as the public hearing on May 19, 1982.

Written comments were received from Vermont Transit Company, Inc. and from the New Hampshire Household Movers Association. In addition to the written comments received, approximately twenty (20) authorized carriers or their representatives appeared and gave testimony regarding the adoption of the proposed rules. The Commission has seriously considered the comments and testimony presented during the hearing and responding thereto has amended the proposed rules accordingly. Upon

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consideration of all the information presented to the Commission, the Commission has determined that the attached rules shall be adopted and entitled: Chapter 700 Rules and Regulations for Common and Contract Carriers of: Passengers, Chapter 800 Rules and Regulations governing Motor Carriers in the Transportation of Property for Hire, Chapter 900 Rules and Regulations pertaining to the Carriage of Household Goods for Hire by Motor Vehicle.

It should be noted that Sections 903.09 and 903.11 have been reserved for rules to be adopted in the near future and this proceeding shall be open until such time when the Commission makes a determination on these sections.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby ORDERED, that the attached rules, Chapter 700, 800, and 900, be and hereby are, adopted and readopted.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of May, 1982.

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NH.PUC*05/21/82*[79282]*67 NH PUC 338*New Hampshire Department of Public Works and Highways

[Go to End of 79282]

Re New Hampshire Department of Public Works and Highways

Intervenors: Boston and Maine Corporation et al.

DX 82-49, Order No. 15,659

67 NH PUC 338

New Hampshire Public Utilities Commission

May 21, 1982

ORDER granting authority to fill over abandoned rail tracks as part of construction of a new highway.

APPEARANCES: Roderick Cyr for the department of public works and highways; Stanley Barriger, pro se; Representative John Hoar, Jr., pro se.

BY THE COMMISSION:

REPORT

By petition filed February 4, 1982, the Department of Public Works & Highways seeks authority to construct the two lanes on new highway route 101, and a ramp to the same, across the tracks of the Boston & Maine Corporation in the Town of Candia. Hearing thereon was held at Concord on April 1, 1982.

The Department has approved a Federal Aid Priority Primary Project No. FFD-018-2 (17), New Hampshire Project No. P-7959 which provides for the construction

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of N.H. Highway No. 101 on a new location from a point in Raymond near the junction of Routes 101 and 107 to a point in Candia west of the intersection of Route 101 and Brown Road, a distance of approximately nine miles. This is to be a four lane highway, two lanes in each direction, with a ramp leading from the present Route 101 to the new highway. The width of the highway at the crossings will be 50 feet for each lane, while the single lane ramp is designed for 83 feet in width.

The original design, which was adopted several years ago provided for three bridges one each for the eastbound and westbound highway lanes and a crossing at the location of the ramp.

Since the original plans were completed, a decision of the United States District Court, Order No. 615 date January 25, 1982, authorized the abandonment of the line of railroad from milepost M2.80 at East Manchester to milepost M30.0 at Rockingham Junction, a distance of 27.2 miles, which includes all of the line in the Towns of Candia and Raymond.

Authority granted in a previous petition before the Commission in DT 81-8 to permit the construction of a grade crossing in the vicinity of the easterly terminus of the project and to close the present Brown Avenue Crossing would not be required if the railroad is abandoned.

The record does not indicate the last date of train operations over the line in the Towns of Candia and Raymond. In 1969, before the Raymond gravel bank was closed, there were 4,478 carloads of gravel transported from the Raymond Gravel Bank. This bank has been closed for several years. No service has been provided since the line was embargoed on December 19, 1979.

The original plan would provide approximately 28 foot clearance from the top of the rail to

the underside of the bridge structure. There is no plan to change the profile of the highway, but the fill in place of the bridge would be 300 feet wide at the railroad level with fifty feet at the highway level for the Route 101 bridges, and a width of 240 feet at the base of the 83 foot wide fill at the ramp location. This would require the removal of at least 540 feet of rail.

The cost of the bridges, as originally proposed is estimated at \$750,000.00. There would be no question concerning the construction of the bridges if the railroad is to continue in operation, but with the abandonment which has been authorized, it is the position of the Department of Public Works & Highways that it is more economical and practical to construct the highway on the fill than to build and maintain three separate bridge structures.

Those appearing in opposition to the proposal claim that the railroad should be retained because it is the shortest distance line from the seacoast to the central portion of the state, that it could carry coal or other heavy freight, but to abandon the line will foreclose forever the opportunity for rail service in the future.

It is the position of the protestants that this Commission has authority to prevent the tearing up and removal of the rails on abandoned lines and re-requests that the petitioner be required to construct the bridges 'hereby preserving the rail line for future possible use.

Rail lines are considered by many to be a very important link in transportation and should be preserved even though they may not be presently in use. Once they are abandoned and the track removed, it is most improbable that they

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will ever be restored so it is incumbent upon those charged with authority to use care in not foreclosing the use of a facility which may be used in the future.

The line in question herein is the shortest distance between the centers in New Hampshire and the only seaport in this state. It consists of 72, 75, and 85 lb. rail. To accommodate rail traffic such as coal and other heavy loads would require the installation of heavier rail and complete reballasting of much, if not all, of the line that has already been authorized to be abandoned.

Under these circumstances the Commission is of the opinion that to require the construction of the three bridges merely to keep intact a line of railroad, would be inconsistent with the economy of the state and contrary to the authority of the Commission under the existing statutes.

Upon consideration of all the facts, the Commission is of the opinion that the Department of Public Works and Highways should be authorized to construct the eastbound and westbound lanes of Route 101, a ramp leading thereto, and a relocated Brown Road across the right-of-way of the Boston and Maine Corporation in the Town of Candia on fill in accordance with a plan on file at this office and that said Department of Public Works and Highways and/or the Boston and Maine Corporation be authorized to remove the rails of the abandoned Manchester-Portsmouth line for sufficient distances to accommodate the fill on which the highways will be constructed. Our Order will issue accordingly and will revoke Order No. 14,852 issued in DT 81-8 as the authority contained therein is no longer needed.

ORDER

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

ORDERED, that the New Hampshire Department of Public Works & Highways and the Boston & Maine Corporation be, and hereby is, authorized to remove the rails and ties and fill those sections of the abandoned line of the Manchester-Portsmouth Branch in the Town of Candia over which the east and westbound lanes of N.H. Highway 101 is to be constructed, the access ramp thereto and the relocated Brown Avenue in accordance with plans on file with this Commission marked DX 82-49; and it is

FURTHER ORDERED, that Order No. 14,852 dated April 20, 1981, in DT 81-8 be, and hereby is revoked.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of May, 1982.

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NH.PUC*05/21/82*[79283]*67 NH PUC 341*Central Vermont Public Service Corporation

[Go to End of 79283]

Re Central Vermont Public Service Corporation

DR 82-135, Order No. 15,660

67 NH PUC 341

New Hampshire Public Utilities Commission

May 21, 1982

ORDER recommending that the Federal Energy Regulatory Commission (FERC) not approve a settlement agreement concerning an increase in wholesale electric rates as proposed by parties to the FERC proceeding.

Before Love, chairman, and McQuade and Aeschliman, commissioners.

BY THE COMMISSION:

ORDER

WHEREAS, Central Vermont Public Service Corporation and other parties in FERC Docket No. ER 82-411-000 have filed a proposed Settlement Agreement recommending a 16.2 percent increase in wholesale rates as of June 1, 1982; and

WHEREAS, this Commission is of the opinion that the proposal may not be in the best interest of the retail customers under the jurisdiction of this Commission and should be rejected; it is hereby

ORDERED, that the attached letter filed with the FERC constitutes the official response of this Commission to the proposed Settlement.

By Order of the New Hampshire Public Utilities Commission this twenty-first day of May,

1982.

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May 21, 1982 The Honorable Kenneth F. Plumb Secretary Federal Energy Regulatory Commission 825 North Capital Street, N.E. Washington, D.C. 20426

RE: Central Vermont Public Service Corporation Docket No. ER 82-411-000 Dear Mr.Plumb:

On May 13, 1982, we received a letter dated May 11, 1982 from Tames E. Hickey, Jr. Attorney for Central Vermont Public Service Corporation, reporting that Central Vermont Public Service Corporation on (CVPS) has submitted to you a proposed Settlement Agreement in Docket No. ER 82-411-000, and indicating that comments should be filed on or before May 31, 1982. This letter and the attached Order constitutes our response to the proposed settlement. One original and fourteen (14) copies are submitted for consideration by the Commission.

We recognize that the date for intervention has passed, although we were not aware of that fact until we received the letter and material from CVPS. Had we been aware of this case, and the potential impact it: would have on customers within our jurisdiction, we would have petitioned for intervention. As we are unable to do so, we are submitting these comments to you and respectfully request your earnest consideration.

Our Comments Address four particular areas:

1. The Settlement Agreement is insufficient in that no rationale or explanation is presented as to what has been agreed toxin particular, we point out that nowhere in the Settlement Agreement or other materials, including the Draft Letter Order Approving Settlement, is there any indication of the over all rate of return or the return on equity that is embodied the revenues agreed to. In addition, we are unable to evaluate from we are the to Settlement the being recommended in important policy areas: what action is embodied in the Agreement on the costs of Pilgrim II abandonment?

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2. The Agreement embodies a 16.2 percent wholesale rate increase is very large and should receive the full scrutiny of the Commission. 3. The proceeding has involved no public comment, yet ultimately may cause a dramatic rate increase at the retail level. If we pass through the wholesale rate increase proposed as a purchased power expense, we will be barraged with public opposition and outcry. Such public outcry has in fact occurred in the case of FERC Docket ER 81-649, where FERC approved a settlement proposed by CVPS pertaining to rate RS-2, and CVPS then applied in NHPUC Docket No. 82-67 for a 13.7 percent rate increase to reflect the FERC approved wholesale rate. We urge you in ER 82-114 to actively solicit public participation from customers of the purchasing utilities, and offer the use of our offices for one or more public hearings. 4. Related to a larger issue, the failure of the proposed agreement to address any of the major objectives of regulation other than that of assuring sufficient revenues, is a serious shortcoming that thwarts the ability of this Commission to proceed with retail regulatory

reform for non-generating utilities. In particular, although PURPA Title I standards are not applicable by law, the purposes of PURPA; conservation, efficiency, and equity, are fundamental goals of regulation and should be aggressively pursued. Our goals for retail regulatory reform in the areas of product offerings and pricing policy are thwarted by wholesale tariffs that continue perpetuating simplistic and insensitive pricing structures that are inconsistent with basic cost of service principles. We urge you to consider these issues and to seek regulatory reforms that will help rather than hinder our efforts at improving retail pricing policy and product offering.

In summary, we recommend that the FERC not approve the Settlement at this time, but allow the proposed rates to go into effect as temporary rates after a one-day suspension. Following this action, we urge you to re-open the proceedings to intervention by other parties and to schedule and convene public hearings held within the boundaries of the wholesale purchasers. We urge you to direct FERC Staff to carefully scrutinize the proposals and to address the questions of wholesale pricing policy and the purposes of PURPA. Lump sum settlements absent public participation would appear to be contrary to, professional regulation.

Thank you for your attention in this matter. Very truly yours, N.H. PUBLIC UTILITIES COMMISSION J. Michael Love, Chairman

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NH.PUC*05/24/82*[79284]*67 NH PUC 344*Granite State Electric Company

[Go to End of 79284]

Re Granite State Electric Company

DE 82-21, Third Supplemental Order No. 15,662

67 NH PUC 344

New Hampshire Public Utilities Commission

May 24, 1982

ORDER granting a motion to reschedule hearing in an electric rate case rate to the commission on remand from the state supreme court.

BY THE COMMISSION:

COMMISSION'S RESPONSE TO GRANITE STATE ELECTRIC COMPANY'S MOTION TO RESCHEDULE HEARINGS

On May 24, 1982, Granite State Electric filed a motion to reschedule the hearing in this docket now planned for June 2, 1982 to be rescheduled for to reasons. The first is the need to obtain discovery and the second is to facilitate a vacation for the Company Witness, Mr. John Newsham.

Staff responded to this motion on May 24, 1982 as well, in which they allege that there has been consistent frustration in obtaining data due to previous vacations by Mr. Newsham. The

Staff cites the Commission's attention to the statement by Granite State's attorney that there would be quick dispersal of data requests and that it wasn't normal for Granite State to present data requests.¹⁽³⁶⁾ Staff also notes the Commission's extraordinary hearing schedule and the difficulty in moving hearing dates. Staff concludes that the hearing schedule should not be altered and that the motion should be denied. Staff seems particularly concerned with the fact that the witness who will be on vacation during the week of May 31 through June 4, 1982 will be speaking in New Hampshire on June 4, 1982.

The Commission will accept the representation offered by counsel that Mr. Newsham's vacation plans will be severely disrupted by a June 2, 1982 hearing. The Commission will accept Granite State Electric Company's request for a hearing during the week of May 24th. The Commission will listen to Mr. News-ham as a witness in this docket at 9:00 A.M. on May 28, 1982 at the Commission's offices. The June 2 hearing will be reserved for staff witnesses. Because of the need to quickly respond after a Supreme Court remand, the Commission will establish this special hearing day for Mr. Newsham on May 28, 1982, but it will also retain the June 2, 1982 hearing date for staff testimony. Granite State Electric is to deliver to the staff any discovery questions no later than three o'clock (3:00 P.M.) May 28, 1982. The Commission was advised that Granite State only needed a relatively small

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amount of time for discovery. Further staff data has been directly obtained from Granite State Electric. Therefore, there is no need to move the hearings or staff testimony into mid-June. Time is of the essence with a Supreme Court remand.

The Commission finds that the motion is granted in part and rejected in part.

SUPPLEMENTAL ORDER

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

ORDERED, that Granite State Electric Company's motion to reschedule the hearing in this docket is granted in part and denied in part.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of May, 1982.

FOOTNOTE

¹Transcript 2/22/82, page 10.

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NH.PUC*05/24/82*[79285]*67 NH PUC 345*Manchester Gas Company

[Go to End of 79285]

Re Manchester Gas Company

Intervenor: Office of Consumer Advocate

DR 81-234

67 NH PUC 345

New Hampshire Public Utilities Commission

May 24 1982

ORDER rejecting a proposed settlement agreement concerning rate design for natural gas natural gas utility.

1. PROCEDURE, § 31 — stipulation agreement — issues concerning matters to be investigated in generic proceeding.

[N.H.] The commission rejected a proposed stipulation agreement concerning natural gas rate design where provisions in the stipulation included increases for customer charges (a topic before the commission in a generic proceeding) finding that to adopt the agreement would interfere with the commission's ability to establish a uniform decision for all utilities as a result of the generic proceeding. p. 346.

2. PROCEDURE, § 31 — Stipulation agreement — Issues requiring full public hearing.

[N.H.] A proposed stipulation agreement concerning natural gas rate design that contained a provision that would have established a conservation adjustment requiring customers to pay for any revenue erosion resulting from their cumulative conservation was rejected finding the subject of such erosion adjustments a matter that warranted consideration at a full public hearing. p. 347.

APPEARANCES: James C. Hood and Peter Center, for Manchester Gas Company; F. Joseph Gentile, Consumer Advocate.

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BY THE COMMISSION:

COMMISSION RESPONSE TO SETTLEMENT AGREEMENT #2 PERTAINING TO THE MANCHESTER GAS RATE DESIGN

On April 8, 1982 the Manchester Gas Company, the Commission Staff and the Consumer Advocate filed a stipulation agreement #2. This stipulation agreement is offered as a resolution for the rate design issues presented in this docket. The Commission is asked to accept this agreement and find that the proposed rates are just and reasonable.

The language of the agreement states that although acceptance does not constitute continuing approval of or precedent regarding any particular principle or issue in this proceeding; an acceptance does constitute a determination that the adjustments and the provisions are justified and appropriate.

The Commission is asked to find the proposed rate design as reasonable and to give its approval. By such a finding, the Commission would not establish a precedent but it certainly would be finding the proposed rates as reasonable. Our past experience clearly establishes that others would cite the Commission's attention to these rates as reasonable. Furthermore, certain provisions of this agreement do despite the disclaimer of precedent establish this rate design as finding in other proceedings.

[1] A settlement agreement is useful to the extent that it resolves conflicts within the context of one case. Where settlement agreement goes well beyond the parameters of a given case, the considerations given in determining acceptance broadens substantially. Unfortunately, this settlement provision goes well beyond the parameters of this case and would have this Commission find itself to certain positions (at least as to Manchester Gas) and are at the heart of the most controversial issues presently before the Commission.

By far the most extensive obligation that the settlement seeks to impose upon the Commission relates to the customer charge. The proposed settlement changes the customer charge from the existing \$3.00 rate for residential or D service to \$4.50 for the customer charge and two terms. The business or G customer will increase from \$3.00 to \$7.00. These are major changes yet not only is the Commission bound to accept them in this docket but the amounts of these charges are imposed upon us in the Commission's generic docket examining the subjects of customer charges and minimum bills, DE 82-65. While again the parties appear to give the Commission discretion in future dockets by stating we still have the power to alter the nature of the charges (customer charge or minimum bill), the amount in dollars and terms is not subject to any alteration. Such an imposition undercuts the very purpose of a generic proceeding; namely, to review a major area of controversy and establish a *uniform* decision to *all* utilities. This overreaching provision of the stipulation results in the Commission's rejection of the stipulation. However, it is not the only reason.

Another difficulty posed by the settlement agreement is its major differences with the Commission's decision in the recently concluded Gas Service, Inc. decision, DR 80-179. In that decision, the Commission scaled down the customer charge, eliminated any differential between residential and business rates, and eliminated some of the latter rate blocks thus flattening the rates.

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These differentials become of critical importance in that As Service, Inc. and Manchester Gas Company have initiated proceedings that will ultimately lead to merger. It would be disruptive to have the two companies on markedly different rate designs. Finally, the rate design offered by the parties would be significantly different from that established by the Commission for other New Hampshire gas utilities.

[2] There are other provisions in this proposed stipulation that the Commission finds should be the subject of full public hearings rather than a settlement agreement. Section 2 on page 4 of the settlement agreement is of such a significant nature that a well presented argument needs to be presented by all concerns. This provision would in essence establish a conservation adjustment whereby consumers are required to pay for any revenue erosion resulting from their

cumulative conservation.

Not only does this settlement seek a revenue erosion adjustment due to the new design of rates but rather the parties also seek to bind the Commission to make a revenue adjustment for the very fact that the increased rates themselves will cause further conservation due to price elasticity.

The language of this settlement agreement is ambiguous. Furthermore, the provisions of the settlement seek to narrow the Commission's options as to Manchester Gas. The Commission does not find settlement agreements that go beyond the issues in a given case to be in the public interest. Nor can we find that the settlement establishes just and reasonable rates. The second stipulation agreement is rejected as against the public good and clearly unjust and unreasonable by its terms.

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NH.PUC*05/25/82*[79286]*67 NH PUC 347*Public Service Company of New Hampshire

[Go to End of 79286]

Re Public Service Company of New Hampshire

DF 82-141, Supplemental Order No. 15,663

67 NH PUC 347

New Hampshire Public Utilities Commission

May 25, 1982

ORDER granting motion by an electric utility to reschedule hearing dates in a proceeding concerning the utility's involvement in a nuclear generating facility.

BY THE COMMISSION:

REPORT

The Republic Service Company of New Hampshire has filed a Motion for Continuance requesting that the hearing dates in this docket be rescheduled due to limited resources, other dockets and financing activity. The Commission believes that PSNH was adequately placed

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on notice of this docket by the Commission's decision in DR 81-87, Report and Order No. 15,424 (67 NH PUC 25) and the Commission's recent decision in DF 82-63, Report and Order No. 15,543 (67 NH PUC 223). The Commission does, however, find that testimony was required in DR 82-146 prior to the request for testimony in DF 82 — 141. Yet the Commission scheduled hearings in DF 82-141 prior to hearings in DF 82-146. The Commission will, therefore, exchange the hearing dates between the two dockets and revise the due dates for PSNH and the Staff. The Commission's revised Order of Notice is hereby attached and is issued according to this Report. The Commission has added a July date to allow for any new information pursuant to

the Massachusetts Department of Public Utilities order requiring Boston Edison to file an initial report on its plans to alleviate its dependence on foreign oil. The report is due on or before July 1, 1982. A hearing date of July 2, 1982 is reserved and the Commission will make available additional hearing days as necessary between June 15, 1982 and July 2, 1982 for resolution of this docket.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

WHEREAS, the Commission in a previous docket, DR 81 — 87, stated that if PSNH's bond rating was lowered that the Commission would attach a condition to subsequent financing to prevent the proceeds from new debt or equity to be used for further work at the Seabrook second unit; and

WHEREAS, the Commission through its subsequent clarification orders, stated that the fate of the second unit was in the hands of PSNH's Seabrook partners; and

WHEREAS, the Commission has repeatedly found that some major steps were needed to be undertaken by PSNH to preserve its financial integrity; and

WHEREAS, Standard & Pool's downgrade activated the condition imposed and clarified by Commission orders; and

WHEREAS, the Commission has already found the necessity to condition financing due to the lack of bona fide responses by PSNH's Seabrook partners; and

WHEREAS, the Commission in its Report and Order No. 15,543 stated that prior to or on July 11, 1982, the Commission would again evaluate the responses by the other New England Utilities to see if a bona fide response and sustained progress has been made; and.

WHEREAS, the Commission stated that if the Commission should again find that no bona fide response has been made or sustained progress has failed to be achieved the Commission would order a delay of any further work on Seabrook II until February 27, 1984; it is hereby

ORDERED, that Docket No. DF 82-141 "PSNH Financial Integrity" is opened for the purpose of receiving any and all information on (1) the question of whether there have been bona fide responses and sustained progress by the other New England electric utilities in alleviating the PSNH financial problems stemming from their ownership in Millstone #3 and their level of ownership in Seabrook; (2) the immediate fate of Sea-brook II as to whether to delay or not and if so how long; and (3) what if any conditions to impose upon future PSNH financings; and it is

FURTHER ORDERED, that the entire record of DF 82-63 is incorporated

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and made a part of the record in this proceeding; and it is

FURTHER ORDERED, that PSNH evidence, material, documents or testimony that it wishes to have the Commission consider as to the aforementioned concerns on or before June 9, 1982; and it is

FURTHER ORDERED, that hearings in this docket will be conducted beginning at 9:00

a.m., June 14, 1982, June 15, 1982, July 2, 1982 and at such other times as designated by the Commission; and it is

FURTHER ORDERED, that the hearings will be conducted at the Commission's offices at 8 Old Suncook Road, Concord, New Hampshire; and it is

FURTHER ORDERED, that all persons seeking "party status" are to notify the Commission by June 10, 1982, such notification must include a description of the reasons why party status should be conferred upon the applicant and how its interests will be affected by a decision in this proceeding. The Commission reserves the right to determine who will be viewed as parties; and it is

FURTHER ORDERED, that members of the Commission staff are to present an analysis of other electric utilities and their respective construction programs, attention should be given to rate of return earned, dividend policy, yield bond ratings, construction program versus existing plants, any recent postponements or alterations in those construction programs, percent of AFUDC earnings and overall rate of return allowed; and it is

FURTHER ORDERED, that Staff is to file their analysis on June 14, 1982; and it is

FURTHER ORDERED, That this Order of Notice is to be published within seven days of the date of this Order in the following newspapers: *Union Leader, Nashua Telegraph, Laconia Evening Citizen, Keene Sentinel, New Hampshire Times, and the Portsmouth Herald.*

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of May, 1982.

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NH.PUC*05/25/82*[79287]*67 NH PUC 349*New England Telephone and Telegraph Company

[Go to End of 79287]

Re New England Telephone and Telegraph Company

Intervenues: Community Action Program and Office of Consumer Advocate

DR 82-70, Order No. 15,665

67 NH PUC 349

New Hampshire Public Utilities Commission

May 25, 1982

ORDER denying motion to dismiss rate filing.

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1. RATES, § 640 — Procedure — Motion to dismiss.

[N.H.] The commission denied a motion to dismiss a rate filing based on an allegation that the filing was nothing more than an a "make-whole proceeding where all aspects used in determining revenue requirements were at issue in the case and evidence was presented on all aspects of determining a proper revenue requirement for the utility. p. 351.

2. RATES, § 235 — Initiation of rate changes — Statutory waiting period between rate filings.

[N.H.] A statute limiting rate increase requests by utilities to two-year intervals did not give the commission the discretion to refuse to accept a filing brought by a utility nineteen months after the issuance of the final commission order in the utility's previous proceeding. p. 351.

APPEARANCES: Peter Gunther and Robert Wells, for New England Telephone; F. Joseph Gentili for the Consumer Advocate's Office; Gerald Eaton for Community Action Program (CAP).

BY THE COMMISSION:

COMMISSION'S RESPONSE TO MOTION TO DISMISS

The Consumer Advocate filed a Motion to Dismiss on April 21, 1982. The motion contends that the filing by New England Telephone Company is nothing more than a "make whole,, proceeding and should be dismissed. The Consumer Advocate states that New England Telephone is seeking to focus the Commission's attention on narrow issues rather than go through the full rigors of a rate case. Reference is made to our January 11, 1982 order involving *PSNH*, DR 81-87 (67 NH PUC 25), and a recent Maine Public Utilities Commission decision on an alleged make-whole proceeding.

The Consumer Advocate also requests that the Commission use its statutory power pursuant to RSA 378:7. That statute states that the Commission is under no obligation to investigate any rate matter which it has investigated within a period of two years, but may do so within said period at its discretion. Recent decisions by this Commission are cited as coming within the two-year rule.

New England Telephone Company counters these arguments by citing our attention to both their testimony and the data filed pursuant to the Commissions, filing requirements. Based on both sets of documents New England Telephone maintains that this is indeed a full rate case. In oral argument on this subject, the counsel for New England Telephone stated that all aspects of a rate case (revenues, expenses, rate base, depreciation, overall rate of return and attrition) were proper areas for the Company, the Staff, the intervenors and the Commission to propose adjustments. Consequently, New England Telephone (NET) contends that their filing is a full rate case and not a "make whole proceeding".

New England Telephone contends that it is inappropriate to apply RSA 378:7 to this situation since DR 80-23, the Company's last basic rate case, was initiated on March 4, 1980 ([1980] 65 NH PUC 564, 40 PUR4th 29). Furthermore, New England Telephone interprets the language in RSA 378:7 to stand for the proposition that RSA 378:7 allow a utility to file more often than every two years. NET contends that the language of this statute allows a given utility to file as often as it believes necessary, but allows the Commission the discretion to review only once

every two years. Or to state it more simply, NET contends that the result that flows from this statute is

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not to prohibit rate increase requests within a two-year time period, but rather that the Commission is offered the discretion to allow increases to be placed into effect without investigation. NET contends that the Commission is only obligated to investigate one case per two-year time period.

[1] The Commission finds that the Motion to Dismiss must be denied, because we find that this petition is a full blown rate request. All aspects used in determining revenue requirements are at issue in this case. Furthermore, there are either exhibits, testimony and/or data on all aspects of determining a proper revenue requirement.

The information filed pursuant to the filing requirements certainly provides the Commission and the various parties a wealth of information. This was their overall purpose, and we find that the filing in this proceeding reflects that Commission concern.

The Commission in evaluating the arguments of the parties as to RSA 378:7 must look to the Supreme Court decision for guidance. That guidance appears most recently in *Re Pennichuck Water Works* (1980) 120 NH 562, 419 A2d 1080, and *Gas Service, Inc.* (1981) 121 NH 602.

In *Pennichuck* the Court discussed RSA 378:7 and stated that "on its face, this statute complicates the matter of requesting rate increases on the part of a utility's management and to a degree locks utilities into a two year period between rate increases." 419 A2d at pp. 1083, 1084. Clearly, this opinion rejects the concept offered by NET that RSA 378:7 is to be interpreted as a statute which allows increases to go into effect without Commission investigation and that the Commission is only obligated to investigate one of a series of filings every two years.

The Court in *Gas Service* found that the Commission had abused its discretion by failing to consider *Gas Service Company's* rate increase application. The Court in that opinion noted that *Gas Service Company* claimed confiscation. Further, the Court noted that more than two years had passed since *Gas Service Company's* previous June 1, 1979 rate filing and "well over a year since the February 1980 order". 121 NH at p. 603. The Court went on to state that, "To require the company to wait for two years for its claim at least to be considered is not only unreasonable but also unconstitutional." 121 NH at p. 603.

[2] The Court concluded that the Commission "abused its discretion in refusing to consider the company's August 1980 application for a rate increase". 121 NH at p. 603. An abuse of discretion is a significant finding by a court and one this Commission does not seek to duplicate. While the Consumer Advocate is correct that the Court held the Commission accountable for the time period that passed during the appeal process, this Commission must comply with the Court's decisions. In the *Gas Service* case, the Court's opinion could be viewed as being grounded on the allegation of confiscation. It also can be interpreted as significantly limiting our discretion pursuant to RSA 378:7. Since it is not necessary to resolve this large issue to adequately resolve issues in this case, the Commission will forgo a final resolution to a future proceeding. However, if the Court found that we committed an abuse of discretion in denying hearings on a rate request (a) fourteen months after the filing of tariffs for a previous case; (b) ten months after

the filing of testimony in a previous proceeding; and (c) six months after the issuance of a final order in a previous case, it is clear that to deny NET hearings on this petition which comes (a) twenty-seven months after their previous basic rate proceeding; (b) twenty-four months after the filing of testimony in their previous rate proceeding; (c) nineteen months after the issuance of a final Commission order in that proceeding, would be an abuse of discretion.

The Motion to dismiss is denied. Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the Consumer Advocate's Motion to Dismiss is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of May, 1982.

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NH.PUC*05/25/82*[79288]*67 NH PUC 352*Public Service Company of New Hampshire

[Go to End of 79288]

Re Public Service Company of New Hampshire

Intervenor: Office of Consumer Advocate

DF 82-118, Order No. 15,667

67 NH PUC 352

New Hampshire Public Utilities Commission

May 25, 1982

AUTHORITY to issue and sell mortgage bonds granted to electric utility subject to conditions imposed on use of proceeds.

1. SECURITY ISSUES, § 120 — Authority to issue and sell mortgage bonds — Restrictions on use of proceeds imposed by commission.

[N.H.] The commission granted a petition by an electric utility for authority to issue and sell general and refunding mortgage bonds and to issue and pledge first mortgage bonds on the condition that the proceeds could not be used for any new commitments, expenses, or costs related to a nuclear power plant under construction.

APPEARANCES: Frederick J. Coolbroth and Martin L. Gross, for the petitioner; F. Joseph

Gentili, Consumer Advocate.

BY THE COMMISSION:

REPORT

By this unopposed petition filed April 16, 1980, Public Service Company of New Hampshire (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire, and operating therein as an

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electric public utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369 to issue and sell for cash not exceeding \$60,000,000 of General and Refunding Mortgage Bonds, Series E (the "Series E G&R Bonds"); to issue First Mortgage Bonds, Series Y (the "Series Y First Mortgage Bonds"), to be pledged as additional security for the General and Refunding Mortgage Bonds of all series (the "G&R Bonds"); and to mortgage its present and future property, tangible and intangible including franchises, as security for the G&R Bonds and First Mortgage Bonds. A duly noticed hearing was held in Concord on May 7, 1982.

Neither Public Service Company of New Hampshire nor the Consumer Advocate disputed the Commission's use of the same conditions as to use of these proceeds as the Commission imposed and found reasonable in DF 82-63. Consequently, it is understood by all parties that these conditions will again be imposed on all proceeds arriving from an approval in this docket.

Company Witness Lampron testified that the proceeds from the sale of the Series E G&R Bonds will be used (a) to pay off a portion of the short-term notes outstanding at the time of sale, the proceeds of which will have been expended principally to finance capital expenditures associated with the purchase and construction of property reasonably requisite for present and future use in the conduct of the Company's business; (b) to finance capital expenditures associated with the purchase and construction of such property; and (c) for other proper corporate purposes. No proceeds are to be separately received, apart from the proceeds of the sale of the Series E G&R Bonds, from the issuance of the Series Y First Mortgage Bonds which will be pledged as security for the G&R Bonds. All expenses incurred in accomplishing the financing are sought to be paid from the general funds of the Company.

The Series E G&R Bonds will be sold through a negotiated public offering. Mr. Lampron described in detail the major terms of the proposed Series E G&R Bonds and explained the proposed issue and pledge of \$24,135,000 of the Series Y First Mortgage Bonds. PSNH again seeks a negotiated rather than a competitive sale.

The Company submitted a balance sheet as of February 28, 1982, actual and pro forma for the sale of these securities. Exhibits were also submitted showing: disposition of proceeds, estimated expenses of the issue; and capital structure as at February 28, 1982, actual and pro forma for the sale of these securities. Projected financing requirements and estimated construction expenditures were outlined in testimony. Certified copies of authorizing votes of the Company's Board of Directors were put in evidence at the hearing.

As noted earlier, in accordance with the provisions the Commission's Order No. 15,543 dated

March 24, 1982 (67 NH PUC 223), in Docket No. DF 82-63, the Commission will condition the use of the proceeds from the sale of the Series E General and Refunding Bonds with respect to Seabrook Unit II.

The Commission finds that if it were to absolutely prohibit the use of proceeds from the issuance of the Series E General and Refunding Bonds to meet existing obligations for progress payments and nuclear fuel payments under the contracts listed by the Company, the Company might be exposed to claims for damages and potential increases in costs that would not be consistent with the

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object of controlling the costs of the Seabrook project. On the understanding that the Company will use its best efforts to seek deferrals of such payments on reasonable terms or avoid the costs altogether, the Company is authorized to meet obligations for progress payments and nuclear fuel payments associated with Seabrook II that existed prior to March 24, 1982. However, let PSNH clearly understand that this limited authorization means that progress payments paid by PSNH after March 24, 1982 should reflect that this Report and Order and Report and Order No. 15,543 authorize a continuously reducing progress payment as to Seabrook Unit II than would have been the situation absent these two orders. The Commission wishes to emphasize that the obligation of PSNH to minimize its expenses and exposure as to Seabrook Unit II is not a shallow one. Rather as is noted in this Report and Order as well as Report and Order No. 15,543, PSNH is to use its best efforts to minimize costs associated with the second unit at Seabrook until there is found a demonstration of a bona fide response by the other New England electric utilities. Furthermore, the Commission is concerned that Staff reports increasing levels of workers at the construction site occurring after the January 11, 1982 and March 24, 1982 Orders. Such increases in workforce if they relate to the second unit raise concerns as to whether the spirit of these two Orders is being violated. PSNH's financial exposure is of paramount concern during this time period of high interest rates. PSNH must adhere to the necessary fiscal responsibility occurring within industry generally and the electric utility industry specifically.

The Company can use the proceeds of this issuance to meet any short-term debt related to Seabrook Unit II as of March 24, 1982 and for any contractual obligations for materials or nuclear fuel related to Seabrook II (even if the aforementioned will be delivered in the future) that existed on or before March 24, 1982. As to Unit II, PSNH cannot use the proceeds for any short-term debt, contracts, nuclear fuel, materials, labor or any other expenditure committed to after March 24, 1982. The proceeds of this issuance can be used for work occurring before or after March 24, 1982 relating to the containment liner for Seabrook Unit II.

The Company cannot use these proceeds for any additional commitments of materials, labor or services related to Seabrook Unit II not agreed to by written contract as of the date of this Order unless allowed by the previous paragraph. If there is a question it should be sent to the Commission for an advisory opinion.

The Commission reserves jurisdiction to rule as to whether or not the final terms of this proposed financing are in the public good. The Commission always reserves this power so as to

facilitate the process of obtaining other regulatory approvals.

Subject to this reservation as to final terms and the Commission's conditions as to disposition of the proceeds and the other limitations set forth previously, the Commission finds that the issue and sale of the Series E G&R Bonds and the issuance and pledge of the Series Y First Mortgage Bonds and the mortgaging of the Company's property will be consistent with the public good.

The Commission wishes to note that this financing has been shown in PSNH financial forecasts going back at least two years. Consequently, a successful completion of this financing does not

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alleviate our concerns over the financial flexibility of PSNH. Rather, our concerns existed even though we assumed in DR 81-87 and DF 82-63 a successful issuance of this offering at reasonable final terms.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue and sell not exceeding sixty million dollars (\$60,000,000) of its General and Refunding Mortgage Bonds, Series E, for cash in accordance with the foregoing Report and as set forth in its petition; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue \$24,135,000 of First Mortgage Bonds, Series Y, to be pledged as additional security for its General and Refunding Mortgage Bonds, in accordance with the foregoing Report and as set forth in its petition; and It is

FURTHER ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to mortgage its present and future property, tangible and intangible including franchises, as security for its General and Refunding Mortgage Bonds and its First Mortgage Bonds; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall submit to this Commission the principal amount, term, purchase price and rate of interest of said Series E General and Refunding Mortgage Bonds and said Series Y First Mortgage Bonds. Following this required submission, a Supplemental Order will issue as to whether or not the terms of the issue and sale of the securities, including the principal amount, term, purchase price and rate of interest thereof are just and reasonable and consistent with the public good; and it is

FURTHER ORDERED, that the proceeds from the sale of the Series E G&R Bonds can be used for the purpose of discharging and repaying a portion of the outstanding short-term notes of said Company and to finance the purchase and construction of Seabrook Unit I; and it is

FURTHER ORDERED, that the proceeds from the sale and/or issuance of these Series E General and Refunding Mortgage Bonds cannot be used for any new commitments, expenses or costs related to Seabrook II not already contracted for as of March 24, 1982; and it is

FURTHER ORDERED, that the proceeds from the sale and/or issuance of these First Mortgage Bond cannot be used for any new commitments, expenses or costs related to Seabrook II not already contracted for as of March 24, 1982; and it is

FURTHER ORDERED, that except as authorized in the foregoing Report none of the proceeds from the General Refunding Mortgage Bonds, Series E, shall be used to further the construction of Seabrook II; and it is

FURTHER ORDERED, that on January 1st and July 1st in each year, Public Service Company of New Hampshire 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 securities

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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 twenty-fifth day of May, 1982.

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NH.PUC*05/27/82*[79289]*67 NH PUC 356*Eastman Street Crossing

[Go to End of 79289]

Re Eastman Street Crossing

Intervenors: Boston and Maine Corporation and New Hampshire Department of Public Works and Highways

DX 82-89. Order No. 15,676

67 NH PUC 356

New Hampshire Public Utilities Commission

May 27, 1982

JOINT petition by railroad and state department of public works to remove warning bells from pedestrian crossings; granted.

RAILROADS, § 26 — Signals — Removal of crossing warning bells — Reduced traffic.

[N.H.] Where highway improvements necessitated relocation of railroad signal controls and the evidence indicated no recent traffic over the track in question and no scheduled operations over the line, the commission granted a petition brought by the railroad and state public works department to remove warning bells from the crossing on the condition that any occasional traffic using the track be required to stop at the crossing and then proceed by being flagged across by a crew member.

APPEARANCES: John Adams for the Boston and Maine Corporation; Daniel Horgan and John Amrol, for the New Hampshire Department of Public Works and Highways.

BY THE COMMISSION:

REPORT

By joint petition filed February 25, 1982, the Boston and Maine Corporation and the N.H. Department of Public Works and Highways, seeks authority to remove the warning bells at two pedestrian crossings on Eastman Street in the City of Concord. Hearing thereon was held at Concord on May 6, 1982, at which time no one appeared in opposition to the petition.

For many years Eastman Street was the shortest distance between North Main Street and that portion of the City known as East Concord. By joint petition filed May 14, 1948, the State Highway Department and the Boston and Maine Railroad requested, and this Commission authorized the construction of overhead highway bridges across the tracks of the Boston and Maine Railroad in

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conjunction with the construction of the Concord By-Pass. The Commission also closed the Ferry Street grade crossing and the Eastman Street crossings to vehicular traffic but retained them as public pedestrian crossings to be protected by automatic bells and further ordered that private farm crossings for the use of the Woodman Farm be maintained and equipped with gates and locks, a key to which shall be in the possession of the Woodman Farm. (Re New Hampshire Highway Dept. [1948] 30 NH PSC 298.)

The overhead bridges which were constructed in accordance with Order No. 5369 in that proceeding are now a portion of I-393 and are in the process of being widened to accommodate the additional traffic which is generated through improvements to Route U.S. 4 used in common with I-393.

There are two individual crossings involved in these proceedings. One is the tracks of the former Concord-Claremont Railroad, now known as the Stone Hill Branch and the other is the Northern Railroad operated by lease to the Boston and Maine Corporation.

The Claremont, or Stone Hill Branch, crosses the street on a curve to the left for northbound trains. There are granite blocks at the westerly highway approach to prevent vehicles from passing over the tracks. The crossing of the tracks of the Northern Railroad is approximately 200 ft. east of the first crossing. At the easterly approach to this crossing is a fence which is just west of the access road to Walker's Island, a part of the Woodman Farm. Thus, that portion of Eastman Street between the granite blocks and the fence is closed to vehicular traffic with the exception of the farm vehicles used by the proprietors of the Woodman Farm. The pedestrian crossings are located just south of the location of the paved portion of the former Eastman Street Crossings and an 8-inch warning bell is located on a mast adjacent to each of these crossings.

The controls for the bell operation are under the Overhead Highway Bridge which is now

being renovated and widened. In this process it is necessary to relocate the controls at a cost estimated between \$5,000.00 and \$7,000.00; maintenance of this protection is estimated at \$1,000.00 per year for both. There has been no traffic over the Claremont Branch track during the past winter and there are no scheduled train operations over the Northern Railroad line although there are occasional train movements estimated at three per week. It is proposed to stop all train movements before passing over either crossing, permitting the train to then proceed by being flagged across by a member of the train crew.

Observations were taken at both crossings on May 5, 1982, from 11:40 a.m. to 12:55 p.m. During this period of one hour 15 minutes during the noon hour seven pedestrians walked over both crossings and stated that they were just exercising and would not use the crossing if the weather was inclement. There were two additional persons who walked across the Claremont Branch Track approaching from the railroad property and who are best described as trespassers.

Brush in the southwest quadrant of the Claremont Branch Crossing, believed to be on the Woodman Farm property, restricts a view on the westerly approach for northbound trains for approximately 75 feet. The view for southbound trains is approximately 200 feet. The view of trains approaching in both

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directions from the easterly approach is substantially greater.

The track of the Northern Railroad is tangent both north and south of the crossing and views of more than 200 feet in each direction are obtainable by pedestrians approaching from either direction.

Maximum train speeds on the Claremont Branch track are 10 miles per hour. The maximum speed authorized on the Northern Line is 20 miles per hour.

There is a substantial difference in the use of the tracks at these crossings between the present and 1948, when passenger trains were operated on both lines and local freight trains on the Claremont Branch and both local and through freight trains on the Northern.

Upon consideration of all the facts, the Commission is of the opinion that public safety does not require the maintenance of the warning bells at the Eastman Street pedestrian crossing of the Claremont Branch and the Northern Railroad. Our Order will issue amending Order No. 5369 accordingly, and will provide for the stopping of all trains before proceeding over the crossing while flagged by a member of the crew. While such protection is unusual for pedestrian crossings the fact that farm vehicles must pass over both crossings when operating between farm buildings located in the southwest corner of the intersection of the Claremont track and the Island which is east of the Northern track must receive consideration.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Order No. 5369 dated August 11, 1948 (D-T2776) be, and hereby is, amended by striking out that portion of said Order requiring automatic bell protection to be

maintained at the pedestrian crossings at the Eastman Street Crossings of the Claremont and Northern Railroad; and it is

FURTHER ORDERED, that all trains approaching either of said crossings, shall stop and proceed over the crossing while flagged by a member of the crew.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 1982.

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NH.PUC*06/02/82*[79290]*67 NH PUC 359*Public Service Company of New Hampshire

[Go to End of 79290]

Re Public Service Company of New Hampshire

Intervenor: Office of Consumer Advocate

DF 82-71, Order No. 15,677

67 NH PUC 359

New Hampshire Public Utilities Commission

June 2, 1982; dissenting opinion June 3, 1982

PETITION by an electric utility for authority to increase its capital stock beyond amount fixed by the utility's articles of agreement.

SECURITY ISSUES, § 52 — Necessity and appropriateness of equity issue.

[N.H.] The commission denied a request by an electric utility to increase its capital stock where the company failed to give any rationale for the increase finding that the increase in equity requested could be damaging to ratepayers.

(MCQUADE, commissioner, dissents, p. 360.)

APPEARANCES: Frederick J. Coolbroth, for Public Service Company of New Hampshire (PSNH); and F. Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:

By petition filed March 4, 1982, Public Service Company of New Hampshire (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as an electric public utility under the jurisdiction of this Commission, seeks authority pursuant to RSA 369:14 to increase its capital stock beyond the amount fixed and limited by its Articles of Agreement by increasing its authorized Common Stock, \$5 par value from 27,000,000 shares to 40,000,000 shares, and its authorized preferred stock, \$25 par value, from 5,000,000 shares to 8,000,000 shares.

At a duly noticed hearing on the petition, held in Concord on April 19, 1982, the Company submitted that at a Special Meeting of the Stockholders held on October 22, 1981 and an adjourned session of said meeting held on November 20, 1981, the stockholders voted to amend the Articles of Agreement of the Company to increase its authorized preferred stock, \$25 par value, and common stock, \$5 par value to the higher amounts set forth in the Company's petition and a certified copy of the authorizing notes was submitted.

Company Witness Lampron testified that the increases in the Authorized Capital Stock were necessary for proper corporate purposes including the financing of the Company's construction program over the next several years.

The Commission finds that it is impossible to state at this time that the issuance of additional shares of preferred or common stock is in the public good. Much of what goes into a determination of public good as to financings relates to the factual circumstances at

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any given moment. Whether it is proper to issue bonds, preferred stock or common stock depends on market conditions, coverage ratios, capital structure considerations, rate considerations, bond rating criteria, the prime Interest rate, as well as other financial considerations.

There is no rationale given by PSNH to increase its authorized preferred stock by 6070. Nor does there appear any Justification for an authorization of 40,000,000 shares of common stock when their most recent financial forecast demonstrates a need of 35,000,000 shares if all construction is continued at the pace, cost and arrives at the completion dates forecasted by PSNH.

There are obviously differing financing needs if PSNH owns less than 35.57% or delays of the second unit occur. These major decisions presently being examined in our financial integrity docket are but one reason why this request is premature.

These dramatic proposals to increase common and preferred stock appear to be a recognition of greater equity versus debt financing in the future. Certainly a 60% increase in the preferred stock level demonstrates an inclination towards a different capital structure. The Commission is well aware of the costs of these various financing options and finds that prudence dictates the handling of RSA 369:14 requests when PSNH is seeking our permission to Issue common or preferred stock or debt pursuant to the other provisions of RSA 369.

The Commission agrees with the Consumer Advocate that it is not appropriate at this time to allow charter amendments which would appear to give open-ended authority for levels of equity financing that may or may not be in the public interest. The Commission recognizes that it takes roughly \$2.00 from the consumer to support \$1.00 of equity financing, and that increasing the proportion of equity financing could be damaging to the ratepayer.

Consequently, the Commission denies the petition without prejudice. The Commission will require the Company to file this request as well as similar ones at the time of their various financings.

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 initiating this proceeding is denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this second day of June, 1982.

MCQUADE, commissioner, dissenting: I find that the record in this docket supports the granting of the petition and to be within normal management prerogatives.

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NH.PUC*06/03/82*[79291]*67 NH PUC 361*Granite State Electric Company

[Go to End of 79291]

Re Granite State Electric Company

DR 81-86, Ninth Supplemental Order No. 15,679

67 NH PUC 361

New Hampshire Public Utilities Commission

June 3, 1982

ORDER approving second-step rate increase as contemplated in previous order with modification of rate design.

DISCRIMINATION, § 96 — Electricity — Outdoor lighting service.

[N.H.] Discussion by commission concerning historic discrimination by electric utility in favor of outdoor lighting customers through an unequal application of rate increases and unequal use of both fuel adjustment and purchased power recovery mechanisms. p. 361.

APPEARANCES: As noted previously.

BY THE COMMISSION:

REPORT

I. *HISTORY*

The Commission in its Report and Order No. 15,452 dated February 3, 1982 (67 NH PUC 117), allowed Granite State Electric an annual increase of \$1,120,000. A part of that decision was to allow a second step increase as of June 1, 1982. This second step increase was designed to reflect changes in payroll, payroll taxes, postage and property taxes from that found to be

reasonable in the test year. This adjustment is made only after an audit by Staff and is designed to offset major elements that have historically added to attrition.

The Commission's Report and Order stated that these additional second step revenues shall be derived by an equal increase to each KWH of all rate schedules.

Granite State Electric filed information designed to demonstrate that a second step increase of \$168,000 was justified. Tariff pages were filed to collect only \$165,924. The tariff pages filed by the Company contained percentage increases in the range of 0.65% to 1.14% for all classes except outdoor lighting.

II. REVENUES

The Commission's financial and auditing staff have reviewed the filing as to the various adjustments totalling \$168,000. These auditors have confirmed the accuracy of the Company's numbers and the Commission will allow an additional revenue increase of \$168,000.

III. RATE DESIGN — OUTDOOR LIGHTING DISCRIMINATION

The Commission finds the rate design proposed by Granite State Electric to be discriminatory in favor of outdoor lighting customers and against the interests of other customer classes. The Commission in its Report and Order No. 15,452 discussed a portion of the history of this discrimination. On page 33 of that Report (67 NH PUC at p. 134), the Commission noted that the Outdoor Lighting rates, Class M "have been allowed to

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stagnate with little or no increase for years." In fact, the time period of this stagnation expands nearly twenty-five years. During this time period minuscule increases were applied to the Outdoor Lighting customers while residential, commercial and industrial were subjected to steady major increases in price.

The degree of subsidization is clearly demonstrated by an examination of the purchased power and fuel adjustment clauses over the past decade. From the inception of the purchased power adjustment clause, the Outdoor Lighting customers were excluded from paying these charges that were either allocated to all other customers during this time period, borne by stockholders or accumulated for recovery from all other consumers at some other time. Re Granite State Electric Co. (1981) 66 NH PUC 187. It was only as of June 1, 1981 by Commission Order No. 14,882 (66 NH PUC 187), that these customers were finally charged purchase power expenses even though all other customer classes were paying these charges for nearly a decade.

The fuel adjustment clause has been used in a discriminatory fashion as well. While the fuel adjustment clause was applied to all customers during 1971-72 winter, Outdoor Lighting customers paid no fuel adjustment costs until bills rendered on or after August 1, 1976. Re Granite State Electric Co. (1976) 61 NH PUC 199. At the time Granite State Electric sought to apply the fuel adjustment to its Outdoor Lighting Class the undercollection from the class was \$45,000. 61 NH PUC at p. 200. This delay, and clear violation of the state statute prohibiting discrimination, isolated Outdoor Lighting customers from the dramatic increase in the price of oil during the early 1970's. This time period, the Arab Oil Embargo, witnessed the highest jump

in the price of oil ever experienced. Clearly, the Granite State Electric decision to forgo costs associated with purchased power costs and fuel costs for ten years and four years respectively for this class causes problems. Among the problems are an erosion of earnings larger than justified rate increases from other rate classes, erroneous attrition adjustments as well as others. Our largest concern is the fact that Granite State Electric, unlike other electric utilities hasn't kept records of over or under collections in revenues for the fuel adjustment charge or the purchase power adjustment. Clearly, Granite State Electric lost at least \$100,000 from Outdoor Lighting customers during the time period Granite State Electric chose to exempt these customers from paying their proper share of costs. These activities support the Staff's concern that it is difficult or impossible to substantiate the allegations of undercollections by Granite State Electric. In fact if there are any legitimate undercollections they may well result from Granite State Electric Company's decision to discriminate in favor of outdoor lighting customers. However, our analysis reveals no demonstrated undercollection but rather a history of discrimination and a failure to keep accurate and separate records.

Granite State Electric subsequently filed revised tariff pages to increase Outdoor Lighting — rates by \$2,065. This proposed adjustment (again we suspect at staff urging) still is substantially less than that proposed for other classes.

The Commission found in its decision, Report and Order No. 15,452, that the G-3 rate or small commercial customers had been subsidizing the other customer classes. The Commission reduced these rates in Order No. 15,452

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because of its concern that discrimination must be alleviated pursuant to both RSA 378:7 and 10. The Outdoor Lighting customers still are not paying their fair share. The C-3, small commercial customers are paying more than their share. Therefore, the Commission will require the proposed rate increase of \$6,915 for G-3 customers to be transferred to the Outdoor Lighting customers, Class M for a total M increase of \$8,980. The other rate classes will be adjusted as proposed by the Company which reflects purchase power costs through W-3-S but does not reflect W-4 in any fashion. The rate increase as to W-4 is discussed in a subsequent Report and Order.

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 following tariff pages are approved for effect June 1, 1982: First Revised Pages — 32, 34, 38, 39, 41, 52, 54, and corresponding Cover Sheets; and it is FURTHER ORDERED, that First Revised Pages 45, 47, and 48 are rejected; and it is FURTHER ORDERED, that the Company file Revised Pages 47 and 48 in accordance with this opinion.

By order of the Public Utilities Commission of New Hampshire this third day of June, 1982.

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NH.PUC*06/04/82*[79292]*67 NH PUC 363*Mountain Springs Water Company

[Go to End of 79292]

Re Mountain Springs Water Company

DE 81-360, Supplemental Order No. 15,680

67 NH PUC 363

New Hampshire Public Utilities Commission

June 4, 1982

ORDER setting value and fixing price for sale of water utility.

VALUATION, § 58 — Sale of water utility — Measures of value.

[N.H.] When determining the value of a water utility and fixing a price for its sale, the commission used the original cost of rate base components, depreciated, adjusted for inflation less contributions by customers; the commission rejected the use of the capitalized earnings method because the utility had a history of inadequate service and an inability to make a profit and also rejected the use of reproduction cost to ascertain value finding that method unreliable due to uncertainties as to the exact extent of the existing distribution system in the ground.

APPEARANCES: Laurence F. Gardner for the petitioner; Daniel A. Laufer for Mountain Springs Water Company.

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BY THE COMMISSION:

REPORT

On November 19, 1981, Mountain Lakes Village District filed a petition for determination of value pursuant to RSA 38:9 and 10. On January 6, 1982, the Commission issued an Order of Notice for public hearing which actually commenced on February 23, 1982. The Commission acknowledges that the water utility which is the subject matter of this docket has a long history of proceedings before this Commission, the courts and other tribunals.

At the hearing Robert J. Rohr, Professor of Economics at the Amos Tuck School of Dartmouth College and William Morrow, Village District Commissioner, testified for the petitioner. Richard S. Woodhall and Thomas A. Bower, professional engineers associated with Hayden, Harding, and Buchanan, Inc., Thomas Finn and Robert Mancini of Finn Construction Co. testified on behalf of the Company. Bernard Lucey testified for the Water Supply and Pollution Control Commission.

Professor Rohr testified as to the value of a fair price for the Mountain Lake Water Co. utilizing a capitalized earnings approach in the amount of \$110,000.

Mr. Woodhall placed the value by utilizing replacement cost, new, depreciated in the amount of \$1.3 million. The testimony was based on an evaluation of the existing system presently installed. Messrs. Finn and Mancini generally corroborated his findings.

The only issue involved in this proceeding is a determination of value pursuant to RSA 38:9 and 10 i.e. to fix the price to be paid for said plant and property. The petition does not request a finding that the taking be in the public interest. The Water Company does not address the public interest requirements in its brief but, oddly enough, the petitioner does. Apparently the petitioner acknowledges that their burden of proceeding dictates that a finding be made that the taking is in the public interest in accordance with RSA 38:10. The Commission finds that the testimony in this record supports such a finding that taking is in the public interest.

The remaining issue is the determination of value. There does not appear to be any cases dealing with valuation pursuant to RSA 38:9 in the Commission or in the law reports. (See Goodrich Falls Co. v Howard [1934] 86 NH 512, which does not reach the issue). The Commission must, therefore, look to other reported cases to formulate an opinion of the proper methodology to use in establishing "value".

It should be noted that valuation of public utility property is unique and difficult to establish for two reasons: (1) it is extremely difficult to separate the value of the physical property from the value of the business enterprise, if any (2) There is an absence of sales of similar property for comparison of market value.

In New England Power Co. v Littleton, 114 NH at p. 598, (a tax abatement case) the Court recognized that there are at least five approaches to valuation. They are (1) original cost less depreciation (2) reproduction cost less depreciation (3) comparable sales (4) capitalized earnings and (5) cost of an alternative facility capable of delivering utility service.

The parties did not present any evidence of approach (1) original cost less depreciation, but the Commission was requested to take administrative notice of its Report issued in D-E6481 (1981)

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where it determined the proper rate base to be \$109,814.

No evidence was submitted as to approach (3) comparable sales or approach (5) costs of an alternative facility.

As to approach (2) reproduction costs less depreciation, witness Woodhall estimated the value at \$1,300,000. (Supra).

As to approach (4) capitalized earnings, Professor Rohr estimated the value at \$110,000. (Supra).

There is no question that the above approaches to value or methodologies are recognized as valid and evidence to arrive at valuation was relevant and properly submitted. Public Service Co. of New Hampshire v New Hampton (1957) 101 NH 142. However, there is no rigid formula

which can be used to arrive at full and true value (See tax case, *New England Teleph. & Teleg. Co. v New Hampshire* [1973] 113 NH 92, 95, 98 PUR3d 253, 302 A2d 814). Nor is specific weight required to be allocated to any of the several approaches. *Kittery Electric Light Co. v Assessors of Town*, 219 and 728, 739 (ME 1966); *New England Power Co. v Littleton*, supra.

Determination of the value of the water system pursuant to the methodology mentioned heretofore requires that we give due consideration to the history of this water company and the record before the Commission. Apart from the cost studies and the various opinions concerning value from which the Commission must derive a judgment as to what the market value is, we cannot overlook what the entire record reveals concerning the previous findings of this Commission along with the underlying physical and economic facts.

It is clear that the company has had many difficult problems in its development as a public utility. It has experienced a long history of litigation in the bankruptcy courts, and the law courts of this state and has had proceedings before this Commission spanning a period of eight to ten years. It may be a going concern only in the sense that it was in actual operation with considerable complaints of inadequate service, but not in the sense that it is a profitable business. Hence there is lacking a proper foundation for the use of capitalized earnings as a standard for valuation of the property.

Other facts having adverse effect on market value (lack of growth; limit on possible customers to 335 by water resources; questionable extent of system in place; lack of growth in service area) must also be considered. Under any circumstances a purchaser of this water system would be faced with the uncertainty of ascertaining what is in the ground, the problems placing the system and its facility in working order, but even having done so there is the additional problem of devising some method of increasing earning power or reducing expenses.

The Commission finds that it cannot accept the value estimated by Mr. Woodhall utilizing reproduction cost, new, less depreciation since it cannot determine the exact extent of the existing distribution system in the ground and under those circumstances would hardly expect a purchaser to place a value on the mere expectation that all of the system is in place.

The concept of market value if applied to this system would be unrealistic because of the unique circumstances, mentioned above, under which the system has functioned from its inception. It is doubtful that any investor acquainted with the utility's development, its financial history, limited source of supply and storage, its unfavorable growth potential and its poor reputation in the geographical

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area, would consider the system as a desirable venture. Hence, under the circumstances shown by this record, the value of the system must be determined by resort to other concepts than reproduction cost or the capitalized earning approach. Accordingly although we have considered reproduction costs new, less depreciation and capitalized earnings, we have determined that the proper base for ascertaining just compensation to be fixed in this proceeding is the original cost of rate base components, depreciated, adjusted for inflation, less contributions shown to have been made by consumers for the utility's benefit. See: *Re Aldercroft Heights County Water Dist.* (Cal 1965) 60 PUR3d 227.

In D-E6481 the Commission found a rate base and capital structure of \$509,814. Witness Woodhall's testimony revealed that a proper inflation adjustment would be 38.5% which applied to the rate base of \$509,814 would increase rate base less depreciation to \$704,092. Customers having contributed to aid construction in the amount of \$400,000 leaves a proper value for this system to be \$306,092.

Pursuant to RSA 38:9 the Commission will assess the prevailing party, Lakes Village District the sum of \$1966.63. A schedule showing the calculation of the assessment is filed in this docket and will be distributed to the parties with this report.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that pursuant to RSA 38:9 and 10 the value of Mountain Springs Water Company is fixed at \$306.092; and, it is

FURTHER ORDERED, that the parties comply with the provisions of RSA 38:11.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1982.

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

REIMBURSEMENT FOR EXPENSES
PURSUANT TO RSA 38:9
Water Engineer

General Counsel
Legal Research

Executive Director
and Secretary

Secretarial

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NH.PUC*06/04/82*[79293]*67 NH PUC 367*Manchester Gas Company

[Go to End of 79293]

Re Manchester Gas Company

DR 82-104, Second Supplemental Order No. 15,686

67 NH PUC 367

New Hampshire Public Utilities Commission

June 4, 1982

PETITION by natural gas utility for a change in accounting procedure concerning a cost of gas adjustment; granted.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, the Commission on Page 2 of its Report in this case stated (67 NH PUC 298), "... we expect that the Company will deduct this amount (\$60,767.56) as well as interest from the period this gas was billed ratepayers in the Winter 1982-83 cost of gas adjustment"; and

WHEREAS, the Company has requested approval to handle the accounting for such sum in as expeditious a manner as possible; it is

ORDERED, that the Commission will revise the preceding quoted sentence to read,

"We expect that the Company will deduct this amount (\$60,767.56) as well as interest from the period this gas was billed ratepayers until the Winter 1982-83 CGA or until a reduction is made in April, 1982 propane inventory balance. Whichever treatment is adopted by the Company will not preclude any parties from arguing otherwise in the next CGA hearing."; and

WHEREAS, Page 3 of the Commission Report (67 NH PUC at p. 299) utilized the figure \$33,243 in three places; and

WHEREAS, it has been brought to the attention of the Commission that a portion of this \$33,243 has already been taken into account; it is

ORDERED, that in all three places where the \$33,243 is mentioned on Page 3 of the Report (67 NH PUC at p. 299), it should be changed to \$20,002.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1982.

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NH.PUC*06/04/82*[79294]*67 NH PUC 368*Fuel Adjustment Clause

[Go to End of 79294]

Re Fuel Adjustment Clause

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

DR 82-123, Order No. 15,687

67 NH PUC 368

New Hampshire Public Utilities Commission

June 4, 1982

ORDER implementing fuel surcharge adjustments filed by electric utilities for periods during which a hearing was neither requested nor filed.

 BY THE COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1982, 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 for those utilities which file monthly unless requested or needed by one of those utilities; and 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 or needed to have a hearing scheduled; and

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

ORDERED, that 5th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 7 — Electricity, providing for a fuel surcharge of \$1.34 per 100 KWH for the month of April, 1982, or if NHPUC tariff No. 8 is placed into effect June 1, 1982, then Original Page 19A, providing for a fuel surcharge credit of \$(0.34) per 100 KWH, be, and hereby is, permitted for effect for the month of June, 1982; and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of \$0.23 per 100 KWH for the month of June, 1982, or a net fuel charge rate remaining at \$1.45 per 100 KWH, be, and hereby is, permitted for effect for the month of June, 1982; and it is

FURTHER ORDERED, that Original Page 51A of Granite State Electric Company tariff, NHPUC No. 9 — Electricity, providing for an oil conservation adjustment of eight cents (\$0.08) per 100 KWH for the months of March through

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June, 1982, be, and hereby is, permitted to remain in effect for June, 1982; and it is

FURTHER ORDERED, that Original Page 17B of Granite State Electric Company, NHPUC No. 9 — Electricity, providing for a fuel surcharge for the months of March through June, 1982, of \$1.40 per 100 KWH be, and hereby is, permitted to remain in effect for June, 1982; and it is

FURTHER ORDERED, that 15th Revised Page 15 of the New Hampshire Electric Cooperative, Inc. tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of \$1.18 per 100 KWH for the month of June, 1982, be, and hereby is, permitted to become effective June 1, 1982; and it is

FURTHER ORDERED, that 17th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$1.26 per 100 KWH for the month of June, 1982, be, and hereby is, permitted to become effective June 1,

1982; and it is

FURTHER ORDERED, that 101st Revised Page 6 of Littleton Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$0.71 per 100 KWH for the month of June, 1982, be, and hereby is, permitted to become effective June 1, 1982; and it is

FURTHER ORDERED, that 69th Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of \$(1.06) per 100 KWH for the month of June, 1982, be, and hereby is, permitted to become effective June 1, 1982; and it is

FURTHER ORDERED, that 64th Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of (\$0.30) per 100 KWH for the month of June, 1982, be, and hereby is, permitted to become effective June 1, 1982.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1982.

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NH.PUC*06/04/82*[79295]*67 NH PUC 369*New Hampshire Electric Cooperative, Inc.

[Go to End of 79295]

Re New Hampshire Electric Cooperative, Inc.

Additional petitioner: Connecticut Valley Electric Company, Inc.

DE 82-157, Order No. 15,688

67 NH PUC 369

New Hampshire Public Utilities Commission

June 4, 1982

JOINT petition by two electric utilities to transfer service; granted as requested.

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BY THE COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc. (hereinafter called the Cooperative) and Connecticut Valley Electric Company, Inc. (hereinafter called Connecticut), corporations duly organized under the laws of this State and operating therein as electric public utilities under the jurisdiction of this Commission, by joint petition filed May 11, 1982, seek authority pursuant to Chapter 374 RSA for the Cooperative to discontinue service to one (1) customer, and for Connecticut to assume service to this customer, on Jeffers Hill Road in Haverhill, New Hampshire; and

WHEREAS, in order to render the service the Cooperative maintains a long cross-country feeder line through very difficult terrain inaccessible to trucks, thus creating a problem of service reliability; and

WHEREAS, Connecticut has existing distribution facilities on Jeffers Hill Road approximately 700' from the customer; and

WHEREAS, the Cooperative has agreed to build the tie line connecting the customer to Connecticut; and

WHEREAS, Connecticut could provide better, more reliable service to this customer, and has agreed to provide this service; and

WHEREAS, the one customer involved, namely Stephen B. Wellington, has signified in writing that he has no objection to the proposed transfer, such assent to the transfer being on file with this Commission; and

WHEREAS, the Commission finds it to be in the public interest that the transfer of customer service take place on the evidence that improved service can be rendered through elimination of a difficult-to-maintain existing cross-country feeder line and connection to facilities along a public road; and

WHEREAS, each company, the Cooperative and Connecticut, has filed a revised service territory map reflecting the change brought about by this transfer of customer service; it is

ORDERED, that, pursuant to the provisions of Chapter 374 RSA, the Cooperative be, and hereby is, authorized to discontinue electric service; and Connecticut be, and hereby is, authorized to provide service to the above-named customer; such authorization for this transfer of service being granted as provided by RSA 374:22 when all interested parties are in agreement; and it is

FURTHER ORDERED, that Connecticut may collect accounts receivable, as existing at the time of the transfer, of the Cooperative relating to the subject customer, as a condition of continued service by Connecticut.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1982.

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NH.PUC*06/04/82*[79296]*67 NH PUC 371*Wilton Telephone Company

[Go to End of 79296]

Re Wilton Telephone Company

DR 81-243, Supplemental Order No. 15,689

67 NH PUC 371

New Hampshire Public Utilities Commission

June 4, 1982

ORDER accepting proposed settlement agreement in a telephone rate case.

1. RETURN, § 26.2 — Cost of debt capital — Comparable utilities.

[N.H.] Where the evidence presented at a proceeding to set rates for a telephone utility showed that the utility had the highest cost of long-term debt of any utility in the state while other telephone utilities had some of the lowest, the commission accepted a proposed rate settlement but put the company on notice that if the unreasonable financing continued it would lead to the use of a hypothetical capital structure at the utility's next rate proceeding and a possible lowering of the return allowed on common equity. p. 372.

2. EXPENSES, § 35 — Amortization of obsolete plant — Telephone central office equipment — Undepreciated value.

[N.H.] While accepting a proposed settlement agreement in a telephone rate case the commission warned the utility that its amortization of the undepreciated value of central office equipment without the commission's authorization was in direct violation of commission rules and, should it occur again, would result in a fine or the denial of any amortization. p. 372.

APPEARANCES: Charles DeGrandpre for Wilton Telephone Company; commission staff involvement: Eugene Sullivan, finance director; Daniel Lanning, PUC examiner; Michael Burke, PUC examiner.

BY THE COMMISSION:

REPORT

I. *GENERAL CONCERNS AND INFORMATION*

On May 17, 1982, Wilton Telephone Company and Staff filed a recommended stipulation agreement to the Company's proposal to increase overall revenues by \$70,000. The settlement proposes an increased revenue figure of approximately \$54,000. The \$16,000 differential is the result of extensive auditing by the Commission Staff.

The test year has been updated to an all 1981 test year. The pro forma adjustments include a flash-cut of station connections. The Commission is obligated by the Federal Communications Commission (FCC) to opt for either a flash-cut or phase-in approach to a change in the accounting treatment for station connections. The Commission has followed a procedure whereby the flash-cut approach is adopted.

The Commission's rationale is simply that if a new policy has been formulated in regulation, then its adoption should be immediate absent compelling reasons to the contrary.

The settlement also reflects a continuation of recent Commission decisions that eliminate mileage charges. These charges

which increase in amount as the distance to the center of town increases have been found to be discriminatory against the rural and suburban customers. The Commission has actively eliminated these charges with other telephone companies, and we are pleased to see a settlement in accordance with these concerns.

II. *COST OF CAPITAL*

[1] The cost of capital contained in the settlement is as follows:

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

Cost of Capital
December 31, 1981

Long-Term Debt
Common Equity

The long-term debt is issued to the Indian Head Bank and carries a cost of prime plus one percent. This debt issuance was authorized in Re Wilton Teleph. Co. (1978) 63 NH PUC 291. The three existing Commissioners were not on the Commission at that time this debt involvement was approved.

The record reveals no insight as to why such an open-ended financing was approved.¹⁽³⁷⁾ Wilton has the highest debt costs of any utility in New Hampshire. Yet their counterparts in the telephone industry have some of the lowest debt costs. Most of their counterparts have used the REA Telephone Loan Program. Clearly, the ability to get single digit financing rather than 17% financing should be of significant incentive to explore this alternative to the existing debt instrument.

[2] The Commission places the Company on notice that they should explore other banks, as well as the REA Financing Program within the next six months so as to ascertain whether cheaper debt financing is feasible. The Company will be required to report the result of their examination in detail to the Finance Director six months after the date of this order.

The Commission further places the Company on notice that this unreasonable financing if continued in capital structure will lead to an examination on a hypothetical capital structure in their next rate proceeding. The Commission, absent positive change as to this debt instrument and its terms, will also consider lowering the return allowed on common equity.

For now, the Commission will accept the settlement as to the overall rate of return.

III. *OPERATING RESULTS*

Wilton reported net operating income of \$205,512 with total operating revenues of \$668,442 and operating expenses of \$462,930. The settlement offers to make certain changes which we find reasonable.

Local service revenues have been reduced by \$5,000 to reflect the loss of revenues related to the elimination of mileage charges.

Maintenance expenses have been increased by \$18,929 to account for added

expense due to expensing station connection (which were formerly capitalized). This adjustment is based upon using the "flash-cut" method. Phase-in would result in lower expenses for three years, but would be greater for the additional ten years.

The change in depreciation and amortization of the embedded cost of station connections results in an increase of \$1,983.

Toll revenues have been increased by \$12,547 to reflect the fact that the Company would realize approximately 60 percent of the increased station connection costs through the settlement process.

Depreciation expense has been reduced by \$30,128 to reflect a 16-year life for the new central office equipment which was installed in 1978. The 16-year life equates to a rate of 6.25% and reflects no salvage value or cost of removal. Since 1978 the Company has been using a ten-year life for the central office equipment. The 16-year life is the same as has been allowed for Continental Telephone. All other companies, with the exception of Merrimack County (which also needs to be changed), use a longer life. (The IRS recommends 18 years for central office equipment.) It should be pointed out that the Company never formally filed for a change in depreciation rates.²⁽³⁸⁾

The Company expresses the need to add two additional installer/repairmen at a total cost of \$30,000. The \$30,000 has been reduced to \$27,000 to reflect capitalization of approximately 10 percent of the gross salaries. It is understood that the Company had a retirement of a foreman and he was not replaced during the test year, although a current employee was moved up to his position. The Company requests inclusion of a replacement and one additional person.

The above adjustments and the related adjustments to federal income taxes and business profits taxes result in an adjusted net operating income of \$197,978.

IV. RATE BASE

The average rate base for the test year amounts to \$1,545,267 and is depicted later in this opinion.

V. REVENUE REQUIREMENT

The revenue requirement was calculated as follows:

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

| | |
|---------------------------------|--------------|
| | Actual |
| | 1981 |
| Plant in Service | \$ 2,159,790 |
| Less: Accumulated Depreciation | 648,563 |
| Net Plant in Service | 1,511,227 |
| Plus: Cash Working Capital | 33,168 |
| Material & Supplies | 68,913 |
| Less: Deferred Taxes | 47,535 |
| Pre-1971 Investment Tax Credits | 2,838 |

| | |
|---------------------------------|--------------|
| Customer Deposits | 17,668 |
| Rate Base | 1,545,267 |
| Rate of Return | 15.58% |
| Net Income Required | \$ 240,752 |
| Average Rate Base | \$ 1,545,267 |
| Cost of Capital | x 15.58% |
| Required Net Operating Income | 240,752 |
| Less: Adjusted Net Oper. Income | \$ 197,978 |
| Required Increase in NOI | 42,774 |
| Income Taxes @ 26.4% | 11,292 |
| Required Revenue Increase | \$ 54,066 |

The Company's original filing was for an increase of \$70,452. That filing was erroneous because investment tax credits were booked improperly and resulted in an additional \$13,840 of expense. Net operating income would have been higher by that amount and the resulting revenue requirement lower by \$13,840.

VI. RATE STRUCTURE

It is recommended that part of the decrease due to this agreement be programmed to separate element 1 into three separate charges which more closely represent the different costs to perform this service. For instance, a record charge for a name change should not cost as much as an order by a new customer.

The Company is instructed to separate element 1 into three distinct charges and file this with the Commission within thirty days of the date of this order.

VII. AMORTIZATION

Wilton has been amortizing the undepreciated value of central office equipment, which was removed in 1978. Permission to amortize this plant over a ten-year period was never requested from the Commission. Such a failure is a direct violation of our rules. If this should occur again, the Commission will at the very least fine and may well deny any amortization. The settlement allows recovery of \$11,456 associated with this amortization to be included in operating expenses. The Commission in accepting the settlement will thus accept this adjustment. However, it is with our strong caveat that violations of our rules will not be tolerated in the future.

VIII. CONCLUSION

The Commission will accept the settlement and allow rates to be increased by \$54,066. The new rates are applicable to all bills rendered on or after June 1, 1982.

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 tariff pages originally filed are rejected and Wilton Telephone is to file revised tariff pages in accordance with this order to collect

additional revenue in the amount of \$54,066; and it is

FURTHER ORDERED, that the new rates are to be applicable to all bills rendered on or after June 1, 1982.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1982.

FOOTNOTES

¹The Commission at that time did not have the sound advice of its present Finance Director, who would never have allowed such a financing to be approved.

²A failure to notify the Commission as to any proposed changes in depreciation will in the future result in a fine being levied.

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NH.PUC*06/07/82*[79297]*67 NH PUC 375*Mount Washington Railway Company, Inc.

[Go to End of 79297]

Re Mount Washington Railway Company, Inc.

DR 81-322, Order No. 15,693

67 NH PUC 375

New Hampshire Public Utilities Commission

June 7, 1982

ORDER requiring certain maintenance procedures.

BY THE COMMISSION:

REPORT

On October 19, 1981, the Mount Washington Railway Company submitted a request for a rate increase of approximately 33 1/3 percent, raising, among other things, adult round-trip fares to \$20.00.

On April 9, 1982, an Order of Notice was issued setting a hearing for May 14, 1982 at 1:00 P.M. at the Commission's Concord offices. Notices were sent to Jack D. Middleton, Esquire (for publication); Ellen C. Teague, Mount Washington Railway Company; George Burdick, Chief Engineer, Mount Washington Railway Company; and the Office of the Attorney General. An affidavit of public notice was filed with the Commission on May 6, 1982.

Hearings were held on May 14 and May 17, 1982. The Company produced as witnesses: Rep. Kenneth Randall, Bookkeeper; George Burdick, Chief Engineer; and Robert Wood, Accountant. The Commission Staff presented Walter King, Railroad Investigator.

SAFETY

The continued safe operation of the Cog Railroad is of prime importance to this Commission. In an attempt to comply with our statutory mandate to assure safe service, this Commission had its Railroad Inspector, Walter King, inspect the railroad three times during the month of May, 1982. The inspections conducted prior to the hearings were conducted on May 11 and 13, 1982 focused on the lower portion of the Cog Railway, its equipment and the personnel.

The inspection that was conducted after the hearings focused on that portion of the track that was under snow at the time of the hearings.

Mr. King testified that the site inspections of the lower portion disclosed deficiencies-tipped

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bents, incorrect rack spacing and caps out of place. He testified that previous inspections had revealed a need for repairs to the skyline switch to assure continued good operation. He testified that the switch repairs need not be accomplished before the railroad opens for the coming season, but that the bents, rack spacing and the caps were, in fact, safety hazards and required corrective action before opening. He noted that he had been accompanied on the inspection by the track foreman who had recorded the deficiencies and was assured that they would be completed as directed.

The Commission directs the Company to take the necessary corrective action to eliminate the rack spacing problems, to fix the tipped bents and to insure that the caps are back in place prior to opening the railway to the public. The Commission further finds that the safety of operations require that the skyline switch be completely repaired no later than June 15, 1982. The Commission will not tolerate any deviation from the highest safety standard possible. Inspector King is instructed to immediately report any safety problem with the railway and to require immediate corrective action by the Cog Railway.

Mr. King recommended that the Company direct its efforts in the specific area of Jacobs Ladder. Certain timbers in that area are stated to be in need of replacement, and he noted that the Company has invested approximately \$17,000 in new timber for replacing portions of the bents during 1982. Mr. King recommended that the Commission direct a specific maintenance schedule to assure that the approximately twenty (20) bents be replaced in total over a period of ten (10) years, and that the presently available timber be used as a minimum to replace two (2) complete bents during this season.

The Commission accepts the recommendation that a maintenance schedule should be ordered. However, our overriding concern for safety leads to a requirement that these 20 bents be replaced over a seven (7) year period and that the presently available timber be used, as a minimum, to replace two (2) complete bents during this season.

Mr. King made reference to a construction practice of installing timber connectors between bents along the rail line. He noted both past and current company practice and testified to the desirability of using timber connectors as recommended by the Commission's consulting study completed in 1968. The Commission instructs the railway to comply with this study as to the installation of timber connectors.

Mr. King cited the desirability from an economic standpoint of completing construction on a new engine and rail passenger car. Replacement of the engine would provide additional power in case of an older unit breakdown. Addition of the new passenger car would take out of service an older car, which is currently being cited for various minor deficiencies. The Commission orders the railway to place a high priority on placing this new engine and rail passenger car into service as soon as possible. The Commission is far more concerned with safety than economics, and the railway should make every attempt to provide the public with the newest and best maintained equipment.

Another recommendation by Mr. King was to have the railway focus its attention on the Marshfield Siding and switch and to the track between the shop and the passenger line. His testimony was that repairs have been deferred over

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a number of years, and that although no accidents have resulted, continued negligence will inevitably result in future problems. The Commission is extremely concerned when any maintenance has been deferred with the money that has been made over the years. There is no reason to allow any deferral of maintenance. This maintenance is ordered to be completed during 1982.

Mr. George Burdick was the Company's witness for operations and maintenance. He expressed knowledge of Mr. King's recent inspection, and was aware of the specific deficiencies noted during the visits with the track foreman. He confirmed that the Company would correct the deficiencies relative to caps, tipped bents, and rack spacing before the railroad is open to the public.

Mr. Burdick acknowledged that repairs were necessary to the skyline switch, and indicated that a continued preventive maintenance program was established in lieu of a complete rebuilding schedule. He assured the Commission that public safety was assured by adhering to this repair schedule.

Concerning a reconstruction program of Jacob's Ladder, Mr. Burdick explained that many sections of the ladder date back to the 1930's. As damaged or deteriorated wooden members are identified through inspection, those members are replaced. He confirmed the purchase of new timber as noted earlier by Mr. King, and agreed that a replacement schedule for all bents over a period of years would assure continued public safety. Although he recommended that the replacement schedule be extended over a twenty-year period, he revised his comments upon cross-examination to a time period of ten years.

Mr. Burdick concurred with Mr. King's testimony relative to the desirability of utilizing timber connectors and acknowledged that this construction method had been accepted by the Company as a standard construction practice.

In regard to the completion of the engine and passenger car construction, he indicated that the passenger car would be completed this year and would be in service by July, 1982. The engine requires approximately twenty man weeks to complete, and will require the expenditure of approximately \$2,500 in materials.

Mr. Burdick acknowledged the need for repairs at Marshfield Siding and acknowledged that repairs were scheduled during 1982.

The Commission appreciates the efforts of Mr. Burdick and Mr. King. However, the Commission believes that even a higher degree of safety should be sought. There shall no longer be any deferral of any maintenance unless there is permission received from the Commission by an order signed by all three Commissioners. The Company, as noted later in this opinion, is being allowed a rate increase. The revenues from such an increase should be used primarily to repair and maintain the track equipment and all other factors impacting on the safety of the public. Any deviance from the safety requirements established by this opinion and other decisions by the Commission will result in fining at the very least, and as we demonstrated last year we will shut down operations anytime we are convinced that there is a risk to the public.

Witnesses Burdick and King have provided certifications of safety, and based on these certifications, operations will be allowed to open.

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CONCERNS OF THE PUBLIC

The Commission had received a letter from a Charles Brennan of Morristown, New Jersey. The letter described in vivid detail a particularly bad experience endured by him and his wife on a trip on the Cog Railway. The letter revealed that certain improvements are long overdue to assure both safety and basic comfort for passengers traversing the mountain. As of July 1, 1982, the Railway is to have the following on every train that goes up or down the mountain: (1) portable toilets; (2) some blankets; (3) flashlights; (4) water with cups; and (5) signs indicating that passengers should follow the safety instructions of the engineer. Inherent in this requirement is that the Cog Railway management must give the proper safety instructions to each of its engineers and other personnel.

RATE INCREASE

At the hearing, several accounting matters were raised by the Commission's Financial Staff. The Company has been capitalizing the cost of materials, while the labor revealed to those projects have not been capitalized. This is improper accounting, as the labor and the related benefits should be included in the cost of fixed assets. Unless all costs related to fixed assets are properly stated, it becomes impossible to arrive at a proper asset value and a proper rate base for ratemaking purposes. By July 1, 1982, the Company is to have filed a revised 1981 annual report reflecting this ordered change. No further deviations are to be made by the Company as to this concern. Proper accounting practices are to be followed.

Secondly, the Company has recorded interest expense as railway operating expenses. Interest expense should be recorded as fixed charges and not as part of net utility operating income. The Company is to refile their reports making this adjustment.

Finally, the Commission deems it improper for the Company to make advances to its owners or employees of the corporation at rates far below the cost of the borrowings of the corporation. These advances are not to be made in the future.

The evidence in this case demonstrates that the additional increase to rates may be justified only if the proper accounting practices are taken into account and the safety measures are in fact implemented in 1982. Based on this condition, the rate increase requested is granted for the start of the 1982 season.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is incorporated and made a part of this order; it is hereby

ORDERED, that the Cog Railway take the necessary corrective action to eliminate the rack spacing problems, to fix the tipped bents and to insure that the caps are in place prior to opening the railway for the season; and it is

FURTHER ORDERED, that the skyline switch is to be completely repaired no later than June 15, 1982; and it is

FURTHER ORDERED, that a maintenance schedule for replacing the bents at Jacobs Ladder is to be filed with the Commission that will lead to all bents being replaced over a seven-year period and that the railway, pursuant to this schedule, replace at least two complete bents at Jacobs Ladder during 1982; and it is

FURTHER ORDERED, that the new engine and passenger car should be completed and placed in operation as soon as possible; and it is

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FURTHER ORDERED, that the repairs to the Marshfield Siding and switch and the track between the shop and the passenger line be completed in 1982; and it is

FURTHER ORDERED, that all trains that go up and down the mountain are to be equipped with portable toilets, blankets, flashlights, water with cups and signs indicating that passengers should follow the safety instructions of the engineer as of July 1, 1982; and it is

FURTHER ORDERED, that the accounting change discussed in the Report are to be complied with and the annual reports refiled correctly; and it is

FURTHER ORDERED, that there are no longer to be loans to owners or employees out of utility funds; and it is

FURTHER ORDERED, that based on all of the above, the requested rate increase is granted.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1982.

Commissioner Paul R. McQuade will issue his decision at a later point in time.

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NH.PUC*06/07/82*[79298]*67 NH PUC 379*Public Service Company of New Hampshire

[Go to End of 79298]

Re Public Service Company of New Hampshire

DF 82-118, Supplemental Order No. 15,696

67 NH PUC 379

New Hampshire Public Utilities Commission

June 7, 1982

ORDER authorizing utility to issue and sell refunding mortgage bonds.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, our Order No. 15,667 dated May 25, 1982 (67 NH PUC 352) issued in the above-entitled proceeding, authorized Public Service Company of New Hampshire to issue its General and Refunding Mortgage Bonds Series E (the "Series E G&R Bonds"), in a principal amount not exceeding \$60,000,000 and its First Mortgage Bonds, Series Y (the "Series Y First Mortgage Bonds"), in the principal amount of \$24,135,000; and

WHEREAS, in compliance with said Order No. 15,667, the Company has submitted to this Commission details concerning the issue of the Series E G&R Bonds and Series Y First Mortgage Bonds, including the principal amount, the term and purchase price thereof, and the interest rate thereon (said provisions being the same for both issues except for the principal amount and purchase price), the principal amount of the Series E G&R Bonds being \$50,000,000 and of the Series Y First Mortgage Bonds being \$24,135,000, said term being seven (7) years from June 15, 1982, said price of

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the Series E G&R Bonds being ninety-six and three tenths percent (96.3%) of the principal amount, and said interest rate being eighteen percent (18%) per annum, all in accordance with the Underwriting Agreement, a copy of which is to be filed with the Commission; and

WHEREAS, after due consideration, it appears that the issue and sale of \$50,000,000 of the Series E G&R Bonds hereinabove described under the terms and conditions of the General and Refunding Mortgage Indenture, dated as of August 15, 1978, together with the indentures supplemental thereto, including the Fourth Supplemental Indenture to be dated as of June 15, 1982, upon the terms presented to this Commission, including the term purchase price and interest rate hereinabove set forth or referred to, and it further appears that the issue of \$24,135,000 of Series Y First Mortgage Bonds under the terms and conditions of the Company's First Mortgage, dated as of January 1, 1943, together with all Indentures supplemental thereto, including the Thirty-Second Supplemental Indenture to be dated as of June 15, 1982, upon the terms presented to this Commission, including the term and interest rate hereinabove set forth or referred to, to be pledged as security for the G&R Bonds, can only be justified to protect the financial stability of the Company and only in that context can the public good be found, and in

that context we find the public good pursuant to RSA 369; it is

ORDERED, that Public Service Company of New Hampshire be, and hereby is authorized to issue and sell for cash its General and Refunding Mortgage Bonds, Series E 18% due 1989, in the principal amount of fifty million dollars (\$50,000,000) at a price of ninety-six and three tenth percent (96.3%) of the principal amount, said Series E G&R Bonds to bear interest at the rate of eighteen percent (18%) per annum; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue its First Mortgage Bonds, Series Y 18% due 1989, in the principal amount of twenty-four million one hundred thirty-five thousand dollars (\$24,135,000) to be pledged with the General and Refunding Mortgage Indenture Trustee to be held by said Trustee under the terms of the General and Refunding Mortgage Indenture as additional security for the G&R Bonds, said Series Y First Mortgage Bonds to bear interest at the rate of Eighteen percent (18%) per annum; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to mortgage its present and future property, tangible and intangible including franchises, as security for the Series E General and Refunding Mortgage Bonds and Series Y First Mortgage Bonds hereinabove authorized; and it is

FURTHER ORDERED, that all other provisions of said Order No. 15,667 of this Commission are incorporated herein by reference.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1982.

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NH.PUC*06/09/82*[79299]*67 NH PUC 381*Concord Natural Gas Corporation

[Go to End of 79299]

Re Concord Natural Gas Corporation

DS 81-281, Supplemental Order No. 15,697

67 NH PUC 381

New Hampshire Public Utilities Commission

June 9, 1982

ORDER levying fine for failure to report a gas leak.

APPEARANCES: Charles H. Toll, Jr. (Orr & Reno), representing Concord Natural Gas Corporation.

BY THE COMMISSION:

On July 10, 1981, a gas leak occurred at the Eagle Hotel in Concord, N. H. that resulted in the ignition of natural gas. The building, located across from the state capitol, was evacuated,

streets barricaded and traffic rerouted by the fire department. The incident was caused by a contractor who had cut a two (2) inch gas pipe with a torch inside the building.

The company responded to the scene and subsequently shut-off the flow of gas feeding the flame. Although there was no property damage or injuries involved, according to the "Rules and Regulations Prescribing Standards for Gas Utilities" (Chapter PUC 500, part 508:03):

" ... Reports shall, be made on any leak that

"(1) Caused a death or a personal injury requiring hospitalization;

"(2) Resulted in gas igniting;

"(3) Caused estimated damage to the property of the operator, or others, or both, of a total of \$1,000 or more;

"(4) In the judgment of the utility, was significant even though it did not meet the criteria of (1), (2), or (3): or

"(5) Because of its location, required immediate repair and other emergency action to protect the public, such as evacuation of a building, blocking off an area, or rerouting traffic."

This incident was not reported to the Commission and on March 30, 1982 Concord Natural Gas Corporation was ordered to appear before the Commission to show cause why it should not be penalized according to state statute.

At the hearing, the Company's engineer, Mr. David Buttrick, who responded to the incident stated he was not aware of the state regulations regarding leak reporting and that he did not consider this incident to be significant enough to inform the Commission Mr. Buttrick stated that in his judgment, it was not a serious matter; it did not require the evacuation of the building; it did not require the rerouting of traffic; and it probably was no more than a routine repair. Mr. Cedric H. Dustin, Jr., President of Concord Natural Gas Corporation, agreed with this statement. However, it is not their judgment but the rules and whether they were complied with that the Commission must consider in this matter.

Even though the Company did not consider this incident to be dangerous or significant, the actions of the fire department indicated that they considered it a potentially serious situation. The evacuation and barricading of the street would also indicate a dangerous situation to the public. Public confidence in safety regulations dictates that the Commission be

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notified in such a case so that it can properly investigate and respond to public inquiry.

Throughout the hearing, the Company's only explanation or excuse was that in their "judgement", they did not have to comply with the reporting requirements. However, after reviewing the state regulations, it is the opinion of the Commission that Concord Natural Gas Corporation is, in fact, in violation of said rules by not reporting properly to the Commission and subject to penalty under provisions of RSA 374:17.

The Commission considers safety to be of the utmost importance. All utilities should take notice that the Commission will require the strictest compliance with the safety requirements and

standards of this Commission and the appropriate federal agencies.

The evidence in this case is conclusive that Concord Natural Gas failed to comply with the Commission's rules and regulations pursuant to gas safety. That failure will result in a fine being levied in the amount of \$500, payable to the State of New Hampshire by June 21, 1982. If Concord Natural Gas Corporation should ever again fail to comply with our safety reporting requirements, the maximum fine of \$100 per day will be levied. This fine, like any other fine, is to be charged below the line to stockholders. Ratepayers are never to pay the costs that result from a utility's failure to adhere to Commission safety requirements. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Concord Natural Gas Corporation shall be fined \$500 pursuant to statutory authority (RSA 374:17) of the Commission; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation educate and instruct all their supervisors as to the state requirements for leak reporting.

By order of the Public Utilities Commission of New Hampshire this ninth day of June, 1982.

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NH.PUC*06/09/82*[79300]*67 NH PUC 382*Lakes Region Water Company, Inc.

[Go to End of 79300]

Re Lakes Region Water Company, Inc.

DR 81-203, Second Supplemental Order No. 15,699

67 NH PUC 382

New Hampshire Public Utilities Commission

June 9, 1982

ORDER establishing current rates for a water company as temporary rates pending further hearings.

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BY THE COMMISSION:

REPORT

On March 12, 1982, Lakes Region Water Company, Inc. filed certain revisions to its tariff, NHPUC No. 2 — Water, providing for increased annual revenues of \$16,834, effective April 12, 1982. The Company's petition in this matter included a request for temporary rates for which a public hearing was held on May 25, 1982.

At the hearing on the matter of temporary rates, staff raised several issues which will extend into future hearings on permanent rates such as allocations of expense and capital costs between the systems now before the Commission and the Wentworth Cove Water Co., also owned by the owners of Lakes Region. Several data requests were made in this hearing which must be responded to prior to future hearings.

We will allow the rates currently in effect to be fixed as temporary rates, as of the date of this Report and Order.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the rates currently in effect for Lakes Region Water Company, Inc. shall be designated as temporary rates for all service rendered on or after the date of this Order.

By Order of the Public Utilities Commission of New Hampshire this ninth day of June, 1982.

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NH.PUC*06/10/82*[79301]*67 NH PUC 383*Gas Service, Inc.

[Go to End of 79301]

Re Gas Service, Inc.

DR 80-36, Fourth Supplemental Order No. 15,701

67 NH PUC 383

New Hampshire Public Utilities Commission

June 10, 1982

ORDER imposing fine on gas company for failing to obey commission order concerning charges for service lines.

FINES AND PENALTIES, § 6 — Violation of commission order — Gas company —
Imposition of fine.

[N.H.] The failure of a gas company to adhere to a commission order which had been upheld by the state supreme court was repugnant to the concept of orderly regulation; therefore, the company was fined \$10,000 to be charged to stockholders.

APPEARANCES: As noted previously.

BY THE COMMISSION:

REPORT

In late 1979, Northern Utilities, Inc. and Gas Service, Inc. approached the Commission Staff with requests to revise their terms and conditions under which

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mains and services were extended to new customers. Existing tariffs were similar for the two companies. Both provided a certain minimum distance (100 feet) without charge, and both employed a formula for customers beyond that distance, called the "Twenty-Five Percent Test". If the net annual revenues from the customer were estimated to be less than 25% of the Company's estimated cost of the main extension, the customer was asked to make an advance contribution in the amount of the difference.

These companies contended that construction costs were rising too fast to allow a continuation of any level of free extension. Staff took no position but advised the companies that any change to a tariff and to receive Commission permission.

Accordingly, these two companies filed proposed tariff changes seeking to eliminate certain provisions of their existing tariffs and to charge for certain previously free extensions of mains and services.

In the Commission's decisions involving Northern Utilities and Gas Service, the Commission allowed them both to apply the "Twenty-Five Percent" rule to all main extensions. However, we denied both the opportunity of charging for any service line.

In Re Northern Utilities Inc. (1980) 65 NH PUC 453, the Commission stated the following (65 NH PUC at p. 455):

"Accordingly we will deny that portion of the Company's proposal which allows residential customers to be charged for service line costs. The 2570 rule may apply to the entire costs for main extensions but shall not be applied to service line costs."

In Re Gas Service, Inc. (1980) 65 NH PUC 408, 411 and (1980) 65 NH PUC 426, the Commission rejected the filed tariff pages requested by Gas Service which sought to require customer contributions for new customers toward the cost of construction of service lines. Thus, neither Gas Service Company's previous tariffs nor the tariffs approved back in 1980 allowed for the contributions for the cost of construction of service lines.

In fact, the Company, convinced that it was correct, took an appeal from our August 29, 1980 Report and Order No. 14,464 (65 NH PUC 408). In that appeal, they stated in their statement of the case the following:

"On August 29, 1980 the Commission rendered its report. It allowed contributions by new customers toward the cost of construction for mains, *but disallowed similar contributions by new customers toward the cost of construction of service lines.*" Emphasis supplied.

This order also required the Company to file revised tariff pages to show a contribution requirement for mains but none for service lines. Yet, Gas Service, Inc. never filed this information or the appropriate tariff pages.

Instead of complying with our order, the Company went ahead and charged customers as if they had prevailed. They conducted this procedure despite no authorizing order, tariff or

Supreme Court suspension of our Report and Order to the contrary.

The Supreme Court upheld the Commission's order on September 16, 1981. Yet, despite even the Supreme Court decision, the Company continued to impose consumer contributions upon new customers toward the cost of construction of service lines. This procedure came to a halt only after a December, 1981 inquiry by Staff.

The failure to adhere to our orders for sixteen months and the Supreme

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Court decision for three months resulted in many consumers being incorrectly charged. The only way to resolve this situation is to order immediate refunds, plus interest, to each and every affected customer. These refunds are to be made by check prior to the end of June 1982. The checks are to bear the language "Refund Ordered by the New Hampshire Public Utilities Commission".

The refunds are to be made to the following people, corporations or institutions in the amount shown, plus eight percent (8%) annual interest:

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

| | |
|-----------------------------------|-----------|
| 1. Ferd Corporation | \$ 1,500 |
| 2. Gauthier Construction Company | \$ 250 |
| 3. Granite State Oxygen | \$ 250 |
| 4. Howard Street School | \$ 500 |
| 5. Kollsman Instruments | \$ 500 |
| 6. Laconia Medical Center | \$ 500 |
| 7. Laconia Needle Manufacturing | \$ 500 |
| 8. Laconia Parks and Recreation | \$ 250 |
| 9. Laconia Region Hospital | \$ 500 |
| 10. Oak Material Group, Inc. | \$ 500 |
| 11. Plus Co., Inc. | \$ 600 |
| 12. Seppala and AHO (New Ipswich) | \$ 1,000 |
| 13. Visiting Nurse Association | \$ 125 |
| 14. Berkshire Builders, Inc. | \$ 255 |
| 15. Roger Constant, Builder | \$ 910 |
| 16. Constellation Corporation | \$ 3,500 |
| 17. Eckman Construction | \$ 1,200 |
| 18. Miles Israel | \$ 1,500 |
| 19. K & B Construction | \$ 3,500 |
| 20. Keewaydin Shores | \$ 5,000 |
| 21. Maple Leaf Construction | \$ 1,000 |
| 22. Arlo Leonard | \$ 396 |
| 23. S. J. Maculewich | \$ 691 |
| 24. C. Duneklee | \$ 818 |
| 25. R. Rochello | \$ 875 |
| 26. C. Austin | \$ 374 |
| 27. C. Connor | \$ 1,079 |
| 28. P. Statz | \$ 783 |
| 29. C. Stephens | \$ 529 |
| 30. R. Robinson | \$ 200 |
| 31. Berkshire Builders | \$ 466 |
| 32. Constellation Corporation | \$ 5,400 |
| 33. Hicks Homes | \$ 19,099 |
| 34. Hillcrest Homes | \$ 600 |
| 35. J & J Associates | \$ 4,000 |
| 36. J. P. McKenna, Inc. | \$ 7,500 |
| 37. McColgan Development Corp. | \$ 15,600 |
| 38. Rodgers Brothers | \$ 6,096 |
| 39. Robert Ross Construction | \$ 3,000 |
| 40. Security Homes, Inc. | \$ 9,000 |
| 41. Stabile & Sons, Inc. | \$ 1,200 |

| | |
|-------------------------------|-----------|
| 42. Stabile Development Corp. | \$ 14,416 |
| 43. Tomasian Realty | \$ 3,942 |
| 44. Watersedge, Inc. | \$ 272 |
| 45. Woodspire Realty Trust | \$ 1,000 |

The total refund to these forty-five (45) customers is \$121,176, plus interest, at an annual rate of eight percent (8%).¹

These refunds will return the money incorrectly required of these consumers and, together with the interest, make them whole. However, the damage was

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not limited to these consumers. Rather, there still remains the issue of the harm done by Gas Service, Inc. to an orderly regulatory system.

The regulatory system, although not perfect, rests upon compliance with Commission orders. The Commission attempts to make sure that consumers are charged nothing more, or nothing less, than the approved rates (tariffs) at the Commission. When Gas Service, Inc. chose to ignore our order of August 29, 1980 and again the order of September 30, 1980, they were challenging the Commission's authority.

They were clearly aware that their position was not adopted by the Commission. Otherwise, clearly an appeal wouldn't have been taken. Gas Service Company could have asked the Court to stay our orders and allow them to collect these charges pending appeal. Gas Service chose not to make a request of the Court for such relief and thus the Commission's orders remained in effect during the time of appeal.

The Court confirmed the Commission's decision in September of 1981. Yet, even after losing in the court of last resort, Gas Service chose to continue charging rates never approved by the Commission or the Court. Nor did the Company ever file tariff pages in compliance with the two aforementioned orders reflecting the Commission's refusal to allow charges for extensions of service lines.

In failing to obey our orders, the Company violated RSA 365:41 and 365:42. In failing to file tariff pages that reflected the extension policy approved by the Commission, Gas Service, Inc. violated RSA 374:17. Based on these violations, the Commission could fine at least \$100 a day for each day of default from August 29, 1980 through December 31, 1981. The fine would be extraordinarily large and would far exceed the damage to consumers. The Commission could settle for the simple repayment to consumers. The Commission will do neither.

The failure to adhere to this Commission's orders and directions cannot be excused. Failure to immediately comply with the Supreme Court decision is even more repugnant to the concept of orderly regulation. If Gas Service is allowed to ignore the orders of this Commission, then it is inevitable that other utilities and individual consumers will be tempted to act in a similar fashion. Furthermore, failure to levy some fine on Gas Service Company would be unfair to the numerous utilities and consumers that comply with Commission orders regardless of their perspective on the fairness, accuracy, or correctness of the order. Consequently, to preserve strong regulation and to insure adherence by all utilities and consumers to our orders, Gas Service is fined ten thousand dollars (\$10,000). The fine is to be made payable to the State of New Hampshire and

received by the State Treasurer no later than June 22, 1982. This \$10,000 fine is to be booked below-the-line and thereby chargeable to stockholders. Ratepayers cannot, and will not, be held accountable for the failure of utility management to comply with Commission orders.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the Company make refunds to all customers who, during the period of September 9, 1980 through December 31, 1981, made any contributions

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toward any residential service line construction by any residential or commercial meter installation in the amount of \$121,176; and it is

FURTHER ORDERED, that the refunds be accompanied by interest at an eight percent (8%) annual rate; and it is

FURTHER ORDERED, that the individual consumers listed in the Report are to receive checks reflecting the amounts listed in the Report, plus an increment of interest at an 8% annual rate, no later than July 1, 1982; and it is

FURTHER ORDERED, that the checks are to bear the language, "Refund Ordered by the New Hampshire Public Utilities Commission"; and it is

FURTHER ORDERED, that Gas Service, Inc. is to pay a fine of ten thousand dollars (\$10,000), payable to the State of New Hampshire, and received by the State Treasurer no later than June 22, 1982; and it is

FURTHER ORDERED, that this \$10,000 fine is to be booked below-the-line; and it is

FURTHER ORDERED, that the Company file replacement tariffs setting forth service extension terms providing for the following policies:

- A. Contributions towards all main extensions may be required in accordance with the so-called 25% rule.
- B. Contributions for non-residential services may be made in accordance with the 2570 rule.
- C. Contributions for services to multi-family dwellings may be made when the number of dwelling units equals more than two (2).
- D. There shall be no contributions for residential services.
- E. There shall be no contributions toward any residential or non-residential meter.

By Order of the Public Utilities Commission of New Hampshire this tenth day of June, 1982.

FOOTNOTE

¹The Commission requires 8% interest on customer deposits, as well as over and under collections in the cost of gas adjustment.

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[Go to End of 79302]

Re Manchester Water Works

Intervenor: Four-Town Water Study Committee

DR 81-388, Second Supplemental Order No. 15,702

67 NH PUC 387

New Hampshire Public Utilities Commission

June 11, 1982

ORDER granting rate increase, as modified.

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1. MUNICIPAL DISTRICTS, § 2 — Jurisdiction of commissions — Municipal water companies.

[N.H.] The operation of a municipal water system outside municipal boundaries is subject to commission jurisdiction. p. 389.

2. MUNICIPAL DISTRICTS, § 2 — Jurisdiction of commissions — Municipal water companies.

[N.H.] A municipality's operation of utility-type services within its own boundaries is not subject to commission jurisdiction under a statute exempting municipalities operating within their corporate limits from the definition of public utility. p. 390.

APPEARANCES: Charles A. DeGrandpre; for the petitioner; Robert A. Wells; Armand Dugas for the Four-Town Water Study Committee.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

Prior to 1981, the last occasion on which Manchester Water Works sought an increase in the rates it charges to customers residing outside the City of Manchester was in 1979. At that time, the New Hampshire Public Utilities Commission (hereinafter "the Commission") approved an increase of fifteen (15) percent over pre-1979 rates.

On December 31, 1981, Manchester Water Works filed a Petition for Increase in Rates requesting authority from the Commission to increase its rates to out-of-Town customers by an

average of twenty-five (25) percent effective as of February 1, 1982. This rate increase would result in additional revenue annually of approximately \$110,000.

Manchester Water Works also filed a Petition For Temporary Rates, on December 31, 1981, requesting that current rates be made temporary rates for the duration of the hearing process. This Petition was granted by Order No. 15,489 ([1982] 67 NH PUC 159), effective as of January 31, 1982.

The Commission suspended the proposed rates on January 6, 1982 pending an investigation, per Order No. 15,417. Extensive public hearings were held before the Commission of the Petition for Increase in Rates on May 4, May 11, May 12, and May 26. Manchester Water Works presented Frederick Elwell, its chief executive officer; Arthur Blair, its chief financial officer; and Christopher Woodcock from Camp, Dresser & McKee, Inc. (hereinafter "CDM"), the firm which prepared the Cost of Service Study in 1979 upon which the former rate case and the proposed rate increases were based. All three witnesses were subject to thorough cross-examination by Mr. Traum and Mr. Lessels of the Commission's Staff; Mr. Dugas, the Chairman of the Four-Town Water Study Committee representing Bedford, Goffstown, Hooksett, and Londonderry; and by the Commissioners. Mr. Dugas and Mr. Traum testified themselves and Mr. Webster of the Londonderry Water and Sewer Commission made a statement on the record.

In addition to responding to three sets of Data Requests filed prior to the hearings by the Staff and Mr. Dugas, Manchester Water Works promptly responded to a number of requests for information made by the Staff and Commission during the hearings. Requests for information made by the Water Works were similarly responded to. The proposed increases were thoroughly examined and analyzed.

Throughout the course of the rate case, Manchester Water Works stressed the necessity of obtaining new permanent

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rates before its second quarter billing in 1982. The new permanent rates will be retroactive to January 31, 1982, the day on which temporary rates were made effective. Manchester Water Works offered to postpone issuing its second quarter bills until June 10, 1982. Therefore, the Commission has done everything in its power to get an order issued by June 10, 1982.

II. *POLICY*

There is a need for society in general and Manchester and its surrounding communities in specific to recognize that water is a limited resource. In many ways, the situation in the water utility industry today is similar, if not identical, to that of the electric industry in the early 1970's. Usage, which has historically fluctuated independent of price, now is beginning to respond to price. New sources of supply, preservation of existing sources, new services and stricter environmental concerns are leading to a situation where additional demand, and to an extent certain non-essential existing demand, will continually force the price of water upwards. These requisite new commitments to handle this increased demand and the non-essential existing demand will lead to costs substantially above those incurred historically.

Despite the monsoon rains of the past week, water remains a primary resource endangered by human and chemical pollution, limited supply, previous usage habits not reflective of efficiency or conservation and a lack of general public knowledge on the seriousness of the situation. The number of water shortages that have occurred in New Jersey, Florida, California, Connecticut, Massachusetts are not foreign to New Hampshire given the recent experience of our capital city, Concord.

The Commission recognizes that although the ATT-Department of Justice Settlement, the deregulation of natural gas and Seabrook receive more attention by the public, the press and the politicians, the Commission believes that the highest level of importance must be accorded the water utility industry.

The present Commission is attempting to promote water policy that complies with the provisions of RSA 374:1 as to adequate service. Our attempt is complicated by small, largely undercapitalized, water utilities that attempt to service small isolated pockets of consumers. This historic hodge-podge approach was the result of allowing contractors to build systems that were poorly designed in the first place and unable to be maintained either financially or operationally.

[1] Compounding this major problem are the severe restrictions placed upon the Commission on regulating municipal corporations that seek to provide utility service outside their municipal boundaries. The operation of a municipal water system outside its own limits is subject to the jurisdiction of the Commission. RSA 362:2, 38:12 and *Blair v Manchester Water Works* (1961) 103 NH 505, 42 PUR3d 237, 175 A2d 525.

Yet despite being subject to our jurisdiction, the Legislature has carved major exceptions to the Commission's power that would normally emulate from that jurisdiction. Amendments to RSA 362:4 in the early 1970's exempt municipal corporations furnishing water outside its municipal boundaries and shall not be considered a public utility "for the purposes of accounting, reporting or auditing functions with respect to said service".

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In *Blair v Manchester Water Works* the Court interpreted the statutory framework finding that municipal owned water utilities were intended to place a primary duty to furnish water to residents of the municipality and that any right to furnish water to nonresidents in adjoining towns and districts is secondary. 103 NH at p. 507, 42 PUR3d at pp. 239, 240. The Court also found in that case that "the present statutes do not give the Public Utilities Commission authority over the utility to compel it to extend its service over the entire area of [an] adjoining town." 103 NH at pp. 507, 508, 42 PUR3d at p. 240.

[2] RSA 362:2 specifically exempts municipalities operating within their corporate limits from the definition of a public utility. Clearly, a municipality's operation of utility type services within its own boundaries is beyond our jurisdiction, review or oversight. This is unfortunately true no matter how unfair this may be to any consumer or group of consumers in the State.

It is within this context that the Commission endeavors to both establish reasonable water policy and to respect the sovereignty of the municipal government.

III. OPERATING EXPENSES

One step in developing out-of-City rates is to calculate an acceptable level of operating expenses, which for ease of understanding will be broken down into the components of Operation and Maintenance, Payments in Lieu of Taxes, Services and Benefits from the City, and Depreciation. The Commission will utilize Exhibit 26, a comparison of Staff and Manchester Water Works positions, to satisfy RSA 363:17-b.

A. Operation and Maintenance Expenses

Mr. Traum originally used a systemwide level operation and maintenance expenses that culminated in a total of \$2,520,773. To this number he applied an out-of-City factor of 6.9% to arrive at an outside-the-City revenue level of \$2,520,773. During his direct testimony, he acknowledged that certain known and measurable adjustments should be reflected by an addition to these totals.

Manchester Water Works filed a system-wide figure for operation and maintenance expenses of \$3,211,279, a factor of 8.06% and thus an out-of-City amount of operations and maintenance expenses of \$258,829.

The Commission will first examine the testimony of Mr. Woodcock, in which he raised certain alleged known and measurable changes in costs. The first of these is a wage adjustment to non-union employees of \$40,080. The Commission has allowed similar adjustments where the amount of the increase is known as is the date of its application. The Commission does this so as to fulfill our obligation to set reasonable rates, both for the present as well as the future. Re New England Teleph. & Teleg. Co. (1980) 65 NH PUC 564. In this instance, the amount is known as is the effective date of December 31, 1981. The Commission will allow this adjustment to operating and maintenance expenses.

The next proposed adjustment relates to the Blue Cross adjustment of \$30,532. This increase became effective around May 1, 1982. The Commission has historically allowed for recognition of known and measurable changes in benefits as a proper extension of the wage recognition. Re Manchester Gas Co. (1979) 64 NH PUC 95. Consequently, the Commission will allow this adjustment as a known and measurable change.

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The Company proposes an adjustment of \$19,300 for data processing. Since this is an adjustment based on six months of operations, the actual pro forma on an annual basis would be \$38,600. The testimony demonstrates that this action taken by the Company will result in improvements in efficiency. Since improvements in the efficiency of any government operation would by their nature serve the public good, the Commission will allow a proforma increase of \$38,600 to reflect a full year of data processing costs. In future proceedings, the Commission will expect a detailed report as to the efficiencies and savings arising out of these costs.

There is an adjustment sought for purchased power expenses or more appropriately the rising cost of electricity. Manchester Water Works is served by Public Service Company of New Hampshire, which was allowed a rate increase on January 11, 1982. This adjustment is thereby known to this Commission. There is some difficulty in measuring this adjustment due to changes that occur in usage from year to year by Manchester Water Works and the fact that the

adjustment allowed PSNH fluctuated between rate classes and within rate classes. Furthermore, the Commission endeavors to encourage conservation wherever possible. The effect of the rate increase would appear to be \$52,000 on a rate class GV customer with Manchester Water Works' usage. The Commission will reduce this by 10% to properly reflect the encouragement of conservation. Therefore, the Commission will allow an adjustment of \$46,800 for increased electricity costs.

The Commission's recognition of these increases in known and measurable costs beyond the test year amount to \$156,012. This number added to Mr. Traum's original system-wide total of \$2,520,773 yields a total of \$2,676,785. To this, the allocation factor of 8.06% will be applied as derived in Water Works Hearing Response Set # 1, Item #3.

In determining a percentage allocation of out-of-City customers for O&M expenses, the Commission gleans from the CDM, 1979 report, and the record in this proceeding, that the 6.9% used by Mr. Traum in his testimony accounts for only a portion of usage, while the 8.06% provided by the Water Works in Hearing Response Set # 1, Item 3, is more reflective of 100% of usage.

In addition, the Commission is aware that 7.370 of actual metered usage in 1981, as opposed to only 6.9% in 1978, was used by out-of-town customers. This trend further supports use of a growth factor as utilized by the utility for capital items.

Use of the 8.06% factor times \$2,676,785 results in an O&M figure of \$215,749, which the Commission accepts. The remainder of the Company's position is found to be unsupported by the record.

B. Payments In Lieu of Taxes

The Water Works originally filed a test year figure of \$353,572, as used by Mr. Traum, and a proformed figure of \$432,000. Since the pro forma figure includes dollars that are estimated, as opposed to known and measurable, the Commission will only accept \$22,000 above the \$353,572, as testified to by Mr. Woodcock as fitting the known and measurable qualification. The resulting figure is \$375,572, which then has the allocator of 7.74% as shown in Water Works Hearing Response Set #1, Item #3 applied. The result, which the Commission accepts, is \$29,069.

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C. Services and Benefits From the City

There has been a tremendous amount of attention paid to this aspect of Manchester Water Works filing. Exhibit 26 indicates that Manchester Water Works believes that the proper pro forma should be \$104,268. Staff Witness Mr. Traum originally proposed \$32,749. The Four Towns contend that the entire concept of exchanging services by the Water Works for certain services provided by the City is unacceptable and should be stopped.

The Four Towns allege that the system of trade-off appears to be an exclusive paper exercise that tries to adjust values to show why the City does not pay comparably for Manchester Water Works services. It is their contention that all legitimate services provided by the Manchester Water Works should be paid for through the normal accountability system. Likewise, all

legitimate services received by the Manchester Water Works should be paid for in the same manner according to the Four Towns.

However, whatever the equitable considerations are, the legal parameters that this Commission must operate within preclude resolutions of these concerns. The Water Works through RSA 362:4 is not considered a public utility for accounting reporting or auditing functions. Our inability to perform these functions, together with the deference given municipal corporations operating within their own corporate limits, leads to a rejection of the position advocated by the Four Towns. If the towns believe that this situation results in inequitable or discriminatory treatment, then they need to raise their concerns with the Legislature and not this Commission. We are presently without statutory authority.

The Water Works in Exhibit #3 showed \$632,128 as the value of services received from the City. In Exhibit 26, the Water Works raised the item of tax applicable to Manchester Water Works buildings. This adjustment added another \$619,520 for a total of \$1,314,861. Mr. Traum used the original discovery figure of \$632,128 from which he subtracted \$157,000. This latter figure was listed by the Water Works for "Use of City's Credit Rating 2% Saving X \$7,875,000". Two of his reasons are telling in this matter and decisive in our decision. First, the Water Works did not incur higher interest rates due to the incremental principal related to the out-of-town customers. Second, that since the request for a return on municipal equity includes a 3% investment risk factor above the most recent and highest municipal borrowing rate, the inclusion here would in effect provide double recognition.

The Commission, due to its inability to effectively monitor the relationship between the City and the Water Works, will accept the total submitted by the Water Works of \$1,314,861 less the \$157,000 properly raised by Staff, or \$1,157,861. As to the allocation factor, the Commission accepts the 7.93% figure derived from the data response Set #1, Item #3. This results in a figure of \$91,818.

D. Depreciation

Since Mr. Traum adopted a proforma for known asset additions to be capitalized, the Water Works in Exhibit 26 developed a figure comparable to his with a slightly lower allocation figure.

In Mr. Traum's calculation he excluded depreciation on Contributions in Aid of Construction (CIAC) as the Commission has done in numerous previous

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cases. The general rationale for this is where ratepayers have contributed plant, there would not be a requirement for them to pay for depreciation on that plant where it has not been shown conclusively that the ratepayers will not be required to replace the plant.

Therefore, the Commission is in agreement with Mr. Traum, and will not allow depreciation on CIAC assets, but we do not agree with his allocation factor of 29.93%. Instead of taking total property, plant, and equipment divided by total CIAC to arrive at 29.93%; the Commission will divide out-of-City CIAC by the out-of-City allocation of property, plant, and equipment as developed in the Rate Base section of this report.¹⁽³⁹⁾ One minus the resulting percentage is 53.7%, which when multiplied by \$874,275 results in \$469,486. This figure is allocated \$50,845

to out-of-City customers based on the Water Works 10.83% allocator.

In summation for Operating Expenses, the Commission will accept:

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

| | |
|---------------------------|-----------|
| Operation and Maintenance | \$215,749 |
| Taxes | 29,069 |
| Services from City | 91,818 |
| Depreciation | 50,845 |
| | 387,481 |

IV. COST OF CAPITAL

Manchester Water and Mr. Traum indicate a preference for actual costs of capital. Since the Commission is treating the out-of-town customers' operation as a profit-making utility, we will accept the Water Works reflection of their actual costs of debt and 13.55% on the municipal investment but will use the actual capital structure as of December 31, 1981 shown in the CPA report of the Water Works. The result is to reduce the 10.57% requested to 10.4% as follows:

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

| | Amount | Cost Rate | Weighting |
|------------------|--------------|-----------|-----------|
| Municipal Equity | \$ 9,608,760 | 13.55% | 7.4% |
| Debt | 7,875,000 | 6.75% | 3.0% |
| | 17,486,760 | 10.4% | |

V. RATE BASE

Rate Base is another area best handled in parts. To be consistent with Exhibit 26, the Commission will break rate base into 4 parts: net plant, inventory, working capital, and other items.

A. Net Plant

Net Plant was developed by Mr. Traum, originally, to be \$1,812,398 based on the Manchester Water Works Set #1, Item 2. In Exhibit 26, the Water Works adopted Mr. Traum's figure.

Through his direct testimony, it was gleaned that in developing net plant, 10.83% of Manchester Water Works' system-wide gross plant less 10.83% of Manchester Water Works' system-wide CIAC less 10.83% of Water Works system-wide depreciation was used. Mr. Traum thereupon requested the actual out-of-City figure for CIAC. This average 1981 CIAC figure is accepted by the Commission as it accurately reflects the CIAC for out-of-City ratepayers and does not estimate a proxy for them. The New Hampshire Supreme Court has unequivocally

precluded a public utility from including Contributions in Aid of Construction (CIAC) in its rate base and from receiving a rate of return thereon. Such funds supplied by consumers must be deducted from the rate base as these are funds upon which the investors are not entitled to any return. *Windham Estates Assn. v New Hampshire* (1977) 117 NH 419, 422, 374 A2d 645. For

Gross Plant and accumulated depreciation, the Commission will use 10.83% of the beginning and end of 1981 year average as shown on the 1981 CPA report of the Manchester Water Works. These figures are \$25,650,302 and \$27,642,357 correspondingly with an average of \$26,646,330, 10.83% of which is \$2,885,797. Subtracting the average 1981 out-of-City CIAC of \$1,881,500²⁽⁴⁰⁾ (as derived from Manchester Water Works data response Set 2, # 1, and Set 1, #4 and #5) results in a net plant figure of \$1,004,297.

B. Inventory

For the purpose of calculating the Water Works average investment in Inventory for out-of-City customers, the Commission has utilized the 1981 average as shown in the 1981 CPA report $[(\$836,150 + 686,542) \div 2]$ \$761,346. This is then allocated based on an average of 10.83% accepted for capital items and the 8.06% accepted for O&M items under the understanding that some of these inventory items will become capitalized and others expensed. The result $(\$761,346 \times 9.45\%)$ \$71,947 is accepted by the Commission as the average Inventory for out-of-City ratepayers.

C. Working Capital

Working Capital is an area in rate-making that generally develops a great deal of controversy. The traditional, and simplest approach, as derived by the F.P.C. was simply 45 days of O&M. This approach has its main acceptance in its simplicity. More exact methods are detailed lead/lag studies and balance sheet analysis.

The Water Works originally filed for a 120-day level on the basis that most of their billings are quarterly. Mr. Traum utilized 75 days based on a more sophisticated approach which was further adjusted by the Water Works to 94 days based upon a further refinement of the collection period. The Commission will accept the 94-day figure, and recognizes that any change to semi-annual billing of fire protection charges will act to improve the Water Works cash flow in the future, thereby reducing the 94 days.

As to what it should be applied to, earlier in this report, the Commission accepted \$215,749 as the proformed figure related to out-of-City customers. This figure will be utilized without any further adjustment for:

1. Payments in lieu of taxes as they are made partially in advance and partially in arrears and do not fall under the PUC Chart of Accounts — Operation and Maintenance.
2. Service and benefits from the City as no cash changes hands, so the Water Works has not laid out any cash investment.
3. Debt retirement as that does not conform with standard ratemaking treatment for profit-making utilities.
4. Capital expenditures as they are recognized in net plant and any form of CWIP in rate base, of which working

capital is a portion, is illegal in New Hampshire.

To derive the Working Capital figure, the Commission thus multiplied the \$215,749 by

94/365 providing a result of \$55,563.

D. Other Items

The other items included in rate base computations normally include such diverse items as recognition of average prepayments, customer deposits, investment tax credits, etc. In this instance, the items of significance per the CPA report are an average investment in prepaid expenses of \$108,545 and average customer deposits of \$33,601. The net figure is \$74,944, which is then allocated based on the 9.45% figure previously derived, resulting in \$7,082 as the amount to be included in rate base.

In summation, the out-of-City rate base is simply derived through addition:

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

| | |
|-----------------|-------------|
| Net Plant | \$1,004,297 |
| Inventory | 71,947 |
| Working Capital | 55,563 |
| Other Items | 7,082 |
| | \$1,138,889 |

VI. REVENUE REQUIREMENT

The revenue requirement is thus calculated as cost of capital (10.4%) times rate base (\$1,138,889) plus the accepted operating expenses of \$387,481. No income taxes are involved which greatly simplifies the procedure. The result is a revenue requirement of \$505,925.

The proforma revenue figure originally developed by Mr. Traum and utilized by the Water Works in Exhibit 26, for out-of-City customers was \$438,266.

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

| | |
|---------------------------|-----------|
| Return on Investment | \$118,444 |
| Expenses | \$387,481 |
| Total Revenue Requirement | \$505,925 |
| Present Revenues | \$438,266 |
| Rate Increase | \$ 67,659 |

Thus, the additional revenue required on an annual basis is \$67,659.

Since temporary rates were authorized in this docket, the Water Works should file documents laying out the development of the revenue shortfall due to time lapse from the effective date of that temporary rate to the effective date of this order. That shortfall should be surcharged on a flat rate per cubic foot over a 6-month period.

VII. SECOND STEP INCREASE

The Supreme Court of New Hampshire has stated that this Commission must set rates that are reasonable, both at the date of issuance and for the foreseeable future. *New England Teleph. & Teleg. Co. v New Hampshire* (1973) 113 NH 92, 98 PUR3d 253, 302 A2d 814. The Court has also stated that the Commission is to be allowed the discretion to set rates in a range that is not so unreasonably low as to be confiscatory, nor so high as to be unjust and unreasonable.

The Commission has on occasion chosen to provide a second step increase. Our rationale for this allowance has included one or more of the following reasons: (a) to recognize superior

utility management; (b) recognition of expenses presently known but not measurable until some later point in time; (c) an attempt to reduce the number of rate cases thus reducing the overall rate case expenses; (d) an attempt to spread rate adjustments in a more uniform fashion; (e) to further policy considerations found to be in the public good. The Commission will allow such a second step increase for Manchester Water Works if the conditions set forth in Section XII of this opinion are met.

The Water Works may file after January 1, 1983 for known and measurable

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increases or decreases in the following areas, which the Commission will then allow 90% to be flowed through to change rates accordingly:

- a) purchased power;
- b) payments in lieu of taxes;
- c) non-capitalized wages and fringe benefits; and
- d) updated capital structure to December 31, 1982 with the cost of equity set at 300 basis points above the most recent cost of municipally issued debt related to the Water Works.

VII. RATE DESIGN

A. Hydrant vs. Hydrant/Inch-Foot

There has been a concerted effort by both Staff and the Four Towns to have the Commission adopt a rate design for fire protection that is based solely on a per hydrant charge rather than the existing rate design in which a rate is bifurcated based on hydrants and inch-feet.

Staff cites our attention to a recently decided case in which we made such a change. Re Hampton Water Works (1982) 67 NH PUC 295. The Four Towns contend that there are greater inequities in cost pursuant to the existing method than existed under the previous per hydrant charge.

Manchester Water Works counters these arguments by noting that basing the charge on a per hydrant basis discourages proper hydrant installation. The Four Towns contend that the existing rate design discourages towns from expanding their water system and more importantly encourages them to install the smallest water main possible.

Manchester Water Works contends that the change from charges on hydrants only to the existing rate design occurred in earlier proceedings where representatives of Staff and the Four Towns took the exact opposite position from that offered in this proceeding. As to our decision in Hampton, the Company notes that it was acceptance of a settlement agreement and that there was no litigation or argument offered as to this aspect.

There have been various attempts to distort what is and is not reflected in the existing hydrant rates. The Four Towns, in discussing the change approved in the 1979 decision, fails to understand that the change was one of rate design and not revenues. The large percentage increases experienced by the various towns was the result of increased miles of mains increased hydrants and increased rates.

The Commission is aware that the same level of rates will be collected no matter if a hydrant only or a hydrant/inch-foot combination charge is used. Our removal of customer Contributions in Aid of Construction and the depreciation associated with the same insures those costs will not be required twice of consumers. Thus, the question is solely what is a more equitable rate design.

The Commission agrees with the contention of Manchester Water Works that one proceeding resolved by settlement does not establish a precedent. Furthermore, the evidence in this proceeding is inconclusive as to the superiority of one design or the other.

The Four Towns and Staff have presented reasons why they believe it is more equitable to charge on a hydrant basis. Their presentations are not of such a nature to convince us to eliminate the existing bifurcated charge for public fire protection. However, both the Four Towns and the Staff have raised sufficient questions so as to require that the rate increase attributable to the public fire protection class of approximately

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\$12,936 be applied on a per-hydrant basis.

B. Private Fire Protection

The Commission has allowed a 15.4% increase in revenues to be applied to the three customer classes. For the private fire protection customers, the Company had sought a \$4,000 increase. The result of our finding a reasonable level less than what was requested leads to an increase for this class of \$2,464. This increase is to be spread in an identical fashion as proposed by the Water Works, but at the lesser amount.

C. Meter Rates

The Water Works proposes to apply an \$85,000 increase to their out-of-City customers on metered rates. The reduced level approved by the Commission would lead to an approximately \$52,000 increase.

The Water Works also sought to continue its four-block rate structure. The Commission finds this proposal unacceptable. Rather, the Commission believes that there needs to be further continuation of the flattening procedure that occurred in the Water Works' last two cases before this Commission. This procedure provides the proper recognition of resources, leads to more efficient use of existing resources and is more cost based than used by the Water Works.

The Commission finds that a two-step rate design is more reasonable than that proposed by the Company. The first step is to be a continuation of the minimum charge or the first 600 cubic feet at \$15.37 per quarter rather than the existing \$13.32. This \$2.05 increase is a 15.4% increase. The remainder of the increased revenues allowed are to be added to all the revenues derived from the other three blocks. This dollar figure is then to be divided by all the cubic feet used in these three blocks so as to arrive at one cost rate per 100 cubic feet for each 100 cubic feet of usage per quarter in excess of 600 cubic feet.

VIII. GRASMERE

The Company chose not to apply any of the increase to its Grasmere customers. Such a discrimination in lieu of increased rates vis-a-vis the other towns is discriminatory. We cannot

allow such discrimination between customers outside the City boundaries pursuant to RSA 378:10. Consequently, the Commission instructs the Water Works to apply an appropriate level of its \$67,547 rate increase to the customers.

IX. DISCRIMINATION BETWEEN RATES IN MANCHESTER AND OUTSIDE OF MANCHESTER

The Four Towns and Staff have repeatedly pointed to the substantial difference between the rates charged in the City and those charged outside the City. The request is for the Commission to correct this differential. The Water Works contends that they can charge whatever they desire in the City and that the Commission's powers don't reach inside Manchester's municipal limits. The Four Towns argue that the differential should be in single digit numbers rather than the present range of 14 to 55%.

The Commission finds that *Blair v Manchester Water Works* and the relevant sections of RSA 38 and 362 preclude us from resolving this problem. We find this despite the fact that the City of Manchester has determined to apply the same percentage increase to customers inside the City that we apply to customers outside the City. Tying the in-City decision to our outside-the-City decision

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demonstrates the fiction that is occurring as to this issue.

While we cannot agree that the differential should be as low as a single digit, we do believe that a range of 14 to 5.5% with an average of 28% is too severe.

Manchester would be well served to give greater support to the superior management it has at the upper levels of its Water Works Department. Limiting their level of funds is shortsighted and discriminatory. To retain this fine management and to develop profitable water service in areas outside those presently served, a more secure revenue base is needed inside the City of Manchester. To the extent that the Four Towns wish to address this discrimination further, an amendment to state statutes is necessary.

X. LONDONDERRY FRANCHISE

Manchester has been granted authority to serve in certain areas of Londonderry. Testimony was given by Mr. Elwell (T. 89) that service might not be provided to certain portions of this franchise for 20 years. The extremities of this area are, in some cases, considerable distance from existing mains which could mean a very large expense for someone desiring water service.

RSA 374:27 has been interpreted by this Commission (*Laconia Water Works* — portion in Belmont) as inferring that a franchise not exercised, or area not served, within two years renders such franchise void.

Within three months, the Town of Londonderry and the Manchester Water Works are to make a joint report as to where Manchester Water Works will serve in Londonderry no matter what. Other utilities are interested in serving Londonderry, and we must plan for proper service to these citizens.

XI. BEDFORD WATER WORKS

The Commission has notified the Attorney General that Bedford Water Works is not providing adequate service to its customers, nor is it complying with Commission orders. The Commission cannot sit by and allow these citizens to suddenly be without water. Manchester Water Works is the closest utility, and they will be required to file a report for our study as to the costs of interconnection with this system no later than thirty days from the date of this order.

The Commission is considering ordering the Manchester Water Works to extend its mains to serve this franchise area. We find support for this in *Blair v Manchester Water Works* as long as no costs of this project are imposed on Manchester's primary customers, within the City limits, and as long as their primary duty to these customers is not affected. Further, as noted on pages 507-508 of that opinion, the Commission, is only precluded from: (1) compelling extension service over the entire area of an adjoining town; and (2) injuring in any way Manchester's primary duty to serve within Manchester.

XII. SECOND STEP CONDITIONS

The allowance of a second step increase is purely discretionary. The rates in this decision are reasonable now and for some time into the future. However, to promote smoother planning, minimize the jumps in rates, and to establish a sound regional water policy, the Commission will allow a second step increase if the following conditions are met by Manchester Water Works within the next three months: (a) the filing of the report of connection costs as to the Bedford Water System; (b) a report as to which areas in Londonderry they are prepared

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to serve; (c) an increase in revenue in the City larger in terms of percentage by at least 3% than that allowed in this decision; and (d) a commitment by the City of Manchester to place into effect inside the City the same percentage increase as the second step allowed as of January 1, 1983. 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 tariff pages filed by Manchester Water Works for \$110,000 are hereby rejected and it is;

FURTHER ORDERED, that Manchester Water Works file revised tariff pages to reflect a rate increase of \$67,659 as of June 1, 1982 and it is

FURTHER ORDERED, that since temporary rates were authorized in this docket, the Water Works is to file documents laying out the development of the revenue shortfall due to the time lapse of from the effective date of that temporary rate to the date of this order, which is to be charged on a flat rate per cubic foot over a six month period, and it is

FURTHER ORDERED, the Manchester Water Works file a report as to the costs that would be incurred in connecting their present system with that of the Bedford Water Works within one month of the date of this order and it is

FURTHER ORDERED, that the Water Works together with the town of Londonderry file a report within three months of the date of this order as to the portion of their existing franchise

area in Londonderry that they commit to serve within the next two years and it is

FURTHER ORDERED, that the rate design implemented by the Commission in its report is to be followed by the Manchester Water Works and it is

FURTHER ORDERED, that a portion of this increase is to be levied upon Manchester Water Works' Grasmere customers, and it is

FURTHER ORDERED, that the second step increase will be allowed if the conditions are met as set forth in the Report and after an examination by staff of any documents filed as of January 1, 1983.

By Order of the. Public Utilities Commission of New Hampshire this eleventh day of June, 1982.

FOOTNOTES

¹1.0 -[1,881,500 di (37,4220, x 10.83%)] = 0.537

²Per Mr. Blair and Mr. Moniz of the Water Works, this amount is a gross figure, but the current cost to the Water Works to determine the net amount by subtracting retirements and replacements, would greatly offset the amount of the retirements and replacements which are miniscule as compared to the \$1,880.500. So the net figure was not requested.

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NH.PUC*06/11/82*[79303]*67 NH PUC 399*New England Telephone and Telegraph Company

[Go to End of 79303]

Re New England Telephone and Telegraph Company

DE 82-114, Order No. 15,703

67 NH PUC 399

New Hampshire Public Utilities Commission

June 11, 1982

ORDER approving the relocation of telephone lines due to bridge construction.

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APPEARANCES: Wayne Snow, engineering manager, for the petitioner.

BY THE COMMISSION:

REPORT

On April 12, 1982, the New England Telephone Company filed with this Commission a petition seeking authority to place and maintain aerial plant across State-owned public waters in Tilton and Belmont, New Hampshire across the Winnepesaukee River.

The Commission issued an Order of Notice on April 13, 1982 directing all interested parties to appear at a public hearing at 1:00 p.m. on May 19, 1982 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 the publication of said notice, copies of the hearing notice were directed to: John Bridges, Director, Department of Safety; George Gilman, Commissioner, DRED; John R. Sweeney, Director, Aeronautics Commission; and the Office of the Attorney General. An affidavit of public notice was filed with this Commission on May 3, 1982.

Wayne Snow, Engineering Manager, explained that the petition results from a need to relocate a line due to the bridge construction of the Lochmere Bridge over the Winnepesaukee at Depot Street. The Company proposes to remove a 100 pair cable at the site of the existing bridge, and install a new 25 pair cable approximately 30 ft. downstream from the existing bridge, and 65 feet downstream from the proposed new Lochmere Bridge. The crossing will meet or exceed all height restrictions of the National Electrical 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 State-owned waters in Tilton and Belmont New Hampshire, said crossing from telephone pole #116A/17 on State of New Hampshire property in Tilton, New Hampshire to telephone pole #116A/18 on State of New Hampshire property in Belmont, New Hampshire 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 New England Telephone & Telegraph Company to place and maintain aerial plant crossing State-owned waters in Tilton and Belmont, New Hampshire, said crossing from Telephone Pole #116A/17 on State of New Hampshire property in Tilton, New Hampshire to Telephone Pole #116A/18 on State of New Hampshire property in Belmont, New Hampshire.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of June, 1982

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NH.PUC*06/15/82*[79304]*67 NH PUC 401*Woodsville Municipal Electric Department

[Go to End of 79304]

Re Woodsville Municipal Electric Department

DR 81-290, Third Supplemental Order No. 15,710

67 NH PUC 401

New Hampshire Public Utilities Commission

June 15, 1982

REQUEST by electric company to initiate surcharges due to purchased power revenue deficiency; granted.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Woodsville Water and Light Department filed on October 1, 1981 for an increase in rates from its supplier, Central Vermont Public Service Corp., approved by the FERC effective October 5, 1981, which this Commission approved on April 1, 1982 per Supplemental Order No. 15,575 (67 NH PUC 272), and

WHEREAS, the Woodsville Water and Light Department by letters dated April 15, 1982 received at the Commission on April 19, 1982, and further correspondence pointed out a significant deficiency in purchased power revenues versus costs for the period October, 1981 through March 31, 1982 while the Commission was investigating and deciding the issue; and

WHEREAS, the Woodsville Water and Light Department acted in good faith with this Commission in requesting an increase due to PPCA increases; it is

ORDERED, that Woodsville Water and Light Department shall be entitled to surcharge \$57,682, the PPCA deficiency over the aforementioned period over a twelve-month period commencing with the date of this order.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of June, 1982.

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NH.PUC*06/17/82*[79305]*67 NH PUC 402*Public Service Company of New Hampshire

[Go to End of 79305]

Re Public Service Company of New Hampshire

Intervenor: Office of Consumer Advocate

DF 82-119, Order No. 15,711

67 NH PUC 402

New Hampshire Public Utilities Commission

June 17, 1982

ORDER authorizing utility to issue notes using its coal and fuel oil stocks as security.

APPEARANCES: Frederick J. Coolbroth for Public Service Company of New Hampshire; F. Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:

REPORT

By this unopposed petition filed on September 3, 1981, Public Service Company of New Hampshire (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire, and operating therein as an electric public utility subject to the jurisdiction of this Commission, seeks certain authority from this Commission in connection with a banker's acceptance facility financing. A duly noticed hearing was held in Concord on May 7, 1982, at which the Company presented the testimony of Shelton B. Wicker, Jr., the Company's Manager of Special Financial Projects.

Mr. Wicker stated that the Company proposes to enter into an Acceptance and Stand-By Revolving Credit Facility Agreement (the "Credit Agreement") with the banks (hereinafter named the "Banks") and The First National Bank of Boston and Morgan Guaranty Trust Company of New York, as Agents (the "Agents"), providing for the issuance and reissuance from time to time by the Company and the acceptance by the Banks of drafts due not more than 180 days from the date thereon in aggregate amounts at any one time outstanding not in excess of \$20,000,000 (the Bankers' Acceptances"), such Bankers' Acceptances to be eligible for discount and sale to Federal Reserve Banks.

According to Mr. Wicker, in order for the Bankers' Acceptance to be eligible for discount and sale to Federal Reserve Banks, the Federal Reserve Act (12 U.S.C. § 372) and Regulation A promulgated thereunder by the Federal Reserve System require, inter alia, that the Bankers' Acceptance be secured by interests in goods which are readily marketable staples covered by warehouse receipts.

The Company proposes to enter into a Coal and Fuel Oil Storage Lease with LRH Warehousing, Inc. ("LRH"), a Delaware corporation and a wholly-owned subsidiary of Shearson/American Express, Inc., whereby the Company will lease to LRH sufficient real estate and equipment and other property to enable

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LRH to operate field warehouses at the Company's present coal and fuel oil storage installations which service the Company's Merrimack, Newington and Schiller Generating Stations and a Storage Agreement whereby LRH will store and handle the coal and fuel oil delivered to such sites until transported to the respective stations for use by the Company.

Additionally, the Company proposes to grant to the Agents, for the ratable benefit of the Banks, a security interest in all coal and fuel oil delivered to LRH for storage.

The proposed Acceptance Facility Agreement provides for a backup revolving credit facility which would become effective in place of the acceptance facility upon the occurrence of certain contingencies. Under the revolving credit facility, the Banks would make loans to the Company

in amounts not exceeding their commitments then in effect under the Credit Agreement, such loans to bear interest at a rate of 1 3/8% over the prime rate set from time to time by The First National Bank of Boston during time periods in which the field warehouses remain in effect, and at all other times at a rate of 1.5% over such prime rate. Such loans would be secured by the security interest described above.

The Banks which propose to enter into the Credit Agreement and their respective proposed commitments are as follows:

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

| <i>Name of Bank</i> | <i>Commitment</i> |
|--|-------------------|
| The First National Bank of Boston | \$ 5,000,000 |
| Morgan Guaranty Trust Company of New York | 5,000,000 |
| Citibank, N.A. | 5,000,000 |
| Continental Illinois National Bank & Trust Company of Chicago | 5,000,000 |
| | <hr/> |
| Total | \$20,000,000 |

Mr. Wicker described the various fees, charges and commissions to be paid by the Company in connection with this financing.

The Company submitted an exhibit comparing the effective interest rates to be paid under the Credit Agreement for bankers' acceptances (the acceptance rate plus 1.25%) with the rate charged the Company under its existing Revolving Credit Agreement (108% of prime). The exhibit showed that the bankers' acceptance rate has been consistently lower.

Documentation with respect to this financing was submitted. Additional exhibits were submitted showing the balance sheet and capital structure, actual and proformed to reflect the proposed issuance of \$20,000,000 Bankers' Acceptances and the proposed sale of \$60,000,000 of General and Refunding Mortgage Bonds, disposition of proceeds and estimated expenses. While not objecting to the financing, Staff raised certain concerns that they now feel have been addressed by the additional data filed by PSNH.

The proceeds received by the Company from the issuance of the Bankers' Acceptances and the notes will be used by the Company to finance, at cost, the acquisition and storage of coal and fuel oil prior to its reasonable immediate use in the Company's electric generating stations by (a) providing funds for payments due to shippers and suppliers, (b) reimbursing the Company's treasury for such payments made by it, and (c) providing the Company's treasury with funds to make such payments prior to the actual payment thereof by the Company.

Neither the Company nor the Consumer Advocate disputed the Commission's use of the same conditions as to

use of these proceeds as the Commission imposed and found reasonable in DF 82-63 (67 NH PUC 223). Consequently, it is understood by all parties that these conditions will again be imposed on all proceeds arriving from an approval in this docket. These conditions are agreed as

being in place as of March 24, 1982.

The Commission finds that if it were to absolutely prohibit the use of proceeds from this financing to meet existing obligations for progress payments and nuclear fuel payments under the contracts listed by the Company, the Company might be exposed to claims for damages and potential increases in costs that would not be consistent with the object of controlling the costs of the Seabrook project. On the understanding that the Company will use its best efforts to seek deferrals of such payments on reasonable terms or avoid the costs altogether, the Company is authorized to meet obligations for progress payments and nuclear fuel payments associated with Seabrook II that existed prior to March 24, 1982.

The Company can use the proceeds of this issuance to meet any short-term debt related to Seabrook Unit II as of March 24, 1982 and for any contractual obligations for materials or nuclear fuel related to Seabrook II (even if the aforementioned will be delivered in the future) that existed on or before March 24, 1982, or short-term debt incurred to pay such obligations. As to Unit II, the Company cannot use the proceeds for any short-term debt, contracts, nuclear fuel, materials, labor or any other expenditure committed to after March 24, 1982. The proceeds of this financing can be used for work occurring before or after March 24, 1982 relating to the containment liner for Seabrook Unit II.

The Company cannot use these proceeds for any additional commitments of materials, labor or services related to Seabrook Unit II not agreed to by written contract as of the date of this Order unless allowed by the previous paragraph. If there is a question it should be sent to the Commission for an advisory opinion.

Based on all of the evidence and subject to the foregoing restrictions with respect to use of proceeds, the Commission finds that the proceeds from this financing will be used to finance, at cost, the acquisition and storage of coal and fuel oil prior to its reasonable immediate use in the Company's electric generating stations and that the issuance and reissuance by the Company from time to time of its secured drafts and notes in aggregate amounts outstanding at any one time not in excess of \$20,000,000; the lease by the Company to LRH Warehousing, Inc. of the; field warehouse sites; and the granting by the Company of a security interest in coal and fuel oil, together with the proceeds (not including accounts receivable from the sale of electric energy) and rights related thereto, all as set forth in the documentation submitted to the Commission, will be consistent with the public good. Our Order will issue accordingly.

ORDER

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

ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue and reissue from time to time its secured drafts due not more than 180 days from the date thereof in aggregate amounts outstanding at any one time not in excess of \$20,000,000 as described in the foregoing

Report, such amounts to be considered apart from and in addition to the aggregate amount of short-term borrowings authorized by this Commission to be incurred by the Company in Order

No. 14,854 dated April 21, 1981, in Docket No. DF 81-76 (66 NH PUC 151); and it is

FURTHER ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue its secured notes in aggregate amounts not exceeding \$20,000,000 as described in the foregoing Report, such notes, if due less than one year from the date thereof, to be considered apart from and in addition to the amount of short-term borrowings authorized by this Commission to be incurred by the Company in said Order No. 14,854; and it is

FURTHER ORDERED, that this Commission hereby assents to the lease by the Company to LPH Warehousing, Inc. of the coal and fuel oil storage facilities appurtenant to the Company's Merrimack, Newington and Schiller generating stations; and it is

FURTHER ORDERED, that this Commission hereby approves the granting by the Company to The First National Bank of Boston and Morgan Guaranty Trust Company of New York, as Agents, for the ratable benefit of the Banks, of a security interest in the coal and fuel oil delivered to LRH Warehousing, Inc. for storage, together with the proceeds (not including accounts receivable from the sale of electric energy) and rights relating thereto; and it is

FURTHER ORDERED, that the terms of the foregoing transactions shall be substantially as set forth in the latest draft documents submitted in this proceeding; and it is

FURTHER ORDERED, that the proceeds from this financing can be used for the purpose of discharging and repaying a portion of the outstanding short-term notes of said Company and to finance the purchase and construction of Seabrook Unit I and for the other purposes stated in the foregoing Report; and it is

FURTHER ORDERED, that the proceeds from this financing cannot be used for any new commitments, expenses or costs related to Seabrook II not already contracted for as of March 24, 1982; and it is

FURTHER ORDERED, that on January 1st and July 1st in each year, Public Service Company of New Hampshire 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 securities being authorized until expenditures of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1982.

Commissioner Paul R. McQuade dissents from the Commission's Report and Order, and the conditions imposed therein, that the proceeds be prohibited from use for the construction of Seabrook Unit II.

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NH.PUC*06/18/82*[79306]*67 NH PUC 406*New Hampshire Department of Public Works and Highways

[Go to End of 79306]

Re New Hampshire Department of Public Works and Highways

Intervenors: Boston and Maine Corporation and Goffstown Department of Public Works

DX 82-82, Order No. 15,712

67 NH PUC 406

New Hampshire Public Utilities Commission

June 18, 1982

PETITION by the highways department for permission to remove abandoned rail track from a crossing; granted.

CROSSINGS, § 61 — Reconstruction and relocation — Alteration — Abandoned rail track.

[N.H.] Where abandoned rail track was in poor condition and causing safety hazards at a highway crossing, the commission authorized the highways department to remove that section of track, instead of just paving over it, in order to avoid future maintenance and safety problems.

APPEARANCES: John Hickey for the Department of Public Works and Highways; John Adams for the Boston & Maine Corporation; Joseph Perry for the Goffstown Department of Public Works; Clayton D. Sargent, pro se.

BY THE COMMISSION:

REPORT

By petition filed February 5, 1982, the Department of Public Works and Highways seek authority to remove the rails and ties at two grade crossings involving N.H. Highway Route 114 and the Goffstown Branch tracks of the Boston & Maine Corporation. Hearing thereon was held at Concord on May 4, 1982.

The Goffstown Branch is a single track line approximately 8.11 miles in length which leads from Manchester to the Piscataquog River near Main Street in Goffstown. On July 14, 1981, Senior District Judge Murray of the First District Federal Court issued Order No. 580 authorizing for federal purposes the abandonment of the Branch. An embargo had been placed on the line in August of 1980 because it had fallen below the Federal Railroad Administration Standards for Class I track maintenance. Only two receivers of freight are located near the end of the line in Goffstown.

The easterly crossing bears identification No. AAR POT 844-244R, or Georges Crossing at Mile Post M 5.25 and the westerly crossing No. AAR POT 844-249A or Dan Littles Crossing at Mile Post M 6.5.

Both crossings are unprotected except for the statutory signs and the whistling of trains. At both locations this highway crosses the railroad tracks at an acute angle. This results in a serious hazard to the riders of bicycles and motorcycles as the wheels catch in the

flangeways at the crossings and result in accidents.

It is the position of the Department of Public Works and Highways that, since the line has been authorized to be abandoned the rails and ties should be removed forthwith to eliminate this hazard. It objects to paving over the crossing because of the continual requirement for maintenance due to the condition of the ties and the resultant movement of the rails which continually cause problems. It is requested that the work be coordinated with the Division Engineer at Hooksett to be completed within 30 days of the date of the order. The representative of the Town of Goffstown is also in support of the removal of rails and ties.

The Railroad Corporation is opposed to the removal of the track at these two locations as a special project because it is planned to contract eventually to remove all of the track fixtures on the line which will also provide for the regrading of all public crossings whether state or municipally maintained.

An individual who is interested in having railroad lines remain intact is opposed to removing the rails, but favors paving over the crossings until any future possibility of reactivating the line is eliminated.

It is the intent of the New Hampshire Department of Public Works and Highways to remove the rails for a distance of 50 feet each side of the center-line of the crossing.

The width of this easterly crossing along the railroad track is 84 feet and the westerly crossing is 80 feet in width. No change in profile or alignment is proposed so that should the rail line be reactivated in the future it would only be necessary to install the ballast, ties and rails without any further involvements.

It is clear from the testimony in this proceeding that there is no rail traffic on this branch. Federal permission has been obtained to abandon the track.

Under these circumstances it appears that to maintain two crossings which provide a hazard to certain types of traffic on a rather heavily travelled state highway is unsafe and unnecessary. While the Railroad Corporation intends in the future to contract for the removal of all rails and ties to a successful bidder it objects to any order that will require the removal of rails and ties at these two crossings because the labor force will have to be taken from Railroad employees. The State Highway Department is willing to place the required fill and pavement to provide a good highway surface. Estimates indicate that the railroad work can be performed in two days.

Upon consideration of all the facts the Commission is of the opinion that public safety requires the removal of rails and ties at the two crossings involved herein and that the work must be coordinated between the railroad and the State to properly provide for the flow of highway traffic.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Boston & Maine Corporation be, and hereby is, directed to remove the rails and ties at the two grade crossings at the intersection of the Goffstown Branch and N.H. Highway 114, at mile posts M 5.25 and M 6.5 in the Town of Goffstown; and it is

FURTHER ORDERED, that the said Boston & Maine Corporation shall notify and coordinate the work with the said Department of Public Works and Highways

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within thirty (30) days of the date of this Order; and it is

FURTHER ORDERED, that upon the removal of rails as authorized herein the crossbuck and advance warning signs at the said crossings shall be removed by the agency responsible for their maintenance.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1982.

NH.PUC*06/18/82*[79307]*67 NH PUC 408*Belmont Sewer Commission

[Go to End of 79307]

Re Belmont Sewer Commission

Intervenor: Town of Belmont

DE 82-131, Order No. 15,713

67 NH PUC 408

New Hampshire Public Utilities Commission

June 18, 1982

ORDER granting an easement to a local sewer commission for the installation of plant crossing state-owned railroad tracks.

APPEARANCES: David Caron, town administrator, for the Town of Belmont, and Richard Fournier, chairman of the Belmont Sewer Commission.

BY THE COMMISSION:

REPORT

On April 27, 1982, the Town of Belmont, New Hampshire, through its Sewer Commission, petitioned this Commission for an easement to install by the open cutting method 30 feet of 30" sleeve at Station 1241 + 42 +/- (Railroad Stationing) in the Town of Belmont, New Hampshire. It is noted that earlier approval had been sought and granted under DE 81-85 for several crossings (See Order No. 14,876 April 30, 1981 [66 NH PUC 177].) The third of the six crossings granted by said Order was to have been at the Fox Hill Road Crossing in Belmont. The instant petition indicates that the crossing now being sought replaces the one originally planned for Fox Hill Road.

On April 28, 1982, the Commission issued an Order of Notice setting the matter for hearing at 10:00 a.m. on June 9, 1982. Notices were sent to the following: Richard Fournier, Chairman,

Belmont Sewer Commission (for publication); John Bridges, Director, Safety Services; Selectmen's Office, Town of Belmont; George Gilman, Commissioner, Department of Resources and Economic Development; N.H. Transportation Authority; and the Office of Attorney General.

The public hearing was convened as noticed, with Hearing Examiner, Michael W. Holmes presiding. At the outset,

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concern was expressed that notice being given to the defunct New Hampshire Transportation Authority may not have reached the proper authority now handling State railroad affairs. Telephone calls to the Department of Public Works and Highways, did, in fact, reveal that the notice had not been received by the railroad administrator, but it was confirmed that no objections to the crossing existed and that Highway had been dealing with the Water Supply and Pollution Control Commission on the same matter.

With notice problems resolved, the hearing proceeded. Mr. Fournier discussed the petition and how this would replace the Fox Hill Crossing earlier approved.

No intervenors were present, nor were there any written objections. Accordingly, the Commission finds the granting of the easement for the purpose of crossing State-owned railroad tracks in Belmont, New Hampshire as described herein 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 authority be granted to the Belmont Sewer Commission to cross under public lands in the Town of Belmont, New Hampshire as outlined in the attached Report and petitioner's exhibits; and it is

FURTHER ORDERED, that authority granted by so much of Order No. 14,876 referring to a crossing at Fox Hill Road be, and hereby is, withdrawn.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1982.

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NH.PUC*06/22/82*[79308]*67 NH PUC 408*New England Electric Transmission Corporation

[Go to End of 79308]

Re New England Electric Transmission Corporation

Intervenors: Powerline Education Fund et al.

DSF 81-349. Second Supplemental Order No. 15,715 48 PUR4th 477

67 NH PUC 408

New Hampshire Public Utilities Commission

June 22, 1982

APPLICATION of electric transmission corporation for a certificate of site and facility to construct, operate, and maintain an electric transmission line; corporation held to have met its burden of proof on the "need for power" issue.

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1. CERTIFICATES, § 76 — Factors affecting grant or refusal — Transmission lines — Burden of proof.

[N.H.] To meet a "good cause" requirement for a certificate of site and facility, an electric transmission corporation seeking to construct new transmission lines was required to establish each element of the "need for power" issue by a fair preponderance of the evidence, not by clear and convincing evidence; therefore, the company only had to prove that each proposition it introduced was more likely to occur than not. p. 413.

2. CERTIFICATES, § 76 — Factors affecting grant or refusal — Certificate for transmission line — Application of burden of proof.

[N.H.] In determining how to apply an electric transmission company's burden of proof requiring it to meet a preponderance of the evidence standard to build a transmission line, the commission held that the company's testimony must be viewed in a light favorable to the company, and unless the testimony was incapable of belief or internally contradictory, the commission would accept the testimony as reasonable predictions and estimations of what might occur in the future. p. 413.

3. CERTIFICATES, § 76 — Factors affecting grant or refusal — Certificate of site and facility — Defining "electric power" and "demand."

[N.H.] In determining whether to grant a certificate of site and facility, the commission held that the fact that a proposed facility would deliver energy and related cost savings and not capacity to a given geographical area was immaterial to the issue of whether the facility met the demand for electric power since the phrase "meet the present and future demand for electric power" was interpreted by defining the term "electric power" to include energy (the ability to do work over a period of time) and capacity (the capability of providing energy at any given instant in time); furthermore, "demand" was interpreted in its economic sense (the amount of electric energy or capacity that buyers will buy at specified prices during given periods of time) and its engineering and planning sense (the amount of electric energy or capacity that the system will be called upon to deliver or have available in a given period of time). p. 414.

4. CERTIFICATES, § 76 — Factors affecting grant or refusal — Certificate of site and facility — Burden of proof requirement satisfied.

[N.H.] In an intermediate step of the proceedings for a certificate of site and facility, an electric transmission corporation seeking to build an 83-mile transmission line was held to have met its burden of proof in the need for power issue by showing the likelihood of surplus energy

from another line, the projected load growth for the geographical area, and the savings generated by the transmission line. p. 417.

BY THE COMMISSION:

OPINION

This matter involves the application of the New England Electric Transmission Corporation ("NEET") for a certificate of Site and Facility to the Bulk Power Supply Site Evaluation Committee (SEC) and the Public Utilities Commission of the State of New Hampshire. The question presented to this Commission at this stage in the proceedings is whether NEET has met its burden of going forward with sufficient evidence to establish that a transmission line with approximate voltage specifications of \pm 300 KV and a capacity of 690 MW extending 83 miles from, the Quebec-New Hampshire border to Comerford Station, Grafton County, New Hampshire or a shorter transmission line of 6.7 miles from the Vermont border at Moore Station to Comerford Station, New Hampshire, is required to meet the present and future demand for electric power within the meaning of RSA 162-F:8(b).

The Commission, at this stage of the proceedings, finds that NEET has met its burden of going forward on this issue. The Commission emphasizes that it is not

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deciding at this stage whether one party's evidence outweighs another party's evidence on the issues relating to the "need for power." That process of weighing and balancing will occur when the entire record in this proceeding is closed. Indeed the intervenors, the Powerline Education Fund (PEF) and others, and the Attorney General as counsel to the public will have full opportunity and will be expected to respond to the applicant's evidence at subsequent hearings.

I. PROCEDURAL HISTORY

On November 13, 1981, NEET filed with this Commission an application for a certificate of Site and Facility to construct, operate and maintain an electric transmission line in Coos and Grafton Counties, New Hampshire. The application was filed pursuant to RSA 162-F. In brief, the application sought approval and a certificate for one of two alternate lines. The first line would extend 83 miles from Tabor Notch in Pittsburg, New Hampshire to a converter site south of Comerford Station. The second line would enter New Hampshire from Vermont at Moore station and run 6.7 miles to the converter site at Comerford Station. (Application pp. 3-5, 8-9). The application stipulated a design voltage of \pm 450 KV, with a carrying capacity of 2000 MW operating on direct current for either alternative. (Application pp. 2-3).

On November 25, 1981, the SEC and this Commission pursuant to RSA 162:7 met jointly to consider the application and scheduled an informational hearing on the application in Littleton and Lancaster, New Hampshire on December 22, 1981. Informational hearings were subsequently held in Littleton and Lancaster on December 22, 1981 and in Lancaster and Littleton on January 14 and 15, 1982.

Adversarial hearings commenced on February 18, 1982 in Littleton. Subsequent hearings

were held. in Colebrook, March 4, 1982; in Concord on March 18 and 19, 1982; in Concord, April 15 and 16, 1982; and in Concord, April 22 and 23, 1982. At the April 23, 1982 session counsel for NEET stated that it had completed its case in chief on the issue of the "need for power." (T. 14-167, T. 15-133).

During the course of the hearings two motions of particular relevance to this matter, were filed with the SEC and this Commission. On December 29, 1981 the PEF, a group with full party status in this proceeding moved to recuse Commissioner McQuade of the Public Utilities Commission. On December 31, 1981, the Attorney General, as statutorily appointed representative of the public, also moved to recuse Commissioner McQuade and on January 18, 1982 moved to have a special commissioner appointed under RSA 363:20. Commissioner McQuade subsequently excused himself from these proceedings and the Governor and Council nominated and approved Richard J. Daschbach to sit as special commissioner in place of Commissioner McQuade.

PEF also moved on February 16, 1982 to consider Phase II of the proposed transmission line with Phase I. NEET, in its application, had stated that its proposed transmission line (each alternate) was designed at \pm 450 KV and 2000 MW of capacity in the event that sufficient power would be available from Quebec in the early 1990's to warrant additional transmission line construction from Comerford Station through New Hampshire to the New Hampshire-Massachusetts border. NEET referred to the

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construction of each alternate proposed in its application as Phase I and referred to the additional transmission line south from Comerford Station to the Massachusetts border as Phase II. NEET stated that if and when Phase II became viable it would make application to the SEC and this Commission for a certificate of site and facility under RSA 162-F for Phase II. NEET stated, however, that the design of the proposed Phase I alternates at the higher voltage of \pm 450 KV at 2000 MW was in contemplation of the construction of Phase II, if and when Phase II were warranted. NEET witnesses also testified that if Phase II were never built, the Phase I alternates could be built at design ratings of approximately \pm 300 KV and 690 MW. NEET objected to the PEF motion to join Phase II with Phase I and the SEC asked for briefs and argument on the issues raised. On April 23, 1982 at the close of the applicant's case on the "need for power" issue, the SEC and this Commission acted on the PEF motion to join Phase I and Phase II. The PEF motion was granted in part and denied in part, (T. 15-113-115), by a ruling requiring NEET to submit an application on Phase II if it proceeded with Phase I at \pm 450 KV and 200 MW. The SEC and the Commission also ruled that if NEET wished to go forward with the proposed alternates at \pm 300 KV there was no integration and it need not file an application on Phase II. The SEC also referred to this Commission the question of whether NEET had met its burden of proof¹⁽⁴¹⁾ as to the "need for power", invited the parties to brief the issue and requested this Commission to act expeditiously in deciding the issue. (T. 15-127-128). NEET excepted to the ruling of the SEC and the Commission (T. 15-133-134). Since the ruling on April 23, 1982, NEET has not filed an application on Phase II nor amended its present application to cover Phase II. Accordingly, the issue before this Commission is whether NEET has met its burden of proof on the "need for power" issue with respect to the two alternates at a proposed

design of approximately \pm 300 KV and 690 MW.

II. ISSUES PRESENTED

On April 27, 1982 this Commission established a briefing schedule for the parties and directed their attention to specific questions to be addressed in the briefs. These specific questions are as follows:

"1. What should be the burden NEET should meet on need for power as to this docket?"

"2. Is the burden different for the proposal of 6.4 miles (sic) vis-a-vis the proposal for 83 miles?"

"3. Should the Commission make its determination as to need for power using criteria for: (a) New Hampshire only; (b) New Hampshire and New England; or (c) New England only?"

"4. Does the burden of proof change pursuant to an energy banking concept vis-a-vis an energy surplus scenario?"

The Commission has received initial and reply briefs from NEET, PEF and the Attorney General as counsel for the public.

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A. What Is The Standard to be Applied to NEET's Burden of Proof on the Need for Power Issue and the Proposed Alternate Routes?

[1,2] Before determining whether NEET has met its burden of proof on the need for power issue, this Commission must first determine the standard to be applied. The Commission finds that NEET must establish each element of the "need for power" issue by a fair preponderance of the evidence. By a fair preponderance of the evidence, we mean that the evidence introduced must establish that the proposition to be proved is more likely to occur than not. In determining whether a fair preponderance of the evidence exists with respect to each element, the Commission finds that the evidence must be viewed in a light favorable to the party with the burden.

This Commission must note that this is an administrative proceeding. While it bears some resemblance to civil judicial proceedings there are important differences. First, strict rules of evidence are not applied, especially hearsay rules. Second, most testimony and documentary evidence will be expert testimony or exhibits based on the expertise of the witness sponsoring the exhibit. Third, the problems associated with drawing inferences from eyewitness accounts of past behavior or events are virtually nonexistent in these types of proceedings.

This Commission and the SEC is almost always confronted with expert testimony from qualified witnesses. Uncertainty associated with such evidence arises because the witnesses and exhibits attempt to predict with reasonable certainty events which may or may not occur in the future or the effects of environmental phenomena over long periods of time where data are uncertain, conflicting or non-existent. Recognizing these characteristics of these proceedings, this Commission must test NEET's case in chief on the "need for power" issue.

The Supreme Court of New Hampshire has held that the standard for measuring the burden of proof in rate making procedures before this Commission is the "preponderance of the

evidence" standard. *Legislative Utility Consumers' Council v New Hampshire Pub. Utilities Commission* (1977) 117 NH 972, 974, 23 PUR4th 128, 380 A2d 1083. Professor Davis in his treatise on administrative law states that the standard, absent special public policy considerations compelled by statutory language or constitutional mandate, is the standard of the preponderance of the evidence. 3 Davis, *Administrative Law Treatise* § 16.9 (1980). Given this body of authority we find that the applicable standard in this matter is the preponderance of the evidence.

PEF urges that a different standard be applied to this case. Its argument is based on RSA 162-F:6. That provision requires an applicant for a certificate of site and facility to have complied with RSA 162-F:4 prior to filing the application. RSA 162-F:4 requires utilities to file annually their long-range plans for bulk power facility construction and retirement. RSA 162-F:6 requires that facilities for which certificates are requested be taken from the inventory of facilities described in the utility's long-range plans unless the applicant can show good cause as to why the facility was not included in the long-range plans.

PEF correctly points out that the facilities for which NEET has requested a certificate were not part of NEET's long-range plans and were not part of the

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inventory maintained by NEET or its affiliated companies under RSA 162-F:4. PEF then argues that because NEET must show good cause why the proposed facilities were not included in or selected from the inventory to be maintained pursuant to RSA 162-F:4, NEET must meet its burden of proof on the need for power issue under a standard of "clear and convincing" evidence.

An analysis of the statute persuades us that the "good cause" requirement does not elevate the burden of proof of NEET to a standard of clear and convincing evidence. On the contrary, the "good cause" requirement is a legal requirement that the applicant must meet in addition to the other legal requirements of the statute. As a separate legal requirement or condition for obtaining a certificate of site and facility, the "good cause" requirement has no bearing on the burden of proof standard. Indeed, upon final disposition of the application in this docket, NEET must establish good cause before it can be awarded a certificate. Whether NEET has or has not shown "good cause" within the meaning of RSA 162-F:6 is not before us at this stage of the proceeding. Accordingly, we do not rule on this issue except insofar as PEF urges that the "good cause" bears on the standard to be applied in assessing the burden of proof.

Based on our determination that the applicant's burden of proof is to establish each element of the need for power by a preponderance of the evidence, we must now describe how that standard is to be applied to the evidence submitted by NEET in its case in chief. As we noted earlier, unlike civil judicial proceedings, we are not confronted by testimony and evidence as to the legal significance and inferences to be drawn from such evidence with respect to past events. On the contrary we have testimony by Mr. Robert O. Bigelow and Mr. Roland H. Lalande, two qualified experts in their fields, as to the probability of events happening in the future and the relationship of the proposed facility to these events. Under the circumstances and for purposes of ruling on the issues at this stage of the proceedings we must view their testimony in a light favorable to the applicant. Unless their testimony and exhibits are incapable of belief by this Commission or internally contradictory, we will, for purposes of ruling *at this stage of the*

proceedings, accept the testimony and exhibits as reasonable predictions and estimations of what may occur in the future. Testimony and exhibits which would be incapable of belief by this Commission would have to be highly implausible based on this Commission's knowledge and expertise in the field of electric power regulation. For example a prediction or projection today by a qualified expert that nuclear fusion technology would be commercially available within six months at costs competitive with conventional sources of generation would be highly implausible to this Commission. Such testimony would not be sufficient to enable a proponent to meet its burden of proof of a preponderance of the evidence on an issue relevant to that testimony.

B. *What is the Proper Interpretation of the Statutory Requirement that the Proposed Facilities "Meet the Present and Future Demand for Electric Power"?*

[3] RSA 162-F:8 requires this Commission to find that the proposed facilities are required to "meet the present and future demand for electric power". In a shorthand fashion the question

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posed by the statute has been characterized as the "need for power" issue.

At the outset, this is the first case to come before the SEC and the Commission under the statutory scheme laid down in RSA 162-F proposing a transmission line, unrelated to any particular generating facility located in New Hampshire. There are two aspects of the proposed transmission facilities (either the longer 83 mile line or the shorter 6.7 mile line) which raise novel issues. First, the line(s) as proposed by NEET have as their main purpose providing energy and concomitant cost savings, *not capacity*, from the Hydro-Quebec system.²⁽⁴²⁾ Second, the lines will provide energy and dollar savings not only to New Hampshire but will also provide a substantial portion of such savings, in fact the largest portion of such savings, to utilities and their customers located outside of New Hampshire.

The two words in the statute which bear careful examination are "demand" and "power". To utility and electrical engineers the two terms have meaning in that engineers must plan and operate electric systems to provide energy over periods of time to perform work and provide the capability to supply energy at any instant in time when the system is called upon to deliver. To economists the term "demand" means the amount of a commodity that buyers will buy at each specified price in a given market over a given period of time. *Dictionary of Economics and Business*, Nemmers, p. 120 (1976). "Electric power" is the commodity which may have value to buyers either in the form of energy to perform work or the capability to deliver energy at a given instant in time. The statute in question does not specifically stipulate which view of the two terms is appropriate and we can surmise, as with most legislation which regulates in technical areas and which creates administrative agencies to perform the regulatory function, that we are to interpret the statute in practical terms in light of the requirements and needs of the industry to be regulated and its consumers. *See* 2A Sutherland, Statutes and Statutory Construction § 49.05, *City of Manchester v Boston & Maine Railroad* (1953) 98 NH 52, 99 PUR NS 181, 94 A2d 552.

We find that the terms in question, "demand" and "electric power", are appropriately viewed in either the engineering sense or the economic sense and that the comprehensive scheme envisioned by RSA 162-F is best served by such an interpretation. Accordingly, we construe the

term "electric power" to include both energy (i.e. the ability to do work over a period of time) and capacity (i.e. the capability of providing energy at any given instant in time). We also construe the term "demand" in its economic sense (i.e., the amount of electric energy or capacity that buyers will buy at specified prices during given periods of time) and in its engineering and electric systems planning sense (i.e. the amount of electric energy or capacity that the system will be called upon to deliver or have available in a given period of time). Under this interpretation of the statute, the fact that the proposed facility will deliver energy and related cost savings and not capacity to New Hampshire and New England is immaterial to the issue whether the facility meets the demand for "electric power."

The other threshold issue to be decided in interpreting the statute is whether the proposed facility must meet the "demand

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for electric power" in New Hampshire only, New Hampshire and New England, or New England only. We reject the view that the "demand for electric power" must be examined in light of the demand for electric power in New England only. As will be discussed more fully below, it is not necessary for us to decide whether the statute requires us to view the "demand for electric power" in the context of New Hampshire alone or New Hampshire and New England, because of the close interrelationships of electric systems located in all New England states.

In rejecting the view that we must look to New England alone, the obvious point is that the present statute is an expression of the public policy of the State of New Hampshire to regulate the construction and operation of bulk power electric supply facilities located in the state. We and the SEC are creatures of the government of the State of New Hampshire accountable to its citizens. Consequently, we must concern ourselves with the attendant benefits and costs to the citizens of the state we serve. The delicate balancing process established by RSA 162-F:8 clearly implies that the SEC and this Commission must assess the benefits (i.e. the ability of a particular facility to meet present and future demands for electric power) to New Hampshire citizens and costs (i.e. disruption of regional development, adverse impacts on system reliability and economics and environmental impacts caused by a proposed facility) to New Hampshire citizens before a certificate may issue. If we were to examine New England cost and benefits only, conceivably we would be confronted by the situation where all of the costs of a facility would be borne by New Hampshire's citizens and all of the benefits would be achieved by persons outside the state. Absent any clearly expressed and overriding federal policy or statute requiring such a result, we cannot interpret RSA 162-F to require or permit such a result.

We are, however, presented with a unique situation involving the electric utility systems in New Hampshire. This situation prevents us from isolating any review of a bulk electric power facility to be located in the state from its effects on the rest of New England.

The state's largest generating utility, Public Service Company of New Hampshire (PSNH) is a member of the New England Power Pool (NEPOOL). NE-POOL is a voluntary association of the region's electric utilities which operate in concert under an agreement designed to reduce electric costs and improve system reliability for all its members. Under NEPOOL operating procedures all generating units are centrally dispatched so that the least costly units available are

operating; at any given time. NEPOOL members share in the savings generated by this economic dispatch system. Maintenance on, plants within the system is scheduled so that NEPOOL members will have reliable capacity available from the pool when their units are undergoing maintenance. In the event of unscheduled outages of a member's unit, NEPOOL, makes power available to that member so that its customers may be served. In the event of a system-wide emergency, NEPOOL will provide power on essentially a rationed basis so that the burdens of the emergency are shared. NEPOOL also provides reserve margins whereby operating generating units of one member are backed up by the availability of generating units of another member. Bulk power facilities are planned by the NEPOOL

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Planning Committee and financial resources of members are committed to such units for their construction and operation. The proposed facilities are "Pool Planned" units. (Ex. 3, 9-13) (T. 3-23).

As a result of the integration of the electric utility systems in New Hampshire³⁽⁴³⁾ with other electric utility systems in the region, any increase in the reliability of the NEPOOL system as a whole, any reduction of the risks of curtailed power supplies or system emergencies, and any increase in the availability of less costly energy available to pool members during periods of maintenance will inure to the benefit of New Hampshire. For these reasons, we find it unnecessary to decide whether we view the proposed facility in terms of New Hampshire alone or New Hampshire and New England. Because of the nature of New Hampshire's electric supply systems we, perforce, are conferring benefits on New England when we confer benefits on New Hampshire and vice versa.

C. Has the Applicant Met Its Burden of Proof on the Need for Power Issue at this Stage in the Proceedings?

[4] As we have stated, we find that NEET has met its burden of proof *at this stage in the proceeding*. This conclusion is made in the context of the findings of this Commission under subparts A and B, above. NEET's burden at this stage is to establish by a preponderance of the evidence that the proposed facilities are required to meet the present and future demand for electric power. We have interpreted demand to mean that savings will be generated from the proposed facilities to reduce costs of electric power, causing a greater quantity of electric power to be purchased by consumers who are willing to pay the price. By demand we also mean that power will be supplied via the proposed facilities at prices at which purchasers will buy the power and that the proposed facilities will improve the ability of electric systems in New Hampshire and New England to deliver power when it is called for by the consumers of electricity. We have defined "electric power" to mean both energy (the ability to perform work over time) and capacity (the ability to provide energy at any instant at which it is demanded).

The next step is to assess the testimony and exhibits offered by the applicant to determine whether sufficient evidence has been introduced to meet the definitional criteria discussed above. As we also discussed, the evidence at this stage in the proceedings will be assessed in a light favorable to the applicant.

NEET offered two witnesses in support of its case on need for power: Mr. Robert O.

Bigelow, President of NEET and Vice President in charge of Planning and Power Supply for New England Power Company; and Roland H. Lalande, Technical Assistant to the Vice President of Production and Transmission, and Consultant in negotiations with interconnected systems for the Power Control Department for Hydro-Quebec. (T1-25; 14-17, 18) Mr. Lalande and Mr. Bigelow offered testimony and exhibits on the availability of power from Hydro-Quebec and Mr. Bigelow offered testimony on the need for power in New Hampshire and New England (Ex. 3-9, 103).

Before we can determine whether there is sufficient evidence in the record

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to enable NEET to meet its burden on the need for power in New Hampshire and New England, it is first necessary to determine whether there is sufficient evidence in the record to support a finding that there is any power available which will flow over the proposed transmission line. We are, therefore, required to determine whether NEET has met its burden that there is power available from Hydro-Quebec.

All parties concede that the proposed facilities will either directly connect with transmission systems of Hydro-Quebec (the 83 mile line) or indirectly, through Vermont, connect with transmission systems of Hydro-Quebec (the 6.7 mile line). The purpose of these interconnections is to tap into the Hydro-Quebec generating and transmission system so that energy may flow back and forth over the lines between Hydro-Quebec and New England electric systems. (NEET Application, pp. 1-2).

Hydro-Quebec is a large electric system owned by the Government of Quebec, Canada. (T 14-21,22). Hydro-Quebec is presently interconnected with New York, Ontario, Newfoundland-Labrador and New Brunswick, Canada, and exports power to New York, Ontario and New Brunswick. (T 14-23) (Ex. 103, p. 5).

The applicant offered testimony through Mr. Lalande that 95% of the generating capacity of Hydro-Quebec is from hydroelectric plants and that Hydro-Quebec has a storage capacity associated with its hydroelectric generation of approximately 58,000,000 MWh. (Ex. 103, p. 3) Mr. Lalande also testified that Hydro-Quebec had planned a generation expansion program and that, while the generation expansion program was undergoing review (T. 14-46), Hydro-Quebec was not considering cancellation of three hydro-electric projects and a nuclear project (T. 14-77) (Ex. 44, last page). Total estimated generation capacity for these units according to Exhibit 44, the Hydro-Quebec Annual Report for 1980, is 7,291 MW. At another point in the record Mr. Lalande testified that Hydro-Quebec would adhere through 1986 to the capacity expansion program outlined in his Exhibit 104. (T. 14-57).

Mr. Lalande also testified as to the recent revision by Hydro-Quebec of its load forecast over the period of 1980 -1998, (Ex. 103, p. 4) (Ex. 105, English translation). According to this testimony and the exhibits, Hydro-Quebec's load growth forecast had been reduced from 6.1% to 4.7%. Mr. Lalande testified that the revised forecasts would make surplus energy available over the next ten years (Ex. 103, pp. 7-8) (T. 14-37). Mr. Lalande also testified to the possibility of negotiating seasonal capacity contracts and firm capacity contracts with New England systems. (T. 14-23, 24) (Ex. 103, p. 8).

With respect to the interest of Quebec in establishing a relationship with NEET and NEPOOL, Mr. Lalande testified that Hydro-Quebec and NEPOOL had virtually completed negotiation of an "energy banking" contract and an "interconnection" agreement and were in negotiations on a "PASNY type" contract. (T. 14-26). Total estimated costs of the portion of the transmission line and related facilities north of the Quebec-New Hampshire border necessary for the interconnection between the two systems, according to Mr. Lalande, are \$209,460,000 U.S. Dollars as of 1986. (Ex. 103, p. 6). Mr. Lalande testified that Hydro-Quebec intended to proceed with the project and to make the necessary expenditures to keep the project on schedule. (Ex. 103, p. 7).

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On the basis of this evidence, we find that the applicant has met its burden of proof on the issue as to whether there is energy available to New Hampshire and New England from Hydro-Quebec and a willingness on the part of Hydro-Quebec to enter into agreements with NEPOOL.

We must now examine whether NEET has met its burden on the issue of whether the available power is needed to meet the present and future demand for electric power in New Hampshire. The answer to this latter question turns on several factors. These factors are: the type and quantity of available power, the energy and capacity needs of New Hampshire utilities, the relationships of New Hampshire utilities to the New England Power Pool and the cost savings associated with the available power. NEET's case on this issue turns on the testimony of Mr. Bigelow and related exhibits.

Before reviewing the evidence, it bears remembering that we are addressing the question whether the smaller transmission lines at approximately \pm 300 KV and 690 MW (either 83 or 6.7 miles) are required to meet the need for power. As we noted earlier the larger sized lines are not before us for the reason that NEET has not filed an application for Phase II of the project. Accordingly, the alternate lines proposed must be examined in light of their smaller size and their attendant capability. Under the circumstances and based on the record before us, we cannot say that NEET has introduced sufficient evidence to justify the smaller-sized lines from the standpoint that they will provide needed capacity in the future. Mr. Bigelow testified repeatedly that construction of the larger sized line was warranted in view of probable needed capacity for New England utilities by the mid to late 1990's. Mr. Bigelow's testimony did not address the value of the smaller sized line in terms of future capacity needs for mid to late 1990's and it appears from the testimony that the smaller sized line was not contemplated for this purpose. (T. 15-43). We also note that Mr. Lalande testified that, at most, seasonal capacity would be available through the early 1990's from Quebec and that there was a possibility of firm capacity being available but only if Hydro-Quebec received certain financial commitments to purchase that capacity from New England utilities. (T. 14-66, 67).

We are mindful that it was not until the last day of the hearing on April 23, 1982, that the applicant was informed of the decision to require an application for Phase II or accept a reduced size for the lines. However, we do find that NEET has met its burden on the need for power issue based on the energy exchanges alone.

Mr. Bigelow has testified that there are four primary bases of agreement between NEPOOL and the participants (New England utilities) in the line and Hydro-Quebec. These bases for agreement according to Mr. Bigelow and Mr. Lalande are the "energy banking" arrangement, the sale of energy surpluses, the purchase of entitlements of power by any one of the participants and a "PASNY type" arrangement. (Ex. 3, 45 and 47). Before examining the details of these arrangements as described in the testimony and the record, it is necessary to discuss the participation of particular utilities, especially PSNH, in the arrangements.

According to Mr. Bigelow and Mr. Lalande a committee of NEPOOL is engaged in the negotiations with Hydro-Quebec concerning the interconnection and proposed exchanges of power. NEPOOL

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is negotiating on behalf of its members. NEET has been selected by NEPOOL to construct the facilities (either the longer or shorter line and the converter station) and will be reimbursed by the participating utilities for the costs, operation and maintenance of the line. Depending on the nature of the arrangement and based on certain, prescribed formulae set forth in the draft agreements, the participant will either share in cost savings resulting from operation of the line or purchase entitlements of power at costs which will be competitive with costs an entitlement purchaser would incur but for the availability of the line.

According to the draft of the "Energy Banking Agreement" (Ex. 47) and the testimony of Mr. Bigelow, daily exchanges of energy between NEPOOL and Hydro-Quebec will occur over the transmission facility. During periods of off-peak loads in New England, New England utilities will operate their relatively efficient, low operating cost generating plants (coal-fired and nuclear stations) and export the energy generated to Hydro-Quebec. Hydro-Quebec will use this energy to serve its domestic load. The availability of this energy through the transmission facility will enable the Hydro-Quebec system to store water behind its dams during this off-peak period. The water stored presumably would have been converted to energy to serve Hydro-Quebec's load during the off-peak period but for the availability of energy via the transmission facility. The water stored behind the dams will be converted to energy during the peak periods for both systems and an amount of energy equivalent to the amount of energy shipped north by the New England utilities will be shipped south via the transmission facility. The energy shipped south will displace more costly energy which would have been generated by more costly and less efficient generating units which New England utilities would have to operate during the peak hours. From these transactions savings would be generated which would reflect the difference between the incremental cost of producing energy to supply Hydro-Quebec during the off-peak hours and the decremental costs to New England utilities of energy displaced during peak hours when energy is transmitted south from Hydro-Quebec. (See Supplement I, Ex. 47). For the first six years of the agreement, the New England participants would receive 60% of the savings generated and Hydro-Quebec would receive 40% of the savings. After six years the savings would be split 50%-50%. (Ex. 47, Article IX,9.2).

The energy surplus and entitlement arrangements were explained by Mr. Bigelow's testimony and are found in the "Interconnection Agreement" (Ex. 45). According to this evidence, each

participant in the facility has the right to negotiate an entitlement for power from Hydro-Quebec up to the amount of each participant's pro-rata share. As explained by Mr. Bigelow, the pro rata share for each participant is determined by calculating the percentage of each participant's 1980 kilowatt hour load to the total 1980 kilowatt hour load of the New England utilities. An entitlement as described by Mr. Bigelow was any arrangement between a participant and Hydro-Quebec which does not involve energy banking, purchase of energy surpluses, energy or spinning or ready reserve transactions.

According to Mr. Bigelow entitlement transactions take precedence over other transactions utilizing the transmission

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facility. Whatever capacity remains in the facility after taking into account the entitlement transactions of the participants is utilized for energy banking and other energy exchanges.⁴⁽⁴⁴⁾

Under the "Interconnection Agreement" and the testimony, if energy surpluses are made available from hydroelectric sources in the Hydro-Quebec system, the cost of that energy will be equal to 80% of the incremental costs associated with generating an equivalent amount of energy by New England systems (Ex. 45, Supplement III,2.). The Interconnection Agreement also provides for exchanges of energy derived from nonrenewable sources, emergency power and supplemental energy made necessary by water or fuel availability, governmental actions or widespread disasters. (Ex. 45, Supplements IV and V). As testified to by Mr. Bigelow, the sales of energy surpluses appear to be the key part of the Interconnection Agreement and will generate savings to participants over the next ten years. According to Mr. Bigelow, the savings accruing to NEPOOL as a result of the availability of energy at 80% of New England's costs will go into the "Quebec Savings Fund" and be distributed according to the participant's pro-rata share with one important exception, to be noted below.

The fourth arrangement discussed by Messrs. Bigelow and Lalande is the "PASNY type" contract with Hydro-Quebec. It should be noted that the record does not contain even a draft copy of this contract. As Messrs. Bigelow and Lalande described this contract it is similar to a contract negotiated between the Power Authority of the State of New York (PASNY) and Hydro-Quebec for the sale of energy over an eleven year period from 1986 to 1997. (T. 14-84). Under this proposed contract 33 million MW hours would be delivered from Hydro-Quebec to NEPOOL and its member utilities. Hydro-Quebec would anticipate delivering this energy at the rate of 3 million MW hours per year. (T. 14-84). According to Mr. Lalande the energy to be delivered under the PASNY contract will be offered to NEPOOL and its members first and any surpluses over and above the 3 million MW hours per year would be delivered under the interconnection agreement. (T. 14- 85, 86). Mr. Bigelow testified that the cost of the energy to be delivered under the PASNY type contract would be at 80% of the average fossil fuel cost of generation in the New England system and would add an additional 20% savings over and above energy surpluses delivered under the interconnection agreement. (T. 14-119, 120) (Ex. 113) With respect to whether and when the PASNY type contract would be agreed upon between NEPOOL and Hydro-Quebec, Mr. Bigelow testified that he hoped to complete

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negotiations within the next two months. (T. 15-93).

To summarize the proposed arrangements according to the testimony of Messrs. Bigelow and Lalande and the exhibits, essentially there is to be an exchange of energy between the two systems based on energy banking which is not dependent on energy surpluses; the delivery of energy surpluses at 80% of the incremental oil-fired energy costs of the New England systems; entitlements to energy and perhaps seasonal capacity to be negotiated individually by participants in the facility and 33 million MW hours of energy to be delivered under a PASNY type contract for an eleven year period at a price to NEPOOL and its members of 80% of the average cost of NEPOOL fossil fuel generation. Each participant will pay its pro-rata share of support costs for the facility and, with the exception of entitlement purchases, will share in the savings generated by these energy exchanges according to each participant's pro rata share.

Given these arrangements, we find that NEET has introduced sufficient evidence to meet its burden of proof that the arrangements described above will take effect. We must now examine the question whether NEET has met its burden of establishing that the energy purportedly made available will meet a present and future demand for electric power as we have interpreted the statutory language. We have earlier construed the statutory language to refer to the demand for energy as well as capacity. We construed the term demand in its economic sense, i.e. the quantity of a commodity which buyers will buy at given prices over a period of time. We have also held that we must examine the demand for power in the context of needs of New Hampshire but that because of the integrated nature of NEPOOL of which PSNH is a member we must also consider the needs of other member utilities of NEPOOL as well.

Determining whether the proposed arrangements will meet the demand for power in New Hampshire is probably the most difficult part of this case. This Commission would hope and expects that the record on this issue will be fully and completely developed in future hearings.⁵⁽⁴⁵⁾ However, at this juncture we have only to decide whether there is sufficient evidence in the record to enable NEET to meet its burden of proof.

Mr. Bigelow testified that in addition to the pro-rata share of the Quebec Savings Fund, the utilities in the state in which the major portion of the transmission line was located would receive an additional 5% bonus share (Ex. 3, p. 31). Originally, the 5% bonus share was to be available to the utilities of the host state only if the utility exercised its entitlement purchases under the Interconnection Agreement. Subsequently, and after cross-examination by members of this Commission, the availability of the bonus share was increased. These recent revisions of the arrangement covering the 5% bonus share, according to Mr. Bigelow, awarded the bonus share to the savings generated by energy banking and energy surpluses.⁶⁽⁴⁶⁾ (T. 15-97). Mr. Bigelow also testified that with the 5%

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bonus share went the attendant responsibility to the bonus recipient of picking up an additional 5% of the support payments. During the course of his testimony Mr. Bigelow sponsored a number of exhibits which estimated the savings which would inure to New Hampshire under various scenarios and assumed New Hampshire received the 5% bonus share.

(Ex. 38, 107, 111, 112, 113). The most instructive of these exhibits for purposes of this discussion are Exhibits 107-110 and 113 and, in particular, Exhibit 109.

With respect to Exhibit 109, Mr. Bigelow testified that in the first three years of contemplated operation of the 83 mile line in New Hampshire the following dollar savings would accrue to New Hampshire utilities and to New Hampshire ratepayers, given rate of return-revenue requirement regulation of these companies by this Commission and the Federal Energy Regulatory Commission.

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

Case 1 Case 2 Case 3

| | |
|---|---|
| Assuming Surplus of 4.6 million MWH/year | Assuming Energy Surplus of Banking 2 million Only MWH/year |
|---|---|

\$35.4 million \$12 million (\$1.2 million)

With respect to Exhibit 113, Mr. Bigelow described the scenario for a \pm 450 KV line sited in New Hampshire and the attendant savings to New Hampshire under a PASNY type contract. This exhibit also assumed that two-thirds of all energy purchased up to 3 million MW hours per year was at the lower cost of 80% of average NEPOOL fossil fuel generation costs. The savings were indicated as follows for the first three years of operation.

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

Case 1 Case 2 Case 3

(supra.) (supra.) (supra.)

\$53 million \$24 million (\$3.6 million)

Mr. Bigelow also testified that if Exhibit 113 were adjusted to reflect the less costly smaller sized line of approximately \pm 300 KV sited in New Hampshire, the savings would be greater under a PASNY type contract. Extrapolating the cost figures for the smaller sized line from Exhibit 109 would yield the following savings for New Hampshire under a PASNY type contract:

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

Case 1 Case 2 Case 3

\$55.4 million \$26.8 million (\$1.2 million)

Mr. Bigelow also testified that after the first three years of operation the Case 3 (energy banking only) scenario would show net savings to New Hampshire and that the savings would increase in years 1993 to 1997. (Ex. 111). In projecting these savings Mr. Bigelow obviously made a number of assumptions. In testifying with respect to these assumptions Mr. Bigelow sponsored Exhibit 38. (T. 14- 128-136). An examination of Exhibit 38 discloses that Mr. Bigelow assumed escalation rates of 11% per year for fossil fuel through 1990 and 9% thereafter and operating and maintenance and construction escalation rates of 9%. Cost of capital for construction of the line was estimated to be 12.4% and Mr. Bigelow used this figure as the discount rate for purposes of his present value calculations of future savings. Under

cross-examination Mr. Bigelow explained these assumptions and their internal consistencies and we cannot find at this stage of the proceedings that the assumptions were unreasonable (T. 14-128-136).

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Mr. Bigelow also testified in response to questioning that these savings would be available to PSNH regardless of the generating capacity, type of generation or primary energy requirements of PSNH for the period, 1986 through 1995. (T. 14-158). In this testimony Mr. Bigelow pointed out that since the estimated savings were savings achieved by NEPOOL, given the entire generating and energy requirements of Pool members and the fact that PSNH would be entitled to participate in these savings under an energy banking, interconnection or PASNY type agreement, PSNH would obtain these savings regardless of its generating and energy requirements at the time. (T. 14-158-159).

In projecting the savings, Mr. Bigelow also made assumptions concerning the future generating and energy requirements of NEPOOL and PSNH. Given the uncertainties of future electric power supplies in the region, Mr. Bigelow's assumptions are open to question. However, for present purposes and present purposes only, we accept these assumptions. If anything, these assumptions may be too optimistic concerning the ability of New England utilities to reduce oil dependency and to reduce energy and capacity costs. If the plans Mr. Bigelow uses for his assumptions underlying the projections of savings fall short of their goals, the savings to the Pool and New Hampshire will be even greater for the reason that there will be a higher dependency on oil-fired generation than planned. Under these assumptions, Mr. Bigelow assumed Seabrook I and II and Millstone III would be built by 1987 (all three nuclear units of approximately 3450 MW of capacity (Ex. 3, p. 13). He also assumed that the New England Electric Systems, the region's second largest utility would be 10% oil dependent by 1986, a decrease from 62% in 1981. (Ex. 115, T. 14-144, 145). Mr. Bigelow testified that oil-fired generation should be 29%, down from 62% in 1981. Mr. Bigelow also estimated that by 1987, assuming a 28% ownership of Seabrook I and II and completion of both units, PSNH would rely on oil-fired generation for 10% of its energy production. Finally, Mr. Bigelow, as noted earlier, estimated a need for capacity for Pool members sometime in the late 1990's.

Given these estimates and assumptions concerning future capacity and energy requirements for Pool members and PSNH we cannot say Mr. Bigelow was unreasonable in his estimates in savings generated by the transmission line and the savings to be achieved by New Hampshire. As we discussed earlier NEET has met its burden at this stage in the proceedings in establishing that surplus energy is likely to be available from Hydro-Quebec from 1986 through 1995. As Mr. Bigelow pointed out in connection with Exhibit 5, at a projected toad growth of between 4% and 5% for Hydro-Quebec, from approximately 274 million MW hours to 398 million MW hours of surplus energy would be available for export from Hydro-Quebec over the period of 1984-1993. Mr. Lalande confirmed Mr. Bigelow's Exhibit 5 and testimony in this regard and stated that Hydro-Quebec's new load forecast was at 4.7% annually through 1990. (T. 14-24).

In addition to the evidence on savings to be generated by the transmission line, there is evidence in the record of additional benefits to New Hampshire of the availability of energy from Hydro-Quebec. As noted above, Mr. Bigelow has estimated that 10% of PSNH's energy will

come from oil-fired generation in 1987, assuming completion of Seabrook

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I and II. Energy from Hydro-Quebec, according to both Mr. Bigelow and Mr. Lalande, may be used to displace a portion of this energy from oil-fired sources. Even though Mr. Lalande testified that Hydro-Quebec was a winter peaking system and Mr. Bigelow testified that PSNH was also a winter peaking system, Mr. Lalande testified that Hydro-Quebec's winter peaks were sharp peaks in demand and that, in all probability, surplus energy could be exported by Hydro-Quebec during winter periods on the "shoulder" of Hydro-Quebec's peak periods. (T. 14-41).

Mr. Bigelow also testified that by 1990, the region as a whole would depend on oil for 29% of its electric energy (Ex. 5). He also testified that a major portion of that 29%, some 50 million barrels per year in 1990, would be imported from foreign countries. Additional reductions in the projected 29% dependency of New England's utilities on foreign oil would, according to Mr. Bigelow, be achieved through deliveries of surplus energy over the proposed line. In terms of projected benefits to New Hampshire, the reliability of New Hampshire's electric supply would be enhanced because of its interdependency with the electric supply system of New England.

To reiterate, on the basis of the foregoing review of the evidence in the record, this Commission finds *at this point in these proceedings* that NEET has met its burden of proof on the "need for power" issue. NEET has adduced evidence tending to establish that savings to New Hampshire will accrue from operation of the line. In light of our interpretation of the statute that the term "demand" implies a quantity of a commodity which buyers will buy at a given price' these savings, which will result in a reduction of the price of electricity over what those prices would otherwise be to New Hampshire ratepayers, will meet a "demand" for electric power in New Hampshire. In view of the evidence, that some oil-fired energy will be displaced on the PSNH system if energy surpluses are made available from Hydro-Quebec, the facility meets the demand for electric power. This demand is prompted by the perceived need of New England utilities including PSNH, to displace oil-fired generation, which in the first instance is costly and in the final analysis is less reliable because it originates from unstable sources of supply.

There remains the question as to whether NEET has met its burden with respect to the alternate 6.7 miles of transmission line. The two relevant differences between the 83 mile line and the 6.7 mile line for purposes of the need for power issue are the lower costs of the 6.7 mile line and the unavailability of the 5% bonus share to New Hampshire for sitting that portion of the line in New Hampshire. A comparison of Exhibit 110 to Exhibit 109 illustrates the effects of these differences. In sponsoring these exhibits, Mr. Bigelow noted that the support costs of the smaller line (Ex. 110) were \$6 million for New Hampshire. New Hampshire's share was 8.2% (less the 5% bonus). Exhibit 110 even with the smaller percentage share shows savings under Case 1 and Case 2 according to Mr. Bigelow. An adjustment of the figures of Exhibit 113 (the display of the various cases under a PASNY type contract with Hydro-Quebec) yields the following savings for the 6.7 mile line over the period of 1986 1988:

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

| | |
|-----------------|----------------|
| Case 1 | Case 2 |
| \$35.04 million | \$17.3 million |

The evidence summarized previously with respect to the 83 mile line and its potential for oil displacement and improved system reliability, is equally relevant to the issue of whether NEET has met its burden with respect to the 6.7 mile line. Since we found that this evidence enables NEET to meet its burden with respect to the 83 mile line, it follows that NEET has met its burden with respect to the 6.7 mile line.

While we have found that NEET has met its burden of proof at this stage in the proceedings on the need for power issue, we are compelled to make a few observations for the guidance of the parties and the assistance of the Commission if and when this application comes before the Commission for final disposition under RSA 162 F-8. Throughout the applicant's case the applicant has stressed the benefits to New England of the facility at the risk of giving New Hampshire's benefits short shrift. Despite this misplaced emphasis, we find that the evidence to date tends to establish dollar savings accruing to New Hampshire from the construction of this facility. We should also note that we have not seen finally executed copies of the various agreements under which these savings are to accrue. There are, moreover, difficulties in translating the various load forecasts of Hydro-Quebec into quantities of energy surplus and in relating the availability of these energy surpluses to the capacity expansion programs of Hydro-Quebec. We have also noted our difficulty in perceiving benefits to New Hampshire from entitlement transactions. We also have had difficulty in quantifying the oil-fired energy displacement value to PSNH and New England of the energy surpluses from Hydro-Quebec. In deciding this issue the Commission has also been constrained by Mr. Bigelow's assumptions about the ability of New England's utilities to back out oil-fired generation. Due to uncertainties in meeting energy needs in the future and planning and scheduling new facilities of any type, these assumptions may be unrealistic and deserve greater attention in future hearings.

SUPPLEMENTAL ORDER

For all of the foregoing reasons, it is hereby ordered that:

1. The New England Electric Transmission Company, at this stage of the proceedings, has met its burden of going forward on the "need for power" issue for the approximately \pm 300 KV line of 83 miles and the approximately \pm 300 KV line of 6.7 miles;
2. The right of the parties to this proceeding to introduce additional, competent and relevant evidence on the need for power issues shall in no way be foreclosed by this opinion and order; and
3. This matter, along with the requisite number of copies of this opinion and order, shall be referred to the Bulk Power Supply Site Evaluation Committee for such further proceedings as that Committee and the Public Utilities Committee sitting as a joint board shall deem appropriate.

FOOTNOTES

¹The parties have characterized the issue as one of burden of proof. Technically the issue is

whether NEET has met its "burden of going forward". However, for consistency with terminology used in the SEC Order and briefs of the parties we will refer to the burden as the "burden of proof."

²This conclusion is based on Mr. Bigelow's testimony at T. 15-43, and will be discussed more fully *infra*.

³The New Hampshire Electric Co-op is not a member of NEPOOL. However, it shares in the benefits in that its wholesale suppliers of electricity have the NEPOOL opportunity to operate at reduced costs.

⁴We have difficulty with the applicant's case that the entitlement under the Interconnection Agreement meet a need for power in New Hampshire. First, we do not know whether PSNH will exercise its right to the entitlement if the line is built. However, we expect this question will be addressed by PSNH when it appears at subsequent hearings. Second, it is not clear what kind of power will be available from Hydro-Quebec under an entitlement purchase. Mr. Lalande testified that there would be at most seasonal capacity (Spring-Fall) available and that Hydro-Quebec experienced sharp winter peaks. (T. 14-66, 67). If PSNH exercised its rights to an entitlement it appears it would get "firm" energy or "seasonal" capacity from Hydro-Quebec for the period of Spring through Fall. We note the peak for PSNH is the winter. However, we could infer from this evidence that PSNH could use its entitlement to reduce its costs, especially when it schedules maintenance for its plants during its off-peak periods or to reduce its somewhat higher costs when it experiences a moderate peak in the summer. We note also that under the Interconnection Agreement, PSNH could sell a part or all of its entitlement to another participant who had greater need for an entitlement. While PSNH would undoubtedly benefit from such a sale we have difficulty ruling that the bartering of contractual rights is what the legislature intended when it required proposed facilities to meet the demand for power.

⁵Representatives of PSNH have not testified in this proceeding. However, the SEC and the Commission have requested PSNH testimony and appearances by PSNH witnesses were scheduled after April 23, 1982, but now postponed as a result of the action taken on the PEF Motion on April 23, 1982 (T. 14-167).

⁶As is well known to all the participants in this proceeding an alternate route is being planned through Vermont. It is unclear at this time in which state the line will ultimately be built. However, for present purposes we must assume that a line of approximately +/- 300 KV will be sited in New Hampshire. We will discuss separately in this opinion the question of whether NEET has met its burden on the shorter 6.7 mile line. The latter line assumes that the largest segment of the line will be located in Vermont.

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NH.PUC*06/22/82*[79309]*67 NH PUC 427*Meetinghouse Brook Estate Water Company

[Go to End of 79309]

Re Meetinghouse Brook Estate Water Company

DE 82-182, Order No. 15,716

67 NH PUC 427

New Hampshire Public Utilities Commission

June 22, 1982

REVOCATION of the public utility status of a water company owned by the same customers it serves.

BY THE COMMISSION:

ORDER

WHEREAS, Meetinghouse Brook Estates Water Company, (Meetinghouse) was granted authority to operate as a public utility in a limited area in Pembroke, N.H. in Docket DE 74-124 and Order No. 11,517 (59 NH PUC 246); and

WHEREAS, the Attorney General of the State of New Hampshire has stated that a membership corporation or an unincorporated association that owns and operates a water system for the provision of water only to themselves, would not be as a public utility as defined by RSA362:4; and

WHEREAS, the consumers of Meetinghouse have certified that they are individually the owners of and the exclusive customers of the water system; it is

ORDERED, that the authority granted by Order No. 11,517 is revoked, and that Meetinghouse Brook Estates Water Company shall no longer be considered as a public utility as of the date of this Order.

By Order of the Public Utilities Commission of New Hampshire this twenty-second day of June, 1982.

NH.PUC*06/22/82*[79310]*67 NH PUC 427*Pequod Associates, Inc.

[Go to End of 79310]

Re Pequod Associates, Inc.

DL 82-183, Order No. 15,719

67 NH PUC 427

New Hampshire Public Utilities Commission

June 22, 1982

APPROVAL of a special pricing plan for the sale of cogenerated waste heat.

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COGENERATION, § 34 — Rates — Rate design factors — Credits and long-term price effects.

[N.H.] Although a pricing plan for cogenerated waste heat from a wood-fired generating unit was above the current rate limit for dependable power, the commission approved the plan because it found the long-term price would be lower once the sale of waste heat was credited.

BY THE COMMISSION:

REPORT

This docket was opened by the New Hampshire Public Utilities Commission pursuant to its own motion and its obligations under RSA 362-A: 1-5 (Limited Electrical Energy Producers Act) "to provide for small scale and diversified sources of electrical power" and to adjudicate disputes arising under the provisions of the Act.

The Franconia Power and Light Company, a limited partnership of Pequod Associates, Inc. and Paul C. Porter, intends to construct and operate a wood-fired electrical generating unit in Lincoln, New Hampshire with an initial capacity of 5 MW; and cogenerate waste heat in the form of hot water which will subsequently be available for sale for a district heating and cooling system. The Franconia Power and Light Company desires to sell its entire generation output to the Public Service Company of New Hampshire and has proposed a 30-year contract between itself and Public Service Company of New Hampshire (PSNH). The proposed contract conforms to PSNH's standard "Contract for the Purchase and Sale of Electric Energy" with the exception of the price formula in Article 3, "Price", and the addition of Article 12, "Energy Credit". The pricing formula results in an initial electrical price of 9.5¢ per kilowatt, escalated or de-escalated by changes in the prime rate and inflation. Article 12 applies a credit of 75% of all revenues from the sale of waste heat. While the initial electrical price is above the current Limited Electrical Energy Producers Act (LEEPA) rate for dependable power, the Commission finds that once the sale of waste heat is credited, the long-term electrical price will be below the LEEPA rate for dependable power. In the long run, therefore, consumers will benefit by obtaining power from a source which will be less expensive and more dependable than the oil-fired generation it replaces.

The contract is also consistent with the Commission's decision in DE 79-208, Report and Order No. 14,280 (65 NH PUC 291), which stated that pursuant to LEEPA, "the Commission will recognize rates and measures where appropriate in excess of that allowed pursuant to the PURPA standard of avoided costs and the FERC rules." The standard where such measures are appropriate, however, is not easy to meet and only exceptional circumstances will receive similar Commission action.

The Commission will allow rates paid pursuant to this contract to be recovered in the Energy Cost Recovery Mechanism. The Commission has previously allowed PSNH and other utilities to charge rates to consumers for oil-fired facilities that are above 9.5¢ per KWH. Based upon the foregoing, our Order will issue accordingly.

ORDER

WHEREAS, the wood-fired electrical generating unit proposed by Franconia Power and

Light Company for Lincoln,

New Hampshire has been shown to qualify under RSA 362-A; and

WHEREAS, upon investigation and consideration, this Commission is of the opinion that special circumstances exist relative to this project and the proposed contract between the Franconia Power and Light Company and the Public Service Company of New Hampshire (PSNH), which render the terms and conditions thereto just and consistent with the public interest; it is

ORDERED, that said contract be amended to contain a clause stipulating that the contract be reviewed after five (5) years to determine whether or not a significant energy credit resulting from the sales of waste heat is being applied against the electrical rate, and that said contract shall be modified if the Franconia Power and Light Company has not achieved significant sales of waste heat; and said modified contract shall be submitted for Commission review; and it is

FURTHER ORDERED, that said contract as amended shall be agreed to and carried out by both parties.

By Order of the Public Utilities Commission of New Hampshire this twenty-second day of June, 1982.

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NH.PUC*06/22/82*[79311]*67 NH PUC 429*Mount Washington Summit Road Company

[Go to End of 79311]

Re Mount Washington Summit Road Company

DR 82-167, Supplemental Order No. 15,720

67 NH PUC 429

New Hampshire Public Utilities Commission

June 22, 1982

ORDER implementing schedule of rates and charges.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Mount Washington Summit Road Company filed a rate structure pursuant to RSA 378, "N.H.P.U.C. No. 9 Cancels N.H.P.U.C. No. 8, Effective June 18, 1982, and

WHEREAS, the Commission, by Order No. 15,705, issued June 11, 1982, suspended said tariff pending investigation and decision; and

WHEREAS, the Mount Washington Summit Road Company has submitted cost related

factors to substantiate the need for the requested increase; it is

ORDERED, that the Mount Washington Summit Road Company's "Schedule of Rates and Charges, N.H.P.U.C. No. 9 Cancels N.H.P.U.C. No. 8, Effective June 18, 1982" be, and hereby is, authorized to be put into effect as requested on June 18, 1982; and it is

FURTHER ORDERED, that Order No. 15,705 which suspends the rate

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increase be, and hereby is, superseded by this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of June, 1982.

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NH.PUC*06/29/82*[79312]*67 NH PUC 430*Manchester Gas Company

[Go to End of 79312]

Re Manchester Gas Company

DF 82-124 Order No. 15,733

67 NH PUC 430

New Hampshire Public Utilities Commission

June 29, 1982

ORDER authorizing utility to declare and issue a stock dividend.

APPEARANCES: Charles Toll for Manchester Gas Company.

BY THE COMMISSION:

REPORT

Manchester Gas Company (hereinafter referred to as the "company") a New Hampshire corporation doing business as a gas public utility under the jurisdiction of this Commission by petition filed April 21, 1982, wherein it proposes to declare and issue a one and sixty-two hundredths percent (1.62%) common stock dividend not to exceed four thousand one hundred and sixty-six (4,166) shares of authorized common stock to be payable 14 days after approval by the Commission to shareholders of record 10 days after said order and to pay fractional shares in cash at the rate of \$6.50 per share.

The petitioner, the Manchester Gas Company (MGC) and Gas Service, Inc. (GSI), a corporation duly organized under the laws of the State of New Hampshire, are negotiating to create a new holding company, Energy North, Inc. (ENI), which a share exchange will acquire all of the issued and outstanding common stock of MGC, except for shares of stockholders exercising their dissenters' rights and simultaneously acquire all of the issued and outstanding common stock of GSI, except for shares of stockholders exercising their dissenter's rights.

Results of studies by independent consultants, Smith :Barney, Harris Upham & Co. for GSI and Adams, Harkness & Hill for MGC — the parties have agreed that:

a) GSI common shareholders should be entitled to receive 47.87% of the total common stock of ENI to be issued in connection with the exchange and receive 2 shares of ENI common stock for each share of GSI common stock;

b) MGC common shareholders should be entitled to receive 52.13% of the total common stock of ENI to be issued in connection with the exchange and receive 1 share of ENI common stock for each share of MGC common stock. The foregoing percentages are substantially the same as the ratios of

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their respective stockholders equity on their balance sheets as of September 30, 1981.

For GSI and MGC shareholders to receive the correct percentage of ownership in ENI under this exchange formula, the outstanding common stock of the Petitioner, MGC, must be increased by 4,166 shares, or 1.62 percent of the total shares outstanding. The shares necessary to fund such a dividend are presently authorized. They would be issued as a 1.62 percent common stock dividend on all outstanding common stock of the Petitioner.

As of December 31, 1981, the common stockholders' equity in MGC was as follows:

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

| | |
|---|-------------|
| 400,000 shares \$5 par value authorized | |
| 257,145 shares \$5 par value issued | \$1,285,725 |
| Capital surplus | 483,754 |
| Retained Earnings | 2,030,505 |
| | 3,799,984 |

The securities to be issued are common shares identical to the present common shares issued and outstanding. The Petitioner proposes to issue no more than 4,166 shares, representing 1.62 percent of the shares presently authorized and outstanding, to present shareholders at a rate of 1.62 additional shares for each 100 shares presently held. The total number of shares actually issued will be less than 4,166 as a result of the elimination of fractional shares. Shareholders entitled to fractional shares will be paid in cash on the basis of a value of \$6.50 per share, the most recent bid price on March 24, 1982, the date of the Board of Directors' meeting. The record date for payment of this stock dividend will be ten (10) days after the date of Public Utilities Commission approval, and the payment date will be fourteen (14) days after the date of such approval.

The Company anticipates that it will be able to pay dividends at the current annual rate of 90 cents per share on both the presently outstanding stock and on the new shares to be issued.

MGC has in each of the last 10 years, issued a 3% stock dividend. The proposed 1.62 percent stock dividend is not contingent upon the consummation of the share exchange with GSI and ENI. If the share exchange is not consummated, MGC will consider an additional stock dividend.

The petitioner will not realize any proceeds from the issuance of this stock dividend.

The Commission finds that payment of this stock dividend will be consistent with the public good. Present stockholders will be placed on a parity with GSI stockholders thereby facilitating an equitable exchange of stock.

The Petitioner, MGC,, is authorized to declare and issue a one and sixty-two hundredths percent (1.62%) common stock dividend on presently outstanding common stock, the total amount of such dividend not to exceed four thousand one hundred and sixty-six (4,166) shares of authorized common stock of the Petitioner and to pay fractional shares in cash at the rate of \$6.50 per share. Our Order will issue accordingly.

ORDER

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

ORDERED, that the Manchester Gas Company be, and hereby is, authorized to declare and issue a stock dividend of one and sixty-two hundredths percent (1.62%) common stock dividend not to

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exceed four thousand one hundred and sixty-six (4,166) shares; and it is

FURTHER ORDERED, that said stock shall be payable 14 days after this date to shareholders of record 10 days after the date of this order; and it is

FURTHER ORDERED, that stockholders be paid in cash for fractional shares, an amount based at a rate of \$6.50 per share; and it is

FURTHER ORDERED, that within 30 days after the date of payment of the stock dividend said Manchester Gas Company shall file with this Commission a financial statement duly sworn to by its treasurer indicating appropriate entries on the company's balance sheets.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of June, 1982.

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NH.PUC*06/30/82*[79313]*67 NH PUC 432*New England Telephone and Telegraph Company

[Go to End of 79313]

Re New England Telephone and Telegraph Company

DE 82-62, Order No. 15,736

67 NH PUC 432

New Hampshire Public Utilities Commission

June 30, 1982

ORDER granting license for aerial cable to cross railroad right of way.

 APPEARANCES: Wayne Snow for the company.

BY THE COMMISSION:

REPORT

The Commission issued an Order Of Notice on March 3, 1982 fixing a public hearing on April 7, 1982 with actual notice sent to the Company; John R. Sweeney, N.H. Aeronautic Commission; New Hampshire Transportation Authority; George Gilman, Commissioner, Department of Resources and Economic Development (DRED); John Bridges, Safety; and the Office of the Attorney General.

The Company's witness, Wayne Snow, testified that there presently exists one 200 pair cable and it is necessary to install another one 100 pair cable as shown on exhibit 1.

He further testified that the existing and proposed plant crossing the State railroad right-of-way ifs designed to meet the requirements of telephone consumers in the Colebrook exchange.

No objections were filed or made to the Commission to the filed petition.

Upon the petition filed, and the evidence presented the Commission finds the approval for a license to place and maintain one 200 pair cable and to construct and maintain one 100 pair cable across the State railroad right-of-way is in the public interest and the requested license is approved to be issued by the proper State Official.

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The Commission also finds that no damages be accessed as the Company has been using the right-of-way and the additional cable will not unduly burden the right-of-way.

Our Order will issue accordingly.

ORDER

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

ORDERED, that a license to cross the State of New Hampshire railroad right-of-way is approved and authorized to be issued in Colebrook at the following location:

Beginning at telephone pole number 80/13 (PSNH 7/3) of said transmission line on the westerly side of said highway #26 south of said railroad right-of-way and extending eighty-five (85) feet in a more or less northerly direction to telephone pole number 80/14 (PSNH 7/2) within said railroad right-of-way and then extending thirty-eight (38) feet in a more or less northerly direction to telephone pole number 80/141/2 (PSNH 7/1) on the westerly side of said highway north of said railroad right-of-way.

The above-described right-of-way crosses railroad right-of-way owned by the State of New Hampshire and presently operated by the North Stratford Railroad Company at a point just east of bench mark Number 68.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June,

1982.

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NH.PUC*06/30/82*[79314]*67 NH PUC 433*New England Telephone and Telegraph Company

[Go to End of 79314]

Re New England Telephone and Telegraph Company

DE 82-74, Order No. 15,737

67 NH PUC 433

New Hampshire Public Utilities Commission

June 30, 1982

ORDER granting license for aerial cable to cross railroad right of way.

APPEARANCES: Wayne Snow for the company.

BY THE COMMISSION:

REPORT

The Commission issued an Order of Notice on March 15, 1982 fixing a public hearing on April 20, 1982 with actual notice sent to the Company; John R. Sweeney, N.H. Aeronautic Commission; New Hampshire Transportation Authority; George Gilman, Commissioner, Department of Resources and Economic Development (DRED); John Bridges, Safety; and the Office of the Attorney General.

The Company's witness, Wayne Snow, testified that there presently exists one 200 pair cable and one 600 pair

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cable and it is necessary to install another one 600 pair cable as shown on Exhibit 1.

He further testified that the existing and proposed plant crossing the State railroad right-of-way is designed to meet the requirements of telephone consumers in the Plymouth exchange.

No objections were filed or made to the Commission to the filed petition.

Upon the petition filed, and the evidence presented the Commission finds the approval for a license to place and maintain one 200 pair cable and one 600 pair cable and to construct and maintain one 600 pair cable across the State railroad right-of-way is in the public interest and the requested license is approved to be issued by the proper State Official.

The Commission also finds that no damages be accessed as the Company has been using the right-of-way and the additional cable will not unduly burden the right-of-way.

Our Order will issue accordingly.

ORDER

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

ORDERED, that a license to cross the State of New Hampshire railroad right-of-way is approved and authorized to be issued in Plymouth at the following location:

Beginning at telephone pole number 60/1 (NHEC 101/7) of said transmission line on the northerly side of Bridge Street west of said railroad right-of-way and extending in a more or less easterly direction one hundred (100) feet to telephone pole 60/2 (NHEC 101/8) on the northerly side of Bridge Street east of said railroad right-of-way.

The above-described right-of-way crosses railroad right-of-way owned by the State of New Hampshire and presently operated by the North Stratford Railroad Company at a point approximately one hundred and fifteen (115) feet east of the intersection of Main Street and Bridge Street.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1982.

=====

NH.PUC*06/30/82*[79315]*67 NH PUC 434*New Hampshire Electric Cooperative, Inc.

[Go to End of 79315]

Re New Hampshire Electric Cooperative, Inc.

DE 78-232, DE 78-233, Third Supplemental Order No. 15,738

67 NH PUC 434

New Hampshire Public Utilities Commission

June 30, 1982

ORDER revising testing schedule for electrical meters.

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BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, this Commission, on December 1, 1980, established, by Second Supplemental Order No. 14,593 (65 NH PUC 607), revised and additional standards to be met by limited electrical energy producers in order to qualify for sale of electrical energy; and

WHEREAS, one of those standards provides that the accuracy of the recording equipment is the responsibility of the qualifying producer and shall be verified annually to this Commission; and

WHEREAS, a review of the small residential-type generating facilities indicates that these

systems use the self-contained single-phase meter; and

WHEREAS, the use of these meters has not revealed any inherent adverse accuracy conditions; and

WHEREAS, the Commission finds it to be in the public interest to revise that portion of our Second Supplemental Order No. 14,593 regarding annual meter verification; it is

ORDERED, that self-contained single-phase meters used in generating facilities of 10KW or less be tested on a 12-year or selective test schedule, the same as prescribed in the Commission's rules and regulations, in lieu of annual meter tests; and it is

FURTHER ORDERED, that all other recording equipment used for billing purposes, including polyphase meters and single-phase meters requiring transformer rated meters, shall be tested annually; and it is

FURTHER ORDERED, that the accuracy and testing of recording equipment remains the responsibility of the qualifying producer, and shall be verified to this Commission.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1982.

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NH.PUC*07/01/82*[79316]*67 NH PUC 435*Fuel Adjustment Clause

[Go to End of 79316]

Re Fuel Adjustment Clause

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

DR 82-149, Order No. 15,739

67 NH PUC 435

New Hampshire Public Utilities Commission

July 1, 1982

ORDER implementing fuel adjustment clauses.

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APPEARANCES: Margaret Nelson for Concord Electric Company and Exeter and Hampton Electric Company; Michael Flynn for Granite State Electric Company; Kenneth E. Traum for the public utilities commission staff.

BY THE COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed public hearing on the fuel adjustment clause filings of Concord Electric Company, Exeter & Hampton Electric Company, and Granite State Electric Company, for the third quarter of 1982 at its offices in Concord on June 9, 1982.

Concord Electric Company and Exeter & Hampton Electric Company were represented by one witness, Peter J. Stulgis. Concord had a fuel adjustment charge rate credit of \$(0.34)/100 KWH approved for June of 1982, while Exeter & Hampton Electric Company had a credit of \$(0.23)/100 KWH.

In developing the third quarter of 1982 estimates, the most significant inputs are based on estimates provided by the companies' sole electricity supplier, PSNH, of \$0.03775/KWH for July, 1982, \$0.03680/KWH for August, 1982, and \$0.03236/KWH for September, 1982.

Based on this and taking the amount of fuel expense rolled into base rates into account, Concord's proposed rate for the third quarter 1982 is \$0.03457/ KWH while Exeter & Hampton's is \$0.03454/KWH.

Besides PSNH's estimates, another reason for a lower rate being charged ultimate customers is overcollections by both companies coming into the third quarter of 1982.

In addition, Concord Electric Company is estimating a 2.5 to 3.0% growth in sales for the third quarter of 1982 over 1981, while Exeter & Hampton is anticipating a 0% growth in sales. Both companies anticipated lost and unaccounted for ratios of approximately 4% based on historical averages.

The Commission believes these requested rates of a \$(0.03)/100 KWH credit for both companies are in the public good and our Order will issue accordingly.

Granite State Electric Company (GSEC) in its FAC and OCA filings and presentations, was represented by three witnesses and 16 exhibits during the course of the June 9, 1982 hearing and a further June 29, 1982 hearing required by an error discovered in the Company's earlier filings; and extensively cross-examined by Mr. Traum, of the PUC Finance Department.

On balance, the Company requested the FAC be raised 8.0¢ /100 KWH to \$1.48/100 KWH, while the OCA be increased 8.5¢ /100 KWH to \$0.165/100 KWH.

The OCA increase is principally due to a higher estimated differential between oil and coal costs and more coal generation, as 4 units, Mount Tom, Salem Harbor Units 1, 2, and 3 are currently on line burning coal.

A percentage of the cost savings resulting from this additional coal generation is one offsetting reason to the increase in the FAC requested. Other reasons include an estimated reduction by 1.1% of energy sales in the third quarter 1982 versus 1981 and an estimated undercollection going into the third quarter 1982, of approximately \$30,000 out of over \$4,000,000 in costs, which represents a substantial improvement over the first quarter results. These factors were offset by a reasonable estimate

of increasing oil costs for the upcoming quarter.

The Commission believes the requested rates of \$1.48/100 KWH for the third quarter of 1982, FAC and \$0.165/100 KWH for the third quarter 1982, OCA are in the public good, and our Order will issue accordingly.

ORDER

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

ORDERED, the Commission, in correspondence dated march 2, 1982, 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 for those utilities which file monthly unless requested or needed by one of those utilities; and 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 or needed to have a hearing scheduled; and

WHEREAS, this is not one of the two off months of quarterly FAC utilities, hearings were held for Concord Electric Company, Exeter & Hampton Electric Company and Granite State Electric Company; it is

ORDERED, that 1st Revised page 19A of Concord Electric Company tariff, NHPUC No. 8 — Electricity, providing for a fuel surcharge credit of \$(0.03) per 100 KWH for the month of July, 1982, be, and hereby is, permitted for effect for the month of July, 1982; and it is

FURTHER ORDERED, that 1st Revised page 19A of Exeter & Hampton Electric Company tariff NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of (\$0.03) per 100 KWH for the month of July, 1982, be, and hereby is, permitted for effect for the month of July, 1982; and it is

FURTHER ORDERED, that 1st Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of \$0.165 per 100 KWH for the months of July through September, 1982, be, and hereby is, permitted to go into effect for July, 1982; and it is

FURTHER ORDERED, that 1st Revised Page 30 of Granite State Electric Company, NHPUC No. 10 — Electricity be, and hereby is, rejected; and it is

FURTHER ORDERED, that 1st Revised Page 30 of Granite State Electric Company, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the months of July through september, 1982, of \$1.48 per 160 KWH be, and hereby is, permitted to go into effect for July, 1982; and it is

FURTHER ORDERED, that 16th Revised Page 15 of the New Hampshire Electric Cooperative, Inc. tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of \$2.09 per 100 KWH for the month of July, 1982, be, and hereby is, permitted to become effective July

1, 1982; and it is

FURTHER ORDERED, that 18th Revised Page 11B of Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$2.41 per 100 KWH for the month of July, 1982, be, and hereby is,

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permitted to become effective July 1, 1982; and it is

FURTHER ORDERED, that 102nd Revised Page 6 of Littleton Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$1.12 per 100 KWH for the month of July, 1982, be, and hereby is, permitted to become effective July 1, 1982; and it is

FURTHER ORDERED, that 70th Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of (\$2.25) per 100 KWH for the month of July, 1982, be, and hereby is, permitted to become effective July 1, 1982; and it is

FURTHER ORDERED, that 65th Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of (\$1.05) per 100 KWH for the month of July, 1982, be, and hereby is, permitted to become effective July 1, 1982.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1982.

Commissioner McQuade's decision will be issued at a later date.

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NH.PUC*07/01/82*[79317]*67 NH PUC 438*Manchester Gas Company

[Go to End of 79317]

Re Manchester Gas Company

Intervenors: Office of Consumer Advocate and New Hampshire People's Alliance

DR 81-234, Fourth Supplemental Order No. 15,740

67 NH PUC 438

New Hampshire Public Utilities Commission

July 1, 1982

ORDER approving rate increase, as modified.

APPEARANCES: G. Peter Guenther and James C. Hood, representing Manchester Gas; F. Joseph Gentili as Consumer Advocate; and Mary Renfo on behalf of the New Hampshire People's Alliance.

BY THE COMMISSION:

REPORT

On August 28, 1981, Manchester Gas Company (hereinafter referred to as the "Company") filed with the Commission revisions to its Gas Tariff N.H.P.U.C. No. 12 providing for an increase in rates to its customers designed to increase annual revenues by approximately \$1,839,915, to become effective as to bills rendered on or after September 27, 1981. By Order No. 15, 105 dated September 18, 1981 (66 NH PUC 367), the Commission suspended the effective date of the proposed rates until further order from the Commission, and additionally ordered revisions to correct and

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update the tariff as well as to incorporate specific information. The combined filing with revisions then became proposed N.H.P.U.C.No. 13.

Subsequent to the August filing, the Commission heard nothing from the Company regarding its request until the Company responded to Supplemental Order No. 15,353 issued December 7, 1981 (66 NH PUC 555), whereby the Company was directed to file testimony and exhibits by December 15, 1981 or have its proposed tariffs as amended (No. 13) rejected.

After seeking and obtaining a delayed filing date, the Company, on December 22, 1981 filed its evidence in support of its proposed tariffs. However, at the same time the Company also filed a petition for temporary rates.

On March 25, 1982 by Report and Order No. 15,551 (67 NH PUC 245), the Commission granted Manchester Gas a temporary increase in the amount of \$569,572. Third Supplemental Order No. 15,591 (67 NH PUC 285) was issued approving a tariff for those temporary rates.

At approximately the same time as the temporary rates were approved, the parties reached a settlement on revenue deficiency contained in a document referred to as Stipulation No. 1. On April 8, 1982, the parties agreed to rate design as addressed in Stipulation No. 2. The Commission rejected Stipulation No. 2 setting forth its reasons in a Report issued May 24, 1982. The Commission has required hearings to be held on the rate design issues and has, hopefully, provided sufficient guidelines in its May 24, 1982 Report to allow abbreviated hearings and a speedy resolution of this area of the case.

As to the revenue deficiency, Stipulation No. 1, the Commission has after much deliberation decided to adopt the settlement. The Commission's rationale for acceptance is as follows: First, the Consumer Advocate on behalf of consumers, the Commission's Staff and the utility all agree as to this level of increase. It is rare that such a diverse group would agree. Second, the Commission finds that it is more probable than not that the existing prime interest rates will increase: over their present levels during the next six months due to heavy federal government borrowing. Third, the movement of the gas utilities toward merger in this State could be delayed by a protracted proceeding.

The Commission places Manchester Gas on notice that they will be held to the same standard as we have applied to Gas Service in its recent rate case, DR 80-179. The Commission places Manchester Gas on notice that proper utility accounting supports our actions in Gas Service as to non-utility operations, motor vehicles, dues and officers' expenses. Manchester Gas is to make its

entries onto its books using the Gas Service decision as its guideline.

A central feature of Stipulation No. 1 is its agreement on an annual step increase. It is understandable given recent inflation and normal regulatory lag that a utility would be interested in seeking some means by which to reduce the revenue deficiency generated by these two features. But the Commission is certainly aware of the legitimate concern ratepayers have that no utility be so assured of all its revenue requirements that it neglects increasing the efficiency of its operations. Considering the concerns of both, the Commission finds that the methodology for calculating the agreed-upon December 1, 1982 step increase is generally well-balanced, allowing for both any increases or decreases

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in expense. There is one exception. It was agreed that although capital costs would be updated to September 30, 1982, the cost of equity would remain the same. But the cost of equity is sensitive to interest rates, and it does not appear to the Commission that its exclusion is an oversight by the parties. Therefore, in this one respect the Commission believes that it can safely revise the agreement to more closely fit the intended purposes of the parties by indicating that the cost of equity shall also be subject to review in the step increase.¹⁽⁴⁷⁾

The Company has not waived the right to seek additional revenues for other items at the time of the step increase. Conversely, Staff has not waived the right to challenge any requests by the Company for such additional revenues and specifically has not waived without limitation the right to investigate the possible existence of any changes in revenue levels then being experienced by the Company. Furthermore, the Commission is recognized by all parties to retain its authority to disapprove as part of any step increase any increase in expense which the Commission determines to be unjust or unreasonable.

The Commission will allow the Company to recover in accordance with RSA 378:29 the difference between the revenue level provided by the settlement and the actual revenue level collected during the time period of temporary rates. Also, in addition to the permanent rates allowed in the Commission's final Order, the settlement provides that the Company shall be permitted to collect by means of a surcharge to all firm gas customers over a period of four (4) months, an amount equal to the rate case expenses associated with this proceeding.

For settlement purposes, the parties have agreed to the following figures, having done so based on the kind of normal give-and-take in negotiation that results in a position marginally acceptable to all parties while none agree with all of the underlying figures and the principles reflected in each individually. By the same token, this Commission only finds the results are reasonable and particularly concurs with and stresses that language in the Stipulation which makes it clear that the agreement establishes "no principles or precedents." Those figures accepted for settlement purposes are rate base of \$11,937,953, and operating income of \$979,065 resulting in a revenue deficiency of \$1,212,222 which is accepted by the Commission pursuant to the above decision.

The Company's rates include the fold-in of fuel costs in the amount of \$.30 per therm. Simultaneous with implementation of these rates, a revised cost of gas tariff should be filed to reflect the \$.30 fold-in.

At a hearing in its office on this day, July 1, 1982, the Applicant presented additional evidence on rate design, meeting those concerns of the Commission that were expressed in the Commission Report that rejected the rate design settlement. The Commission is pleased with the value of this additional evidence. These proposed revisions to the rate design in Stipulation No. 2, results in a rate philosophically consistent with the rates now in effect for Gas Service Co., thereby bringing the gas utility industry in this state one step closer to a uniform rate design based on sound economic principles that insure both

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conservation and adequate gas supplies. Similarity in rate design also permits the easy integration of gas utility companies where desirable, as well as permitting ratepayers who move to a new service territory to be assured of equal and fair treatment. Specifically, the proposed monthly customer charge for both rate "D" and rate "G" is \$3.10 the same as Gas Service. Manchester Gas also proposes a relatively flat two block rate for both "D" and "G" and service connection charges that are also the same for each company. Those revisions reflect a basic service charge of \$20.00 rising to \$30.00 outside of normal working hours. A \$5.00 bad check fee has also been initiated to conform with Gas Service Company. The other significant difference from the stipulated rate/tariff design requires page 14 section 12b and page 16 section 14 be revised. Each of those two pages require their \$17.50 and \$25.00 charges be revised upward to \$20.00 and \$30.00 to be consistent with Gas Service Company and more closely reflect the Cost of Service for Meter Testing and reconnections.

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 sheets originally filed in this proceeding to collect \$1,839,915 are rejected; and it is

FURTHER ORDERED, that the Company file a revised tariff No. 13 to collect over the next four months a revenue amount sufficient to reflect the difference between temporary rates and permanent rates; and it is

FURTHER ORDERED, that the Company is authorized to collect a permanent annual rate adjustment of \$1,212,222, or an increase above the existing temporary rates of \$642,650; and it is

FURTHER ORDERED, that upon collection of the recoupment pursuant to RSA 378:29, the Company is to have tariffs in place to collect the permanent revenue increase granted; and it is

FURTHER ORDERED, that the permanent rate increase results from the Commission accepting the Settlement Agreement No. 1 agreed to by the Consumer Advocate, Manchester Gas and the Commission Staff.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1982.

FOOTNOTE

¹Adjustment would result from either a significant increase or decrease in the prime interest rate.

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NH.PUC*07/02/82*[79318]*67 NH PUC 442*Public Service Company of New Hampshire

[Go to End of 79318]

Re Public Service Company of New Hampshire

Intervenors: Office of Consumer Advocate, Community Action Program, Seacoast Anti-Pollution League, and the New England Coalition on Nuclear Pollution

DR 82-146, DR 82-150, Second Supplemental Order No. 15,732

67 NH PUC 442

New Hampshire Public Utilities Commission

July 2, 1982

ORDER granting rate increase, as modified

1. RATES, § 163 — Reasonableness — Reliance on rates by patrons — Period of energy cost recovery mechanism.

[N.H.] A six-month period was established for an energy cost recovery mechanism to prevent fluctuations in utility bills so that customers could have some certainty of rates and so that they could focus on usage habits that increase or decrease bills. p. 443.

2. PROCEDURE, § 29 — Disposal of issues — Due process.

[N.H.] Issues were struck from an energy cost recovery mechanism on the grounds of due process where the time allowed was inadequate to prepare expert testimony. p. 443.

3. EXPENSES, § 109 — Taxes — Real estate taxes — Abatements.

[N.H.] Real estate taxes were adjusted to reflect abatements where the commission concluded that the utility's duty as a regulated monopoly to provide service at the lowest possible cost to ratepayers would give it an incentive to continue to pursue abatements. p. 444.

4. EXPENSES, § 48 — Dues.

[N.H.] A portion of Edison Electric Institute dues was allowed as an expense where expenses related to advertising and lobbying were booked below the line. p. 447.

5. EXPENSES, § 88 — Political and lobbying expenditures.

[N.H.] Expenses incurred by a Washington consultant were disallowed for rate-making purposes where they were nonrecurring; ratepayer responsibility for political, institutional, or promotional activities was precluded by commission rules; and no specific evidence was given to demonstrate the benefit of the expenses to ratepayers. p. 448.

6. EXPENSES, § 19 — Costs related to plant conversion.

[N.H.] Expenses were allowed for a consultant to mediate the conversion of a generating plant from oil to coal. p. 449.

7. EXPENSES, § 89 — Regulation or rate case expenses.

[N.H.] Recovery of rate case expenses was allowed where the commission determined that a state supreme court decision required recognition of the expenses. p. 449.

8. REPARATION, § 15 — Collection of construction work in progress overrefund.

[N.H.] The commission allowed a utility to collect an overrefund of construction work in progress from the class of customers that originally received the refund on the grounds that the funds were rightfully the company's revenues. p. 450.

APPEARANCES: Martin L. Gross, Eaton W. Tarbell, and Debbie-Ann Sklar, for Public Service Company of New Hampshire (PSNH); F. Joseph Gentili, Consumer Advocate; Gerald Eaton for Community Action Program (CAP); Lee Bishop for the Seacoast Anti-Pollution League (SAPL) and the New England

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Coalition on Nuclear Pollution (NECNP).

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On May 19, 1982, the Commission issued Order No. 15,650 (67 NH PUC 331) whereby the Commission established Docket No. DR 82-146 to receive information concerning the Energy Cost Recovery Mechanism (ECRM) established by Commission Order No. 15,486 (67 NH PUC 157). This proceeding was also initiated to continue to properly account for any over or under recoveries in energy costs pursuant to our previous decisions in DR 79-187, Phase II and DR 81-87. The Commission held public hearings in this docket on June 9, 10, 11 and 22, 1982.

On May 19, 1982, the Commission also opened Docket No. DR 82-150 by Order No. 15,652. This docket was opened pursuant to RSA 378:7 and DR 81-87, Order No. 15,424 (67 NH PUC 25), where we indicated that because of our concern as to the financial integrity of PSNH that we could design a procedure to adjust rates on a six-month basis so as to closely monitor the Company's financial position. Hearings were held in this docket on June 21, 22, 28 and 29, 1982.

[1] The Commission is concerned with eliminating the constant fluctuations in the rates charged consumers for electricity. Institutions like schools, governmental bodies, businesses that are energy intensive and residential consumers who budget all need certainty as to what the rate will be for an extended period of time. The Commission has endeavored to establish a procedure whereby absent exceptional circumstances, rates while adjusted six months are constant for six months. The procedure allows consumers to focus their attention on their own usage habits, in

that any increase or decrease in a consumer's bill during the six-month time period relates *solely* to that consumer deciding to use more or less electricity in a given month.

The six-month rates set for the time period of July 1, 1982 to December 31, 1982 are the result of combining these two dockets. To facilitate discussion of the issues in both proceedings, the Commission will use its regulatory discretion to combine the dockets and issue this one decision.

II. DETERMINATION OF PARTIES

The Commission reserved the rights to determine party status. There was at, objection lodged as to SAPL and NECNP in the DR 82-150 proceeding. The Commission, after deliberation, unanimously approved those parties under appearances in this Report.

III. SCOPE OF THE PROCEEDINGS

[2] The Consumer Advocate filed a motion to strike certain issues from the proceeding. These issues included cost of capital, capital structure, rate base and certain expense adjustments that had been ruled upon by the Commission in DR 81-87. CAP, SAPL and NECNP supported this motion.

The Consumer Advocate based his argument for granting the motion on an allegation that there was a denial of due process. The Consumer Advocate contended that to allow proper representation of the consumer viewpoint, preparation on issues such as return on common equity, capital structure, and rate base must include time to solicit the assistance of experts in these areas.

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The Commission in examining this allegation of a denial of due process noted that the filing had been filed less than a month prior to hearings. The Commission, aware that both utilities and consumer groups have traditionally used experts for these issues, found that there would be in fact a denial of due process if these issues were examined in this short a time period. The majority of the Commission based on this rationale accepted the motion of the Consumer Advocate to limit the proceeding as to these issues and proceeded to hear only testimony on changes in revenues or expenses.

The Commission did, however, note that for the next six-month proceeding all parties to this proceeding or any subsequent parties were placed on notice that they were to be prepared to address the issues of cost of common equity, the cost of capital generally, attrition, rate base and capital structure. If expert testimony is needed, then these parties should be prepared to file testimony on these matters in the fall of this year. The Commission would encourage expert testimony specifically on the issue of return on common equity. In times of chaotic financial markets such as the present, it is important that a proper cost of capital and capital structure be determined on a fairly recent basis.

The acceptance of the Consumer Advocate's motion reduced the amount of the proposed revenue increase subject to Commission evaluation by \$8,531,924. The Commission also accepted a revised allocation formula as to cost of service that further reduced the revenue subject to Commission review by \$1,318,032. This leaves issues representing a proposed

revenue increase of \$11,691,237.

IV. *PROPERTY TAXES*

The Company filed a proforma adjustment for real estate taxes in the amount of \$1,292,729. That amount was based upon an estimated 8.8% increase from 1981 to 1982. Staff submitted Exhibit 12, which explains the abatement of the 1981 property taxes in the Town of Goffstown. The total tax bill of \$204,196 was abated in the amount of \$79,556. Staff and the Consumer Advocate recommend that the real estate adjustment should be reduced to reflect that abatement. CAP argues that property taxes should not be estimated and the actual taxes as of March 30, 1982 should be adopted. The Company argues that the Goffstown abatement should not be reflected, as there will be increases in other localities to offset the abatement (Exhibit 42). They also state that the Company's recent history in estimating real estate taxes has been very good. On the basis that the Company's recent real estate tax estimates have been good, the Commission will assume that the offsetting increases have been included in the estimated increases. However, Exhibit 2, Schedule 1A, page 2 of 3, includes Goffstown at the original figure. The Commission will remove the \$79,556 from the proforma adjustment. The Commission will also accept the adjustment to real estate taxes due to the sale of Maine properties (Exhibit 51) in the amount of \$32,063. The two adjustments together equal \$111,619.

[3] The Company argues that the Goffstown abatement should not be made, because it does not add to the incentive to pursue abatements. The Commission commends the Company for its active pursuit of abatements. Exhibit 12 presents a list of 56 communities where PSNH is pursuing tax abatements. A regulated monopoly has the duty of

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providing service at the lowest possible cost to the ratepayer. The Commission considers that goal as a proper incentive to continue to obtain tax abatements. As the cost of this activity is included in the current cost of service, any results obtained from that activity should also be recognized when they are known and measurable.

The Commission will accept a revised adjustment to expenses to reflect an increase of \$1,027,566 in property taxes allocated to N.H.¹⁽⁴⁸⁾

V. *SALARY ADJUSTMENTS*

PSNH proposed a total proforma adjustment to salaries and wages of \$5,952,236. The adjustment was calculated in three steps. The first step was an annualization of the base payroll to reflect the annual effect of payroll changes which occurred during the test year, in the amount of \$2,825,796. The second step was to annualize increases which have, or will, occur during 1982, in the amount of \$2,613,003. The final step was to include an increase of \$513,437 for the effect of increases upon overtime and premium costs. All of the payroll increases were factored at a rate of 72.86% to reflect the ratio of labor expense that is charged to utility operations as compared to the total labor expense of the Company. The overtime expense was calculated as 8.4% of the annual base payroll, excluding executives.

During cross-examination by Staff, it was pointed out that a retroactive payroll increase of 8% was paid to employees in August 1981 for the months of June and July 1981. The retroactive

increase was annualized using the August payroll figures resulting in an inflated annual payroll adjustment. The Company submitted a revised calculation (Exhibit 52) showing a decrease of \$161,900 in annualized base payroll. There was extensive cross-examination by the Staff and intervenors related to the use of the 72.86% expense factor. That expense factor was the Company's actual experience during the 1981 test year. Several exhibits (23, 49, 61) were submitted to show that the number of Seabrook-related employees was growing at an increased rate during 1981 and the first four months of 1982 while non-Seabrook related employees remained fairly constant. The ratio of labor expense charged to utility operations to total labor expense has decreased steadily during 1981. As a result of a Staff request, the Company Witness Wiggett testified that the expense ratio for the first four months of 1982 was 68.78%. The Staff and intervenors recommended that the 68.78% factor be used to determine the percentage of the payroll increases which should be charged to utility operations. To further illustrate the change which has taken place in the expense factor, a 76.31% factor was used in Docket No. 81-87 which was based on a 1980 test year while the 1981 actual expense factor was 72.86%, a change of 3.45%. For purposes of this case, the Commission will use the 68.78% expense factor, which is the actual experience for the first four months of 1982.

The percentage, which the Company used to determine the increase in overtime expense (8.4%), was based on 1981 actual overtime expense as a percent of the 1980 base payroll, excluding executives. Staff pointed out that when the 1981 overtime expense is compared to 1981 base payroll, the percentage is

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6.8%. Staff recommended that an overtime percentage of 7.2% should be used based upon the 1981 overtime expense as a percentage of the actual payroll expense after deducting overtime (Exhibit 2-11, page 48). The Commission will accept the Staff's recommendation.

There was extensive cross-examination by all of the parties related to the subject of including 1982 increases on an annual basis. The parties argued that the increases should be limited to the payroll increases which would actually be incurred in 1982 and should not include payroll expense, which would be incurred after December 31, 1982. The Staff and intervenors were concerned that the inclusion of wage increases for employees other than union employees, who receive increases at various times during the year, would result in overstating the payroll proforma adjustment for the period that it is contemplated that the revised rates will be in effect. The Company witness testified that 76% of non-hourly employees receive increases during the first half of the year. Staff recommends that only 76% of the proposed increase for those employees be included in the proforma adjustment. The Company's original adjustment was based on an estimated 8% increase, the same percent that was included in the union agreement. The Company stated that actual experience for 1982 was 9%. The 9% experience included executive increases, whereas the filed proforma adjustment did not. The Commission feels that the inclusion of executive payroll has skewed the experience upward from 8 to 9%. Further, the Commission will include only 76% of the estimated 8% increases for non-hourly employees.

The Company contends that the inclusion of the 1982 increases will only assure that the annualized payroll will be collected during a six-month period from July 1 to December 31, 1982 (Exhibit 34). They further state that this cost review is different from traditional rate cases and

that the annual amount should be used to set rates as of July 1982. The annual amount of increase for hourly employees will be included as the increases are effective as of May 30, 1982. Only a portion (76%) will be included for the other employees.

The proforma adjustment for payroll is calculated as follows:

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

| | |
|---|---------------|
| 1. Increase in annual base payroll requested | |
| \$ 3,878,392 | |
| Less: Retroactive adjustment (Exhibit 52) | |
| 161,900 | |
| <hr/> | |
| Sub-total | |
| 3,716,492 | |
| 2. 1982 Hourly payroll increase | |
| 1,460,017 | |
| 3. 1982 Other payroll increase requested | |
| 2,126,317 | |
| Less: Portion of annual increases after | |
| 6/30/82 (24%) | |
| 510,316 | |
| <hr/> | |
| 4. Overtime: Annual base payroll-1981 | \$ 44,829,713 |
| 1,616,001 | |
| Plus: Base payroll increases | 3,076,018 |
| <hr/> | |
| Total 1982 Base payroll | 47,905,731 |
| Overtime factor | 7.2% |
| <hr/> | |
| 1982 Overtime | 3,449,213 |
| Less: 1981 Overtime | 3,060,961 |
| 388,252 | |
| <hr/> | |
| Total gross payroll increases | |
| 7,180,862 | |
| Less: Capitalized portion (31.22%) | |
| 2,241,834 | |
| <hr/> | |
| Payroll adjustment excluding overheads | |
| 4,938,928 | |
| <hr/> | |
| Payroll Adjustment Allocated to New Hampshire | \$ 4,535,418 |
| (91.83%) | |

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VI. PENSION, PAYROLL TAXES AND INSURANCE COSTS

PSNH initially filed a proposed pro-forma adjustment for \$1,279,731 associated with increased insurance costs (\$345,230), pension costs (\$523,707) and payroll taxes (\$410,704). These pro-forma adjustments are directly tied to the wage adjustment. Consequently, acceptance of the Staff position as to wages necessitates a similar downward adjustment to these expense items.

The Commission will, therefore, accept the following adjustments:

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

Insurance Costs at 5.8% \$ 286,458

| | |
|---|--------------------|
| Pension Costs at 8.8% | 434,626 |
| Payroll Taxes at 6.9% | 340,786 |
| Sub-total | <u>\$1,061,870</u> |
| Adjustment Allocated to New Hampshire (91.83%) | \$ 975,115 |

The Commission will accept a proforma adjustment to expenses for the 1981 test year for \$975,115, or \$304,616 less than the PSNH request.

VII. *SHORT-TERM PURCHASES AND SALES*

The Staff raises the issue that our treatment as to short-term purchases should be consistent in merging the ECRM and non-ECRM proceeding. To honor that consistency, Staff would make a downward adjustment of \$44,100 for capacity costs of short-term purchases, which are non-recurring. However, Staff would also make a revenue adjustment of \$52,838 to general operating revenues to reflect 1981 short-term sales, or a net increase of \$8,738.

The Commission, to be consistent with its treatment in the latter ECRM portion of this decision, accepts the Staff position as to these two matters.

VIII. *EDISON ELECTRIC INSTITUTE DUES*

[4] The Company requests recognition of the dues that they pay to the Edison Electric Institute. The amount is \$192,547. In addition, the Company originally included \$46,428 in test year expenses for EEI's advertising program. Upon review of the advertising program, PSNH submitted Exhibit 40, where they agreed to eliminate the expense and have these expenses booked below the line.

In DR 81-87, the Commission on its own eliminated these expenses because the Commission could not separate the lobbying expenses, and the political and institutional advertising expenses from the general dues portion. Since the Commission had adopted rules that prohibit charging New Hampshire consumers for any expenses associated with political, institutional or promotional advertising or activities, the Commission excluded all EEI costs.

The Consumer Advocate contends that we should continue the exclusion since we have already excluded these costs from, cost of service in DR 81-87.

It is the Consumer Advocate's contention that the Commission is ill advised to review areas in which is has already reviewed in the short time period allocated to these proceedings.

The Commission finds that it is proper for ratemaking purposes to include the dues of \$192,547 for ratemaking purposes. PSNH has placed those expenses associated with lobbying activities below the line as is proper by Commission procedure. Furthermore, PSNH willingly acknowledges that the \$46,428 of EEI advertisements that are political or institutional in nature should be booked below the Free pursuant to the Commission rules. See Re Utility Advertising (1980) 65 NH PUC 499, 507,

which is a correct interpretation of our policy.

Consequently, test year expenses will be allowed to include the EEI dues. There will also be

a reduction in expenses of \$46,428 for those advertisements that are against the Commission rules.

IX. GOVERNMENTAL AFFAIRS EXPENSES

The Commission and CAP called into question the PSNH allocations of above-the-line and below-the-line expenses associated with their governmental affairs division. PSNH during 1981 allocated expenses of their employees based on the following criteria: if the employee was lobbying an individual legislator on a bill that PSNH took a position, the expense was booked below the line and not chargeable to stockholders. All other activities, including participating in groups which are taking positions on bills, are viewed as proper for above-the-line treatment.

CAP contends that PSNH's criteria based on their interpretation of account 426.4 is erroneous and, furthermore, that the criteria should be the Commission rules prohibiting direct or indirect costs of institutional or political activity from being passed on to customers. However, the record was not developed to quantify any adjustment. Consequently, the Commission places PSNH on notice that any test year using 1982 data or later will be subjected to the criteria set forth in the Commission rules on political, institutional and promotional activity as set forth in our rules and in 65 NH PUC 507. PSNH is to advise their employees in the governmental affairs department, their executives and their employees in other departments that their hourly billings are to reflect the Commission rules as set forth in 65 NH PUC 507. Compliance with this position will be a proper subject of inquiry in the next six-month adjustment, as well as all others subsequent thereto.

X. ELECTRIC POWER RESEARCH INSTITUTE

PSNH has requested recognition of \$873,277 of expenses associated with dues to the Electric Power Research Institute, the research arm of the electric utility industry. PSNH has not paid these dues in 1979, 1980 or 1981 due to its financial problems. Staff and the Consumer Advocate argue that the adjustment should be rejected due to PSNH's financial circumstances. The Company has paid these dues for the first six months of 1982 and intends to pay the dues for the remaining six months.

All of the participating Commissioners believe that under normal circumstances the payment of these dues is a proper ratemaking expense. However, the Commissioners split on the question of recognizing these expenses given the financial circumstances of the Company. Consequently, the requisite two votes being lacking, no judgment as to the recognition of these expenses can be given in this proceeding. Final resolution of this question must await some other proceeding.

XI. CONSULTANT EXPENSES

[5] Staff, the Consumer Advocate and CAP have called into question as nonrecurring \$25,149 of expenses associated with a Washington consultant. PSNH contends that if these expenses are reasonable and even if viewed as nonrecurring will be replaced by some other consultant.

The evidence demonstrates that these expenses should be excluded since: (1)

the consultant no longer works for PSNH and thus the expenses are nonrecurring; (2) his work will be performed by an existing PSNH executive; (3) these expenses were excluded in DR 81-87; (4) the expenses were clearly incurred in activities precluded by Commission rules precluding ratepayer responsibility for political, institutional or promotional activities; and (5) no specific evidence was shown as to the benefit of these expenses to ratepayers. The Commission will make a downward adjustment in test year expenses to remove these costs amounting to \$25,149 from being passed on to ratepayers.

XII. SCHILLER CONSULTANT

[6] The Commission has hired a consultant to mediate the successful conversion of the Schiller Station from oil to coal. These expenses of \$5,840²⁽⁴⁹⁾ are recognized as a proper proforma adjustment to test year expenses.

XIII. RATE CASE EXPENSES

Public Service Company of New Hampshire has included an adjustment to test year expenses to account for the recovery of rate case expenses. This adjustment, \$187,000 is directly attributable to the recovery of the remaining unrecovered rate case expenses commensurate with DR 79-187 plus similar expenses incurred during the course of DR 81-87, the previous rate case.

The position of the Commission Staff, as argued by the Finance Director, E. Sullivan, is that insofar as the Commission has provided for the review and recognition of legitimate and justifiable costs, as incurred during the normal course of doing business, at six month intervals, then the methodology and Company recommendation is appropriate.

The Consumer Advocate, F. Joseph Gentili, however, argues that the methodological change, which leads to the adjustment, is inappropriate because the adjustment is part of a six month step increase. Mr. Gentili argues that methodological changes are essentially policy changes, should not be done within the context of a six-month step increase; it is the view of the Consumer Advocate that these changes are better accomplished in a full rate change proceeding, wherein typically all costs, revenues and policies are subject to review. Mr. Eaton, Counsel for Community Action Programs, argues that it is inappropriate to provide for the simultaneous recovery of expenses associated with two rate change proceedings.

[7] The Commission is required to recognize rate case expenses by the Supreme Court decision in *New Hampshire v Hampton Water Works Co.* (1941) 91 NH 279, 38 PUR NS 72, 18 A2d 765. The Commission does have discretion as to the time by which these expenses are recovered. Furthermore, the Commission does have the discretion to disallow any unreasonable level of expense. There are however no challenges to the reasonableness of these expenses. Rather, the only questions raised have been to timing.

The Commission finds PSNH's proposed method reasonable given the establishment of the six month procedure. These expenses were legitimately incurred and therefore must be recognized.

In response to the arguments of the Community Action Programs, it is the view of the Commission that if rate case

expenses are being recovered with the same speed that they are being incurred then the standard of reasonableness has been met. The adjustment here is a provision to complete the amortization of the expenses associated with the early rate case DR 79-187, and is therefore consistent with this standard.

XIV. UTILITY TAX ASSESSMENT

PSNH originally requested an adjustment for an increase in the utility assessment tax. The initial assessment for the next fiscal year as calculated in 1981 would have supported the original proposed adjustment of \$185,171. However, there have been events resulting from Commission action and that of other governmental agencies that lead to a reduction in the assessment.

The Commission's Finance Staff, who are responsible for the calculation of the assessment, arrived at an estimate of \$72,846 or approximately \$112,000 less than that originally submitted by the Company. All parties agree to this new number which the Commission will accept.

XV. CWIP REFUND AND RECOUPMENT

In Section 10 of Exhibit 2, and in the testimony and cross-examination of Mr. Stetson on June 28, 1982, the Company presented proposed changes to the CWIP Refund and Recoupment provisions of the Company's Tariff NHPUC No. 26. The changes included several minor adjustments and one major change with respect to the CWIP refund in the matter of the outdoor lighting customers.

Mr. Stetson testified that because of a Company error in the calculation of the CWIP refund for the ML Outdoor Lighting Class, the Company inadvertently over-refunded those customers. The error was discovered April 28, 1982, and the refund for those customers was discontinued May 1. Mr. Stetson testified that the over-refund calculated at the end of May amounts to \$117,717. The Company proposes to net this amount against the future CWIP refunds for the D-Residential and G-General Service rate classes. The Staff opposes this treatment and recommends that the outdoor lighting customers be required to pay. The Consumer Advocate recommends that the Company not be allowed to recover the over-refund at all, because it was caused by Company error; CAP agrees and further notes that his clients would be harmed by the Company's proposal.

[8] The Commission finds that the Company should be allowed to collect the over-refund. In our opinion, the mistake on the part of the Company is the kind of error that may occur from time to time and is similar to a billing error, which the Company later corrects. In addition, the Company, as a result of the error, has instituted a tracking mechanism to prevent such errors in the future. The Commission also finds that the funds over-refunded by the Company have no relation to CWIP or the CWIP refund, but rightfully belong to the Company as revenues in 1982. Additionally, the funds should be returned to the Company by those customers who received the funds, e.g., the ML customers. We will, therefore, allow the Company to collect \$117,717 from the ML customers as a part of the base rates for those customers between July 1 and December 31, 1982, with a final reconciliation to be made in a similar manner as for the recoupment provision.

The Commission approves the Company's proposal for completing the CWIP refunds for the

other customer

classes, but notes that the refund accounts will change for D and G rate classes in accordance with the Commission's denial of the Company's request to net the ML over-refund against these amounts. The CWIP refunds shall continue to be noted separately on customers' bills. The Commission will expect a filing from the Company in November designed to complete the CWIP refunds for all customer classes by December 31, 1982, at which time a final accounting will be made to the Commission.

The Company's proposal for changes to the recoupment provision of the tariff is approved; a reconciliation of actual recoupment revenues with Company estimates will be made in the proceedings to consider a January 1, 1983 rate change, and any necessary adjustments to the rates for the January 1, 1983 to June 30, 1983 period will be considered. The Company will file a final accounting of the recoupment with this Commission when the recoupment is complete.

XVI. OTHER PROPOSED REVENUE AND EXPENSE ADJUSTMENTS

The Company submitted other pro forma adjustments for expense changes and revenue additions and reductions. No substantial challenge was raised to these by any party and upon review the Commission will accept all but the interest on customer deposits. The Commission would note that in the writing of this opinion certain questions have been raised in our mind as to the allocation procedures between wholesale and retail which will be one subject of the next six month proceeding.

XVII. ENERGY COST RECOVERY MECHANISM

The Commission by Fifty-Sixth Supplemental Order No. 15,486 approved the establishment of a rate mechanism to adjust for energy costs for Public Service Company of New Hampshire (PSNH) on a six-month basis.

The Commission, pursuant to the settlement agreement in DR 79-187, Phase II, and the Commission decision in DR 81-87, must examine and rule on the over/under collections that have occurred up to the present and through June 30, 1982.

Therefore, the Commission established Docket No. DR 82-146 for the purpose of resolving any questions related to over/under collections through June 30, 1982 and establishment of a new level of energy costs to be recovered in base rates for the time period July 1, 1982 through December 31, 1982.

PSNH filed testimony and exhibits in accordance with the settlement agreement approved in DR 79-187, Phase II, by Order No. 15,486 on May 20, 1982.

The ECRM rate currently in effect is \$3.645/100 KWH in base rates.

IN PSNH's May 20, 1982 filing, a rate of \$3.622/100 KWH was requested for the period July 1, 1982 through December 31, 1982. This \$0.023/100 KWH decrease would have resulted in approximately a \$1,000,000 annual decrease in New Hampshire retail revenue.

Due to numerous requests made during the course of the first three days of hearings by Mr. Gantz and Mr. Traum of the PUC Staff, updates of the May filing to include more recent known

figures, and corrections of several errors, the Company on June 17, 1982 filed a revised ECRM calculation supporting a rate of \$3.560/100 KWH. This would result in an annual decrease of approximately \$3,800,000 in New Hampshire retail revenues from the present level.

The Commission was gratified by the June 17, 1982 filing and the spirit of cooperation incorporated in it on behalf

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of the Company. Since this is the first full filing under the ECRM, the Commission wants to give the Company as much latitude as possible, so it will limit any further adjustments to ones that more or less "set the rules".

These fall in several areas:

1. The interest on overcollections estimated for the period ending December 31, 1982 should be credited to customers along with the principal amount of the overcollections as of June 30, 1982.

As noted in an exchange between Mr. Traum of the PUC Staff and Mr. Hall of PSNH, on pages 73-74 of the June 9, 1982 transcript, this figure was estimated to be approximately \$220,000. "Q. Am I correct that that two hundred and twenty thousand is not incorporated into your estimates for this upcoming six-month period?"

"A. That's correct."

Mr. Traum goes further to develop the scenario in which all of PSNH's ECRM estimates turn out to be accurate; and in that scenario asks,

"Q. So, in effect, two hundred twenty thousand would be due back to the customers?"

"A. That's right."

Based on these statements, the Commission feels \$220,000 or more accurately a figure developed utilizing the estimated overcollection figures as filed on June 17, 1982, or \$261,000, will be used to reduce this ECRM request and will be used to set the precedent of returning overcollections or collecting undercollections plus interest as soon as possible. The rationale for this is that the incorporation of 8% interest on over/ under collections is only rough justice, and the Commission's aim is to keep this interest figure as low as possible. This is best achieved by "returning" the principal and all of the interest estimated to be accrued on that principal in the same time frame; in this case, the next six-month ECRM period.

2. The Settlement Agreements establishing ECRM developed an incentive whereby PSNH is allowed to pass the costs of short-term secondary purchases through ECRM as long as the total costs of such transactions are lower than the bypassed PSNH energy costs. PSNH, through Mr. Johnson, illustrated the cost savings resulting to ratepayers from this proceeding. Examples of these savings were \$5,132 in February 1982, and \$50,970 in March, 1982.

These amounts were contributors to the overcollection as of June 30, 1982.

No estimate of a corresponding savings was built into the ECRM estimates for July through December, 1982, or for June, 1982. The Commission will not at this time make such an estimate,

but will let at least another six months of figures develop to provide a longer history upon which to derive savings estimates for future ECRM.

3. Hand-in-hand with short-term secondary purchases are the corresponding sales. The Commission's understanding is that short-term sales are made on an energy and capacity basis for billing purposes. PSNH has opted to flow the energy revenues through ECRM, but not the capacity revenues. These capacity revenues approximated \$31,000 in February, 1982; \$65,000 in March, 1982; and none in April, 1982.

The Company's position is that these capacity revenues should not flow through ECRM. This proposal would provide great incentive to the Company to make such sales and could provide windfall profits once Seabrook comes on line; but the Commission sees enough pitfalls in the proposed handling to disallow it.

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First, the handling proposed is not consistent with the handling of short-term purchases, which brings up the quandry referred to by Mr. Johnson of PSNH at T.341, "If I have included the cost of obtaining that capacity in ECRM and further attempt to optimize that purchase by a sale during the period of time when I really couldn't use it, then I feel that it is logical and consistent that the revenue be flowed directly through to further lower the ECRM."

In the particular case referred to, PSNH purchased 20 MW of nuclear power from Central Vermont Public Service Company (CVPSCo.) for the month of April, 1982, and flowed the energy and capacity components of the purchase through ECRM. Later, PSNH turned around and sold a portion of that short-term purchase, and only flowed the energy portion of the sale through ECRM.

Certainly, in this case, the capacity portion of the sale should also have been flowed through ECRM. In the broader spectrum the possibility exists, but won't be allowed, whereby PSNH could make short-term purchases flowing the corresponding energy and capacity costs through ECRM up to the level of avoided costs on a six-month basis, and then selling 100% of the short-term purchases but only crediting the energy portion of these revenues to ECRM.

Another Commission concern with the Company's proposed handling of short-term sales deals with the fact that in general these shares would result in lower savings shares from NEPEX-NEPOOL flowing through ECRM as credits.

In order to strengthen consistency, on T p. 322, Mr. Johnson stated, "the effect of these short-term system power sales and purchases does have a deflating effect on the size of the pot, or savings fund, at the pool."

Because of these reasons, the Commission orders that the capacity, as well as energy, component of short-term sales made by PSNH be flowed through ECRM. In this instant docket, this results in a \$95,866 increase in the estimated overcollection as of June 30, 1982.

Again, consistent with the handling of short-term purchases, no estimate of a corresponding savings for June or for July through December, 1982 will be made and incorporated in this upcoming ECRM estimate. The Commission will let at least another six months of figures develop to provide a longer history upon which to derive savings estimates for further ECRM's.

The Commission notes that by accepting ECRM estimates for June and July through December, 1982, which assume no cost-effective system sales or system purchases, such purchases and sales tend to cause overcollections in ECRM for those months. Our approach provides an incentive to the Company, in that those sales will act to improve cash flow and provide funds at only an 8% rate for at least the next six months.

4. The subject of a threshold upon which to revise the ECRM rate was discussed in some detail. Due to the lack of historical data upon which to rely, the Commission will set that threshold at a 10% variance from the known cumulative over or under collections plus the estimates for the balance of the six month period.

In summation, the ECRM rate for July through December, 1982 will be \$3.544/ 100 KWH calculated as follows:

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

| | |
|---|--------------|
| Estimated Total Costs Subject to Adjustment (per Exh. 1-A, page 2 of 2, Section F) | \$79,303,948 |
| Interest for Overcollection | - 261,000 |
| Short-Term Sales | - 95,886 |
| Revised Estimate-total costs subject to adjustment divided by est. N. H. Retail Sales-2,227,494,000 KWH, or \$0.035442 per KWH. | \$78,947,082 |

On an annual basis this results in an annual decrease of approximately \$4.5 million based on the level of N. H. Retail Sales for the test year ending December 31, 1981.

XVIII. OVERALL REVENUE ADJUSTMENT

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

| | |
|--|----------------|
| INITIAL PSNH SUB-TOTAL | \$22,859,225 |
| REVISED PSNH TOTAL | \$21,541,193 |
| RESULT OF CONSUMER ADVOCATE MOTION | (\$ 9,849,956) |
| PROPERTY TAX CHANGE FROM PSNH REQUEST | (111,619) |
| SALARIES AND WAGES CHANGE FROM PSNH REQUEST | (930,520) |
| PENSION, PAYROLL TAX CHANGE FROM PSNH REQUE. | (200,062) |
| EET ADVERTISING EXPENSES | (42,637) |
| EPRI DUES | (781,761) |
| UTILITY TAX ASSESSMENT REDUCTION | (112,000) |
| NON RECURRING CONSULTANT FEE | (23,031) |
| ECRM CHANGE ANNUALIZED | (4,500,000) |
| INTEREST ON CUSTOMER DEPOSITS | (3,484) |
| SCHILLER STATION CONSULTANT | 5,348 |
| SHORT TERM SALES AND PURCHASES | 7,078 |
| TOTAL REVENUE ADJUSTMENT GRANTED | \$ 4,998,549 |

XIX. RATE DESIGN

The Commission will instruct PSNH to file tariffs pursuant to the settlement agreement in evidence as Exhibit 55. This instruction is given for this proceeding only and the Commission will subject this agreement to further review for acceptance or rejection between now and the next proceeding. The Commission would note that in the residential class there will be no increase in the rates charged for the 200KWH lifeline rate and no change in the customer charge.

Therefore, if a customer uses 200 KWH or less there is no increase. The overall revenue percentage increase is approximately 1.35%.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Public Service Company of New Hampshire file tariffs to collect an additional \$4,998,549 in revenues on an annual basis; and it is

FURTHER ORDERED, that the rate design used in spreading this revenue increase is to be in accordance with the Settlement Agreement, Exhibit 55 in this proceeding; and it is

FURTHER ORDERED, that this new level of rates is to be applied on all bills rendered on or after July 1, 1982; and it is

FURTHER ORDERED, that the rate design set forth in Exhibit 55 freezes

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residential rates as to the customer charge and the first 200 KWH.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1982.

FOOTNOTES

¹\$1,181,110 × 87% = \$1,027,566

²Exhibit 60.

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NH.PUC*07/06/82*[79319]*67 NH PUC 455*Policy Water Systems, Inc.

[Go to End of 79319]

Re Policy Water Systems, Inc.

Intervenors: Green Hills Mobile Home Community and Brook Park Estates et al.

DR 81-229, Fourth Supplemental Order No. 15,743

67 NH PUC 455

New Hampshire Public Utilities Commission

July 6, 1982

ORDER approving rate increase, as modified.

1. RATES, § 120.1 — Test year.

[N.H.] The commission used an historic test year adjusted for known and measurable changes. p. 456.

2. VALUATION, § 25 — Date of valuation — Average or year-end figures.

[H.N.] Rate base was determined by using the year-end and beginning figures as an average. p. 456.

3. RATES, § 158 — Reasonableness — Past losses.

[N.H.] A rate is made to operate in the future and cannot be made to apply retroactively; therefore, operations losses attributable to past years cannot be recovered in rates for the future. p. 457.

4. EXPENSES, § 116 — Penalties and interest on taxes.

[N.H.] An amount for property tax interest and penalties was excluded from test-year expenses where the expense would have been alleviated with timely payment. p. 458.

APPEARANCES: Daniel A. Laufer for the petitioner; F. Joseph Gentili, Consumer Advocate; Representative Ralph Blake, representing the people of Raymond; Richard Lewis, president, Green Hills Mobile Home Community; Philip E. Marineau, representing Brook Park Estates.

BY THE COMMISSION:

I. HISTORY

Policy Water Systems, Inc., a public utility franchised to operate in certain parts of New Hampshire, filed on August 26, 1981 a petition to increase its permanent and temporary rates by 58%, or \$57,800.

On August 28, 1981, an Order of Notice was issued setting a hearing for September 29, 1981 at 10:00 A.M. at the Commission office in Concord. On October 25, 1981, Order No. 15,144 (66 NH PUC 389) was issued suspending the filing. On October 21, 1981, an Order of Notice was issued setting an evening hearing for Raymond on November 9, 1981 at 7:00 P.M. On November 23,

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1981, Report and Supplemental Order No. 15, 322 (66 NH PUC 523) was issued authorizing temporary rates. On March 3, 1982, an Order of Notice was issued setting a hearing for March 24, 1982 at 10:00 A.M., which was held as noticed. On March 26, 1982, Second Supplemental Order No. 15,558 was issued accepting the bond filed on March 24, 1982. On April 22, 1982, a Motion to Dismiss was filed by the Consumer Advocate and responded to by the Company on April 28, 1982. The Commission denies the Motion to Dismiss.

Based on the Company's attempts to comply with the requests made by the Commission Staff, the duly noticed hearing on April 28, 1982 proceeded with the burden of proof on the Company pursuant to RSA 378:8.

[1] This rate case proceeding has been of an extensive and prolonged nature due to the varied

interest and concerns of the many parties appearing in full or limited status. The Commission will utilize 1981 as a test year. This updated source of information properly adjusted for known and measurable changes will allow for just and reasonable rates, both for the present and the near future.

II. RATE BASE

[2] Rate base is developed by taking net utility plant plus working capital, materials and supplies and prepayments, less investment tax credits, construction work in progress, customer deposits, and customer advances.

It is usually based on an average for the test year.

For this Company, using year end and beginning as an average, the fixed asset account less accumulated depreciation and less contributions in aid of construction results in a negative figure. This result is unchanged by continuing through the other accounts.

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

| | 12/31/80 | 12/31/81 | Average |
|---|------------|------------|------------|
| Fixed Assets | \$ 537,277 | \$ 563,767 | \$ 550,522 |
| LESS: Depreciation | - 77,237 | - 82,150 | - 79,694 |
| LESS: Contributions | - 545,477 | - 545,477 | - 545,477 |
| | <hr/> | <hr/> | <hr/> |
| \$- 85,437 | \$- 63,860 | - 74,649 | |
| Add: Materials and Supplies | - | - | - |
| ADD: Prepayments | + 1,560 | + 2,642 | + 2,101 |
| LESS: ITC | - | - | - |
| LESS: Customer Deposits | - | - | - |
| LESS: Customer Advances | - | - | - |
| ADD: Working Capital (1/4 O&M of \$120,205) | | | |

1(50)
+30,051

RATE BASE
4,130

\$ 42,497 +

2(51)
38,367

= -

The Commission will, therefore, consider rate base as \$-0-.

III. COST OF CAPITAL

Since the Commission has previously determined a zero rate base, the cost of capital issue and, in particular, the issue of return on common equity is moot. The Commission remains concerned over the Company's extremely unbalanced capital structure. The Company's balance sheet reveals that the owner of the utility has invested only \$1,000 in the Company. In comparison, the Company's annual report demonstrates \$16,516.50 of debt outstanding as of December 31, 1981. This amount is all shown as notes payable even though

debt not maturing for at least one year should be reported as long-term debt.³⁽⁵²⁾

Since this debt will cost the Company approximately \$2,000 in interest expense in 1982, the Commission will incorporate such an amount in calculating the proper level of revenues needed by this utility.

IV. *RETROACTIVITY*

[3] The issue of retroactively-applied rates has arisen in this proceeding. Policy Water Company's filing of a requested increase of \$56,746 represents \$36,630 associated with 1981 test year operations. However, \$20,116 is attributed to what Policy Water lost in the last few years.⁴⁽⁵³⁾ Commission inquiries as to why the Company hadn't requested a rate increase a few years ago received a response that the Company had conducted initial discussions with an accountant, but that the ultimate result was a failure to file.

The New Hampshire Supreme Court has accepted the basic legal principle that a rate is made to operate in the future and cannot be made to apply retroactively. *Re Pennichuck Water Works* (1980) 120 NH 155, 419 A2d 1080, citing *Southwest Gas Corp. v Nevada Pub. Service Commission* (1970) 86 Nev 662, 669, 85 PUR3d 378, 474 P2d 379, 383.

The court clearly set forth in the Pennichuck opinion that utilities, like other businesses, must monitor their costs of doing business and employ sound business judgment in determining when they should seek a rate increase for future services. There is no constitutional requirement that mandates this Commission to correct retrospectively past errors in judgment made by the utility. (1980) 120 NH 155, 419 A2d 1080.

Applying the Pennichuck standard to this proceeding it is evident that the \$20,116 attributable to operations in past years cannot be retroactively recovered in rates for the future.

V. *OPERATING EXPENSES*

The New Hampshire statutory framework requires that a utility demonstrate the accuracy and reasonableness of the rates to be charged. Specifically, the statutorily imposed burden of proof requires a utility to demonstrate its revenues, expenses, rate base and cost of capital properly adjusted. Inherent in this practice is a requirement that the Commission's accounting practices, rules and regulations be followed.

In this proceeding the Commission must observe that the failure by the Company to adhere to this practice has caused considerable difficulty in arriving at a just and reasonable result.

The Company failed to follow proper accounting practices as to pump replacements. Rather than capitalizing additions, the Company improperly expensed these pumps. This situation arose three times during the test year and totaled a level of expenses of \$4,130. The Commission disallows these operating expenses and directs the Company to properly show this amount as fixed asset additions and thereby included in rate base. Such a treatment will allow depreciation to the extent such depreciation is not offset by contributions in aid of construction. Correspondingly, retirements should be removed from the Company's books of account.

Another comparatively large area of operation and maintenance expenses relates

to salaries of which \$34,200 was booked to general office salaries "and another \$6,034 to" supervisory fees and special services. The Commission finds that the evidence demonstrates this level of expense to be unjustified for a utility serving approximately 831 customers under a flat rate design. Adding to the unreasonableness of these expenses is billing costs amounting to \$3,660 paid to an outside concern.

Most of the physical work performed for Policy Water is done by Policy Well and Pumps, Inc., another concern owned by the owner of Policy Water. The billings for this work contain an allowance for overhead. Since the same owner is involved in both concerns, utility customers are paying for his supervision twice. This is accomplished directly through a \$20,000 annual water works salary and indirectly through the payments to Policy Well and Pump.

Testimony given by the Policy Water owner include that he works full-time for Policy Well and Pump, part-time for Aquetron Manufacturing Co. and S & C Realty and again full time for Policy Well. This conflicting testimony establishes that the proper utility accounting practices for time spent by a major owner or officer have been ignored. Under these circumstances the Commission will allocate 80% of the salary to non-utility operations.

[4] Property taxes were shown at a level of \$8,317. Inquiry as to their reasonableness established that \$297,⁵⁽⁵⁴⁾ was for property tax interest and penalties. Ratepayers are not to be held responsible for any expense that would have been alleviated with timely payment. The Commission will exclude \$297 from the cost of service.

A factor in the Company's previous failure to earn its allowed rate of return was the level of depreciation expenses. At the end of the test year, \$4,913 was booked. The Commission, through inquiry, was made aware that some of these expenses were associated with depreciation on contributed capital. The Commission has denied these expenses since to do otherwise would require ratepayers to pay twice for the same asset or in advance for future replacement. Furthermore, the New Hampshire Supreme Court has clearly established that consumers are not to pay costs associated with their contributed capital. *Windam Estates Asso. v. New Hampshire* (1977) 117 NH 419, 374 A2d 645.

The average fixed assets for 1981 were \$550,552. To this must be added the previously referred addition of \$4,134. Subtraction of the \$545,477 of consumer contributions leads to a figure of \$9,179. This average composite depreciation rate of 2.5% results in an expense level of \$229.

The New Hampshire Supreme Court requires this Commission to recognize rate case expenses as a legitimate expense. The Company's test year submission included a minor level of rate case expenses from a previous case. To that level the Commission will add \$550 to reflect an amortization adjustment relating to this case.

In summation, the Commission will allow the following:

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

Revenue Deductions Requested \$133,434

| | |
|-----------------------|------------------|
| Return | 20,116 |
| Requested | <u>153,550</u> |
| Disallowed: | |
| capitalized | (4,130) |
| return | (20,000) |
| wages | (10,000) |
| taxes | (297) |
| depreciation | (4,684) |
| plus interest expense | 2,000 |
| rate case expenses | 550 |
| Adjusted | <u>\$116,989</u> |

VI. OPERATING REVENUES

The test year of 1981 showed Operating Revenues of \$96,804 which should be proformed by \$672 to reflect our estimate of the annual revenue from the addition, in late 1981, of the 24 unit apartment building in Plaistow.

The Commission will thus accept \$97,476 as the adjusted test year revenue figure, and notifies the Company that in the future they are expected to adhere strictly to the PUC Chart of Accounts for Water Utilities.

VII. REQUESTED INCREASE

The proformed revenues as previously calculated are \$97,476 while the revenue deductions are \$116,989 resulting in a short fall of \$19,513. Accordingly, this Commission will allow the utility to increase rates by \$19,513 or 19.5% retroactive to September 29, 1981, the date designed for temporary rates in Supplemental Order No. 15,322 (66 NH PUC 523).

VIII. METERS

It is the Commission policy that all water shall be metered to insure that each customer pays for the amount consumed and to eliminate waste of the product that is generally inherent in an unmetered system. A metering program was discussed at public hearings. Policy Water Company is presently unmetered.

The Company has indicated that borrowing for meter purchasing may be difficult, and has also indicated an interest in a leasing program. We are of the opinion that the most economical method must be chosen and will expect to receive proposals and supplemental information within two weeks from the date of this Report and Order, including the estimated cost of meter reading. The information furnished shall also include that which is necessary to meter the output of each source of supply which is a long standing Commission requirement.

There is no apparent obstacle to metering the water systems served by Policy, with the exception of the Green Hills system in Raymond, New Hampshire which is predominately mobile homes.

It is possible some of these homes could find a large enough internal area in which a meter could be installed, however, the cost of an outdoor meter pit for those who cannot, would be an unfair burden.

It is also unfair, and discriminatory that the other systems served by Policy be metered,

thereby paying for all water consumed, and the Green Hills system remain unmetered with unlimited use at a flat or set charge. A metered system should have water available for all needs, including reasonable outside use, since cost recovery for the water system should be equal to demand.

We will reluctantly concede at this time, and for the reasons stated above, that metering at Green Hills is unreasonable. This will not, however, prevent future inquiry.

It also seems unreasonable to require Policy to have an unlimited supply available at Green Hills with unmetered/unlimited

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consumption. We are now receiving complaints of low pressure on this system which the Water Company maintains is the result of excessive watering and the home owners believe it is the result of a broken water main. Staff visited the Green Hills area on the afternoon of May 27, and could find no outside watering, however, a pressure check at Rep. Blake's (high system elevation) showed only 4 psi. Policy was just completing the replacement of a burned out pump in its main well. This should assist in solving pressure problems. However, in an effort to solve this problem we will require that Policy Water Systems and the Homeowners Association mutually divide the area served into time zones for the outside use of water. If another test between now and August 1, 1982 reveals further lack of pressure, the increase allowed will be rescinded as to these customers until corrective action is taken by Policy.⁶⁽⁵⁵⁾

IX. RESTRICTED OR LIMITED USE

In the past Policy has restricted outside use on many of its systems, in fact, prohibited its use between the hours of 4 p.m. to 9 p.m. during the summer months. We believe that outside use should be limited during peak periods, but not prohibited. If the Company believes that it is necessary to prohibit this use in order to serve its total system, then it is clear that further water supply is needed and must be actively sought.

Policy shall file new limited use regulations with the Commission Staff, for their review prior to issuance to its customers.

X. IRON & MANGANESE — ROLLING HILLS

Evidence has shown that a level of iron and manganese exists at Rolling Hills that is above recommended levels. The levels are not a health hazard, but do present color and taste problems. Policy has indicated that they are studying the problem and we are hereby requiring that this Commission be notified by August 31, 1982 of the intended action to be taken to relieve these conditions.

XI. FRANCHISE AREAS

Policy is presently providing water service to systems known as Beaver Hollow, R & B West Road, Scobie Pond, and Liberty Tree, which areas are presently not franchised by Commission Order. Policy shall immediately institute proceedings to franchise these service areas. In the interim, all terms and conditions of tariff, NHPUC No. 1 — Water, Policy Water Systems, Inc. shall apply to the above water systems.

XII. RATES

The unmetered rate schedule, or flat charge, presently in effect shall be increased by 19.5% to reflect the increased revenues allowed in this Report.

The metered rate schedule, that is presently a part of Policy's Tariff shall be revised to reflect a 19.5% increase in the quarterly charge for all water consumed over and above the first 3,750 gallons. The minimum charge of \$20.00 for the first 3,750 gallons shall remain.

These rates are also to apply to the Policy Water Systems served at Beaver Hollow, R & B West Road, Scobie Pond, and Liberty Tree.

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SUPPLEMENTAL ORDER

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

ORDERED, that 1st Revised Pages 5, 6, and 7 of Tariff, NHPUC No. 1 — Water, of Policy Water Systems, Inc. which were suspended by Order No. 15,144 (66 NH PUC 389), be, and hereby are, rejected; and it is

FURTHER ORDERED, that Policy Water Systems, Inc. shall file new tariff pages designated 2nd Revised Pages 5,6, and 7, Issued in lieu of 1st Revised Pages 5,6, and 7, and shall bear the effective date of September 29, 1981; and it is

FURTHER ORDERED, that 2nd Revised Pages 6 and 7 shall be revised as directed in this Report, and to reflect the 19.5% increase in annual revenues allowed; and it is

FURTHER ORDERED, that 2nd Revised Pages 5, 6, and 7 shall bear the further designation "Authorized by NHPUC Order No. 15,743 in case DR 81-229, dated July 6, 1982.

By order of the Public Utilities Commission of New Hampshire this sixth day of July, 1982.

FOOTNOTES

¹These figures are put in for simplicity and not to be used for precedent.

²Operating expense which should have been capitalized.

³This is but one example of an apparent unawareness of the Commission Rules and Regulation, much less proper accounting principles.

⁴April 23, 1982 Transcript, page 90.

⁵Company Responses, May 10, 1982 #5.

⁶It is the Commission's understanding that a new source of water has been connected to the policy System in Green Hills since the close of the evidence. We will rely on the residents of Green Hills to keep the Commission informed as to service.

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NH.PUC*07/06/82*[79320]*67 NH PUC 461*Hudson Water Company

[Go to End of 79320]

Re Hudson Water Company

DR 82-196, Order No. 15,744

67 NH PUC 461

New Hampshire Public Utilities Commission

July 6, 1982

ORDER granting second step increase.

BY THE COMMISSION:

ORDER

WHEREAS, the Commission opens this Docket No. DR 82-196 for the purpose of disposing of the Second Step Increase of the Hudson Water Company; and

WHEREAS, this Commission in its Report and Order No. 15,057 in DR 80-218 (66 NH PUC 303), specifically on Page 13, recognized the need for a second step increase in rates to reflect the additional rate base investments for new wells and interconnection costs; and

WHEREAS, the Commission noted these costs would be allowed in rate base on an immediate basis; and

WHEREAS, the Company filed on May 20, 1982, a petition reflecting these additions to its system in the amount of \$792,092; and on line as of April 20, 1982; and

WHEREAS, the Commission Staff sent out an exhaustive set of data requests to the Company on its filing on June 17, 1982; and

WHEREAS, the Company duly and fully responded on June 29, 1982; and

WHEREAS, the Commission feels the investment this resulted in improved

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quality and quantity of water to the Company's Hudson customers; it is

ORDERED, that Hudson Water Company be allowed to increase its rates to Hudson customers by 14.1727% according to 13th Revised Page 17 of NHPUC Tariff, No. 7 — Water, 13th Revised Page 19 of NHPUC Tariff, No. 7 — Water and 14th Revised Page 21 of NHPUC Tariff, No. 7 — Water; and it is

FURTHER ORDERED, that the Company may surcharge customers back to April 20, 1982, based on these newly approved higher rates.

The Commission wishes to put the Company on notice that the Commission feels it to be in the best interests of New Hampshire ratepayers to have the Company acquire additional New Hampshire water utilities whenever possible, and will recognize these acquisitions through appropriate rate-making incentives.

By order of the Public Utilities Commission of New Hampshire this sixth day of July, 1982.

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NH.PUC*07/06/82*[79321]*67 NH PUC 462*Concord Natural Gas Corporation

[Go to End of 79321]

Re Concord Natural Gas Corporation

DF 82-189, Order No. 15,746

67 NH PUC 462

New Hampshire Public Utilities Commission

July 6, 1982

ORDER authorizing utility to sell notes.

BY THE COMMISSION:

ORDER

WHEREAS, Concord Natural Gas Corporation is presently authorized to issue until June 30, 1982 its short-term notes and notes payable in the amount of \$1,100,000 by Order No. 14,966, issued in Docket No. DF 81-160 (66 NH PUC 239); and

WHEREAS, Concord Natural Gas Corporation, by letter dated June 22, 1982, requested authority to issue its short-term monies and notes payable in the amount of \$800,000 until December 31, 1982; and

WHEREAS, Concord Natural Gas Corporation plans to prepare a cash flow analysis to determine what its appropriate short-term limit should be for the period following December 31, 1982; 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 \$800,000 until December 31, 1982; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation shall, on or before December 1, 1982, file its cash flow analysis so the Commission may review the same; and it is

FURTHER ORDERED, that on or before January 1st and July 1st of each year, Concord Natural Gas Corporation

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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 sixth day of July, 1982.

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NH.PUC*07/06/82*[79322]*67 NH PUC 463*New England Telephone and Telegraph Company

[Go to End of 79322]

Re New England Telephone and Telegraph Company

DE 82-110, Order No. 15,747

67 NH PUC 463

New Hampshire Public Utilities Commission

July 6, 1982

ORDER authorizing license to cross railroad right of way with an aerial telephone cable.

BY THE COMMISSION:

REPORT

On April 6, 1982, the New England Telephone & Telegraph Company petitioned this Commission for authority to place and maintain aerial cable over State-owned railroad property. An Order of Notice was issued on April 8, 1982, setting the matter for public hearing at the Commission's Concord offices on May 19, 1982 at 10:00 a.m. In addition to published notice in the *Union Leader* on April 16, 1982, the Order of Notice was mailed to John Bridges of the Department of Safety; George Gilman of the Department of Resources and Economic Development; John R. Sweeney of the Aeronautics Commission; and, the Office of the Attorney General.

At public hearing on May 19, 1982, Wayne E. Snow appeared for the Company and John Clement for the Railroad Authority, Department of Public Works and Highways. Mr. Snow described the proposed crossing as an update of existing but inadequate plant for which no prior licensing could be located. The proposal consists of a 50-pair cable with one 6,600 lb. carrying strand to be placed between Pole 20B/4 easterly to Pole 20B/5. NET had indicated that the cable distance between poles was 70 feet but subsequent checking with the Public Service Company of New Hampshire which shares the poles revealed a correct figure of 63 feet ... Pole 20B/4 being 19 feet from the track centerline, Pole 20B/5 being 44 feet.

Mr. Clement indicated his concern was the location of the crossing in relation to railroad maps. At the hearing he compared his maps with those of NET and was satisfied. (Further isolation of the crossing was obtained subsequently from the Public Service Company of New Hampshire with its map marked "R-8021" which is made a part of this case.

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This map related the crossing to B&M Valuation Map V21/71.)

No objections were filed with the Commission on this updated plant and the Commission

finds it in the public interest. Licensing as requested is approved to be issued by appropriate State Official.

No damages are assessed since this has been an on-going right-of-way and it is not unduly burdened by the update. Our Order will issue accordingly. July 6, 1982.

ORDER

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

ORDERED, that a license to cross the State of New Hampshire railroad right-of-way is approved and authorized to be issued in Weirs Beach (Laconia), New Hampshire, at the following location.

Beginning at Pole #1, said Pole being located 695 feet measured northwesterly from Railroad Mile Post C35/G112; thence northwesterly 504 feet more or less to Pole #3; thence northerly 281 feet to Pole #4 (NET 20B/4); thence easterly 62 feet more or less to Pole #5 (NET 20B/5).

By order of the Public Utilities Commission of New Hampshire this sixth day of July, 1982.

=====

NH.PUC*07/06/82*[79323]*67 NH PUC 464*New Hampshire Electric Cooperative, Inc.

[Go to End of 79323]

Re New Hampshire Electric Cooperative, Inc.

Additional petitioner: Public Service Company of New Hampshire

DE 82-173, Order No. 15,748

67 NH PUC 464

New Hampshire Public Utilities Commission

July 6, 1982

ORDER authorizing transfer of electric service from one company to another.

BY THE COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc. (hereinafter called the Cooperative) and Public Service Company of New Hampshire (hereinafter called Public Service), corporations duly organized under the laws of this State and operating therein as electric public utilities under the jurisdiction of this Commission, by a Joint Petition, filed May 10, 1982, seek authority pursuant to Chapter 374 RSA for the Cooperative to discontinue service to ten (10) customers, and for Public Service to assume service to these customers, on Concord

Road and Mill Road in Lee, New Hampshire; and

WHEREAS, in order to render the service the Cooperative maintains an old distribution line which parallels Concord Road, except that it is off the shoulder of the road in difficult terrain, thus creating a problem of service reliability; and

WHEREAS, Public Service has existing distribution facilities along Concord Road in the same service area; and

WHEREAS, Public Service could provide better and more reliable service to these customers, and has agreed to provide this service; and

WHEREAS, the ten (10) customers involved, namely, John J. McDonald, Barry T. Hutchinson, Frank W. Spencer, Jacqueline R. Steffen, Pearl Peters, Susan Van Osdol, Mrs. Harriett B. Berry, M. Ammann, Eileen Miller, and David Long, have signified in writing that they have no objection to the proposed transfer, such assent to the transfer being on file with this Commission; and

WHEREAS, the Commission finds it to be in the public interest that the transfer of customer service take place on the evidence that improved service can be rendered through elimination of this difficult-to-maintain existing distribution line and connecting to existing facilities along a public road; and

WHEREAS, each company, the Cooperative and Public Service, has filed a revised service territory map reflecting the change brought about by this transfer of customer service; it is

ORDERED, that, pursuant to the provisions of Chapter 374 RSA, the Cooperative be, and hereby is, authorized to discontinue electric service; and Public Service be, and hereby is, authorized to provide service to the above-named customers; such authorization for this transfer of service being granted as provided by RSA 374:22 when all interested parties are in agreement; and it is

FURTHER ORDERED, that Public Service may collect accounts receivable, as existing at the time of the transfer, of the Cooperative relating to the subject customers, as a condition of continued service by Public Service.

By order of the Public Utilities Commission of New Hampshire this sixth day of July, 1982.

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NH.PUC*07/06/82*[79324]*67 NH PUC 465*New Hampshire Electric Cooperative, Inc.

[Go to End of 79324]

Re New Hampshire Electric Cooperative, Inc.

Additional petitioner: Public Service Company of New Hampshire

DE 82-190, Order No. 15,749

67 NH PUC 465

New Hampshire Public Utilities Commission

July 6, 1982

ORDER authorizing transfer of electric service from one company to another.

BY THE COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc. (hereinafter called the Cooperative), and Public Service Company of New Hampshire (hereinafter called Public Service), corporations duly organized under the Laws of this State and operating therein as electric public utilities under the jurisdiction of this Commission, by a petition filed June 3, 1982, seek authority pursuant to Chapter 374 RSA for the Cooperative to provide service to one (1) new customer within the franchise territory of Public Service on Route 101 in Candia, New Hampshire; and

WHEREAS, in order to render the service, Public Service will be required to build a 1,500' line extension; and

WHEREAS, the Cooperative has an existing express line approximately 200' from the proposed customer; and

WHEREAS, Public Service has requested the Cooperative to serve this customer, as the Cooperative is the closer utility; and

WHEREAS, the Cooperative can construct the line more economically and has agreed to provide this service to the one customer involved, namely F. Michael McRae; and

WHEREAS, the Commission finds it to be in the public interest that the transfer of customer service take place on the evidence that more economical service can be rendered through less extensive line construction; and

WHEREAS, each company, the Cooperative and Public Service, has filed a revised service territory map reflecting the change brought about by this transfer of customer service; it is

ORDERED, that, pursuant to the provisions of Chapter 374 RSA, the Cooperative be, and hereby is, authorized to provide electric service; and Public Service be, and hereby is, authorized to relinquish service to the above-named customer, such authorization for this transfer of service being granted as provided by RSA 374:22 when all parties are in agreement.

By order of the Public Utilities Commission of New Hampshire this sixth day of July, 1982.

=====
NH.PUC*07/06/82*[79325]*67 NH PUC 467*New Hampshire Electric Cooperative, Inc.

[Go to End of 79325]

Re New Hampshire Electric Cooperative, Inc.

Additional petitioner: Public Service Company of New Hampshire

DE 82-174, Order No. 15,750

67 NH PUC 467

New Hampshire Public Utilities Commission

July 6, 1982

ORDER authorizing transfer of electric service from one company to another.

BY THE COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc. (hereinafter called the Cooperative) and Public Service Company of New Hampshire (hereinafter called Public Service), corporations duly organized under the laws of this State and operating therein as electric public utilities under the jurisdiction of this Commission, by a joint petition filed June 3, 1982, seek authority pursuant to Chapter 374 RSA for the Cooperative to discontinue service to one (1) customer, and for Public Service to assume service to this customer, on Page Hill Road in Newport, New Hampshire; and

WHEREAS, in order to render the service, the Cooperative maintains a long cross-country feeder line through very difficult terrain inaccessible to trucks, thus creating a problem of service reliability; and

WHEREAS, Public Service has existing distribution facilities on Page Hill Road approximately 680' from the customer; and

WHEREAS; Public Service has agreed to build the tie line to the customer, and exclude the cost of the first 300'; with the Cooperative agreeing to pay for the remaining 380': and

WHEREAS, Public Service could provide better, more reliable service to this customer, and has agreed to provide this service; and

WHEREAS, the one customer involved, namely Carl S. Merritt, has signified in writing that he has no objection to the proposed transfer, such assent to the transfer being on file with this Commission; and

WHEREAS, the Commission finds it to be in the public interest that the transfer of customer service take place on the evidence that improved service can be rendered through elimination of a difficult-to-maintain existing cross-country feeder line and connection to facilities along a public road; and

WHEREAS, each company, the Cooperative and Public Service, has filed a revised service territory map reflecting the change brought about by this transfer of customer service; it is

ORDERED, that, pursuant to the provisions of Chapter 374 RSA, the Cooperative be, and hereby is, authorized to discontinue electric service; and Public Service be, and hereby is, authorized to provide service to the above-named customer,

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such authorization for this transfer of service being granted as provided by RSA 374:22 when

all interested parties are in agreement; and it is

FURTHER ORDERED, that Public Service may collect accounts receivable, as existing at the time of the transfer, of the Cooperative relating to the subject customer, as a condition of continued service by Public Service.

By order of the Public Utilities Commission of New Hampshire this sixth day of July, 1982.

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NH.PUC*07/08/82*[79326]*67 NH PUC 468*Public Service Company of New Hampshire

[Go to End of 79326]

Re Public Service Company of New Hampshire

DF 82-71, Supplemental Order No. 15,753

67 NH PUC 468

New Hampshire Public Utilities Commission

July 8, 1982

ORDER authorizing utility to increase its shares of stock.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Public Utilities Commission of New Hampshire ("Commission") by its Report and Order No. 15,677, issued June 2, 1982 (67 NH PUC 359), denied without prejudice the petition submitted by Public Service Company of New Hampshire ("Company") on March 4, 1982 for authority, pursuant to RSA 369:14, to increase beyond the amount then fixed by the Company's Articles of Agreement the number of authorized shares of Common Stock, \$5 par value, from 27,000,000 to 40,000,000 shares and the number of authorized shares of Preferred Stock, \$25 par value, from 5,000,000 shares to 8,000,000 shares;

WHEREAS, on June 17, 1982, the Company filed a Motion for Rehearing in Respect to Report and Order No. 15,677, praying in the alternative that the Commission grant the Motion for Rehearing and issue an order approving the increase in the number of authorized shares of both its Common Stock and Preferred Stock, \$25 par value, as set forth in the petition or immediately schedule an additional hearing in Docket No. DF 82-71 to permit the Company to introduce testimony with respect to the impact upon the Company of the provisions of Report and Order No. 15,677;

WHEREAS, on June 18, 1982, the Commission held an additional hearing in this Docket No. DF 82-71 to consider the Company's Motion for Rehearing and to reconsider the terms and conditions of the Report and Order No. 15,677; and

WHEREAS, the Company, through its counsel, stipulated at the said hearing

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that an approval by the Commission of the Company's petition for authority to increase the number of authorized shares of its Common Stock and its Preferred Stock, \$25 par value, pursuant to RSA 369:14, would not operate in any manner, nor would the Company so contend, to constrain or otherwise restrict the authority of the Commission to determine pursuant to RSA 369 whether or not the issuance of any additional, authorized but unissued, shares of either the Company's Common Stock or Preferred Stock, \$25 par value, is consistent with the public good

NOW, THEREFORE, be it hereby:

ORDERED, that the Commission's Report and Order No. 15,677 is hereby vacated; and

FURTHER ORDERED, that Public Service Company of New Hampshire be, and it is hereby, authorized to increase the number of shares of its authorized capital stock as follows: Preferred Stock, \$25 par value, from 5,000,000 shares to 8,000,000 shares; Common Stock, \$5 par value, from 27,000,000 shares to 40,000,000 shares subject to the PSNH counsel stipulation.

By order of the Public Utilities Commission of New Hampshire this eighth day of July 1982.

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NH.PUC*07/09/82*[79327]*67 NH PUC 469*New England Telephone and Telegraph Company

[Go to End of 79327]

Re New England Telephone and Telegraph Company

Intervenors: Community Action Program and Office of Consumer Advocate et al.

DR 82-70, Supplemental Order No. 15,752

67 NH PUC 469

New Hampshire Public Utilities Commission

July 9, 1982

ORDER granting telephone rate increase, as modified.

1. RETURN, § 111 — Telephone — Factors to be considered.

[N.H.] The commission based its decision on the rate of return based on: (1) the company's efforts to control costs and minimize expenses to consumers; (2) the uncertainty and risks caused by the divestiture of the American Telephone and Telegraph Company; and (3) the recommendations of the parties. p. 472.

2. RATES, § 539 — Local measured service.

[N.H.] The commission ordered New England Telephone and Telegraph Company to provide low-use measured service as an option in every community. p. 474.

3. RATES, § 553 — Telephone — Kinds of service and facilities — Centrex.

[N.H.] New England Telephone and Telegraph Company (NET) was ordered by the commission to offer existing Centrex customers a three-year rate freeze in exchange for an agreement to continue to use NET to prevent

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the loss of Centrex revenues after divestiture. p. 476.

APPEARANCES: Dellon E. Coker and Terry J. Kolp for the federal agencies; Peter Guenther and Robert Wells for New England Telephone Company; F. Joseph Gentili, Consumer Advocate; Gerald Eaton for Community Action Program (CAP). Staff: Eugene Sullivan, finance director; Robert Camfield, economics director; Dr. Sarah Voll, staff economist; Edgar Stubbs, telephone engineer.

BY THE COMMISSION:

REPORT

I. *HISTORY*

On April 12, 1982, New England Telephone (hereinafter referred to as "the Company" or NET") filed with the Commission a request for an increase in its permanent rates to be effective on May 12, 1982 and providing for rates designed to yield an increase in annual revenues of \$13,669,000.

Order No. 15,613 suspended the proposed rates when it was issued on May 5, 1982. A procedural hearing on May 7, 1982 led to a schedule for public hearings, data requests, responses and the filing of testimony by parties and Staff.

Public hearings were held on April 13th, 14th, 15th, 19th, May 12th, 27th, June 8th and June 17, 1982 in Manchester, Keene, Portsmouth, Plymouth, Littleton, Nashua, Berlin and Concord, respectively.

The Commission has been able to achieve a greater level of public participation due to the new requirement of a notice of intent to file thirty days in advance. The Commission has been able to obtain more information as to any rate increase request through its new filing rules. These rules allow for more information to be filed initially and, consequently, for a more thorough yet less time-consuming procedure than resulted from previous Commission practice. Through the filing rules, the quantity and quality of information filed allows parties to focus their attention on those areas of disagreement in a more expeditious manner.

The quality of Staff analysis and the quality of intervenor presentations, together with the new filing rules, have made possible more settlements, either of complete cases or of certain aspects of a case. These developments have minimized regulatory lag, increased the impact of public participation and made the result more reflective of the needs of both the public and the utilities.

In this proceeding a settlement was entered into by Staff and the various parties as to some, but not all, of the issues in controversy. The Commission adopted the settlement on June 17,

1982. The remainder of this opinion will address both the settled issues, as well as those left to Commission judgment.

II. *RATE BASE*

The Company originally filed a proposed rate base of \$289,668,000. The settlement reduced this figure first by \$576,000 associated with pre-1971 investment tax credit; and second by \$4,000 for property held for future use. The remainder, \$289,088,000, is agreed upon by all parties and found to be reasonable by the Commission.

III. *NET UTILITY OPERATING INCOME.*

NET originally proposed a 1981 test year with a corresponding net utility operating income of \$29,121,000. The

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parties through the settlement agreement agreed to an increase in the net operating income to reflect the additional effects of expensing of station connections. This adjustment, \$211,000, is allowed as reasonable, and the Commission finds that the agreed upon net operating income of \$29,332,000 is reasonable. The Commission is aware that numerous revenue and expense adjustments could be made. However, the balance established by the settlement is reasonable.

IV. *CAPITAL STRUCTURE AND RETURN ON COMMON EQUITY*

The issues of: (1) a proper capital structure; and (2)) a proper return on common equity were the most controversial among the parties. The Federal Executive Agencies had sought expert assistance on both issues. Community Action Program had focused their attention on these two issues. Staff Economist Robert Camfield had been preparing since the last case to litigate capital structure and was prepared to address the return on common equity issue. The Consumer Advocate was negotiating with experts as to both issues.

New England Telephone's initial tariff filing and accompanying exhibits sought a return on common equity of 18% to 20%, an embedded cost of debt of 8.71% and short-term debt cost of 12.42%. These cost rates when properly weighted led to overall requested cost of capital of 12.31% to 13.28%. Furthermore, NET contended that there was no valid reason to explore any capital structure other than that established on the NET books.

The parties entered into settlement discussion and arrived at a highly professional agreement — professional in the sense that there is recognition of the existing high interest rates, yet protection in the immediate future that if the situation changes, the Commission, the Company and the parties can adjust the result. The agreement is solid, in that it provides that the more complex issue, capital structure, is to have its own hearing without tying up a rate proceeding. The wisdom of this approach is further underscored recognizing that there should be greater knowledge as to the immunity of divestiture due to the ATT-Department of Justice anti-trust settlement when this proceeding is undertaken.

The parties agreed that 15.25 to 17% was a proper range for return on common equity. The parties have all agreed that any number within that range is reasonable, and that all are bound by any number within the range.

The parties also agree that the Commission or any party to this agreement may initiate, in a petition to this Commission, an investigation of the Company's cost of equity should a measurable reduction in capital market cost rates occur within a one-year period following the approval by the Commission of this agreement. For the purposes herein, a measurable reduction is considered to have occurred if, for any consecutive six-month period within the above one-year period, the yield on time series entitled Long Term Treasury Securities as disclosed in *U.S. Financial Data* declines by more than 10% from the yield shown for the week of the Commission's approval of this agreement or, if; for any consecutive six-month period within the above one-year period, the average dividend yield for the composite group of utilities entitled Moody's 24 Electric Utilities, as disclosed in Moody's *News Reports* declines by more than 10% from the yield shown for the week of the Commission's

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approval of this agreement. If, subsequent to an ordered reduction in the Company's cost of equity, average Long Term Treasury Security rates or Moody's dividend yield levels recover for a period of three consecutive months to the initial level(s), the Company will be permitted to request an investigation for the purpose of reinstating the cost of equity determined in this case. If the Company makes such a request, it is agreed it will not file a full rate case within the six-month period subsequent to making that request. The provisions of this aspect of the agreement will expire upon the filing by the Company of a general rate case.

As to the issue of capital structure, the parties have agreed that for purposes of this proceeding, the Company's 1981 average capital structure is reasonable. They have further agreed that in the pursuit of the public good, New England Telephone within six months of the date of this order will petition the Commission for an investigation as to the issue of an appropriate (optimum) capital structure to be used for ratemaking purposes for New England Telephone in New Hampshire.

[1] The Commission finds the range of reasonableness to be the range submitted of 15.25% to 17.00% as to return on common equity. The Commission would normally opt for the middle of this range, or 16.125%. The Commission will accept 16.5% as reasonable for the following reasons. First, the Commission has recognized in *Re Granite State Electric Co. (1982) DR 81-86* and *Re Exeter & Hampton Electric Co. (1982) DR 81-317* an incremental addition to return on common equity for superior management in controlling costs and minimizing expenses to consumers. The New England Telephone Company through its expense-cutting programs and its capital investments to offer a wide variety of services to its customers meets this criteria. In particular, the Company has complied with our order to provide low-use measured service in many areas, including Berlin, Keene and Lebanon. This rate mechanism allows basic telephone service to be provided at a rate in the \$5 to \$6 range and, most importantly, allows consumers who are low income, on fixed incomes or low users of telephone service to have access to the telephone network. NET will by the end of this year have complied with our orders in the last case to provide this service to South Nashua, Rochester, Wolfeboro and Laconia.

The Company has made further capital improvements in response to Commission direction in the communities of Westmoreland, the Greater Lakes Region and the Seacoast to improve the

quality of service. These improvements have resulted in fewer outages, extended local service and an opportunity for Granite Stage calling.

Clearly, regulation should attempt to incorporate many of the same factors that contribute to the success of non-regulated businesses. *Grafton County Electric Light & P. Co. v New Hampshire* 77 NH 539, 540, PUR1915C 1064, 94 Atl 193. The need to provide improved service and flexible options in response to customer needs is a factor to which companies in a competitive market would respond.

A second reason for our acceptance of the 16.5% is the uncertainty caused by the ATT-Department of Justice settlement and proposed Congressional legislation that will likely cast local telephone companies into a riskier position.

A third reason for our use of the 16.5% is that although the parties suggest

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a range of 15.25% to 17%, they recommend adoption of the 16.5%.

The Commission will thus adopt 16.125% plus an increment based on the aforementioned factors to arrive at a final return on common equity figure of 16.5%

The Commission will accept the settlement in its entirety as to future adjustments and as to the requirement of NET to file a petition as to a proper capital structure. It is inherently obvious that an optimum capital structure for a company divorced from ATT is different than one continually linked to ATT. Furthermore, a solid review of the capital structure outside a rate case allows for more thoughtful analysis than one litigated in the confines of a rate case.

The Commission will thereby accept the following as the overall capital structure and rate of return for New England Telephone in New Hampshire:

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

RATE OF RETURN

Equity
Long-Term Debt
Short-Term Debt

Total Capital

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

NEW HAMPSHIRE INTRASTATE OPERATIONS

Item
Investor Supplied Capital
Deferred Income Tax

Total

V. OVERALL REVENUE REQUIREMENT

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

| (A) | (B) |
|---------|---------|
| NET | AVERAGE |
| UTILITY | RATE |

| | INCOME | BASE |
|---|---------------|----------------|
| 1. Company proposal | \$ 29,121,000 | \$ 289,668,000 |
| Changes: | | |
| 2. Adjustment to income to reflect additional effects of expensing of station connections | 211,000 | |
| 3. Elimination of pre-1971 investment tax credit from rate base | | (576,000) |
| 4. Elimination of property held for future use from rate base | | (4,000) |
| 5. Stipulated Results | \$ 29,332,000 | \$ 289,088,000 |
| 6. Allowed | 11.57% | |
| 7. Required Earnings (L5B × L6) | 33,447,000 | |
| 8. Additional Earnings Required (L7 - L6) | 4,115,000 | |
| 9. Additional Revenues Required (L8 ÷ .49097) | \$ 8,381,000 | |
| () Indicates reduction | | |

VI. RATE DESIGN

A. Low-Use Measured Service

[2] The Commission in its two most recent NET dockets has been attempting to expand the offering of low-use measured service to various communities in New Hampshire. In DR 80-23 ([1980] 65 NH PUC 564) the Commission ordered low-use measured service into the communities of Berlin, Keene and Lebanon. In our decision in DR 81-221 ([1981] 66 NH PUC 350), the Commission ordered low-use measured service into the communities of South Nashua, Rochester, Wolfeboro and Laconia.

The Commission is aware of the dramatic increases in telephone rates that will occur if certain provisions of the ATT-Department of Justice settlement are approved, or if certain pieces of pending national legislation are passed without significant amendment. The effects of increased competition alone will remove much of the subsidy that has kept telephone rates relatively low in price compared to other utility services. Because these national factors will ultimately affect New Hampshire consumers, it is more critical than ever to insure that each residential customer in the State has the choice of low cost measured service — \$5 to \$6 per month, or regular residential service.

Public hearings held in this docket have demonstrated that while major population areas have access to this option, many communities in less urban settings are denied such a choice. In particular, the North Country has a compelling need for greater access to this option. Public comment in our Littleton hearing focused on the belief by many consumers in that area that they are the last ones to receive the benefits of progressive changes like low-use measured service. The Commission is also aware that many of these less urban communities are suffering worse than average economic conditions and unemployment. Such factors require an acceleration of the low-use measured service option and a refocusing of priorities to include these less urban communities.

Based upon the evidence obtained in our public hearings, the Commission will order that NET offer low-use measured service in the following communities by the end of 1983:

Groveton, Franklin, Plymouth, Greenville, Hanover, Durham, Newport, and Somersworth. The Commission will further require NET to offer low-use measured service to Littleton by July 10, 1983.

The Commission will require NET to provide the low-use measured service

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option to be available in every New Hampshire community by December 31, 1985. Pursuant to this requirement, NET is to file with this Commission a compliance plan of construction to achieve this result.

B. Extended Local Service

There has been an increasing consumer concern, especially in the North Country, to have a greater calling area than is presently provided. The difficulty in resolving consumer concerns in this area can be simply stated: all telephone consumers are not alike. In a given locality, some consumers may wish to reach toll-free community A while others may only be interested in community B, and still others rarely, if ever, call either community. Because telephone rates are based in part upon the number of telephone services a consumer can reach toll free, those that make a consistent level of calls to another community (A) can save money if system additions are made to allow slightly increased rates for the privilege of reaching the other community (A) toll-free. Correspondingly, those that consistently call some other community (B) or rarely, if ever, make calls to neighboring communities pay more and their respective telephone needs are not enhanced by the creation of toll-free calling to community A.

As to how to properly resolve whether any community should have an extension to its local toll-free calling area, NET and the Commission's telephone engineer have drawn up guidelines so as to establish an orderly process. A review of these procedures demonstrates concerns for all the customers and yet appear to give the Commission valid tests to use in making these decisions. The Commission will adopt these procedures.

The Commission does believe that ample evidence has been given in this docket to provide greater extension of local service in the northwestern portion of the State. In particular, there appears to be sufficient community interest to require an extension of local service in Lisbon to be expanded to include the Woodsville exchange. NET is ordered to implement the necessary equipment changes and additions to accomplish this result. The record obtained in the public hearing in Littleton indicates that this change is for the betterment of the public good in that area.

C. Handicapped Services

The Commission inquired into the level and justification of rates presently being charged under the general title of handicapped services. There are presently three devices which are designed to provide greater accessibility to the telephone for people with hearing or speech handicaps. These are a Bone Conduction Receiver presently a charge of \$3.00 per month proposed to be increased to \$3.40; Low Speech — Power Telephone Equipment presently at \$.50 per month proposed to be increased to \$.55 per month; and a volume control device presently at \$.50 per month proposed to be increased to \$.55 per month. These charges are applied in addition to the usual monthly rate.

The Commission is aware that one of the initial forces behind the creation of the telephone was concern with providing assistance to people with these handicaps. Critical in the usage of telephone service is the ability to hear and be heard. Present telephone service provides this ability to the majority of telephone users at the monthly residential rate. The Commission cannot find any compelling reason for an increased fee

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to be collected from those who are incapable of receiving the same level of service as the majority of telephone users. Basic service in the telephone industry should at a minimum provide accessibility to hear and be heard at one price. Consequently, the Commission will eliminate any charges for these services provided a letter explaining the need on a doctor's stationery is provided to New England Telephone.

D. Equipment Purchase — Inside Wiring

Due to the decision on the national and state levels to promote competition in the telephone industry, there has been an emergence of a trend where people buy their own telephone equipment and install it themselves. The public hearings, together with letters to the Commission, demonstrate a strong objection to the present \$.40 a month station line charge that is applied to residential and single line business customers who own their own equipment and do much of their own inside wiring. This situation becomes an aggravation when the full service connection charge is applied.

The Commission finds that the public interest requires that there be an elimination of this charge for residential and single line business customers who own their equipment. There does not appear to be underlying cost justification for a continuation of this charge. Nor is it equitable to treat consumers who own their telephones the same as those who do not. Consequently, the Commission will instruct the Company to establish and publish guidelines which eliminate these charges for those that own their own equipment. Furthermore, these guidelines are to include recognition that some of the service connection charges are to be alleviated where the customer provides the equipment.

E. CENTREX Customers

[3] The Commission is concerned that significant revenues presently received by New England Telephone in New Hampshire will be lost to ATT and other competitors when divestiture occurs. One area where there is a likely revenue loss is CENTREX customers. These customers while not significant in numbers are significant in terms of revenues. Users of this service such as banks are likely to be the source of future attempts by others to switch their business to some non-regulated entity. If these future attempts are successful, then New England Telephone as it will then exist, will have less revenue and thus will have a greater reliance upon local service revenues.

The Commission inquired into the area of revenues from CENTREX customers because of our concern that both the local operating Bell Company and its customers be in a stable position to weather the storm of change that will occur with the divestiture. Because of this concern, the Commission will instruct the Company to offer to its existing CENTREX customers a three year

rate freeze for an agreement to continue using the New England Telephone Service. Such an offer is to expire on December 31, 1982

F. Downtown Nashua Payment Center

Many of the consumers who appeared at the public hearing in Nashua complained of the lack of a downtown payment office. These particular consumers, who were primarily senior citizens and residents of downtown Nashua, expressed dismay over the loss of any establishment in which they could pay their monthly bills without having to own an automobile. The Commission instructed NET to resolve this concern, and it is our understanding that three

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payment centers will be opened this month. They are the Nashua Senior Citizen Center Agency, the Dugas Suprette Inc. and the Bright Spot. The Commission finds that these three establishments will adequately respond to the needs of Nashua and its citizens.

G. Seacoast Emergency Review

The public hearing held in Portsmouth brought concerns over the reliability of the telephone service in case of any emergency. The Commission notes that with the Portsmouth Naval Shipyard, Pease Air Force Base, the Newington and Schiller Station, the Seabrook Units and the propane storage areas in Newington, it is imperative that reliable telephone service and sufficient lines and other equipment are a must. Consequently, the Commission will require a study to be conducted by NET as to the reliability of their Seacoast system during an emergency. This study is to include recommendations for improvements to the overall system in this vital area.

H. Revenue Increase Effect

There will be no increases applied to intrastate toll calls, coin telephones or directory assistance charges. There will be rate reduction for customers who presently use the handicapped services listed in this report and an offsetting reduction for customers who own their telephone. The revenue increase with the exceptions listed above are to be applied in identical fashion as proposed in the original tariff albeit at a reduced rate. The approximate effect of the approved increase for residential customers will be from 35¢ to a maximum of \$1.10 a month increase. A residential customer with one party service in Concord, Laconia or Portsmouth will witness an increase of approximately 90¢ compared with the requested \$1.30 increase. The bill of these customers will go from \$11.00 to \$11.90 a month.

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 tariff pages filed in this proceeding are rejected; and it is

FURTHER ORDERED, that New England Telephone file revised tariff pages in accordance with the rate structure set forth in the attached Report to increase revenues on a net basis by \$8,381,000; and it is

FURTHER ORDERED, that this increase be applied to all bills rendered on or after July 9,

1982.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1982.

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NH.PUC*07/09/82*[79328]*67 NH PUC 478*International Generation and Transmission Company, Inc.

[Go to End of 79328]

Re International Generation and Transmission Company, Inc.

DSF 82-30, Order No. 15,755

67 NH PUC 478

New Hampshire Public Utilities Commission

July 9, 1982

ORDER denying public utility status.

1. PUBLIC UTILITIES, § 12 — What constitutes public service or public use — Fitness.

[N.H.] Function is not the sole criterion for determining public utility status, but a finding of public utility status must be based on the applicant's ability and fitness to carry out its proposed functions. p. 482.

2. PUBLIC UTILITIES, § 11 — State commissions — Power to determine utility status.

[N.H.] General utility law and New Hampshire court decisions support the commission's authority to apply criteria other than functional definition in determining public utility status. p. 483.

3. PUBLIC UTILITIES, § 12 — What constitutes public service or public use — Fitness.

[N.H.] In deciding whether to grant public utility status, a standard of fitness in fulfilling the public interest will be applied, using criteria such as: (1) financial backing; (2) management and administrative expertise; (3) technical resources; and (4) the general fitness of an applicant. p. 484.

APPEARANCES: Earl Gage on behalf of International Generation and Transmission Company, Inc. Limited appearance: Representative Lawrence Guay.

BY THE COMMISSION:

REPORT

PROCEDURAL HISTORY

On February 3, 1982, an application was presented to the State of New Hampshire Public Utilities Commission and Bulk Supply Site Evaluation Committee by the International

Generation and Transmission (Company, Inc. for a certificate of site and facility to construct, operate and maintain a 765 KV international transmission tie in Coos, Grafton and Merrimack County's, New Hampshire. At a scheduled Site Evaluation Committee meeting on February 26, 1982, the Committee unanimously voted not to accept the application until the Public Utilities Commission rendered a decision as to whether IG&T should be authorized a franchise to operate as a public utility in the State of New Hampshire.

On March 1, 1982, the application was filed with this Commission. On March 23, 1982 an Order of Notice was issued by the Commission setting a hearing for April 27, 1982. Certificates by the petitioner's attorney that the notices were posted as required were received dated April 26 and May 18, 1982. Notices were also sent to Richard Couser, Esquire, Robert Backus, Esquire, Edward Cross, Esquire, Office of Attorney General, the respective counsel representing the parties in DSF 81-349, the application of New England Electric Transmission Co., and to all members of the Site Evaluation Committee.

On April 15, 1982, the petitioner filed initial testimony and supplemental testimony

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of John N. Harris, a document entitled "Correspondence and Pertinent Data with the New Hampshire Executive Office and Public Utilities Commission referencing the need for International Transmission and Oil Replacement in New England", and a document entitled "IG&T Pump Storage Project, Stark, New Hampshire, and West Milan, New Hampshire: Preliminary Permit 2825, Summary of Reports, Pertinent Data and Correspondence Reference Project Studies and Intervenors, 1981/1982".

The initial hearing was held on April 27, 1982 with subsequent hearings on May 5th and May 19th. At the close of the hearing on May 19th, the Commission noted that the burden for providing additional documentation was on the applicant and that counsel for the applicant should notify Mr. Iacopino, Executive Secretary of the Commission, as to further information the applicant intended to file or as to the need for an additional hearing. Despite a telephone call from Mr. Iacopino to Mr. Gage, no further information or a request for a hearing was received by the middle of June. In light of the applicant's continued emphasis on the need for a speedy resolution to these proceedings and the Commission's desire to expedite this case, Mr. Iacopino sent a letter to Mr. Gage on June 16th indicating that any additional information must be filed by June 23rd. Mr. Gage responded by letter indicating that his client needed additional time. Consequently, an Order of Notice was issued June 30, 1982 indicating that any additional testimony must be submitted by July 7, and a hearing was scheduled for July 14th. The Commission did not receive any materials or further communication from Mr. Gage by July 7th. The Commission feels that it has given the applicant more than ample opportunity to file additional materials, and therefore, has closed the record in this proceeding.

REPORT

At the initial hearing the applicant attempted to proceed with exhibits and testimony relative to the need for the proposed project and other aspects of the transmission line. The Commission and staff questioned the direction of this testimony, and indicated that testimony as to the merits of the proposal would be heard by the Site Evaluation Committee and the Public Utilities

Commission pending the outcome of the proceeding. Mr. Ellsworth, Chief Engineer of the Commission and Mr. Gage, Counsel for the applicant, then agreed upon the following four areas as the relevant scope for this procedure:

- (1) The professional and management expertise of the applicant;
- (2) The financial capability of the applicant;
- (3) The existence of a willing seller of electric power;
- (4) The existence of willing buyers.

The Commission accepted this definition of scope as agreed to by Staff and the applicant. Based upon the record of the hearings, the Commission makes the following findings relative to these four criteria.

PROFESSIONAL AND MANAGEMENT COMPETENCE

(1) IG&T (N.H.) is a subsidiary to IG&T, Maine and the Officers and Directors are substantially the same personnel for both Corporations.

(2) IG&T (N.H.) has no employees and no payroll; John N. Harris, Vice President and Project Director is a full-time employee of IG&T (Maine).

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(3) IG&T Officers and Directors, other than John N. Harris and K. B. Harris, have primary professional occupations in areas other than IG&T. (Exhibit 16)

(4) The principle areas of employment of these others include an auto dealership, real estate, telephone industry, pulp wood logging */-and mailing operation. None have experience in any matters relative to electric transmission facility construction and operation.

(5) John N. Harris is the only member of the Company to represent a significant amount of knowledge or interest in this project.

(6) Mr. Harris holds a B.S. degree in Civil Engineering from the University of Maine, 1940 and served as a part-time instructor teaching soil mechanics in 1941. He is a registered professional engineer in Maine and New Hampshire.

(7) Mr. Harris' actual work experience is difficult to piece together, as his testimony does not set out specific jobs, with specific dates and specific job responsibilities.

(8) Between the late 1940's and the early 1960's, Mr. Harris served in different engineering and project planning capacities in Canada and the United States. Employers included Canadian Pacific Railway, a Toronto contracting firm, and ALCOA.

(9) Since the early 1960's, Mr. Harris has served as an officer and project manager of IG&T, Maine and New Hampshire and its predecessor corporations.

(10) The plans and proposals of these corporations from 1961 to the present have included: a CANDU Canadian nuclear power plant on the Maine coast; an aluminum plant in Trenton, Maine related to a single CANDU nuclear unit interconnected with New Brunswick; a coastal nuclear plant in New Hampshire; a northern New Hampshire nuclear plant and pumped storage

project; and the present transmission line and pumped storage project.

(11) IG&T — New Hampshire, IG&T -Maine and successor corporations have not completed any project and have no operating business.

(12) IG&T claims an affiliation with Montreal Engineering Company, Limited (MONENCO), but can present no documentation of this affiliation.

(13) IG&T claims an extensive past relationship with MONENCO, but has presented no documentation of past services provided.

(14) The record indicates that MON-ENCO is aware of the projects which IG&T has under consideration and is prepared to provide them with the necessary skills as a consultant. (Exhibit 17)

(15) IG&T has not presented any contract or written evidence of arrangements with MONENCO for the proposed project or for any of the previous projects with which Mr. Harris testifies they had been closely allied.

FINANCIAL QUALIFICATIONS

(1) IG&T has not presented audited financial statements for the Maine or New Hampshire corporations. The financial statements in Exhibit 4 and 4A represent an internal audit.

(2) Testimony revealed that \$22,559,430 of the \$29,295,530 assets listed in Exhibit 4 were related to another project, a hydro-electric pumped storage project. Exhibit 4A was presented as a revised balance sheet.

(3) The assets listed for both corporations comprise primarily planning and engineering studies, both completed and incomplete, which IG&T has not been able to detail for the Commission.

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(4) Testimony revealed that the IG&T, New Hampshire balance sheet included as an asset \$2,077,500 in studies, reports and expenses part of which relates to stock options and interest charges due to the Maine corporation.

(5) Some of the studies in Exhibit 4A — Transmission related balance sheet of IG&T, N.H. — do not relate to the transmission project.

(6) The Commission finds that the studies listed on balance sheets in Exhibits 4 and 4A and plans listed on the balance sheets are not properly considered assets, but represent a risk capital investment. Mr. Harris agreed with this characterization. (T-2-72)

(7) Despite the reference to "cash in hand" on Exhibits 4A and Exhibit 25, testimony indicates that there are no cash assets. IG&T, New Hampshire makes no direct payment for services. Some funds have been passed from IG&T (Maine) to cover such items as printing, hotels and legal services.¹⁽⁵⁶⁾ Payments to company officials for services are in company stock.

(8) Mr. Harris refers to financing teams in New York and Philadelphia that are preparing a prospectus and arranging financing for the project. He indicates that there are three individuals working with two banking groups, but gives no names of the banking groups or any

documentation to support this evidence.

(9) The record indicates that, in fact, the financing of the project and the payment of operating and maintenance expenses depends upon the public utility commissions and the utilities agreeing to buy the energy.

EXISTENCE OF WILLING BUYERS

(1) Phase I of the proposed IG&T proposal would provide for the transmission of 1700 MW of capacity and energy.

(2) The applicant envisions that the states through their respective public utility commissions would purchase 1000 MW of this power and then direct the utilities under their jurisdiction to buy the power. The record shows no evidence of the willingness of any state to undertake such action.

(3) The applicant's proposal anticipates NEPOOL obtaining the remaining 700 MW of power. The applicant has not provided any documentation that NEPOOL has an interest in their proposal. In fact, the record shows that their proposal was presented to NEPOOL and rejected.

EXISTENCE OF WILLING SELLER

(1) The applicant contends that Hydro-Quebec is a willing seller for their proposal based on various contracts that have been offered to and negotiated by NEPOOL. Once again, the applicant provides no documentation of discussions or arrangements with Hydro-Quebec which would substantiate the willingness of Hydro-Quebec to deal with IG&T.

(2) Exhibit 6 which purports to show the availability of power gives no source for the information.

Although the applicant admits that IG&T (N.H.) is not presently a utility (Tr. 1-78-86) and although counsel agreed to the scope of the inquiry, the applicant continues to contend that RSA 362:2 defining public utility sets out the relevant criteria for determining utility status.

In essence, RSA 362:2 defines public utility on a functional basis: "The term

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public utility shall include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court,...owning, operating or managing ... or in the generation, transmission or sale of electricity ... " The petitioner argues that its proposal to build a 131-mile 765 KV transmission line clearly brings it within the definition of public utility under RSA 362:2.

The petitioner submits as evidence supporting its position a letter from Alexander Kalinski, Chairman of the New Hampshire Public Utilities Commission, to the FERC dated February 22, 1978, and a letter from Tupper Kinder, Assistant Attorney General, State of New Hampshire, to the FERC dated April 19, 1978. The subject of these letters was International Generation and Transmission Co., Inc.'s (IG&T) application to the Federal Energy Regulatory Commission (FERC) for a preliminary permit for a proposed pumped storage project in Milan, New Hampshire. In its petition to the FERC, IG&T had stated that it did not intend to become a public utility. Chairman Kalinski's letter to the FERC indicates that IG&T's proposal would qualify it as

a public utility under RSA 362:2. Likewise, the letter and motion to intervene of E. Tupper Kinder, Assistant Attorney General, cites RSA 362:2 and indicates that it would appear that the applicant does come within the terms of the statute.

The petitioner argues that these letters indicate that the public utility status of IG&T has already been determined and that any different action by the Public Utilities Commission at this time would result in a contradictory position by the State.

The Commission does not agree. The intent of Mr. Kalinski and Mr. Kinder in the action before the FERC was to indicate that IG&T could not proceed with its proposed project without coming under the jurisdiction of the Commission and the siting statute (RSA 162:F), Electric Power Plant, Transmission Siting and Construction Procedure. However, as testimony of Mr. Ellsworth indicates the intent of the Commission in writing to the FERC in 1978 was not to indicate that IG&T was a public utility, but that IG&T would have to attain utility status and follow the requirements of RSA 162:F before proceeding.

[1] Other statutes of the Public Utilities Commission and Court decisions in this State and other states, clearly indicate that function is not the sole criteria for granting utility status. RSA 374:22 states that "no public utility shall commence its business as such within this state ... without first having obtained the permission and approval of the Commission." RSA 374:26 concerning "Permission" states:

"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"

Although these statutes under the General Regulations of public utilities do not spell out the specific criteria for determining when the granting of public utility status or franchise is in the public good, it has long been a tenet of public utility regulation that the granting of public utility status must be based upon a finding that the applicant is fit and able to carry out the function which it proposes. Chapter 376:5, which deals with Motor Carriers of Passengers, requires that a Common Carrier Certificate shall be issued only if the applicant is "fit, willing and able properly to perform the

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proposed." Similarly, RSA 162-H relative to the evaluation of energy facilities not covered by the bulk power supply facilities definition in RSA 162-F:2, requires that the Energy Facility Evaluation Committee find that "the applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility ... " (RSA 162-H:9) Surely an applicant proposing to build a major transmission line should not be judged on lesser criteria.

[2] The Commission's authority to apply criteria other than functional definition in determining utility status is supported by New Hampshire cases and general utility law. The New Hampshire Supreme Court has consistently stated that the Public Utilities Commission has broad discretion to act in the public interest in determining whether a petitioner shall be permitted to engage in business. The early case of *Parker-Young Co. v New Hampshire*, 83 NH 551, PUR1929E 160, 145 Atl 786, recognizes that this power extends to the determination of which of two or more competing utilities the grant of status will best serve the public good.

Most of the specific New Hampshire case law relates to common and contract carriers. These cases include: *Vautier v New Hampshire* (1962); *Browning-Ferris Industries of New Hampshire, Inc. v New Hampshire* (1975) 115 NH 190, 339 A2d 1; *Harry K. Shephard, Inc. v New Hampshire* (1975) 115 NH 184, 339 A2d 2; *Waste Control Systems, Inc. v New Hampshire* (1974) 114 NH 21. In each instance the Court has emphasized the board discretion of the Commission in determining the public interest.

The case law in other jurisdictions clearly supports the applicability of the fitness standard in reviewing applications for certificates of public convenience and necessity. The following case notes are in point.

"Determination by the Commission of the merits of an application for a certificate of public convenience and necessity requires that it scrutinize the fitness of the applicant." *Byham v Pennsylvania Pub. Utility Commission* (1949) 165 Pa Super Ct 253, 67 A2d 629.

"An applicant for a certificate must show that he is fit, willing and able financially to provide the required service at just, reasonable and non-discriminatory rates and the requirement of fitness, or ability to perform as a utility presupposes that the prospective utility must have an adequate, dependable, continuous supply of its utility commodity to meet the present and future public needs." *Re Belle Fourche Pipeline Co.* Docket No. 9463, May 12, 1965 (Wyo).

"In determining whether a certificate of convenience and necessity should be issued, the Commission may properly consider whether the applicant is able or qualified to furnish the proposed service." *Re Chambers Rural Teleph. Co.* (1966) 179 Neb 735, 65 63 PUR3d 86, 89, 140 NW2d 400.

"After having made a determination that it would be in the public interest to have a utility service provided, it is the responsibility of the Commission to determine whether an applicant for a certificate of public convenience and necessity is fit, willing and able to serve the public in its proposed service area." *Re Interior Teleph. Co., Inc.* U-77-4, U-77-28, Order No. 7, June 8, 1978 (Alaska).

"Consideration of the question of the ability or willingness of one or more of any of the applicants for certificates of convenience and necessity to maintain a (rail line) over the route mentioned at a future date was declared to be within the

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jurisdiction of the Commission in view of the consideration of that question upon the hearing." *Re United Stages (Cal)*, PUR1925A 688.

[3] Decision upon decision in utility case law emphasizes the standard of fitness in fulfilling the public interest using such criteria as: (1) financial backing; (2) management and administrative expertise; (3) technical resources; and (4) the general fitness of an applicant. Simply stated, the company must be able to construct, operate and maintain its plant as well as to run its business.

Consequently, the Commission rejects the contention of Counsel for the applicant that only functional criteria as set forth in RSA 362:2 are controlling in this procedure. The Commission's

authority to set the criteria for determining utility status as it has in this docket is well supported by the statutes and case law cited.

CONCLUSION

The findings clearly raise basic questions relative to the applicant in regard to each of the criteria set by the Commission. In fact, the Commission notes that the entire record is replete with requests from the Commission for documentation or evidence to support statements advanced by the applicant.

The Company has clearly not met its burden of proof in any of the four areas determined by all parties to be necessary in establishing the applicant's viability as a public utility. On the basis of the evidence presented, the Commission finds that IG&T is not presently a utility as defined by RSA 162-F:2, and that it is not in the public interest to grant IG&T utility status.

Our Order will issue accordingly.

ORDER

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

ORDERED, that request for an order granting approval for the International Generation and Transmission Company, Inc. to engage in the public utility business and to commence construction of the 765 KV transmission facilities is denied; and it is

FURTHER ORDERED, that the matter be forwarded to the Site Evaluation Committee for appropriate action.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1982.

FOOTNOTE

¹It is noted that IG&T has also failed to pay any of the stenographer's fee for transcripts in these proceedings.

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NH.PUC*07/09/82*[79329]*67 NH PUC 484*Concord Natural Gas Corporation

[Go to End of 79329]

Re Concord Natural Gas Corporation

DE 82-199, Order No. 15,756

67 NH PUC 484

New Hampshire Public Utilities Commission

July 9, 1982

ORDER directing gas company to investigate safety conditions of an LNG tank.

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BY THE COMMISSION:

ORDER

WHEREAS, this Commission became aware that the Tennessee Gas Pipeline Company was shutting down the natural gas pipeline during the period July 23-25, 1982 for the purpose of conducting hydro-static tests on portions of the pipeline which feeds the franchised area served by Concord Natural Gas Corporation; and

WHEREAS, On July 7, 1982, Company representatives advised the Gas Safety Engineer that Concord's LNG facility would be placed in service during that period to assure continued gas supply to its customers; and

WHEREAS, discussions revealed that certain modifications were being made to Concord's LNG facility in anticipation of putting it into service; and

WHEREAS, On July 8, 1982, this Commission's Gas Safety Engineer visited the LNG facility to observe those modifications; and

WHEREAS, the Gas Safety Engineer observed that only three (3) of four (4) supporting legs of the Company's 55,000 gallon LNG tank is actually providing tank support, and one (1) leg is providing no support; and

WHEREAS, the Commission is concerned as to whether foundation movement or internal stresses caused this condition, and whether they may have impaired the structural integrity or safety of the tank; it is

ORDERED, that Concord Natural Gas Corporation shall make an immediate investigation into this area; and it is

FURTHER ORDERED, that the Company through appropriate expert, shall report its findings and actions taken as a result of this investigation to the Commission at public hearings; and it is

FURTHER ORDERED, that the Company shall not place its LNG facility into operation until the Commission is satisfied that a safe condition exists.

By Order of the Public Utilities Commission of New Hampshire this ninth day of July, 1982.

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NH.PUC*07/13/82*[79330]*67 NH PUC 485*Manchester Gas Company

[Go to End of 79330]

Re Manchester Gas Company

DR 81-234, Fifth Supplemental Order No. 15,758

67 NH PUC 485

New Hampshire Public Utilities Commission

July 13, 1982

ORDER implementing filed rate increase.

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BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Manchester Gas Company has filed new tariff pages setting forth rates to produce an annual increase in gross revenues of one million, two hundred twelve thousand, two hundred twenty-two dollars (\$1,212,222), to fold into basic rates fuel costs of \$.30 per therm and make appropriate revisions to the calculation of Cost of Gas Adjustment, to recover by means of a surcharge the difference between the revenue level allowed and the actual revenue collected during the time period of temporary rates, and an amount equal to the rate case expenses associated with this proceeding, and to make other modifications in its tariff pages previously in effect, all as directed by the Commission Order No. 15,740 (67 NH PUC 438), and

WHEREAS, after review and study of the proposed rates, the Commission is satisfied that the Company has complied with the provisions of Order No. 15,740; it is

ORDERED, that the following listed tariff pages, filed with the Commission on July 9, 1982, be, and hereby are, permitted to become effective July 14, 1982:

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

| | |
|--------------------|--------------------------------------|
| NHPUC | - No. 13 - Gas |
| Contents and Index | - Original Page 1 |
| Section 1 | - Original Page 2 |
| Section 2 | - Original Pages 3 through 21 |
| | - First Revised Page 22 |
| Section 3 | - First Revised Page 23 and 24 |
| Section 4 | - Original Page 25 |
| | - First Revised Pages 26, 27, and 28 |
| Section 5 | - First Revised Pages 29, 30, and 31 |

and it is

FURTHER ORDERED, that publication of these new rates be made, in the usual manner, in a newspaper having general circulation in the territory affected.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of July, 1982.

 NH.PUC*07/14/82*[79331]*67 NH PUC 486*Tariff Filing Requirements

[Go to End of 79331]

Re Tariff Filing Requirements

DRM 82-126, Order No. 15,759

67 NH PUC 486

New Hampshire Public Utilities Commission

July 14, 1982

ORDER establishing tariff filing rules for toll bridges, toll roads, certain power boats, and amusement railroads.

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PUBLIC UTILITIES, § 64 — What constitutes public service or public use — Particular kinds of business.

[N.H.] The commission established tariff filing rules for toll bridges, toll roads, power boats engaged in the common carriage of passengers or freight, and amusement railroads.

BY THE COMMISSION:

REPORT

This rulemaking was generated by Commission Staff on March 12, 1982, at which time it reminded the Commission that its tariff filing rules presently apply to gas, electric, steam, telephone, telegraph, and water companies, and certain municipal departments; but that there exists no such rules for toll bridges, toll roads, power boats engaged in the common carriage of passengers or freight or amusement railroads.

A public utility is defined (RSA 362:2) as:

"The term public utility shall include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations operating within their corporate limits, owning, operating or managing any railroad or bus line for the common carriage of passengers, or carrying on a public express business over the line of any railroad, any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages or 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 or owning or operating any toll road, or owning or operating any steam or other power boat engaged in the common carriage of passengers or freight, or owning or operating any pipe line, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of gas, crude petroleum, refined petroleum products, or combinations thereof, cooperative marketing associations, organized for purposes of rural electrification, or any other business except as hereinafter exempted, over which on September 1, 1951, the public utilities commission exercised jurisdiction."

In order to administer its rate making responsibilities (RSA 378:1) regarding such utilities, this Commission promulgated "Tariff Filing Rules, Chapter PUC 1600" which provide specific and comprehensive filing requirements. The Commission's existing rules, however, applied only to electric, gas, steam, telephone, telegraph and water companies, and certain municipal

departments all as defined in Chapter PUC 1601.01 — DEFINITIONS.

Staff recommended that the tariff filing rules did not adequately address the requirements of certain utility companies defined in RSA 362:2. Staff further recommended that such requirements should be made less comprehensive than those for other utility companies, and that they should require as a minimum:

30 day notice of intent to file Public notice requirement Format and Contents Service area designation List of data to be filed with tariff filing

Staff offered a new definition of Chapter PUC 1601.01 — DEFINITIONS:

(a) UTILITY

"Utility" means every electric, gas, steam, telephone, telegraph, water company, *toll bridge, toll road, steam or power boat engaged in the common carriage of passengers or freight, and railroad* determined to be a public utility under the New Hampshire statutes, and every municipal department

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furnishing any of the above services outside its municipal limits.

Staff recommended changing existing Chapter 1603.03 — *Items to be Filed*.

B. Five copies of each ... intra-state operation. *These requirements do not apply to toll bridges, toll roads, power boats or amusement railroads.*

Staff recommends the addition of a new sub-chapter 1603.03 C:

C. Five copies of each of the following shall be included with each filing. Whenever an item required by Rule 1603.03 C. duplicates information already filed with the Commission, the response to that sub paragraph may be incorporated by reference to such other filings and additional copies need not be filed. These requirements apply to toll bridges, toll roads, power boats which carry passengers or freight for hire, and amusement railroads.

1. The Company's monthly and annual internal financial reports for the preceeding year.
2. Annual reports to stockholders and statistical supplements, if any, for the previous year.
3. Federal Income tax reconciliation for the previous year.
4. Detailed computation of New Hampshire and Federal Income Tax factors on the increment of revenue needed to produce a given increment of net operating expense.
5. A copy of company's most recent construction budget.
6. List of officers and directors, their compensation for the last two years, and amount of voting stock owned individually by the spouse or minor children, or stock controlled by the officer or director directly or indirectly.
7. Balance sheets and income statements for the previous five years.
8. Annual sales volumes for the previous five years.
9. Indicate the company's need for external capital for the next two year period.

10. Summary workpapers supporting figures appearing on written testimony and/or in accompanying exhibits shall be included in the filing.

The Commission assigned a Docket No. DRM 82-126. On April 23, 1982, it advised Donald S. Jennings, Director, Office of Legislative Services, State House, Concord, New Hampshire, of the Commission's intent to pursue adoption of the proposed rule, and asked that it be processed in the Rulemaking Register. Copies of the proposed rule were also sent to a rulemaking service list (attached). A deadline for the submission of written materials was established as June 4, 1982, and a hearing was set for June 4, 1982 at the Commission's Concord, New Hampshire offices.

The hearing was held as scheduled. No parties appeared in the proceeding. Correspondence was entered from Sidney Weinberg, Boston and Maine Corporation, and Michael D. Ruedig, of the Law firm Gallagher, Callahan, and Gartrell.

Upon review, the Commission finds a need for tariff filing rules for toll bridges, toll roads, and certain power boats, and amusement railroads. It finds the proposed rules offered by staff to be in the public interest. It adopts them in their entirety.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the following rules are adopted and made a part of the New

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Hampshire Public Utilities Commission Rules and Regulations: PUC Chapter 1601.01 — DEFINITIONS

(a) UTILITY

"Utility" means every electric, gas, steam, telephone, telegraph, water company, *toll bridge, toll road, steam or power boat engaged in the common carriage of passengers or freight, and railroad* determined to be a public utility under the New Hampshire statutes, and every municipal department furnishing any of the above services outside its municipal limits.

PUC Chapter 1603.03 — ITEMS TO BE FILED

B. Five copies of each ... intra-state operation. *These requirements do not apply to toll bridges toll roads, power boats, or amusement railroads.*

C. Five copies of each of the following shall be included with each filing. Whenever an item required by Rule 1603.03 C duplicates information already filed with the Commission, the response to that sub paragraph may be incorporated by reference to such other filings and additional copies need not be filed. These requirements apply to toll bridges, toll roads, power boats which carry passengers or freight for hire, and amusement railroads.

1. The Company's monthly and annual internal financial reports for the preceeding year.
2. Annual reports to stockholders and statistical supplements, if any, for the previous year.

3. Federal Income Tax reconciliation for the previous year.
4. Detailed computation of New Hampshire and Federal Income Tax factors on the increment of revenue needed to produce a given increment of net operating expense.
5. A copy of company's most recent construction budget.
6. List of officers and directors, their compensation for the last two years, and amount of voting stock owned individually by the spouse or minor children, or stock controlled by the officer or director directly or indirectly.
7. Balance sheets and income statements for the previous five years.
8. Annual sales volumes for the previous five years.
9. Indicate the company's need for external capital for the next two year period.
10. Summary workpapers supporting figures appearing on written testimony and/or in accompanying exhibits shall be included in the filing.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of July, 1982.

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NH.PUC*07/16/82*[79332]*67 NH PUC 490*Public Service Company of New Hampshire

[Go to End of 79332]

Re Public Service Company of New Hampshire

Intervenors: Community Action Program and Office of Consumer Advocate

DF 82-141, Second Supplemental Order No. 15,760 47 PUR4th 167

67 NH PUC 490

New Hampshire Public Utilities Commission

July 16, 1982

COMMISSION finds statutory authority to delay construction of second unit of certificated nuclear generating plant.

1. EVIDENCE, § 11 — Burden of proof — Financial stability — Party with knowledge of facts.

[N.H.] As a general rule, the burden of proof lies with the party with knowledge of the facts involved; in a proceeding involving the financial condition of a utility, the commission held that the utility had the burden of proving its financial health. p. 493.

2. PROCEDURE, § 19 — Administrative notice — Prior commission proceedings.

[N.H.] The commission held that it could take administrative notice of prior proceedings as long as ample opportunity was given to all parties to challenge or rebut that record. p. 493.

3. ELECTRICITY, § 3 — Generating plants — Financial viability — Public interest standard.

[N.H.] The commission found that the public interest forced it to order an electric utility to halt construction on the second unit of a two-unit nuclear plant. p. 504.

4. PUBLIC UTILITIES, § 134 — Operations and utility practices — Cash flow.

[N.H.] Where a utility did not have the necessary cash flow to carry a 35.6 per cent ownership interest in a nuclear power plant under construction, the commission set forth three options: (1) divestiture or the equivalent; (2) unreasonable and thereby illegal rate increases; or (3) delay; it further found that only the third option was viable. p. 504.

5. SECURITY ISSUES, § 21 — Capitalization and security prices — Commission authority to investigate.

[N.H.] Where a utility's requested capitalization is so high that rates would be unreasonable or a threat to the public's right to adequate service, the commission has the authority to investigate the utility's proposed capital issues. p. 513.

6. SECURITY ISSUES, § 21 — Purposes of capitalization — Commission authority to investigate.

[N.H.] Pursuant to state statute, the commission may determine the amount of a utility's securities issue, may inquire into the purpose to which the proceeds are to apply, and is mandated to protect the public interest by approving the issuance of securities subject to such reasonable terms and conditions as the commission finds to be necessary. p. 515.

7. CERTIFICATES, § 20 — Jurisdiction and powers — Conditions — Delayed construction.

[N.H.] The commission held that a utility's argument that the construction of certified facilities must be allowed no matter what the level of rates, cost of new capital, and without regard to the public interest was an absurd result that could not have been intended by the legislature. p. 515.

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COMMISSIONS, § 17 — Limits on jurisdiction — Statutory authority.

[N.H.] Discussion of commission's statutory authority to delay the construction of an electric utility's nuclear generating plant. Pg p. 514.

CERTIFICATES, § 20 — Jurisdiction and powers — Conditions — Delayed construction.

[N.H.] Statement by dissenting commissioner that in the absence of fraud or mismanagement, the commission cannot order a delay in the construction of a utility's nuclear generating plant. Pg p. 536.

APPEARANCES: Martin Gross and D.P. Cameron, for PSNH; Gerald Eaton for Community Action Program (CAP); F. Joseph Gentili, Consumer Advocate.

Before McQuade (dissenting), commissioner.

BY THE COMMISSION:

REPORT

PROCEDURAL HISTORY

On May 18, 1982, the Commission on its own initiative commenced this docket by the issuance of Supplemental Order No. 15,649 (67 NH PUC 328), which set forth that "Docket DF 82-141 is opened for the purpose of receiving any and all information on (1) the question of whether there have been bona fide responses and sustained progress by the other New England electric utilities in alleviating the PSNH financial problems stemming from their ownership in Millstone #3 and their level of ownership in Seabrook; (2) the immediate fate of Seabrook II as to whether to delay or not and if so how long; and (3) what, if any conditions to impose upon future PSNH financings."

The aforementioned order also sets forth, "that all persons seeking 'party status' are to notify the Commission by June 7, 1982, such notification must include a description of the reasons why party status should be conferred upon the applicant and how its interests will be affected by a decision in this proceeding. The Commission reserves the right to determine who will be viewed as parties."

This docket developed directly from the Commission interest expressed in Dockets DR 81-87 and DF 82-63 wherein the Commission detailed its concern about the financial burdens that face the company in carrying a 35% ownership interest in two nuclear units at Seabrook Station and its other construction projects.

The Commission, from its outset attempted to confine the issues of this docket to those provisions of Order No. 15,649 (67 NH PUC 328). As a result, at the beginning of the hearings the Commission focused on the issues concerning which it would receive testimony, exhibits and evidence; and determined that the scope of this docket would be limited to whether or not there have been "bona fide responses" or "sustained progress" to reduce the Company's ownership interest in Millstone 3 and the Seabrook project, specifically whether other New England Utilities demonstrated a bona fide response to either purchase a part of PSNH shares of the construction projects or any arrangements to alleviate the financial burden of the Company. The Commission stated that since this docket emanated from DF 82-63 the entire record of that proceeding is incorporated by reference and the 66 exhibits submitted in that docket are received as the first 66 exhibits in this docket. It was made very clear that this docket would not relitigate the issues decided in DR 81-87 or DF 82-63 or the issues that were properly noticed for Docket DE 81-312.

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It is noteworthy to restate that the Commission has strongly mandated that any issue directed to the "cancellation" of either one or both of Seabrook units is beyond the scope of this docket. In DF 82-63 all evidence directed to the question of cancellation of Seabrook units was stricken from the record in that proceeding and such evidence submitted in this docket was likewise stricken.

In an effort to confine these proceedings to the scope set forth, the Commission reviewed the motions for intervention and the prefiled written testimony submitted by all of the parties. To determine its relevancy and whether it was within the scope of this proceeding, the Commission carefully reviewed each document. Those documents or sections of documents which were determined to be outside the scope of the proceeding were stricken or excluded from the record. During the course of the proceeding, whenever testimony or exhibits related to materials or issues outside the scope of this proceeding, they were stricken from the record.

INTERVENTION

The Conservation Law Foundation (CLF), Seacoast Antipollution League (SAPL), the New England Coalition of Nuclear Pollution (NECNP), and Executive Councilor Dudley Dudley filed petitions for intervention as full parties and were represented by Roger Koontz, Esquire a member of the Massachusetts Bar. After reviewing the presentation by Mr. Koontz, the Commission found that the evidence to be submitted was primarily in the nature of financial forecasts, Seabrook economics and beyond the scope of these proceedings. The petitions of CLF, SAPL, NECNP and Executive Councilor Dudley were denied.

The Business and Industry Association (BIA) filed a "late" petition to intervene based on its concerns that its members would be adversely affected by a delay of the Seabrook units and its impact on the adequacy of supply of economical and reliable electric power to service present and future needs. The Commission again found these issues to be beyond the scope of this proceeding and the petition of BIA was denied.

The N.H. Electric Coop. requested full party intervention but had no substantial testimony or evidence to present that would be within the scope of this proceeding. Therefore, N.H. Coop's petition was denied.

The Community Action Program filed a petition to intervene as a full party based on its concern as to the impact of this proceeding on its clients, low income ratepayers. The Commission recognized that the Community Action Program through its attorney, Gerald Eaton, had participated in Docket DR 81-87 and DF 82-63 and found that CAP had a substantial interest in these proceedings and would contribute within the scope set forth. Therefore, CAP's petition was granted.

PROCEDURAL ISSUES

In addition to the motions for intervention, which were addressed *infra*, motions were made by the consumer advocate to strike various sections of prefiled testimony. The Commission as mentioned heretofore carefully reviewed all of the testimony both written and oral and struck those sections or parts that were outside the scope of this proceeding.

The Company raised procedural concern relative to the following issues: (1) the authority of the Commission to order a delay in the company's construction

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program; (2) who incurs the burden of proof in this type of proceeding; (3) the Commission proposal to mark in this docket the record submitted in DF 82-63; and (4) whether the Company

has had an opportunity to present its case relative to delay. The authority of the Commission to delay the company's construction program is discussed in considerable length later in this report. The following sections address the other three issues.

BURDEN OF PROOF

[1] The Company takes the position that it does not intend to incur a burden of proof in this proceeding that would not be otherwise imposed by law. The purpose of this docket is to attempt to find a solution to a complex financial problem that has the possibility of impacting on present ratepayers and future ratepayers along with stockholders and investors. This Commission has taken the initiative to look for ways to alleviate the financial burdens of the company caused by a large construction program. Absent any other proposal a rational logical approach appeared to be a delay in construction of one of the units. In this docket, the Commission attempted to fully explore whether it is in the public interest to issue such an order or alternatively to be convinced that there had been sustained progress to reduce the company's financial problems stemming from their ownership in Millstone III and their level of ownership in Seabrook. All parties have the burden to present the best relevant evidence available for the Commission to make a meaningful decision. The niceties of the rules pertaining to burden of proof should have no place in this type of proceeding; however, see *Environmental Defense Fund, Inc. v Environmental Protection Agency* (1976) — US App DC — , 548 F2d 998, 1004, 1005, which cites as a general rule, the burden lies with the party with knowledge of the facts involved. It is apparent in this proceeding that the Company is such party.

ADMINISTRATIVE NOTICE

[2] The concern of the Company regarding the Commission's decision to mark in this docket the record submitted in DF 82-63 is unfounded.

The Supreme Court in *Legislative Utility Consumers' Council v New Hampshire Pub. Utilities Commission*, 149 NH 551 has properly stated "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. *New England Teleph. & Teleg. Co. v New Hampshire* (1973) 113 NH 92, 101, 102, 98 PUR3d 253, 302 A2d 814, 821; *Granite State Alarm Inc. v New England Teleph. & Teleg. Co.* (1971) 111 NH 235, 238, 279 A2d 597, 598." The Court went further to demonstrate that the real concern in an agency taking administrative notice of records is that adequate notice be given so that parties to the proceeding have an opportunity to challenge and rebut matters to be administratively noticed. *Supra*. The court took notice that the Commission on two occasions announced to all parties that it would take such notice. In this docket the parties were expressly put on notice at the very commencement of the proceedings that all of the record of DF 82-63 would be administratively noticed by the Commission and ample opportunity was given to the parties to challenge or rebut that record. The scope of this proceeding was clearly enunciated at the beginning of the hearing. The possible outcome of the hearing was amply understood

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by all of the parties. No party requested additional time to challenge or rebut any part of the DF 82-63 record. The Company stood firm in its position that the Commission was under some sort of obligation to minutely detail to the Company each item it was going to consider and how

it was to be considered. The Commission does not perceive that manner of disclosure to be required. The Commission's responsibility is to evaluate and reconcile conflicting and complicated evidence and testimony. It has an obligation to attempt to gather as much relevant evidence as possible including company records and Commission files. Under the circumstances the Commission finds no merit in the Company's concern.

ECONOMIC FACTORS OF DELAY

Counsel for the Company maintains that the Commission has not provided the Company the opportunity to present its case relative to the costs against benefits of a Seabrook II delay. The Commission believes that this issue was fully addressed by the Company in DF 82-63. Consequently, the Commission excluded these considerations from the new evidence taken in DF 82-141, and incorporated the entire record in DF 82-63 into this proceeding.

A review of the transcript in DF 82-63 shows that the Company's position relative to delay was addressed in the pre-filed testimony of Mr. Bayless, and was discussed at length during the hearings with Mr. Bayless, Mr. Tallman, the Yankee Atomic officials and other PSNH witnesses. Testimony covered such topics as the following: the effect of delay on construction costs; the effect of escalation and increased AFUDC; the costs of mothballing; the problems of lay-offs and the rehiring of skilled workers; the impact on total labor costs; the effect of delay on the engineering time required; and the costs of delay to consumers. The following exhibits are related to the Company's position on the effects of delay — Exhibits 8, 12, 19, 20, 21, 22, 23, 38, 39, 46, 47, 48, 54, 55, 58 and 64. Based upon this record, the Commission finds that the position of company counsel is totally unfounded.

PSNH Counsel raised concerns related to our Order of Notice. It was his contention that Provision 2 allowed for further testimony as to whether or not Unit II should be delayed. The Commission in the opening moments of this proceeding carefully explained the scope of this proceeding:

"The objective of the present docket is to evaluate responses by other New England utilities, to see if bona fide response and sustained progress has been made in connection with PSNH's efforts either to reduce its ownership share in Millstone 3 and the Seabrook project or to arrange substantial equivalents thereof, in alleviating financial pressure on PSNH." (Transcript 82-141, Volume 1, p. 18)

The Commission has indicated in its Report and Order No. 15,543 (67 NH PUC 223) that we would again evaluate the responses of other New England utilities to see if any bona fide response and sustained progress has been made. On page 20 of that decision and on page 20 of Volume I of this transcript we stated:

"If the Commission should again find that no bona fide response has been made or sustained progress has failed to be achieved, the Commission will order a delay of any further work on Seabrook II until February 27, 1984. In either event this will provide better insurance

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against Unit II construction impacting negatively on Unit I completion."

The Commission informed PSNH and all other parties at the beginning of these proceedings

that if we didn't find a bona fide response we would not consider any Provision 2 concerns. Provision 2 of the notice was placed into the notice only if there was a bona fide response. We did not wish to convey that there still might be a delay if there was a bona fide response. (Transcript DF 82-141, Volume 1, p. 20) Provision 3 as to what conditions would be imposed on future financings was still ruled relevant to the proceeding and an avenue to implement the Commission's decisions as to Seabrook II, if there wasn't a bona fide response.

II. *LACK OF BONA FIDE RESPONSES*

The main purpose of the June financial integrity hearings was to learn of any additional responses by New England utilities which would represent sustained progress in alleviating PSNH's financial burdens. All of the responses of the New England utilities since PSNH's original solicitation in January are summarized in Exhibit 91A. Currently pending indications of interest are listed on page 3. The most recent expressions of interest were also discussed in the testimony of Mr. Staszowski (Exhibit 67).

In terms of outright purchase of an ownership interest in Seabrook, only three companies have expressed any interest. The proposals of Commonwealth Electric and Newport Electric were discussed in detail in the Report in DF 82-63. As PSNH indicates in Exhibit 91A, the conditions placed on the Commonwealth proposal are unlikely to be met. The Newport proposal for purchasing 10 MW is subject to Rhode Island PUC concurrence and the ability of the Company to finance the purchase. Although the expression of interest has been confirmed, no offer has been transmitted. (Exhibit 91A, p. 1)

The only new expression of interest in outright purchase is contained in a letter from Massachusetts Municipal Wholesale Electric Company (MMWEC) dated June 7th. (Exhibit 72) In this letter MMWEC indicates that it is evaluating the purchase of additional base load resources including additional Seabrook ownership, but that this evaluation will not be completed until the third quarter of 1982. No indication is given of the size of a potential purchase.

In terms of other proposals including — construction advances, capacity/energy purchases and sale arrangements, and Unit 1/Unit II swaps — MMWEC has also shown the most interest. The only proposal of MMWEC's for which details were not available in March is the proposal to swap 50 MW of ownership between Seabrook I and Seabrook II. PSNH's letter of May 3 (Exhibit 90) indicates that this proposal would improve PSNH's cash flow by reducing construction expenditures by \$13 million from now until the first quarter of 1984. Reservations about this type of arrangement are summarized in the Report in DF 82-63. The Company indicates in Exhibit 91A, p. 3 that the construction advance proposals of Commonwealth Electric and Fitchburg Gas and Electric Light Company carry conditions that are very unlikely to be met. Arrangements appear to be moving ahead with Taunton for a prepayment purchase of unit power capacity and with N. H. Electric Cooperative for a construction advance.

While the Commission compliments PSNH in its effort to solicit interest and support from other New England utilities,

the Commission must indicate its disappointment in the response. The record hardly supports

the kind of bona fide response and sustained progress in reducing PSNH's Seabrook commitments that the Commission has been hoping would be forthcoming.

Undoubtedly the biggest disappointment is the decision by Boston Edison not to consider a purchase of Seabrook at this time despite the order of the Massachusetts Department of Public Utilities calling for aggressive oil back-out. Boston Edison's plan filed on June 29 (Exhibit 84 and 84A), states that their cost comparisons indicate that Seabrook in the early years is not competitive with incremental oil. They plan to convert five oil-fired plants in Boston to coal, purchase nuclear power from Canada and continue to seek Canadian hydroelectric power via the proposed interconnection with New England. While some hope is held out for purchases from Seabrook in future years, it is clear this option depends upon policies of the Massachusetts Department of Public Utilities (DPU) and the continued evaluation of these other options. This decision by Boston Edison continued the pattern of lack of support for Seabrook by the investor-owned members of NEPOOL.

III. *POTENTIAL SALES OF SEABROOK*

In this docket the Company has continually argued that any action by the Commission should be delayed because the potential market for sales of Seabrook ownership has improved. This position was set forth in the panel testimony (Exhibit 891 and emphasized by Company Counsel (Transcript, Vol. 1, p. 24, 25; Transcript, Vol. 1, p. 165, 166). Factors cited as improving the market for Seabrook are: (1) the projected capacity shortage in Vermont with the loss of PASNY power; (2) the cancellation of Pilgrim II and the regulatory attitude in Massachusetts requiring aggressive oil back-out; and (3) the six-year delay of the Sears Island coal plant in Maine.

However, these factors relative to the potential market for Seabrook are not new. The loss of PASNY power by Vermont utilities has been known since 1981. Pilgrim II was canceled by Boston Edison in September 1981. And although the actual decision to delay construction of Sears Island was not made until May, this decision has been anticipated by the industry and regulators for many months. As Counsel recognizes (Transcript, Vol. 1, p. 165), the Commission has been well aware of these factors and in many cases has been aware of them before the Company has. For example, in this docket, the Commission advised the Company of a May decision by the Massachusetts DPU, in which Commonwealth Electric was given 45 days to file a report showing how they planned to resolve alleged capacity deficiencies due to the cancellation of Pilgrim II and Montague 1 and 2. (Vol. 1, p. 34, 35) The Commission had also advised the Company of the requirement by the Massachusetts DPU in its order concerning the Pilgrim II costs of Boston Edison Co. (BECO), that BECO file with the Massachusetts DPU a plan by July 1, 1982 showing how the Company planned to reduce its oil dependence. And in its order establishing this docket, the Commission specifically reserved July 2nd as a hearing day to obtain information concerning the BECO plan.

It was precisely because the Commission was aware of these changes in the New England energy supply situation that it hoped other New England utilities

would step forward and show an interest in purchasing additional shares of Seabrook during the past six months. Despite the favorable climate for Seabrook purchases and despite

considerable pressure from this Commission, the other new England utilities have not responded. Only two small utilities have expressed an interest in Seabrook purchases totaling less than a 1% share.

While the Company expresses the hope that additional offers will be forthcoming in the next 6 months, the evidence does not support this optimism. Testimony and exhibits indicate that the climate in both Maine and Vermont is adverse to utilities in those two states making additional Seabrook purchases. The Company cites a March report of the Vermont Department of Public Service indicating a capacity deficiency, and expresses the belief that Seabrook is a likely option. (Panel Testimony, Exhibit 88) However, Seabrook purchases by Vermont utilities appear very unlikely given recent decisions by the Vermont Public Service Board, which is a separate agency from the Vermont Department of Public Service.

In July, 1979, the Vermont Public Service Board decided to approve Seabrook purchases by Central Vermont Public Service Corporation and by Green Mountain Power Corporation only if the purchases were carried out in a manner that would carry no risk to Vermont ratepayers. (Exhibit 79)

³⁽⁵⁷⁾ As a result of this decision, neither Vermont utility followed through with the Sea-brook purchase. On January 8, 1982 (prior to the January 11th decision of the New Hampshire Commission), the Vermont Public Service Board approved the purchase of Millstone III by the Washington Electric Cooperative, Inc., but denied the proposed purchase of Seabrook, despite the fact that Millstone was considerably more expensive than Seabrook. (Exhibit 80) The Vermont Public Service Board questioned both the projected completion dates and the estimated construction costs of Seabrook. (Exhibit 80, Findings 20, 21)

Thus, although Vermont appears to have a capacity shortfall and although Green Mountain Power was one of the participants in Sears Island, the prospect that Vermont utilities will turn to Seabrook in light of these decisions appears slight.

The prospect for Seabrook purchases by Maine utilities is equally bleak. Although Central Maine Power Company has delayed the Sears Island plant, of which it owned roughly 70%, it accompanied the delay announcement with the statement that it was negotiating for power from New Brunswick for a term of years with the possibility of renewal. Furthermore, actions by the Maine Legislature and statements by the Governor make Seabrook purchases by Maine utilities extremely unlikely. This year the Maine Legislature passed a bill requiring the approval of the Public Utilities Commission for any purchases of energy or operating capacity. (Exhibit 85) Governor Brennan was quoted on June 23, 1982 as calling Seabrook "a white elephant". (Transcript, DF 82-141, Volume 5, p. 595) It should be noted that the Maine climate also raises concerns relative to the future ability of Maine Public Service Company to meet its present commitments to Seabrook.

Thus, the only realistic hope for Seabrook purchases would appear to come from the Massachusetts utilities. Given the plan filed by BECO with the Massachusetts DPU, any commitment to purchase Seabrook by BECO in the near future is very unlikely. Commonwealth

Electric has testified before the Massachusetts DPU that they expect capacity deficiencies for the 1986-1988 period. Re Commonwealth Electric Co. (Mass 1982) 47 PUR4th 229. They offered this in support of their request for full recovery of their costs associated with Pilgrim II. Their argument was that because of these capacity deficiencies it was prudent for Commonwealth to attempt to remedy their situation by investing in Pilgrim II. They then went on to argue that because of this attempt to remedy their capacity deficiencies, it was prudent for them to pursue the avenue of Pilgrim II and thereby their consumers should pay for their entire level of Pilgrim II costs given that they still had a capacity deficiency problem. The Massachusetts Department of Public Utilities gave their response as follows: (47 PUR4th at p. 234, footnote 12):

"We expect that the full resources of the Company will be mustered to forestall any such contingency, particularly in light of the number of capacity offerings currently outstanding and available. The Attorney General comments quite pointedly that if CEC's capacity needs were as critical as the Company would have us believe, we should then see more action to acquire available capacity offerings. Consequently, we will order the Company to file with the Department within 45 days of this Order its proposed plan both to meet its forecasted generation deficiency and in general to address the problem presented by its current degree of oil dependence."

Although Commonwealth Electric had previously expressed an interest in a small (.25%) Seabrook purchase in its letter of March 19th, two facts seem to indicate that Commonwealth is not likely to make a Seabrook commitment. First, the letter of March 19th conditioned an interest in purchasing Seabrook on PSNH's ability to obtain commitments from other utilities to provide the total amount of \$113,200,000. (Exhibit 68 and Transcript, DF 82-141, Vol. 1, p. 190, 191) Second, PSNH had not heard from Commonwealth Electric following the Massachusetts DPU order of May 28, calling upon Commonwealth to show how it planned to reduce its alleged capacity deficiency. Transcript, Vol 1, p. 33) In fact, Commonwealth has made no follow-up on the March 19th letter. (Transcript, Vol. 1, p. 190)

This leaves MMWEC as the best hope for a Seabrook purchase. The Commission must note that while MMWEC has raised the greatest concern of any joint owner about a possible delay of Seabrook II (DF 82-141, Transcript, Vol. 5, p. 640), it nevertheless stated in its quarterly report that "a delay in the completion of Seabrook 2 on the order of two years would not have a significant impact on the overall power costs of MMWEC participants". (Exhibit 87) The Commission also finds it curious that MMWEC would be seriously considering an additional Seabrook purchase, but did not appear before this Commission in this proceeding. In this regard, the Commission finds it striking that none of the out-of-state utilities were willing to appear and testify before the Commission despite the urging of PSNH. (DF 82-141, Vol. 5, p. 600, 601)

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IV SALE OF MILLSTONE III OWNERSHIP

The Commission does take note of the success of PSNH in reducing its ownership in Millstone III, which the Commission had also directed in its January 11 Report and Order. Arrangements are well underway for the sale of 25 MW of Millstone to MMWEC and Connecticut MEEC. The Company indicates that this sale will raise roughly \$45 million. It was

initially believed that the First Mortgage Indenture would require that these proceeds be deposited with the First Mortgage Trustee and would relieve PSNH of some \$8.9 million in construction expenditures between September 1982 and March 1984. (Exhibit 67)

However, the Company is working on a proposal which would potentially increase considerably the funds available for Seabrook construction as a result of this sale. (Exhibit 88) As explained by Mr. Bayless, by using the proceeds to pay off first mortgage bonds, PSNH's total interest obligations could be reduced. This would have the effect of improving the coverage ratio and increasing the amount of G&R Bonds which can be issued. While the Commission finds this to be a possibility, there are a number of questions yet to be resolved. As Mr. Bayless indicates, a fuller analysis of the probable tax and ratemaking consequences, as well as practical consequences of the First Mortgage Bond repurchase must be undertaken. (Exhibit 88) The Commission is particularly concerned about the potential impact on the overall rate of return.

While the Commission is pleased with the prospective sale of the Millstone interest and will consider a proposal as outlined in Exhibit 88, it simply does not provide the kind of relief which the Commission believes is necessary. As Mr. Bayless has indicated, PSNH must raise on the order of \$262 million in 1982 and \$312 million in 1983. This compares with \$179 million in 1981, which reflects the ownership adjustment period, and \$231 million in 1980. (Transcript, DF 82-63, 3-131, 132) Based upon the evidence in this proceeding, the Commission must reluctantly conclude that PSNH has not received bona fide responses which represent substantial sustained progress.

The Commission is also troubled by inconsistencies in the Company testimony relative to: (1) the ability to finance a 35% level of ownership; and (2) the effect of delay in Commission action on uncertainty or the psychological climate.

V. COMPANY POSITION ON 35% OWNERSHIP LEVEL

The Commission must note that PSNH has not been consistent in regard to its ability and intent to finance a 35% level of ownership. As the Commission has noted and PSNH agrees, the Company clearly stated in the summer of 1979 that it could not finance more than 28% ownership and requested permission to go down to that level (DF 82-63, 3-134). In *Re Public Service Co. of New Hampshire* (1979) 64 NH PUC 262, PSNH petitioned the Commission to approve a transfer pursuant to RSA 374:30 of a 22% ownership interest in Seabrook. PSNH would then have owned a 28 interest in Seabrook. The Commission raised certain questions as to some of the transfers and approved a reduction down only to a 36% level.

PSNH responded by motion that there was no way it could finance a 35% share and that the Commission was failing to recognize the true economics of the situation. Testimony was given by PSNH witnesses that their commercial and investment bankers were extremely

uneasy about the Commission's order and that both PSNH and their bankers believed that the Commission failed to recognize PSNH's true economic plight. As the Commission noted in *Re Public Service Co. of New Hampshire* (1982) 67 NH PUC 25, 75, even that level was conditioned upon an immediate divestiture of PSNH's interests in Pilgrim II and Millstone III. The Commission, after review of the evidence, found it compelling as to PSNH's financial

situation and approved the divestiture to a 28% level. (1979) 64 NH PUC 286.

A subsequent appeal of this decision was the subject of a Supreme Court decision in early 1980. *Re Legislative Utility Consumers' Council* (1980) 120 NH 173, 412 A2d 738. The Court found that "the evidence that PSC cannot without CWIP or some other source of revenue, support more than a 28% interest in Seabrook was *undisputed*". 120 NH at p. 174, 412 A2d 738. (Emphasis supplied.)

PSNH issued G&R Bonds in September of 1979, in which Public Service Company itself stated the following:

"The Company believes it can finance about a 35% ownership interest in the Seabrook plant assuming the completion of Unit #2, currently scheduled for 1985 is *deferred four years*." Exhibit 39 — Supplement to Prospectus.

To accept PSNH's new position that they can now finance a 35.6% Seabrook ownership interest without any Unit II delay, there would need to be by necessity a demonstration that the financial situations of the Company had significantly improved since late 1979. The Commission recognizes that PSNH had not received all of the regulatory approvals required for divestiture to 35% when the prospectus statement was made. However, the statement clearly assumes ultimate regulatory approval since it postulates a 35% ownership level. Thus, regulatory approval is not an issue in this analysis.

The overwhelming weight of the evidence in this combined record demonstrates that PSNH's financial conditions have not improved to the extent that any objective observer could find that they could carry such a tremendous construction program. PSNH has twice been downgraded by Standard & Poor's despite their recognition that the New Hampshire Public Utilities Commission had demonstrated as much support as can be reasonably justified. (Exhibits 15 and 81)

In 1979, PSNH had positive cash flow, whereas in 1980 and 1981 cash flow became increasingly negative. This trend by all financial scenarios will become increasingly negative in 1984. The cost of the Seabrook plant has escalated from 2.8 billion dollars in 1979 (Exhibit 39) to 3.56 billion dollars, or 4.14 billion dollars if all nuclear fuel costs are included.

PSNH's coverage ratios have grown considerably worse despite the Commission's use of nearly every regulatory option to provide updated revenue support. (Exhibit 81) These coverages have increasingly decreased especially if a measurement is made excluding AFUDC. (Exhibit 81)

PSNH's AFUDC/net income levels have skyrocketed since 1979, when they were at 92.5% on a gross basis. In 1981, this had risen to 101.9 on a net AFUDC basis, but more importantly for comparative purposes nearly 150% on a gross basis. (Exhibits 33 and 81)

In 1979 Seabrook I and II were scheduled to become operational in 1983 and 1985, respectively, and are now estimated by PSNH to be 1984 and 1986. Even these latter estimates, as will be discussed

later in this opinion, are subject to serious question as to their reliability.

In 1979, there was the possibility that if PSNH fell into financial trouble, the other partners would seek to buy additional shares, especially if Pilgrim II or Sears Island were delayed or canceled. In 1982, all Seabrook partners, as well as all New England utilities, have been canvassed as to interest and there is no interest in additional shares of Seabrook more than 1% despite the cancellation of Pilgrim II and the six-year delay of Sears Island.

The level of financings needed for successful completion of Unit I, let alone Unit II, has risen demonstrably as a comparison between Exhibit 59 and Exhibits 11, 26, 31 reveal. The financings that have occurred have been more expensive than estimated. (Compare Exhibit 33 with Exhibit 59.)

The Company's market-to-book ratio has fallen from an average of 86% in 1979 (Exhibit 29) to approximately 72% in 1982.

Although PSNH's capital structure has improved as to its equity percentage, the overall ratios relative to debt and equity mask the fact that PSNH is limited in issuing debt due to coverage ratios.

PSNH's percentage of plant under construction to existing plant has grown significantly and substantially beyond that estimated in Exhibit 59 back in 1979.

Finally, Standard & Poor's in its recent downgrade stated their belief that the risk associated with PSNH will not disappear even after completion of Unit I until that plant has demonstrated a reliable operating record. They also observed that PSNH has the highest concentration of assets in one project of any other company in the utility industry. Thus, the riskiness of asset concentration has now emerged as a factor that has only recently become critical. (Exhibit 81)

Despite this worsening financial condition, the PSNH Board decided sometime between the summer of 1979 and the spring of 1981 not to reduce ownership below 35%. (DF 82-63, 3-138) However, this change in plan was never communicated to the Commission.

Since the Commission on January 11, 1982 ordered the Company to attempt to sell down to a 28% ownership level, the position of the Company has also been inconsistent. First of all, the Company did not appeal the January Order. Then in the March proceeding counsel for the Company continually stressed that the Company was not contesting the conclusion regarding the 35% ownership level, but was attempting to comply with the Commission order. (DF 82-63, Transcript, Vol. 1, p. 50, 52) In addition, Mr. Bayless, Financial Vice President, testified that at the time of the Commission's January Order the Company had the matter of reducing ownership under consideration and would probably have attempted to reduce ownership itself within a couple of months. (DF 82-63, Vol. 4, 27) Mr. Bayless noted that the Company had the same, concerns as the Commission relative to the heavy financing required in the next two years. (Vol. 4, 27) At the same time, Mr. Bayless expressed the belief that the Company could finance a 35% level.

During the present hearings, the Company agrees that they are nowhere near receiving commitments for the ownership reduction called for by the Commission. While the Company is still hopeful of reducing ownership, the thrust of the Company testimony in these hearings is that they can finance a 35% ownership level despite two bond

downgradings in the past six months. Their position appears to indicate a willingness to pursue a course that is best characterized as "financial brinksmanship". This was made clear in Mr. Bayless' testimony when he indicated that the Company would push forward no matter what the interest rate as long as they could finance. (DF 82-141, p. 670, 674, 675) The difficulty with this approach, as Mr. Bayless acknowledges, (Transcript, DF 82-141, p. 671) is that if the Company cannot finance, Unit I construction would have to be curtailed as well as Unit II construction. Yet, the Company is willing to pursue this course despite the admitted uncertainties regarding factors affecting the success of the financing program.

VI. PSYCHOLOGICAL CLIMATE OR UNCERTAINTY FACTOR

The Commission also finds Company statements relative to the effect of Commission action on uncertainty to be contradictory. PSNH suggests that the Commission postpone any action for 6 months for fear of chilling the climate for prospective purchases and because Commission action now would have a negative impact on the financial markets.

The Commission has indicated earlier that the prospects for Seabrook sales in the next 6 months are not favorable enough to justify postponing action. However, the Commission also questions whether a delay in action until December would alleviate uncertainty. When asked what effect a delay until December would have on uncertainty, Mr. Merrill candidly answered that it was difficult to tell. (DF 82-141, Vol. 5, p. 646) Action now by the Commission is anticipated and a postponement until December might only increase uncertainty as to the Commission's course.

The evidence relative to the reaction of the financial markets is also unclear. Whereas, Mr. Meyer indicates that the financial community would respond to Commission action ordering a delay negatively. Mr. Lampron, PSNH's Treasurer, had testified that the financial community had discounted the possibility of a delay following the January order and that the reaction to the March order was not negative. (DF 82-141, Transcript, Vol. IV, p. 536) The ability of the Company to complete two major financings this spring, at a time when the financial community was thoroughly aware of the Commission's decisions supports this conclusion. The Commission also notes that while PSNH asks that the Commission postpone any action until December, the Company also argues that the Commission has no power to take action.

VII. FACTORS AFFECTING THE SUCCESS OF PSNH'S FINANCIAL PLAN

Despite the Company's desire to push ahead with its full Seabrook construction program, the Company's own witnesses recognize that the success of the financing plan depends upon several factors which all agree are uncertain. As outlined by Mr. Bayless in his testimony, these factors include: (1) securities market factors; (2) the amounts and timing of needed rate increases; (3) the level of construction costs at the Seabrook Plant; (4) the completion dates of Seabrook I and II; (5) economic conditions; and (6) the level of electric sales. (Exhibit 78)

A. Security Market Factors

Particular attention to security market factors and economic conditions is required in this report because of the bond downgradings of PSNH. As Mr. Meyer's testimony indicates, the success of PSNH's financing program depends

upon a marketplace willing to buy debt securities with the speculative ratings PSNH currently has. (Exhibit 77) Testimony indicates that the market euphemistically characterizes such debt issues as "junk bonds", (DF 82-141, Transcript, Vol. 4, 478) and that the market for such securities is considerably narrower for investment grade securities. The large institutional buyers which make up much of the market for bonds will not purchase this kind of debt. (DF 82-141, Transcript, Vol. 4, p. 480) The junk bond market is based in a large part on retail sales to individuals willing to take extraordinary risks. (DF 82-141, Transcript, Vol. 4, p. 480)

Mr. Meyer's testimony indicates that there are very few companies financing with PSNH's bond rating, and that the importance of financial flexibility is greater for low rated companies. (DF 82-141, Transcript, Vol. 4, p. 480, 481) Mr. Meyer agrees that if PSNH had to finance at a particular time there might not be a market for its bonds. (DF 82-141, Transcript, Vol. 4, p. 481)

Although Mr. Bayless indicates that he anticipates that PSNH could continue to finance unless its rating fell to the low C range, this is not borne out by the record. When asked what other utilities had PSNH level bond ratings, Mr. Meyer indicates that there are very few. The two which Mr. Meyer could recall, Savannah Electric and Power and Metropolitan Edison (owner of Three Mile Island) are utilities which the testimony indicates cannot finance in a meaningful way. (DF 82-141, Transcript, Vol. 4, p. 478, Vol. 5, p. 671, 672)

While Mr. Meyer retains confidence in the Company's ability to finance, this view does not necessarily represent the view of the whole financial community. Mr. Meyer indicated that the concern of the banks is as great as ever. (DF 82-141, Vol. 4, p. 482) Although he expresses the opinion that many commercial bankers simply do not understand the long-term capital markets, this does not mitigate the fact that commercial bankers control the revolving credit lines upon which PSNH must rely. And although Mr. Meyer expresses an equally low opinion of Standard & Poor's rating of certain electric utilities, their opinion and influence can nevertheless be considerable. As Mr. Bayless indicates, his first reaction to the latest downgrade of two levels was that it was "a spectacular event". (DF 82-141, Vol. 5, p. 632) Fortunately, the impact on this last financing was not as great as had been feared. However, the long-term effect has yet to be seen.

Furthermore, as Mr. Meyer's testimony indicates, it is not possible to give total assurance of the markets beyond today, especially for debt. (Exhibit 77) The uncertainty of the market is enhanced by the very large demands anticipated this fall because of the financing requirements of the Federal government. Testimony indicates that these requirements will place heavy burdens on the capital markets and will likely increase interest rates further. (DF 82-141, Transcript, Vol. 4, p. 450, Vol. 5, p. 610) Heavy government borrowing is also foreseen in 1983 because of the projected large federal deficits. It is interesting to note, in this regard, that the Company itself allowed Seabrook construction expenditures in March, 1980 due to very high interest rates and the unsettled state of the capital markets. (Exhibit 86) Mr. Bayless testified that the markets in 1980 and the present markets are both characterized by volatility and high interest rates. (DF 82-141, Vol. 5, p. 609)

B. Rate Increases

[3, 4] The second critical factor in the success of PSNH's financing plan mentioned by Mr. Bayless is the amounts and timing of needed rate increases. Mr. Meyer also indicates that rate increases will be critical to the financing plan. (DF 82-141, Tr. Vol. 4, p. 466).

As to timing, Mr. Meyer referred to the Commissions record in providing prompt action as "extraordinary". (DF 82-141, Tr. Vol. IV, p. 465, 466.) Mr. Bayless, in his testimony, stated that it has been the support of this Commission that has allowed Seabrook II and Sea-brook I to go forward. (DF 82-141, TR. Vol. V, p. 624.) In further testimony he indicated that investors view very positively both the updating of the cost of capital and capital structure expenses in the January 11 Order and now the 6 month non-energy cost recovery mechanism. (DF 82-141, Tr. Vol. V, p. 650) In fact, the Commission notes that Standard & Poor's in its June 14th statement down-grading PSNH's bonds stated "The New Hampshire Public Utilities Commission has demonstrated in recent rate decisions its willingness to provide the Company as much support as can reasonably be justified." (Exhibit 81)

4(58)

The record also indicates that future improvement in cash flow through rate increases can be achieved only by further raising the return on common equity. (DF 82-141, Tr. Vol. IV. p. 464) Since rate base is relatively fixed until Seabrook I comes on line, and since operating expenses and compensating revenue adjustments are offsetting, rate of return provides the only means of improving PSNHs cash position. (DF 82-141, Tr. Vol. IV, p. 463, 464.) In Mr. Meyer's opinion, the adequate cash flow or an adequate access to the capital market is necessary to finance PSNH's construction program. Meyer states that it would take either CWIP or an equivalent return, and that "an equivalent return is going to be very, very high indeed." (DF 82-141, Vol. IV p. 456) In fact, as the Commission noted in DR 81-87, it would take a rate increase of nearly \$200 million above existing rates to provide the equivalent of CWIP related revenues. PSNH Report and Order No. 15,424 (67 NH PUC 25, 89). Since the only avenue to accomplish such a revenue increase would be through a return on common equity, it is necessary to calculate what that level would be. Based on financial data set forth in Exhibit 33, the return on common equity necessary to provide CWIP equivalency would be 82%. Obviously in future years this level would have to be increased steadily. No doubt it is for this reason that Standard & Poor's in its rationale supporting its down grade of PSNH stated "it is difficult to envision any clear regulatory position available that can halt further erosion of the Company's financial condition" (Exhibit 81). The Commission must follow the standards set forth in *Bluefield Water Works & Improv. Co. v West Virginia Pub. Service Commission*, 262 US 679, PUR1923D 11, 67 L Ed 1176, 43 S Ct 675, and *Federal Power Commission v Hope Nat. Gas Co.* (1944) 320 US 591, 51 PUR NS 193, 88 L Ed 333, 64 S Ct 281.

These standards require that a utility be given an opportunity to earn a rate of return that is commensurate with returns on investments being made in other enterprises having corresponding risks. Under these standards, a utility has no

constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. PSNH has been provided an opportunity to earn a 17% return on common equity and an overall rate of return of 14.26%. The highest utility award on common equity that Mr. Meyer was aware of is 18%. (Transcript DF 82-141, Volume 4, page 465) Even an allowance matching that level or the 18.65% sought by PSNH in the last rate proceeding will not provide the necessary cash flow to carry a 35.6% ownership interest in Seabrook.

PSNH and this Commission face only three options: (1) divestiture or the equivalent, (2) unreasonable and thereby illegal rate increases or (3) delay. The Commission tried to achieve the first option, we won't and can't do the second.

C. SEABROOK — LEVEL OF COSTS AND COMPLETION DATES

1. General

Inherent in determining whether PSNH's financial plan will be successful is a review of the underlying factors that lead to the amount of capital that is necessary for a given period. Critical in this analysis is the assumption made for the total cost of the project to be financed. To the extent that this estimate is ultimately high or low leads directly to a forecast that is either over or understated.

One of the major components of a cost analysis is the completion date assumed for the project. The further in the future a completion date is from the estimate, the higher the cost and correspondingly the larger the level of capital to be raised.

The Company forecasts the completion dates of Seabrook I as February, 1984 and June, 1986 for Seabrook II. The Commission in its January 11th Order questioned the likelihood of the June, 1986 completion date for Seabrook II. In that decision the Commission found PSNH's Seabrook II date open to serious questions based upon the following.

First, Millstone III as of that point in time was 36% complete compared to Seabrook II, which was 8%. Whereas, both were scheduled for completion in mid-1986, the Commission found it highly unlikely that one, plant four and one-half times further along in completion than another plant would be placed into service virtually as of the same date.

Second, two of the four major owners in Seabrook estimated completion dates for Seabrook II significantly different than PSNH. MMWEC listed the date as 1987, and NEES estimated the winter of 1988-1989.

Third, PSNH's own testimony in PSNH, 64 NH PUC 286, was the PSNH could not carry a 35% ownership level. That PSNH itself had stated that if they were to hold a 35% ownership position, they could finance such a level provided Seabrook II was deferred four years.

Fourth, PSNH had significantly slowed construction on Seabrook II for the better part of 1980. This slow-down was extended due to labor strikes. Despite this fact, PSNH held onto the time differential between the first and second unit completion dates.

This Commission was not and is not alone in calling into question the completion dates for Seabrook. In a separate investigation, the Vermont Public Service Board reviewed the cost estimates and completion dates for Seabrook. (Exhibit 80, Re Washington Electric Coop. Docket

No. 4602 (Jan. 8, 1982)) This order, which preceded our January 11th rate decision by three days, stated that

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based on the record in that proceeding, the Vermont Public Service Board found both the Seabrook "completion date and total cost, as presently estimated to be subject to potential serious error".

The Vermont Public Service Board issued as one of its findings that "there is serious question as to the accuracy of the estimated construction costs of the proposed Seabrook Station". This finding was made despite an acknowledgement that Seabrook was lower in cost than Millstone III. In comparing the two projects, the Vermont Public Service Board stated that "the evidence (as to Millstone III) indicates that the unit is more likely to be completed on schedule and on budget".

Boston Edison, in its oil back-out report to the Massachusetts Department of Public Utilities (Exhibit 84 and 84-A), states the following in terms of present Seabrook costs: "There is a potential that such capital costs are low and will be increased These cost comparisons indicate that at today's published costs, Seabrook in the early years is not competitive with the incremental oil."

In this report, Boston Edison discusses the option of additional ownership in Millstone III as a way of accomplishing oil back-out. Boston Edison's Millstone III discussion is far more optimistic than for Seabrook. They once again state that in its early years it's not competitive with oil, but then go on to mention that the "schedule is to have this unit in service in 1986 and it *appears to be attainable*". Boston Edison also makes reference to the Millstone III lead owner, Northeast Utilities, and its willingness to sell on a unit contract capacity from its pumping storage station. Based on this factor, Boston Edison states that this combination of nuclear and pumped storage is "attractive".

The NRC also called into question the Seabrook II completion date by calling into question the Seabrook I completion date. PSNH has stated that construction on the first unit will be completed by the end of 1983 with start-up in late February of 1984. The NRC has noted that PSNH is 110 days behind schedule on Unit I. PSNH testified that since the NRC review the number was more in the vicinity of 101 days. Based on a five day work week, the project is actually about 20 weeks behind schedule. (DF 82-141, Volume VI, pgs. 699-701) The NRC contends that Seabrook I will not be completed until the spring of 1984 and not operational until the August of 1984.

The Massachusetts Municipal Whole-sale Electric Company reviews its completion date forecast as to units under construction on a six month basis. Special emphasis is given to this evaluation when financings are about to occur. (Exhibit 36) According to the letter marked as Exhibit 36, MMWEC employs a method where the estimated completion date has been arrived at using a 50% probability factor that the plant will be operational by that date. MMWEC's most recent estimate for Seabrook Unit I is June, 1985.

New England Electric System (NEES) also does forecasts for planning purposes as to when a plant under construction will be operational. Exhibit 35 demonstrates that NEES uses November

of 1984 as the operational date for Seabrook I.

MMWEC and NEES are two of the four largest owners of Seabrook. PSNH and United Illuminating are the two largest owners of Seabrook interests.

2. *Seabrook II*

In response, PSNH presented a panel of three witnesses from Yankee Atomic

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Electric Company, overseers of the Seabrook project, to demonstrate among other things "why the May, 1986 inservice date for Seabrook II remains valid regardless of what other people say". (DF 82-63, Vol. 5, p. 5)

This panel consisted of Messrs. Sherry, Johnson and Welsh. The testimony of the panel was that they had a confidence level as to the accuracy of the completion dates of 90% for Unit I and 95% for Unit II. (DF 82-63, Vol. 5, Pgs. 68 and 69) The panel stated that they were more confident in completing a unit that is four years out rather than one that is slated for completion, which is two years out. (DF 82-63, Vol. 5, pg. 69)

The rationale for this high level of confidence in the PSNH forecasted completion date was given by Mr. Johnson. His primary justification was what he referred to as the "learning curve". (DF 82-63, Vol. 5, pgs. 50-51) Mr. Johnson stated that PSNH had experienced problems to date in the construction of Unit I. Mr. Johnson testified that the lessons learned in the construction of Unit I will not be repeated from an engineering and labor standpoint. The result according to Mr. Johnson will be in an improvement in production of Unit II as compared to Unit I.

Another factor cited by Mr. Johnson is the ability to have greater access to employees with experience, gained primarily in the construction of Unit I. Mr. Johnson contends that with a more experienced work force there will be a productivity bonus. (Transcript DF 82-63 Volume 5, page 52) It is also Mr. Johnson's contention that if there is a delay then these workers after they complete their work on Unit I will seek other employment and will therefore be lost to the Company when construction resumes at Unit II.

A third factor Mr. Johnson raises to substantiate his contention as to accuracy of the estimated completion date for Unit II is significant reductions in the amount of backfitting. (Transcript DF 82-63 Volume 5, page 52) The Nuclear Regulatory Commission has required continuous updating of PSNH's design requirements on a safety basis and on deficiencies found at other plants primarily Three Mile Island. (Transcript DF 82-63, Volume 5, pages 79-80. Mr. Johnson contends that the major portion of backfitting their designs has occurred and that he believes that in the future such design changes will be minimal. (Transcript DF 82-63 Volume 5, page 52)

The final factor offered by Mr. Johnson is that the work on Unit I and Common when completed will allow the entire work force to work on Unit II. (Transcript DF 82-63 Volume 5, page 53)

As to the Commission's concern that Millstone III was substantially further along than Seabrook II, Mr. Johnson described that project as being built to a budget. (Transcript DF 82-63

Volume 5 page 57) This method of construction used by Northeast Utilities, the lead owner of Millstone III, is on cash availability. Only the level of cash available is used and all efforts are made to stay within the set cash flow. (Transcript DF 82-63 Volume 5 page 212) According to Mr. Johnson, building to a budget extends the schedule. (Transcript DF 82-63, Volume 5 page 57) PSNH builds its two units to a schedule rather than have their construction based upon cash flow. The extended Millstone III schedule which occurs because of cash flow restrictions, is the reason cited by Mr. Johnson that will allow Seabrook II to catch up with Millstone III and become

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operational within a month of each other.

The Commission recognizes that there is likely to be a second unit time savings associated with the knowledge learned from errors made on Unit I. Furthermore, it is at least possible that there would be some time savings associated with an experienced work force. However, there has been no demonstration of the number of employees associated with Seabrook II that will be performing the same tasks that they performed in the construction of Unit I. Consequently, the contention is not sufficiently supported.

The Commission cannot accept the argument as to NRC required design changes. PSNH did not carry the potential for these changes in its estimation procedure prior to the incident at Three Mile Island and it is equally incorrect not to believe that the NRC will continually modify its safety requirements. To adjust design requirements to ensure greater safety is an ongoing responsibility and it is just as likely as not that the NRC will sometime in the construction of Unit II require changes in its modifications. The number of times that this occurred with Seabrook I is a better guide for Unit II than is the assumption that minimal changes will be made but none that will affect schedule.

Whatever the validity of the positions taken by the Yankee panel of witnesses to support the construction schedule of Unit II by May, 1986, history and other factors prevent acceptance of PSNH's estimate as to the completion of Seabrook Unit II.

Exhibits 37 and 39 carry previous estimates as to completion dates and construction costs. These previous estimates have been overly optimistic. Furthermore, the cost estimates have continuously underestimated the AFUDC cost rate which is likely to increase each and every year until Seabrook I is complete.

A review of the record in DF 82-63 demonstrates that the confidence levels expressed of 90% and 95% are optimistic goals rather than estimates based on probabilities. While these optimistic goals reflect a proper attitude for pushing the workers forward, they should not be used as input for financial models. Mr. Plett and Mrs. Hadley have designed a sophisticated financial model and Mr. Bayless and Mr. Meyer are exceptional in the raising of money, yet all of these efforts can only be successful if there is a realistic planning estimate developed for the completion dates and the total costs of the two Seabrook units.

The failure to include any assumption as to strikes is against the history of this project as well as that of any major facility. (Transcript DF 82-63 Volume V pp. 72-78) The Company has experienced a major carpenters strike in 1979, a major iron workers strike in 1980, and a

pipefitters strike in 1981. (at page 77). The iron workers contract expires this year, the other two expire in 1983 and all of PSNH's labor contracts expire in 1982 or 1983. (Id at pages 77-78).

Since these contracts will be negotiated twice between now and PSNH's estimated completion date, probability dictates that some allowance must be made for the likelihood of strikes in any estimated completion date or construction cost analysis.

The estimated completion dates for both Seabrook I and II assume that certain critical path items that are on schedule stay on schedule, and the ones that are behind schedule are brought back up to schedule. (Transcript DF 82-63, p. 5-123). Again, it is reasonable to

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attempt to achieve the goal, but the history of the project would not allow a 90-95% confidence factor as to the success of this optimistic projection.

Based on the foregoing, the Commission finds that it is highly unlikely that Seabrook II would become operational in May of 1986. The record reveals that it is more likely that the Seabrook Unit II project would become operational in early 1987. The Commission finds that the history of the project demonstrates that PSNH's present estimate is unlikely to be correct.

PSNH witnesses from Yankee Atomic Electric were negative on the approach taken at Millstone III referred to as the built-to-budget approach. The contentions were simply that whenever there was a competing choice between financial needs of the lead owner and the furthering of construction, the former prevailed. While the witnesses of Yankee Atomic Electric may not appreciate this situation from an engineering viewpoint, it is adherently clear that the course pursued at Millstone III is sounder from a near term financial viewpoint than is the program at Seabrook. While construction schedule may give way to financial considerations at Millstone III, it is evident that Boston Edison (Exhibit 84A) and the Vermont Public Service Board (Exhibit 80) find greater validity in the completion date by Millstone III than they do the Seabrook completion date.

3. *Seabrook I*

Questioning of witness Bayless focused on a discussion concerning the completion date of Seabrook I. Mr. Bayless testified that indeed Seabrook I was approximately one hundred days behind schedule (Transcript DF 82-141, Vol 6, p. 699) Since this figure represents working days as it exists today, Seabrook I is five months behind schedule and thus not available until July or August of 1984.

Witness Bayless testified that for purposes of financial analysis, he relies upon Mr. Merrill to provide the dates of completion. (Transcript DF 82-141, Vol. 6, pgs. 699 and 749) In fact, it is Mr. Merrill's estimates that are used by PSNH's auditors, attorneys and financial people in determining the dates and thereby the construction costs and financing program required for both Units. (Transcript DF 82-141, Vol. 6, pg. 749) This reliance is to such an extent that witness Bayless could not quantify the financial impact of the fact that Seabrook I is presently five months behind schedule. (Transcript DF 82-141, Vol. 6, pg. 701)

Witness Bayless testified as to PSNH's ability to make up the 101 days (five months) they are behind schedule:

"Mr. Merrill is regularly questioned by our attorneys and auditors for each prospectus to make sure that they in fact still believe that it can be done. And that as Mr. Merrill continues to believe that in fact *that we can catch up on a major if not all of the portion.*" (Transcript, DF 82-141, Vol. 6, pgs. 749-750)

Witness Bayless was questioned as to how PSNH planned to make up for the five months (101 days) PSNH was behind schedule on Unit I. His answer is as follows.

" We certainly would be working more overtime and throwing more people at that.

5(59) I think we have thrown less people in the past, if it is behind by 'x' man days than of course we have had in the past."

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(Transcript DF 82-141, Vol. 6, pgs. 699-700)

Witness Bayless also testified that PSNH now has 8,313 workers at the Seabrook site up from 7,500 as of March 31, 1982 or an increase of 813 workers in the last three months.

This testimony given on July 2, 1982 completely contradicts the testimony given by PSNH's engineering witness from Yankee Atomic Electric on March 16, 1982 in DF 82-63.

The witnesses were questioned about when the peak in terms of work force would occur, how many people would be employed at peak and how long this peak force would last. Mr. Sherry, Director of Construction Support at Seabrook stated that he believed that the peak force would occur this summer at about 7,800 or 513 less than are presently on site. He also testified that the peak would be falling off at the end of the year. (Transcript, DF 82-141, Vol. 5, pg. 5-148)

In sworn testimony, Mr. Johnson, Vice President of Yankee Electric Company with overall responsibility for the engineering and construction of Seabrook, stated the following in response to staff questions on whether it was advantageous to add more employees than 7,800:

"Q. Mr. Johnson, would you use more employees this year during this peak period than 7800 if you could find more employees skilled to meet the task?

"A. No, I wouldn't. As has been explained in the past where we did beef up is with the highly skilled, welders are one of the critical crafts we have to get these highly skilled X-ray welders. We have to get that built up. We would expect as time goes on the emphasis to shift to electricians and basically electricians, but we think there is a supply that we can get the supply of people, but I wouldn't expect that we would go, that we would add more bodies to try to accomplish this above the peak that I am talking about.

"Q. Because of loss of efficiency?

"A. *That is part of it. You can only use so many efficiently and we just don't need them. As we are finishing up on Unit One you are now getting into more confined areas where you can only work so many people in those areas. You can't work, you are not going to solve the schedule like putting on 8500 people versus 7800, that type of thing.*" (Transcript, DF 82-63, Vol. 5, pgs.

149-150, emphasis supplied)

If 7800 is the ultimate peak work force the Commission must seriously question the hiring of 513 additional employees above the level. The addition of 813 employees since March 31, 1982 in the face of (a) two rating downgrades, (b) sworn testimony that the additional employees could not assist the company in catching up the 20 weeks it's behind on Seabrook I, (c) sworn testimony that such additions would be inefficient and aren't needed, (d) that pursuant to our Report and Order Nos. 15,543 (67 NH PUC 223) and 15,711 (67 NH PUC 402) no new commitments as to labor for Unit II such as hiring could occur after March 24, 1982 is clearly an imprudent action by PSNH. If the additional workers cannot be used to improve the schedule of Unit I more efficiently on its construction and if by Order of this Commission they were to be winding down their effort in Unit II, there is a serious question as to why these people were hired.

The Commission received sworn testimony of the panel of engineers building Seabrook that as of March, 1982 PSNH was building Seabrook I and Seabrook II as fast as possible. (Transcript DF 82-63, Volume 5, Page 180). This

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testimony demonstrates that at least the 513 new hires beyond the 7800 figure testified to as peak, are not making any measurable impact in either the completion of the units or the efficiency of the operations.

PSNH witness Johnson also testified that even at a 7800 level efficiency was lost, but there was a savings in dollars in getting the plant in line. (Transcript DF 82-141, Volume 5, Page 150). However, after 7800 the testimony of Mr. Johnson is unequivocal that additional employees neither improve the schedule nor add to the efficiency. Rather his sworn testimony was that an employee level above 7800 was just not needed. Transcript DF 82-63, Volume 5, Page 150.

PSNH's decision to increase its work force to 8,313, despite the sworn testimony that nothing is gained by increasing above the level of 7,800, can be evaluated against the actions of other electric utilities presently constructing nuclear units. The record in this proceeding reveals that the level of employees at the Millstone III construction site of 1150 MW unit is between 2000 and 2,200 employees. (Transcript DF 82-63, Volume 5, Page 57). Even a doubling of that work force to reflect two units would leave a significant differential between the two projects. PSNH's panel of witnesses was asked to cite any other facility that is currently working around the clock shifts and building more than one nuclear unit. Mr. Johnson testified that there was only one other nuclear site, Palo Verde, in the entire country where three shifts were used and they were constructing twin units. (Transcript DF 82-63, Volume 5, Page 89). Actually as staff later elicited from Mr. Johnson, there are three nuclear units being built at the Palo Verde site and scheduled for operation in 1983, 1984, and 1986. (Transcript DF 82-63, Volume 5, Page 209). Furthermore, each of those units is a 1200 mw versus the 1150 mw units being built at Seabrook (Id at page 209). Yet the total work force for building *three* units due to be completed in the same time frame as Seabrook I and II at the same level of construction, three shifts, is 6,000 to 7,000 or a range of 1,313 to 2,313 less employees than are presently being used at Seabrook I and II.

In comparison to the electric utility industry it is clear that the industry standard is not to build on the basis of a full work force around the clock. Rather like Millstone III most are built to meet the cash flow considerations. The only other plant that is using an around the clock work schedule is building three versus two units, of larger size with 1,313 to 2,313 less employees. Judged by industry standards PSNH's course of action as imprudent.

Based on the sworn testimony of three PSNH witnesses that are associated with Yankee Atomic Electric and the comparisons they have made to what is occurring at other nuclear sites, the Commission finds the following: (1) no matter what the outcome of this decision or any other factor, Seabrook I will unfortunately not be built by the date presently estimated by PSNH, February, 1984; (2) PSNH will not be able to make up the 20 weeks they are presently behind schedule on Unit I; (3) it is more likely that the completion date for Seabrook I will occur in the latter part of 1984; (4) the 513 workers added to Seabrook above the previous peak level estimate of 7,800 will not improve the schedule at Seabrook I, is an inefficient use of personnel and are not needed; (5) PSNH's hiring of 813 employees in the last three months was imprudent given the occurrence of two bond rating downgrades;

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and (6) PSNH's recent hiring of 813 new employees was not to further the completion of Unit I nor to stay within existing commitments for Unit II, but apparently was for some other purpose.

PSNH's financing program increases if either the completion dates or the cost estimates are incorrect. If as we find that Seabrook I is more likely to be completed in the latter part of 1984, then the Company will have greater negative cash flow for 1984 and substantially higher AFUDC earnings. A later completion date for Seabrook I would lead to a greater level of necessary financings.

D. LEVEL OF ELECTRIC SALES

Another critical factor to the success of PSNH's financial plan as indicated by Mr. Bayless is the level of electric sales. The level of sales is critical to the Company's cash flow. If the assumed level of sales is not achieved, then internally generated cash is lower than anticipated and the external financing needs are greater. (DF 82-63, Vol. IV, p. 54) And while the external financing required would increase, the ability to finance would decline because coverage ratios would fall. (DF 82-63, Vol 6, p. 92, 93, 94) The only means of maintaining revenues in the face of lower load growth is through rate increases. (DF 82-63, Vol. IV, p. 55) (Vol. 2, p. 24)

The inter-relationship between level of sales and rate increases is further affected by the phenomenon economists refer to as "elasticity". Elasticity relates to the effect of price on the level of sales. In particular, as prices for electricity rise, consumers will lower the amount which they will purchase. Utilities often seek to raise rates to compensate for lower load growth which tends to produce further sales reduction in response to the new, higher level of rates, thus requiring further rate increases. (DF 82-63, Vol. IV, pp. 155, 199) This Commission has not been receptive to such a procedure as a utility is only offered an opportunity, not a guarantee, to earn their rate of return. To accept this argument would result in a penalty for conservation contrary to the goals of the Public Utility Regulatory Policies Act (PURPA).

PSNH's sales estimates as shown in Financial Scenario COMMON-1 (Exhibit 11) vary by year and by retail versus wholesale customers. The total growth assumptions for 1982, 1983, and 1984 are 0.6%, 3.1% and 0.9% respectively. However, the sales to ultimate customers (retail) show an increase between 1982 and 1983 of 3.16%, between 1983 and 1984 of 4.3% and between 1984 and 1985 of 4.4%. Wholesale sales are relatively flat and actually decline somewhat during this period. (Exhibit 11 and DF 82-63, Vol. IV, p. 156)

Based on recent trends and uncertain economic conditions, the Commission believes that the PSNH sales forecasts are highly optimistic and unlikely to be achieved. For the two year period ending January 31, 1982 load growth has been 1.5%. (DF 82-63, Vol. IV, p. 52) However, for the 12 months ending December 31, 1981, sales growth was 0.4% negative. (DF 82-63, Vol. IV, p. 154) And for the 12 months ending January 31, 1981, sales declined by 2.9%. (DF 82-63, Vol. IV, p. 150) To the extent that sales forecasts are not achieved and due to the effect of elasticity, the rate increases required by the Company could be substantially higher than estimated. As Mr. Tallman indicates, the level of sales is a variable and success of the financing program could require emergency rate relief to offset lagging sales as occurred in 1981. (DF 82-63, Vol. 6, p. 93) Since

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the Commission must balance the interests of consumers with that of utilities, we have been disinclined to accept any portion of a rate increase that is the result of conservation. Consequently, there is again the likelihood that falling sales will lead to rate levels that, while reasonable, do not support the level of financing sought to be accomplished by Public Service Company of New Hampshire.

As this discussion indicates, the Commission has great concern about each of the factors Mr. Bayless has identified as critical to the success of the financing plan. The Commission believes that the Company's financing plan rests upon very optimistic assumptions about the securities markets, the amounts of needed rate increases, the level of construction costs, the completion dates of Seabrook I and II and the level of electric sales. The risks that any or all of these factors may prove to be worse than assumed by the Company are very high. In fact, the Commission comes to the inescapable conclusion that the risks are unacceptably high.

VIII. FINANCIAL CONDITION

[5] The huge degree of risk in PSNH's financial plan also becomes clearer when viewed in the perspective of the company's financial condition. The testimony in this record shows that PSNH's financial condition resulting from the demands of its construction program is much worse than other companies in the electric utility industry. One measure of financial condition is a company's bond rating. As indicated earlier, PSNH's rating is now below virtually all companies in the industry. (DF 82-141, Vol. 4, 509, 510.)

Another common measure of financial health is the availability of internally generated cash or operating income. In PSNH's case internal cash is negative, and will remain negative until Seabrook I comes on line. (DF 82-63, Vo. 3, p. 122, 145.) Since the Company must borrow to pay dividends, internal cash is projected to be -\$44,606,000 in 1982 and -\$67,556,000 in 1983. (DF 82-63, Vo. 3, p. 123.) If Seabrook I is delayed, the size of the negative internal cash flow

increases in 1984 and could approximate -\$90,000,000. (DF 82-63, Vo. 3, p. 124.) An increase in dividend would also increase the negative cash flow in any of these years. And in this regard it is significant to note that Mr. Meyer indicates that an increase in dividend is a likely requirement for the anticipated stock sales. (DF 82-141, Vol. 4, p. 440, 441.) The Company is also required to borrow to pay preferred dividends (DF 82-63, Vol. 3, p. 75.) and at times to pay for some of its long term debt obligations. The use of financings to pay fixed debt obligations occurred in the fall of 1981 and is anticipated to occur again in 1982 and 1983. (DF 82-63, Vol. 3, p. 76.) The level of debt payments met through financings will increase in 1982 and 1983. (DF 82-63, Vol. 3, p. 75, 76, 77.) Consequently, should PSNH not be able to complete a financing, construction would have to be curtailed sharply to meet these other expenses. (DF 82-63, Vol. 3, p. 77.)

Related to negative cash flow is the percent of earnings attributable to AFUDC (allowance for funds used during construction). In PSNH's case, this percent is substantially above the industry standard. (DF 82-141, Vol. IV, p. 498.) Likewise, CWIP (construction work in progress) as a percent of net utility plant is substantially above the industry standard. (DF 82-141, Vol. IV, p. 497.) As a consequence, PSNH must

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rely on external financing to meet its requirements to a much greater degree than the industry as a whole.

The size of the PSNH construction program is also "extraordinary" relative to the size of the company. (DF 82-141, Vo. IV, p. 498.) In fact, Standard & Poor's indicates that the Seabrook units represent the heaviest asset concentration in the industry. (Exhibit 81.)

PSNH is plagued by several problems which affect the industry as a whole. These problems include: (1) the rising cost of construction; (2) reduced load growth; and (3) high capital costs and uncertainty of financial markets. All across the country, electric companies have faced these problems by changing their construction strategies. (DF 82-141, Vol. IV, p. 453, 454, 515-518.) Yet, despite the severity of their situation, PSNH has not been willing to alter its construction program.

IX. COMMISSION ACTION

The Commission finds that pursuant to the statutory authority under RSA 369:1,4,7,11 this Commission has the authority to set such terms and conditions as are necessary to protect the public interest. The Commission finds that the public interest requires (1) the establishment and then preservation of the financial integrity of the Public Service Company; (2) the protection of the public from rate increases that are both unreasonable and illegal; (3) the protection of adequate service; and (4) timely prudent completion of Seabrook Unit I. The Commission further believes that these findings as to the public interest can only be accomplished through the prevention of any further dollars being expended in pursuit of the completion of Seabrook Unit II until one of the following conditions is met: (1) the successful divestiture by PSNH down to a 28% ownership interest in Seabrook is accomplished, or (2) a demonstration of an equivalent response by other utilities to alleviate PSNH's financial condition is made, or (3) Seabrook I is completed.

The Commission will attach the following terms and conditions to each and every PSNH

financing undertaken pursuant to any provision of RSA 369 after the date of this Report and Order unless and until one of the three conditions is fulfilled.

1. Pursuant to the provisions of RSA 369, to the extent these proceeds are used for the furtherance of work at Seabrook Station Site, those proceeds can be used only for the furtherance of work on Seabrook I and common plant associated with both units.

2. None of the proceeds of any future securities issue either of a long or short term nature can be used in whole or in part for construction of Unit II.

The Commission is compelled to make these conditions because the provisions set forth in our Report and Order No. 15,543 in Re Public Service Co. of New Hampshire (67 NH PUC 223) did not result in any limitation on the Company's construction of Unit II. That Order which was designed to allow PSNH an opportunity to wind down their commitment at Unit II while still preserving work on critical path items, has had no effect on the construction schedule or the effort committed to Seabrook Unit II. (Transcript DF 82-141, Vol. 5, p. 581)

No effort has been made to reduce contract obligations or to defer payments. (Transcript DF 82-141, Vol. 6, pg. 580) The Commission in DF 82-63 set forth limited conditions as to the use of the proceeds for Seabrook Unit II to facilitate the concern raised by counsel

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for PSNH that certain problems would arise unless the Company was allowed to make *certain expenditures in certain ways*. (Transcript DF 82-63, Vol. 7, pg. 70 Reference was made by PSNH counsel to one critical path item, the containment liner at Seabrook II. (Id. at pg. 70) Yet PSNH proceeded to work not on certain aspects of Unit II but on all aspects. PSNH counsel referred us to our previous Order No. 14,505 dated September 29, 1980 (65 NH PUC 457), for guidance. That Order was issued during the time of reduced work at the site and led to further reduction as to the aspects allowed to be worked upon at Seabrook II. (Transcript DF 82-63, Vol. 5, pg. 185)

Furthermore, the work force at the site increased from a level of 7,500 to 8,318, some of which were related to Seabrook II. No attempt was made to minimize expenditures; in fact, the record reveals that the level of Unit II activity was increased. Consequently, the Commission believes the conditions set forth in this proceeding are essential to achieve the Commission's statutory obligation to protect the public interest.

The Commission will provide a forum in the next scheduled financing docket to allow for the financing of costs associated with mothballing the work performed on Seabrook II. (Transcript DF 82-63, Vol. 7, pg. 71) However, this consideration will be given only if PSNH demonstrates that the terms and conditions set forth in this Order will be fully complied with by PSNH.

X. COMMISSION POWERS PURSUANT TO RSA 369

[6, 7] PSNH contends that the Commission's powers pursuant to the sections of RSA 369 are quite limited. While conceding that the Commission has the power to limit capital issues that would lead to over-capitalization, PSNH's position is that our function pursuant to RSA 369 is to approve or disapprove the method of financing made by a utility. Referring to our scope as "limited", PSNH concludes that the only conditions that can be imposed upon a financing are

those reasonably necessary to protect the public's right to fair and adequate service. PSNH specifically rules out any authority of the Commission to force a capital structure on to a utility or to use a financing proceeding as a broad investigation into a utility's future additions and increases in capital structure. The conclusion of PSNH's arguments is that the Commission authority, pursuant to RSA 369, is not plenary as in the area of rates and that the power to determine the public good under these sections does not allow a substitution of Commission judgment for that of management.

In support of their positions the Company cites our attention to two cases involving New Hampshire Gas and Electric Company decided pursuant to the predecessor statute to RSA 369, *New Hampshire v New Hampshire Gas & E. Co.* 86 NH 16, PUR1932E 369, 163 Atl 724, and *Re New Hampshire Gas & E. Co.* (1936) and 88 NH 50, 16 PUR NS 322, 184 Atl 602. However, the provisions of the predecessor statute to RSA 369 are substantially different.

The predecessor statute, P.L., c 241 § 1-6 and RSA 369 are alike, in that a provision similar to RSA 369.4 appears as Public Law 241, section 3. 88 NH at p. 54, 16 PUR NS 322. Furthermore, both statutes contain language employing a standard of "public good" to be used by the Commission. RSA § 369.1, however, is substantially broader than its predecessor, in that the Commission is specifically granted authority to determine (1) the amount of the authorized

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issue; (2) the purpose or purposes to which the securities or the proceeds are to be applied; and (3) such reasonable terms and conditions as the Commission finds to be in the public interest.

6(60)

RSA 369:11 accents these powers by specifically prohibiting a public utility from applying the proceeds of any capital issue to any purpose other than those *specified* in the order of the Commission authorizing the issue. Therefore, an allowance of the proceeds for Seabrook I does not allow for the proceeds to be applied to any other purpose undertaken by this corporation, including Seabrook II.

The plain reading of the statute, RSA 369, demonstrates a more significant delegation of power by the Legislature to the Commission than existed under the predecessor statute. PSNH's reliance upon this predecessor statute and cases interpreting the statute is misplaced, since it has been repealed and the provisions contained in the new statute are substantially different.

As noted above, the cases cited by PSNH relate to interpretations of a repealed statute. Yet even these cases do not support PSNH's contention that the Commission is without authority to step in and protect the public interest through use of the statute covering authorization of new capital issuances.

PSNH cites *Re New Hampshire Gas & E. Co.* (1936) 88 NH 50, 16 PUR NS 322, 184 Atl 602 as support of its position that we are without authority. However, a careful reading of that decision leads to the inevitable conclusion that the Commission has the authority through the statutes governing capital issuances to protect the public interest in a fashion that we find

reasonable.

The Court in *New Hampshire Gas and Electric* stated the following (88 NH at p. 57, 16 PUR NS pp. 329, 330):

"The primary concern of the commission in ascertaining the public interest for purposes of capitalization is the protection of the consuming public. An undercapitalization desired by the utility will probably not adversely affect the public interest in the usual case. But if it appears, upon all of the evidence, that the capitalization sought is so high that the utility, because of 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. Whether there is any secondary interest of the public requiring protection (*New Hampshire v New Hampshire Gas & E. Co.* 86 NH 16, 24, PUR1932E 369, 163 Atl 724), such as that of investors, we are not called upon by the questions presented to decide. But the effect of capitalization on the credit of the utility, as bearing upon its ability to command the means of reasonable service, may be a factor. *New Hampshire v New Hampshire Gas & E. Co.* 86 NH at p. 25, PUR1932E 369, 163 Atl 724, *supra*; *Pittsburgh & W. V. R. Co. v Interstate Commerce Commission* (1923) 54 US App DC 34, 293 Fed 1001, 1004."

The Court's emphasis is on the protection of the consuming public. In particular, the Court finds that the Commission must take appropriate measures to protect the public where the capitalization sought is so high that rates

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will be unreasonable or threatens the public's right to adequate service.

Applying this standard to the facts in this case, it is clear that even under the most limited authority scenario, this Commission must act to use the financing statute to protect the public interest. For example, PSNH contends that they plan to go forward in obtaining new financings *no matter what the interest rate* as long as they can finance. (Transcript, DF 82-141, Volume 5, pages 674-675). It is obvious that such a position is bound to have a significant and unreasonable impact on rates. PSNH just recently issued debt at an effective cost rate to consumers of 18.39 to 19%. *Re Public Service Co. of New Hampshire* (1982) DF 82-118. Furthermore, PSNH has other components of its capital structure in excess of 19.25%, such as its term loan which is at 116% of prime plus 25 basis points. Witness Meyer predicts a climb in interest rates for the remainder of the year due to heavy federal government borrowing. (Transcript, DF 82-141, Volume 4, page 450) The bonds that PSNH are issuing are referred to in financial markets as "junk bonds". (Transcript, DF 82-141, Volume 4, page 478) This market is sketchy at best and is based in a large part on retail sales to individuals willing to take extraordinary risks for extraordinary returns. (Transcript, DF 82-141, Volume 4, page 480) That market is extremely narrow, and large institutional buyers which make up much of the market for bonds cannot purchase this kind of debt. (Transcript, DF 82-141, Volume 4, page 480)

The equity market for PSNH is no better in terms of cost. PSNH's Preferred Stock is rated just above the C level by Standard & Poor's. (Exhibit 81) It is their lowest rated security, and thus will cost more than the junk bonds. Further adding to its cost will be the fact that any equity financing requires two dollars in rates to cover one dollar of equity cost rate. The common equity

has held near the seventy-five percent market-to-book ratio, thus leading to more dilution of the stockholders' interest. Just like the preferred, the common stock carries high cost rates for consumers. The inability to use debt for the next few years due to lack of coverage ratios and/or lack of a consistent market may well explain PSNH's recent authorization request to increase their preferred stock ceiling by 60% and increase the authorized amount of common stock up to 40,000,000 shares from 27,000,000 shares. See PSNH DF 82-71 — Report and Order No. 15,677 ((67 NH PUC 359), modified by Order No. 15,753 (67 NH PUC 468).

To finance debt and equity under these financial conditions for Unit II imprudent and against the public interest. A position that no matter what the cost of equity or debt both projects must be pursued without delay with around-the-clock shifts is not prudent under these financial conditions. These high cost rates on debt and equity lead to rates that are unreasonably high, thereby raising the public interest argument to a significant degree and requiring the intervention of the Commission even assuming *arguendo* the continued viability of Re New Hampshire Gas & E. Co.

The PSNH position to finance no matter what the costs as long as they can finance has some very chilling aspects for the continued construction of Unit I, for the continuation of PSNH itself, and thereby the adequacy of service to its customers.

The evidence in this proceeding is that all of PSNH's dividends and a portion of its interest payments are funded

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through new issuances of debt and equity. (Transcript, 82-63, Volume 3, pp. 75, 76, 77) It is concern enough that PSNH is issuing debt and equity at 18% and above to pay for the interest costs of previous securities issued at 10%, 12%, 14%, 15% and 17%. However, it is far more serious to allow PSNH to reach the financial brink where they cannot issue securities. If PSNH is allowed to pursue its course until it cannot issue securities, then it cannot finance the construction of either Unit I or Unit II. The inability to finance would, within a relatively short time, lead to a situation where they could not meet their dividend and interest requirements. Since the Company cannot attain financial stability until Unit I is in rate base, it is critical that obstacles be eliminated that needlessly obstruct this occurrence.

The choice facing this Commission, PSNH and its customers is not whether to delay Unit II or not, but rather to delay one or both units. This Commission cannot allow the slippage of Unit I to occur due to the necessity of maintaining PSNH as a corporate entity and the need to provide adequate service through Unit I's completion and PSNH's continued financial existence. We find that the absence of conditions prohibiting the proceeds of future PSNH financing from being used for Seabrook II could lead to inadequate service and would thereby be against the public interest.

Since the standard of New Hampshire Gas and Electric, *supra*, allows for conditions to be imposed when there is a danger to the adequacy of service, the Commission's authority to issue such conditions cannot be questioned.

New Hampshire Gas and Electric also raises the possibility that even under a strict pre-RSA 369 argument, the Commission is not precluded from viewing the public interest in terms of

investors. As the Commission noted in its decision in DF 82-63 (67 NH PUC at p. 230):

"The need for a conditioned order as to the second unit is not found solely on the basis of needed financial flexibility for PSNH and its partners. Rather, the Commission must also by statute protect stockholders from dilution and ratepayers from unreasonable rates.

"PSNH's common stock has been diluted over the past few years. Continuous sales of stock at below book value have contributed to this dilution. As Witness Bayless noted, this dilution has occurred in almost every electric utility common stock. Comparatively, PSNH has had to issue a larger number of shares than the average electric utility. In 1978, PSNH had less than ten million shares of common stock outstanding. That level has been raised to twenty-five million by this issuance."

PSNH has since authorized a common stock level of 40,000,000 shares. Preclusion from entering the debt market due to either inadequate coverages or the instability of the junk bond market would lead to further use of common stock. Since the Commission has found that there will be inadequate coverage ratios and an unstable junk bond market, it is clear that continuation of work on both units would lead to a further dilution in the existing shareholders' interest which could be against the public interest. A failed financing and the inability to meet terms of existing security issuances would be severely damaging to existing investors. Thus, under this portion of the New Hampshire Gas and Electric standard, there is ample evidence to preclude further proceeds for Unit II so as to help minimize dilution or worse.

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This standard for defining public interest, and thereby the authority for the Commission to condition financings, also draws a connection between capitalization and its effect on the credit of the utility, as bearing upon the ability to command the means of reasonable service. (88 NH at p. 57, 16 PUR NS at pp. 329, 330.)

As noted earlier, Witness Bayless has stated that the Company's position is to go forward to finance no matter what the interest rate as long as they can finance. However, Mr. Bayless also indicated that this is their position even if there is another drop of their ratings into the "C" level. (Transcript, DF 82-141, Volume 5, pages 669-671) Mr. Bayless stated that only after they reached a double level, after the first falling to triple C, would they begin backing off the construction program. Id at 671.

There is no utility that is presently at even a triple C rating. The willingness to pursue this course, despite the two downgrades already experienced, again poses the possibility that this course could ultimately threaten adequate service, thus satisfying the standard set forth in Re New Hampshire Gas & E. Co. (1936) 88 NH 50, 16 PUR NS 322, 184 Atl 602.

Public Service Company's legal memorandum does concede that the Public Utilities Commission is not bound by management decisions in all cases (p.3.). The Company asserts that the standard is that the PUC may reject management decisions only "when inefficiency, improvidence, economic waste, abuse of discretion or action inimical to the public interest are shown." The Company cites a number of other cases in support of this standard. However, at least one of the cases cited imposes a different and lesser standard. In the Town of Warrenton v Carolina Teleph. & Teleg. (NC 1966) 65 PUR3d 130, 132 the North Carolina Commission held

that while a regulatory body does not necessarily have the authority to supplant company management judgment under the "general supervisory provision of the statute," it, nevertheless, may review and reject management decision where such matters affect "the public interest to a degree that the customers of the company might be definitely inconvenienced and their substantive rights affected." Application of that standard by the Commission resulted in the Commission reversing a management decision to close a service office in Warrenton where the record showed that the public would be inconvenienced.

The evidence of the effect on the public resulting from management's decision not to delay further construction of Unit II pending some improvement in the Company's financial situation shows that more than inconvenience may result; i.e., the burdens of dramatically escalating rate increases, expensive debt and equity, the possibility of limitations in the marketplace that would foreclose the ability to finance, and the potential that continuation with Seabrook II will prevent Seabrook I from becoming a reality.

Another case cited by PSNH is *Re Jersey Central Power & Light Co.* (NJ 1980) 38 PUR4th 115; a case which is more analogous to the one at hand. In that case the New Jersey Commission countermanded a decision by NJCP&L management to raise the salaries of the officers of the Company because of the serious financial predicament of the utility.

7(61)

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The Commission stated as a general rule they would not intrude into matters considered management's prerogative, however, management actions including salary decisions are subject to scrutiny. (*Id.*, 38 PUR4th at p. 123.) In light of the financial problems of NJCP&L the Commission found management action in raising salaries unreasonable. In support of the Order to Rescind the raises, the Commission stated (*id.*, 38 PUR4th at p. 123):

"There is authority under circumstances of financial jeopardy to prohibit dividends, service fees and the like where such actions could deteriorate utility property or impair service to the public."

The Commission cited two Ohio Supreme Court cases which were in accord with this standard.

8(62)

The Ohio Supreme Court has held that, in spite of management prerogative regarding the declaration of dividends, because a public utility is so affected with the public interest the Commission has sufficient power to protect this public interest. *Ohio Central Teleph. Corp. v Ohio Pub. Utilities Commission* (1934) 127 Ohio St 556, 2 PUR NS 465, 469, 189 NE 650. In that case, payment of dividends out of depreciation reserves would result in deterioration of the property eventually resulting in impairment of public service. Stated another way, a public utility is:

"an independent corporation and possesses the right to regulate its own affairs and manage

its own business, unless in doing so a situation develops which is inimical to, the public interest." *Elyria Teleph. Co. v Ohio Pub. Utilities Commission* (1953) 158 Ohio St 441, 98 PUR NS 246, 250. 110 NE2d 59.

As noted, PSNH's memorandum of law regarding the Commission authority to delay construction of Unit II refers to decisions of other jurisdictions. The memorandum asserts that a Commission's authority over utility management is limited: "Nowhere is the deference to managerial decision more marked than in the field of financial policy." (Memorandum, page 4) However, a review of the regulatory power of commissions among the several states would lead to a totally contrary conclusion.

Many other states, including: Alabama,

9(63) Hawaii,

10(64) Michigan,

11(65) Ohio,

12(66) Pennsylvania,^{12A} and Wisconsin,

¹³⁽⁶⁷⁾ have statutes mandating commission approval before public utilities may go forward with the issuance of securities. Not only is the prerequisite of Commission approval of utility securities issuances a hallmark of the modern regulatory scheme, but the authority of state commissions to condition or direct the use of proceeds from such issuances is recognized. See; e.g., *Alabama Power Co. v Alabama Pub. Service Commission* (1965) 278 Ala 597. 61 PUR NS 424, 179 So 2d 725; Wis. Stat. § 184.06(2), Accord,

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Wisconsin ex rel. *Wisconsin Electric Power Co. v Bardwell* (1976) — Wis 2d —, 14 PUR4th 169, 239 NW 2d 78. In the same manner as the N. H. RSA, Ch. 369, other jurisdictions afford regulatory commissions the authority to scrutinize the financing before granting approval and condition the use of proceeds as it deems is in the public interest. (*Id.*, 14 PUR4th 169.)

A Pennsylvania Court has held that the State's scheme of regulation over financing "contemplates the reasonable regulation of securities to be issued by the utility company, in the interest and to the benefit and advantage, of the public served by the utility company." *York R. Co. v Pennsylvania Pub. Utility Commission* (1938) 131 Pa Super Ct 126, 24 PUR NS 401, 198 Atl 920, 922. Factors to be considered by the Commission in determining the efficacy of an issuance include, *inter alia*, the nature of the business of such public utility, its credit and prospects. (*Id.*, 131 Pa Super Ct 126, 24 PUR NS 401, 198 Atl 920, 922.) Although the New Hampshire statute does not specify which factors the Commission should consider when making a determination that financing is consistent with the public good, it is apparent that consideration

of these factors should be deemed consistent with reasonable regulation. The approval or denial of an issuance, which would result in the bankruptcy of a utility, would seriously interfere if not destroy public service and would not be consistent with the law. *Id.* Cf. *Re Legislative Utility Consumers' Council* (1980) 120 NH 173.

The Pennsylvania Court's review of its PUC's authority to regulate a utility as to its financings was conducted under the statutory provisions of 66 P.S. § 1241 and 1243. Today, these provisions have been re-enacted as 66 Pa. C.S.A. 1903. On May 7, 1982 the Pennsylvania Public Utility Commission ruled favorably on a motion made by its Chairwoman, Susan M. Shanaman, in which it dealt with the future of Limerick I and II. Her motion, which was adopted by the Commission and will appear in an imminent decision, stated that where the Pennsylvania Commission found that completion of both units by 1987 was not financially feasible, it was in the public interest to have Limerick II either canceled or have its construction suspended until the completion of Unit I.

¹⁴⁽⁶⁸⁾ The motion, which in essence gave Philadelphia Electric the choice of cancellation or delay of Limerick Unit II stated that the Commission, pending completion of Unit I, would not approve any new securities issuances of which the proceeds would be used in whole or in part for construction at Unit II.

We hasten to add that we are not considering the cancellation of Unit II at Seabrook — a result we have stated to be an unacceptable¹⁵⁽⁶⁹⁾ method to resolve our concern for PSNH's future financial situation except as the last resort and only if the other four options set forth in prior decisions fail or no other option arises. *Re Public Service Co. of New Hampshire* (1982) 67 NH PUC 139. However, the ability to condition financing orders and the ability to designate for which projects the proceeds will be applied is a power that the Pennsylvania Public Utility Commission uses and one which the Pennsylvania judicial system has recognized.

The Michigan statute, Act 144 of the Public Acts of 1909, § 1 sets forth the Michigan criteria for the approval of

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issuances of stocks, bonds, notes or other evidence of indebtedness. That statute is similar to N.H.R.S.A. 369, § 1, in that the Michigan Commission is granted the authority to apply to any grant of authority to issue these financial documents, such terms and conditions as the Commission may deem proper.

In a recent decision *Re Northern Teleph. Co.* (Mich 1980) 35 PUR4th 306, 336-338, the Michigan Public Service Commission imposed conditions to an approval of a long-term debt issuance that precluded the proceeds from being used to cover payments found to be excessive in the Commission's rate order. This prohibition prevented the proceeds from being used by Northern Telephone Company in any manner for: labor loading above that authorized by the commission herein, profits to the parent company on transactions with applicant relative to purchases of materials, supplies, equipment, or services, or for any billings made by the parent company for either materials or services not provided directly to applicant. 35 PUR4th at p. 338.

The Michigan Public Service Commission summarized its decision as to the conditions imposed as follows (35 PUR4th at p. 338):

"Only under the named conditions mentioned, however, can this commission find that the use of such funds is necessary to carry out applicant's utility purposes or that the proceeds will be used for lawful purposes."

The language in the Michigan and New Hampshire statutes is sufficiently similar to rely upon the decision as to further evidence of the broad power the Commission as to RSA 369.

In conclusion, the PSNH memorandum is accurate only to the extent that it sets forth the general rule that a regulatory commission will defer to management regarding internal decisions. However, the cases cited by the Company stand for the principle that the general rule is abandoned where management policies will result in detriment to the public interest, either by the lesser standard of public inconvenience or the possibility of financial distress or unacceptable risks to consumers and investors alike resulting from management action or inaction.

PSNH contends that the Commission could not impose a capital structure of its own choice on the utility. Rather, the Company confines our function to approving or disapproving a proposed financing method. Reference is made to *Re New Hampshire Gas & E. Co.* (1936) 88 NH 50, 58, 16 PUR NS 322, 184 Atl 602, wherein the Court acknowledged that as a practical matter, the utility after successive efforts to obtain the necessary approval might be forced to bow to the will of the PUC. Thus, PSNH concludes that the Commission's power to determine the public good in the area of financing does not give it the right to substitute its judgment for management's.

As discussed earlier, *Re New Hampshire Gas & E.* relates to a very different statute. Although the determination of whether bonds or stocks should be issued is for management, the matter of debt ratio is not exclusively within its province. *New England Teleph. & Teleg. Co. v New Hampshire* (1953) 98 NH 211, 220, 99 PUR NS 111, 97 A2d 213. Debt ratio substantially affects the manner and cost of obtaining new capital. It is, therefore, an important factor in the rate of return and must necessarily be considered by and come within the authority of the body charged by law with the duty of fixing a just and reasonable

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rate of return. *New England Teleph. & Teleg. Co. v New Hampshire* (1953) 98 NH 211, 220, 99 PUR NS 111, 97 A2d 213. *New England Teleph. & Teleg. Co. v Massachusetts Dept. of Pub. Utilities* (1950) 327 Mass 81, 88 PUR NS 73, 97 NE2d 509, 514.

The provisions of RSA 369 and the Courts decision in *New England Telephone, supra*, support a broader interpretation of the Commission's authority than contended by PSNH. Terms like "public good" and "public interest" are broad, but they are lawful standards, which are consistently applied and sustained in public utility regulation. *Gordon v Public Service Co. of New Hampshire* (1958) 101 NH 372, 375, 25, PUR3d 521, 143 A2d 428. It comes too late in the constitutional day to say public good and public interest are unlawful standards for public utility regulation. *Davis, Administrative Law* (1951), ch. 2. *Gordon v Public Service Co. of New Hampshire* (1958) 101 NH 372, 375, 25 PUR3d 521, 143 A2d 428.

PSNH cites *Re Grafton County Electric Power & Light Co.* 77 NH 539, PUR1915C 1064, 94 Atl 193, for the proposition that the public good requires that public utilities cannot be restrained in their action or denied their rights as corporations, which are given to corporations not engaged in the public service. It is extremely unlikely that a nonregulated corporation would be able to economically survive, based on a management decision to finance in a necessary time period, no matter what the interest rate and thereby no matter what the cost of its product. Furthermore, *Re Legislative Utility Consumers' Council* (1980) 120 NH 173, 174, 412 NE2d 738, clearly establishes that there are other considerations in a determination of the public good as it relates to public utility corporations. Few, if any, nonregulated corporations have the legal protection against extreme financial difficulties which arises only because of the statutory public interest standard. *Re Legislative Utility Consumers' Council* (1980) 120 NH 173, 174, 412 NE2d 738.

The Commission has the authority to set a proper debt ratio and, therefore, to regulate the manner and cost of obtaining new capital. *New England Teleph. & Teleg. Co. v New Hampshire* (1953) 98 NH 211, 220, 99 PUR NS 111, 97 A2d 213. The Commission has the authority to regulate debt ratios so as not to reach a level of an unreasonable rate of return. *New England Teleph. & Teleg. Co. v New Hampshire* (1953) 98 NH 211, 220, 99 PUR NS 111, 97 A2d 213. Pursuant to a specific grant of authority in RSA 369, § 1, this Commission has the ability to determine the amount of a securities issue. Pursuant to a specific grant of authority in RSA 369, § 1, the Commission has the ability and indeed is mandated to protect the public interest by approving the issuance of securities subject to such reasonable terms and conditions as the Commission finds to be necessary in the public interest. The Commission has a specific grant of authority derived from RSA 369, § 1 and 11, to determine the purpose or purposes to which the securities or the proceeds thereof are to be applied. The definition of public good and public interest is a broad standard and not a narrow one. *Gordon v Public Service Co. of New Hampshire* (1958) 101 NH 372, 375, 25 PUR3d 521, 143 A2d 428. The culmination of this analysis leads to the inevitable conclusion that PSNH's position as to our limited authority to protect only overcapitalization must be rejected.

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XI. *RSA 162-F*

We next consider PSNH's contention that granting of a certificate of Site and Facility for the Seabrook Units under the provisions of RSA 162-F precludes the Commission from conditioning financings that result in a delay of one of those units or specifically ordering such a delay.

PSNH contends that where the Commission, along with other State agencies, participates on behalf of the State in determining the appropriateness of major utility construction investment before such investment is undertaken, the Certificate for construction of a major facility is conclusive of the utility's right to proceed with the investment. PSNH summarizes their argument by stating that the Legislature has set forth a careful statutory scheme in RSA 162-F that provides once a Certificate is granted, the Commission does not have any implied authority to intervene in or to adjust the pursuit of such a construction program. PSNH argues that to imply such authority would interfere with the careful statutory scheme of RSA 162-F.

The thrust of PSNH's arguments is that the provisions of RSA 162-F and the granting of a

Certificate preclude the Commission from exercising its statutory authority pursuant to RSA 369, 374, and 378 or any other statutory provision, if such an exercise would in any manner affect the construction of a certificated facility. We disagree that RSA 162-F nullifies those statutes.

The New Hampshire Supreme Court has often been called upon to review alleged conflicts between statutes. The Supreme Court will find an implied repeal of a statute only if the conflict between the two enactments is unconscionable. To be successful in such an argument, evidence of a convincing force must be presented by the party urging that there is an implied repeal. *Gazzola v Clements* (1980) 120 NH 25, 28. See also *Board of Selectmen of the Town of Merrimack v Planning Board* (1978) 118 NH 150; *Re Opinion of the Justices* (1966) 107 NH 325. Implied repeal is a disfavored doctrine in this State. *Board of Selectmen of the Town of Merrimack v Planning Board* (1978) 118 NH 150, 152. If any reasonable construction of the two statutes taken together can be found, the Court will *not* find that there has been an implied repeal. (*Id.*, 118 NH at p. 153.) In the case of conflicting statutory provisions the specific statute controls over the general. *Re Robert C.* (1980) 120 NH 221. It is not to be presumed that the Legislature would pass an act leading to an absurd result and nullifying to an appreciable extent the purpose of the statute. *New Hampshire v Kay* (1975) 115 NH 696, 698. It is well established that where several statutes deal with the same subject matter, they should be construed, so far as reasonably possible not to contradict each other. *New Hampshire v Woodman* (1974) 114 NH 497, 500, 2 A.J. Sutherland, *Statutory Construction*, § 51.02 (rev 3d ed G. Sands 1973); 82 CJS Statutes § 325, at pp. 618, 619 (1953).

The Commission's statutory authority pursuant to the provisions of RSA 369, 374 and 378 have not been repealed, nor is there convincing evidence to the contrary. Since the creation of RSA 162-F, all three statutes have had additions and extensions to their respective provisions. More importantly, the statutory scheme of RSA 162-F and the provisions of RSA 369, 374 and 378 can be taken together and through reasonable interpretation, there is no possibility of contradiction.

A certificate issued pursuant to RSA 162-F is similar to a building permit. The

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Legislature found the need to provide a coordinated effort to assure the protection of environmental values and certifying the construction, operation or maintenance of bulk power supply facilities so as to assure the State an adequate and reliable supply of electric power in conformance with sound environmental utilization of RSA 162-F:1. Toward this end, this statute was passed to create the site evaluation committee to have general responsibility over siting. *Society for Protection of New Hampshire Forests v Site Evaluation Committee* (1975) 155 NH 163, 170.

The Public Utilities Commission is bound by the findings made by the Site Evaluation Committee. (*Id.*, 155 NH at p. 171 and RSA 162-F:8 I and II.) However, these findings, upon which we are bound, relate to questions of siting, land use, air and water quality. The Commission's granting of a certificate is final as to these questions and as to the need to build the facilities. However, there is no provision in RSA 162-F that precludes the operation of our other

statutory responsibilities.

RSA 162-F can be read to be in concert with the provisions of RSA 369, in that securities can be issued if they are consistent with the public good for the project certified in a 162-F proceeding. In fact, financings for pursuit of a certified facility help satisfy the public good requirement. However, this fact is not the only consideration that should be evaluated in an RSA 369 proceeding. For example, PSNH's position of financing a certified facility almost regardless of the cost of the issuance cannot be upheld where there is no consideration of cancellation, and the only consideration is delay until a more opportune financial climate for the Company.

As to RSA 374, the Company itself petitioned the Commission for permission to transfer a portion of its assets associated with a certificated plant, Seabrook, to other utilities by use of RSA 374:30. *Re Public Service Co. of New Hampshire* (1979) 64 NH PUC 262, and (1979) 64 NH PUC 286; *Re Legislative Utility Consumers' Council* (1980) 120 NH 173, 412 A2d 738. In that proceeding, there clearly was no RSA 162-F preclusion to allowing a transfer of Seabrook assets pursuant to RSA 374:30 even though the original RSA 162-F certificate granted as to Seabrook contemplated a PSNH ownership interest of 50%.

The provisions of RSA 378 require rates that are just and reasonable. This statute is still valid and can easily be read in concert with both RSA 162-F and RSA 369. The Commission can, will and must allow reasonable rates and these rates are to attract capital where that capital is reasonable in cost, reasonable as to its effect on debt equity ratios and in the public good for facilities approved pursuant to RSA 162-F.

A certified construction program under RSA 162-F is to be pursued when that can be accomplished through a just and reasonable rate level designed to attract reasonable capital at reasonable cost rates. There is no statutory construction that allows for financings no matter what the cost or an allowance of rate levels no matter what the amount to support a project certified by RSA 162-F.

The provisions of RSA 369, 374 and 378 are specific delegations of the legislative power to regulate. RSA 162-F is a general statute that coordinates the considerations of siting. Even if the statutes were to be found conflicting, which they are not, the specificity of the provisions

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of RSA 369, 374 and 378 prevail. *Re Robert C.* (1980) 120 NH 221.

Our reading of the statutes allows for the reading of them together as part of an overall regulatory framework. *New Hampshire v Woodman* (1974) 114 NH 497, 500. Even the most overriding interpretation of RSA 162-F must obviously recognize pursuant to RSA 162-F:12 III the necessity to respect Commission orders pursuant to our other statutory powers. PSNH's position that RSA 162-F supersedes our other statutory authority cannot be supported. PSNH's position carried to its logical end would lead to a situation where pursuit of certified facilities under RSA 162-F would be allowed no matter what the level of rates, no matter what the cost of new capital and without regard to what is in the public interest. As the Court stated in *New Hampshire v Kay* (1975) 115 NH 696, it is not to be presumed that the Legislature would pass an act leading to such an absurd result.

XII. SUMMARY OF FINDINGS

A. Lack of Bona Fide Responses

(1) Only two small utilities, Commonwealth Electric and Newport Electric, have made a specific expression of interest in Seabrook purchases. The amounts involved total less than a 1% share.

(2) The Commonwealth Electric proposal contains conditions which PSNH agrees are unlikely to be met.

(3) The Newport Electric proposal is subject to Rhode Island PUC concurrence and the ability of the Company to finance. No formal offer has been transmitted.

(4) While Massachusetts Municipal Wholesale Electric Company (MMWEC) has indicated that it is evaluating an additional Seabrook ownership, no specifics relative to the potential size and timing of a purchase have been discussed.

(5) While MMWEC has made numerous proposals relative to construction advance and a Unit I/Unit II swap, no agreements have been reached to date.

(6) The construction advance proposals of Commonwealth Electric and Fitchburg Gas and Electric Light Company carry conditions which PSNH agrees are very unlikely to be met.

(7) The prepayment purchase of unit power capacity with Taunton and the construction advance with New Hampshire Electric Cooperative, Inc. appear to be moving ahead.

B. Potential Sales of Seabrook

(8) PSNH has not substantiated their position that the potential market for Seabrook has improved warranting a delay in Commission action. The factors cited relative to the potential market are not new.

(9) The loss of PASNY power by Vermont utilities has been known since 1981.

(10) Pilgrim II was cancelled by Boston Edison in September, 1981.

(11) While the decision to delay the Sears Island plant in Maine was not announced until May, it has been anticipated by the industry and regulators for many months.

(12) Despite a March report of the Vermont Department of Public Service indicating a capacity deficiency, decisions by the Vermont Public Service Board make Seabrook purchases by the Vermont utilities appear unlikely.

(13) Central Maine Power Company, which owned roughly 70% of the Sears Island Plant, accompanied the delay announcement with the statement that it was negotiating for power from New

Brunswick for a term of years with the possibility of renewal.

(14) Maine legislation passed this year requiring Public Utilities Commission approval for purchases of energy and capacity and statements by the Maine Governor make Seabrook purchases by Maine utilities unlikely.

(15) The oil back-out plan filed by Boston Edison with the Massachusetts DPU, makes any Seabrook commitment by BECO in the near future very unlikely.

(16) None of the out-of-State utilities were willing to appear and testify before the Commission despite the urging of PSNH.

C. Sale of Millstone III Ownership

(17) Arrangements are well underway for the sale of 25 MW of PSNH's Millstone interest to MMWEC and Conn. MEEC. This sale will raise roughly \$45 million. Although the First Mortgage Indenture restricts the use of these proceeds, PSNH is investigating ways to increase the funds available for Seabrook construction as a result of this sale.

D. Company Position on 35% Ownership Level

(18) The Commission finds the Company's position on its ability and intent to finance a 35% level of ownership to be inconsistent. The record shows the following: (1) PSNH position in the summer of 1979 that it could not finance more than 28% ownership without a 4 year delay in Seabrook II; (2) PSNH Board decision prior to March, 1981 to continue with a 35% ownership level; (3) PSNH did not appeal the Commission's January Order requiring a sell down to 28% ownership level; (4) Company counsel stressed in a March proceeding that PSNH was not contesting the Commission conclusion regarding the 35% ownership level; (5) Mr. Bayless testified in March that PSNH would probably have attempted to reduce ownership itself; (6) Mr. Bayless also testified in March that PSNH could finance a 35% level; and (7) the PSNH June testimony contends an ability to finance a 35% ownership level.

E. Psychological Climate or Uncertainty Factor

(19) The Commission finds PSNH statements relative to the effect of Commission action on uncertainty and the psychological climate to be contradictory. Mr. Meyer indicates that the financial community would respond to Commission action ordering a delay negatively. Mr. Lampron testified that the financial community had discounted the possibility of a delay. Mr. Merrill indicates that the effect of a postponement in Commission action until December on uncertainty was difficult to tell.

F. Factors Affecting Success of PSNH's Financial Plan

(20) The success of PSNH's financial plan depends upon several factors which all agree are uncertain. Mr. Bayless identifies these factors as: (1) security market factors; (2) the amounts and timing of rate increases; (3) the level of construction costs at the Seabrook plant; (4) the completion dates of Seabrook I and II; (5) economic conditions; and (6) the level of electric sales.

1. Security Market Factors

(21) PSNH's financing depends upon a marketplace willing to buy debt securities with the speculative ratings PSNH currently has. This market is uncertain.

(22) The market for "junk bonds" is considerably narrower than for investment grade securities.

(23) The large institutional buyers which make up much of the market for bonds will not purchase this debt.

(24) The junk bond market is based in a large part on retail sales to individuals willing to take extraordinary risks.

(25) The importance of financial flexibility is greater for low rated companies.

(26) If PSNH had to finance at a particular time there might not be a market for its bonds.

(27) There are very few utilities with bond ratings as low as PSNH.

(28) The two other utilities which Mr. Meyer could name with the same bond rating as PSNH are unable to finance in a meaningful way.

(29) Commercial bankers continue to be very concerned about PSNH's financial position.

(30) The uncertainty of the market is enhanced by the very large demands anticipated this fall because of the requirements of the Federal Government.

(31) Federal requirements will likely increase interest rates further.

(32) PSNH itself slowed Seabrook construction in March, 1980 due to very high interest rates and the unsettled state of the capital markets.

2. Rate Increases

(33) Rate increases will be critical to the financing plan.

(34) All parties agree that the Commission's record to date in providing prompt rate relief has been unusually responsive and supportive.

(35) Future improvement in cash flow through rate increases must be achieved by further raising the return on common equity.

(36) The return on common equity required to meet the Company's financial needs would be unreasonably high.

(37) The Commission finds that it does not have the ability within reasonable regulatory standards to halt further erosion in PSNH's financial condition.

(38) An allowance of the highest rate of return on common equity in the nation would not provide the cash necessary to carry a 35.6% ownership interest in Seabrook.

3. Completion Dates and Construction Costs

(39) The completion dates for Seabrook I and II appear overly optimistic. To the extent that these dates are not met, total cost and financing requirements will increase.

(40) While PSNH is estimating a mid-1986 completion date for Unit II, Millstone III has the same completion date yet was 36% complete at the end of 1981 compared with 8% completion for Seabrook II.

(41) Two of the four major Seabrook owners estimate completion dates for Seabrook II significantly different than PSNH.

(42) Despite the fact that Seabrook II construction was halted for the better part of 1980, the time differential between completing the two units was not changed.

(43) Based on a separate investigation, the Vermont Public Service Board found the completion dates and total cost for Seabrook to be subject to potential serious error.

(44) The NRC contends Seabrook I will not be completed until the spring of 1984 and will not be operational until the summer of 1984.

(45) PSNH admits that Seabrook I is currently around 100 days behind schedule. Based on a 5 day work week, the project is 20 weeks behind schedule.

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(46) The Commission finds that the total project cost estimates are very likely to be understated.

(47) The Vermont Public Service Board has also found that there is serious question as to the accuracy of the estimated construction costs of Seabrook Station.

(48) Boston Edison in its oil back-out report to the Mass. DPU found that there was a potential that Seabrook capital costs are low and will be increased.

(49) The confidence levels expressed of 90% and 95% as to the completion dates of Seabrook I and II are optimistic goals rather than estimates based on probabilities.

(50) The forecasted completion dates do not account for any delay resulting from NRC mandated design changes or work stoppages due to strikes.

(51) Financial planning is based on the forecasted completion dates and the Company could not quantify the financial implications of a five month delay in Seabrook I completion should the present schedule lag not be corrected.

(52) Company testimony on the ability to speed up the schedule through the addition of more workers is completely contradictory.

(53) The level of employees at Sea-brook construction site is totally out of line with the standard industry construction practice.

(54) The Commission believes that the present level of 8,313 employees is inefficient and will not improve the schedule at Seabrook I.

(55) The more likely completion of Seabrook I in the latter part of 1984 will result in greater negative cash flow and substantially higher AFUDC earnings in 1984.

4. Level of Sales

(56) The level of sales is critical to PSNH's cash flow.

(57) If the assumed level of sales is not achieved, then internally generated cash is lower than anticipated and external financing needs are greater.

(58) The only means of maintaining revenues in the face of lower load growth is through rate increases.

(59) Rate increases tend to reduce sales because of "elasticity", thus, making further rate increases necessary to maintain needed revenue levels.

(60) The Commission is not receptive to raising rates to compensate for lower load growth. This practice would penalize conservation and in effect guarantee the Company's rate of return.

(61) The Commission believes that PSNH sales forecasts are overly optimistic and unlikely to be achieved.

(62) For the 12 months ended December 31, 1981, sales growth was 0.4% negative, and for the 12 months ended January 31, 1982 was 2.9% negative.

(63) Lagging sales growth is likely to result in requests for emergency rate relief as occurred in 1981.

5. PSNH Financial Condition

(64) Internally generated cash or operating income for PSNH is negative, and will remain negative until Seabrook I comes on line.

(65) PSNH is borrowing to pay for common and preferred stock dividends.

(66) In the fall of 1981 PSNH had to use financings to pay fixed debt obligations. The level of debt payments met through financings will increase in 1982 and 1983.

(67) Internal cash is projected to be -\$44,606,000 in 1982 and -\$67,556,000 in 1983.

(68) If the completion date of Seabrook I is delayed, the size of the negative

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internal cash flow increases in 1984 and could approximate -\$90,000,000.

(69) An increase in dividend would also increase the negative cash flow.

(70) PSNH's percent of earnings related to AFUDC is substantially above the industry standard.

(71) CWIP as a percent of net utility plant is substantially above the industry standard.

(72) The size of the PSNH construction program is extraordinary relative to the size of the Company.

(73) PSNH's ownership interest in Seabrook represents the heaviest asset concentration in the industry.

(74) The rising cost of construction, reduced load growth, and high capital costs and market uncertainty are problems which affect PSNH and the electric utility industry as a whole.

(75) The common response of other utilities faced with these problems has been to change their construction strategies.

6. Commission Powers Pursuant to RSA 369

(76) The provisions of RSA 369 grant the Commission a broader authority than the provisions of its predecessor statute, P. L. C 241 § 1-6.

(77) The provisions of RSA 369 specifically grant the Commission the authority to determine the amount of an authorized issue.

(78) The provisions of RSA 369 specifically grant the Commission the authority to determine the purpose or purposes to which the securities or the proceeds are to be applied.

(79) The provisions of RSA 369 specifically grant the Commission the authority to attach to any security issue such reasonable terms and conditions as the Commission finds to be in the public interest.

(80) RSA 369 is a more significant delegation of power by the Legislature to the Commission than existed under the predecessor statute.

(81) PSNH's arguments relate to interpretations of a repealed statute.

(82) PSNH cites *Re New Hampshire Gas & E. Co.* (1936) 88 NH 50, 16 PUR NS 322, 184 Atl 602, to support its contentions that the Commission is without authority.

(83) *Re New Hampshire Gas & E. Co.* recognizes the Commission's authority to protect the public where the capitalization is so high that rates will be unreasonable or threatens the public's right to adequate service.

(84) Absent Commission action, PSNH would go forward with financing no matter what the interest rate as long as they can finance which would lead to unreasonably high rates.

(85) Unreasonable rates result from the issuances of securities for Seabrook II no matter what the cost to consumers.

(86) To finance debt and equity under PSNH's existing financial situation for Unit II is imprudent and against the public interest.

(87) A position that no matter what the cost of equity or debt both projects must be pursued without delay and with around the clock shifts is not prudent under these financial conditions.

(88) PSNH's position to finance no matter what the costs as long as they can finance has chilling aspects for the continual construction of Unit I and thereby the adequacy of service to its customers.

(89) PSNH's position to finance no matter what the costs as long as they can finance has chilling aspects for the continuation of PSNH itself and thereby the adequacy of service to its customers.

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(90) PSNH's position to continue to finance until it cannot issue securities would at the time of such occurrence stop the construction of both Units.

(91) The choice facing the Commission, PSNH and its customers is not whether to delay Unit II or not but rather to delay one or both units.

(92) The Commission cannot allow the delay of Unit I to occur due to the necessity of maintaining PSNH as a corporate entity and the need to provide adequate service through Unit I's completion.

(93) Absent the conditions set forth in this Report there would be inadequate service and thereby against the public interest.

(94) The conditions set forth in this Order provide protection of investor's interests which is in the public interest.

(95) Absent the conditions in this Report, PSNH's program of financing both Seabrook Units would lead to further downgrading of PSNH's credit rating which is against the public interest.

(96) The Commission can as a minimum supplant Company management judgement under our general supervisory power where customers of the Company may be definitely inconvenienced and their substantive rights affected.

(97) The evidence demonstrates that as a result of PSNH's decision not to delay Unit II more than inconvenience may result.

(98) The evidence demonstrates that as a result of PSNH's decision not to delay, Unit II will prevent Seabrook I from becoming a reality.

(99) The decisions in other jurisdictions support the Commission authority to issue the conditions in this Order.

(100) The decision to determine a proper debt ratio is not exclusively within management's province especially where there is an impact on rates.

(101) Terms like public good and public interest must be interpreted broadly.

(102) It is extremely unlikely that any non-regulated corporation would be able to economically survive based on a management decision to finance no matter what the rate and thereby no matter what the cost of its product.

(103) Few if any non-regulated corporations have the legal protection against extreme financial difficulties which arises only because of the statutory public interest standard.

(104) The Commission has the authority to set a proper debt ratio and regulate the manner and cost by obtaining new capital.

(105) The Commission has the authority to regulate debt ratios so as not to reach a level of unreasonable rate of return.

(106) Pursuant to a specific grant of authority in RSA 369 § 1, this Commission has the ability to determine the amount of a securities issue.

(107) Pursuant to a specific grant of authority in RSA 369 § 1, the Commission has the ability and indeed is mandated to protect the public interest by approving the issuance of securities subject to such reasonable terms and conditions as are in the public interest.

(108) The Commission has a specific grant of authority derived from RSA 369: I and II to determine the purpose to which the securities or the proceeds thereof are to be applied.

(109) The definition of public good and public interest is a broad standard and not a narrow one.

7. *RSA 162:F*

(110) The Commission's statutory authority pursuant to the provisions of RSA 369, 374 and 378 have not been repealed.

(111) Implied repeal is a disfavored doctrine in New Hampshire.

(112) If any reasonable construction of two statutes taken together can be found, there cannot be a finding of repeal.

(113) Statutes should be construed as reasonably as possible not to contradict each other.

(114) In the case of conflicting statutory provisions the specific statute controls over the general.

(115) RSA 369, 374 and 378 are specific statutes whereas RSA 162:F is a general statute.

(116) RSA 369, 374, and 378 and 162-F can be read together without contradiction.

(117) A certificate issued pursuant to RSA 162-F is similar to a building permit.

(118) PSNH recognized the continued viability of other statutory powers when they sought to transfer ownership interest in Seabrook pursuant to RSA 374:30.

(119) RSA 369, 374, 378 and 162:F are part of an overall regulatory framework.

(120) To view RSA 162:F as curtailing our specific powers pursuant to RSA 369, 374 and 378 would lead to an absurd result.

(121) The legislature is presumed not to pass acts leading to an absurd result.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part of this Order; and

WHEREAS, the Commission finds that pursuant to the statutory authority under RSA 369:1, 4, 7 and 11 this Commission has the power to set such terms and conditions upon financings as are necessary to protect the public interest; and

WHEREAS, the Commission finds that the public interest requires (1) the establishment and then preservation of the financial integrity, of the Public Service Company of New Hampshire; (2) the protection of the public from rate increases that are both unreasonable and illegal; (3) the protection of adequate service; and (4) timely prudent completion of Seabrook Unit I; and

WHEREAS, the Commission further finds that these requirements of the public interest can only be accomplished by preventing the expenditure of further dollars on the construction of Seabrook Unit II until one of the following conditions is met: (1) the successful divestiture by PSNH down to a 28% ownership interest in Seabrook is accomplished, or (2) a demonstration of an equivalent response by other utilities to alleviate PSNH's financial condition is made, or (3) Seabrook I is completed; it is hereby

ORDERED, that the following terms and conditions be attached to each and every PSNH financing undertaken after the date of this Report and Order:

(1) Pursuant to the provisions of RSA 369, to the extent these proceeds are used for the

furtherance of work at Seabrook Station Site, these proceeds can only be used for the furtherance of work on Seabrook I and common plant associated with both units.

(2) None of the proceeds of any future securities issue either of a long or short term nature can be used in whole or in part for construction of Unit II.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1982.

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MCQUADE, commissioner, dissents:

REPORT

On May 18, 1982 the Commission on its own initiative commenced this docket by the issuance of Supplemental Order No. 15,649, which set forth that "Docket DF 82-141 is opened for the purpose of receiving any and all information on (1) the question of whether there have been bona fide responses and sustained progress by the other New England electric utilities in alleviating the PSNH financial problems stemming from their ownership in Millstone 3 and their level of ownership in Seabrook; (2) the immediate fate of Seabrook II as to whether to delay or not and if so how long; and (3) what if any conditions to impose upon future PSNH financings."

The aforementioned order also sets forth, "that all persons seeking 'party status' are to notify the Commission by June 7, 1982, such notification must include a description of the reasons why party status should be conferred upon the applicant and how its interests will be affected by a decision in this proceeding. The Commission reserves the right to determine who will be viewed as parties".

This docket developed directly from the Commission interests expressed in Dockets DR 81-87 and DF 82-63 wherein the Commission detailed its concern about the financial burdens that face the company in carrying a 35% ownership interest in two nuclear units at Seabrook Station and its other construction projects.

The Commission from the outset attempted to confine the issues of this docket to those provisions of Order No. 15,649. As a result, at the commencement of the hearings the Commission focused on the issues to which it would take testimony, exhibits, and evidence; and determined that the scope of this docket would be limited to whether or not there have been "bona fide responses" or "sustained progress" to reduce the Company's ownership interest in Millstone 3 and the Seabrook project, specifically whether other New England Utilities demonstrated a bona fide response to either purchase a part of PSNH shares of the construction projects or any arrangements to alleviate the financial burden of the Company. The Commission stated that this docket having emanated from DF 82-63 the entire record of that proceeding is incorporated by reference and the 66 exhibits submitted in that docket are received as the first 66 exhibits in this docket. It was made very clear that this docket would not relitigate the issues decided in DR 81-87 or DR 82-63 or the issues that were properly noticed for Docket DR 81-312.

It is noteworthy to restate that the Commission has clearly mandated that this docket will not get into any issue directed to the "cancellation" of either one or both of the Seabrook units. In DF

82-63 all evidence directed to the question of cancellation of Seabrook units was stricken from the record and such evidence submitted in this docket was likewise stricken.

In an effort to confine these proceedings to the scope set forth, the Commission reviewed the motions for intervention and the prefiled written testimony submitted by all of the parties. To determine its relevancy and whether it was within the scope of this proceeding the Commission carefully reviewed each document. Those documents or sections of the docket which were determined to be outside the scope of the proceeding

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were stricken or excluded from the record. During the course of the proceeding whenever testimony or exhibits related to materials or issues outside the scope of this proceeding, they were stricken from the record.¹

¹Many exhibits had parts or sections stricken from the record before they [were] admitted into the record.

INTERVENTION

The Conservation Law Foundation (CLF), Seacoast Antipollution League (SAPL), the New England Coalition of Nuclear Pollution (NECNP), and Executive Councilor Dudley Dudley filed petitions for intervention as full parties and were represented by Roger Koontz, Esquire, a member of the Massachusetts Bar. After reviewing the presentation by Mr. Koontz, the Commission found that the evidence to be submitted was primarily in the nature of financial forecasts, Seabrook economics and beyond the scope of these proceedings. The petitions of CLF, SAPL, NECNP, and Executive Councilor Dudley are denied.

The Business and Industry Assn's (BIA) filed a "late" petition to intervene based on its concerns that its members would be adversely affected by a delay of the Seabrook units and its impact on the adequacy of supply of economical and reliable electric power to service present and future needs. The Commission again finds these issues to be beyond the scope of this proceeding and the petition of BIA is denied.

The N.H. Electric Coop, requested full party intervention but had no substantial testimony or evidence to present that would be within the scope of this proceeding, therefore, N.H. Coop's petition is denied.

The Community Action Program filed a petition to intervene as a full party based on its real concern as to what impact the outcome of this proceeding would have on its clients, low income ratepayers. The Commission recognized that the Community Action Program, through its attorney, Gerald Eaton, has participated in all rate cases wherein their clients reside including Docket DR 81-87, and DF 82-63 and finds that CAP has a substantial interest in these proceedings and will contribute within the scope set forth. Therefore, CAP's petition is granted.

PROCEDURAL MOTIONS

In addition to the motions for intervention, which were addressed, *infra*, a motion was made by the consumer advocate to strike various substantial sections of prefiled testimony. The

Commission, as mentioned heretofore, carefully reviewed all of the testimony both written and oral and struck those sections or parts that were outside the scope of this proceeding.

The Company presented three procedural concerns (1) who incurs the burden of proof in this type of proceeding, (2) the authority of the Commission to order a delay in the company's construction program, and (3) the Commission proposal to mark in this docket the record submitted in DF 82-63.

BURDEN OF PROOF

Addressing the burden of proof concern it appears that the Company takes the position that it does not intend to incur a burden of proof in this proceeding that would not be otherwise imposed by law. This Commission has not and does not require the company to act in any other manner than authorized by law. The purpose of this docket is to attempt to find a solution to a complex

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financial problem that has the possibility of impacting on present ratepayers and future ratepayers along with stockholders and investors. This Commission has taken the initiative to look for ways to alleviate the financial burdens of the company caused by a large construction program. Absent any other proposal, a rational logical approach appeared to be a delay in construction of one of the units. This docket attempted to fully explore whether it is in the public interest to issue such an order or be convinced that there has been sustained progress to reduce the company's financial problems stemming from their ownership in Millstone 3 and their level of ownership in Seabrook. All parties have the burden to present the best relevant evidence available for the Commission to make a meaningful decision. The niceties of the rules pertaining to burden of proof should have no place in this type of proceeding, however, see *Environmental Defense Fund, Inc. v Environmental Protection Agency* (1976) — US App DC — , 548 F2d 998, 1004, 1005, which cites as a general rule, the burden lies with the party with knowledge of the facts involved. It is apparent in this proceeding that the Company is such party.

ADMINISTRATIVE NOTICE

The Company expressed its concern that the Commission was in error in proposing to mark, in this docket, the record submitted in DF 82-63. That concern is unfounded.

The Supreme Court in *Legislative Utility Consumers' Council v New Hampshire Pub. Utilities Commission*, 149 NH 551 has (properly) stated "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. *New England Teleph. & Teleg. Co. v New Hampshire* (1973) 113 NH 92, 101, 102, 98 PUR3d 253, 302 A2d 814, 821; *Granite State Alarm Inc. v New England Teleph. & Teleg. Co.* (1971) 111 NH 235, 238, 279 A2d 595, 597, 598." The Court went further to demonstrate that the real concern in an agency taking administrative notice of records is that adequate notice be given so that parties to the proceeding have an opportunity to challenge and rebut matters to be administratively noticed, *supra*. The Court took notice that the Commission on two occasions announced to all parties that it would take such notice. In this docket the parties were expressly put on notice at the very commencement of the proceedings that all of the record of DF 82-63 would be administratively noticed by the Commission and ample opportunity

was given to the parties to challenge or rebut that record. The scope of this proceeding was clearly enunciated at the beginning of the hearing. The possible outcome of the hearing was amply understood by all of the parties. No party requested additional time to challenge or rebut any part of the DF 82-63 record. The Company stood firm in its position that the Commission was under some sort of obligation to minutely detail to the Company each item it was going to consider and how it was to be considered. The Commission does not perceive that manner of disclosure to be required. The Commission's responsibility is to evaluate and reconcile conflicting and complicated evidence and testimony. It has an obligation to gather as much relevant evidence as possible including company records and Commission files. Under the circumstances the Commission finds no merit in the Company's concern.

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AUTHORITY TO ORDER DELAY OF CONSTRUCTION OF SEABROOK II

Research into the procedures involved prior to the granting of a "Certificate of Site and Facility for Seabrook Station" lead me to support the contention that this Commission cannot order a delay of construction in the absence of fraud or mismanagement.

The Commission is not aware of any fraudulent action and the Commission has often commended the Company for prudent management practices and decisions. (DR 79-187 and DR 81-87).

As a result, the decision to proceed or not with the Seabrook project is a fundamental management prerogative, which has already been subjected to explicit regulation. The PUC has no express or implied authority to interfere with the Company's decision to proceed, in the absence of clear evidence that the Company's course of conduct endangers the public's right to fair and adequate service. There is no such evidence in the record of this case. Therefore, I respectfully submit that the PUC is without jurisdiction to directly order PSNH to delay construction of Seabrook Unit II, or to achieve that result indirectly through conditions imposed on financings.

MILLSTONE III SALE

The Company has successfully sold its share of Millstone III and has an innovative plan offering to the Trustee of First Mortgage that would further enhance the Company's finances. (Exhibit 88) The sale will bring proceeds of \$45,000,000; moreover, the Company may possibly repurchase selective bonds thus affecting a greater benefit than 1 to 1 repurchase. It is creative financing such as Exhibit 88 suggests that leads me to continue to have confidence in management in these times of high interest rates and monetary pressures.

This action is further proof of sustained progress being made by the Company in response to the Commission's Order No. 15,649 (67 NH PUC 328).

SEABROOK SELL DOWN

The slow and careful responses by the Seabrook participants to the Company's offer to sell down Seabrook can best be laid at the Commission door as I have stated in my dissenting opinion of April 6, 1982 in DF 82-63 so it needs no further statement here.

The evidence submitted in this docket convinces me more strongly that, with a positive position of support by the Commission for the Seabrook construction timetable as outlined by the Company the optimism stated by Mr. Merrill during our hearings will prevail. I continue to be convinced that, given strong support for an early completion of Seabrook by this Commission the other participants will respond favorably within the next six months. The project is nearly 10 years old and an additional six months can do no harm.

Mr. Merrill has proven to be a credible witness and based on his experience a six month extension of time would be in the best interests of the ratepayer and could offer a fairer appraisal of events.

STOCK & BOND SALES

The Commission learned from witness Eugene Meyer, Vice President of Kidder Peabody, that the Company bond lowering that took place earlier this year did not have the negative impact that was expected from the private investor. Indeed the last two bond and stock offerings have been over subscribed at a time when we were concerned that the Company's objectives might not be met,

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thus proving the continued ability of PSNH to finance in a weak market.

The increase cost to the Company was between 10-25 basis points or stated more clearly, up to 1/4 of 1% increase. This has occurred because the investor is looking for a return on his money (yield) over the short term versus a lesser return on more secured bonds.

I believe that this strong investor response is a positive item and is proof of sustained progress of PSNH's ability to finance now and in the future.

INTEREST RATES

Rates of interest are of special concern to the Commission inasmuch as they are reflected in the cost of Seabrook and are ultimately passed on to the ratepayer. Interest rates are high by anybody's standard, however, we are learning in our dealings at the Commission that these current rates are likely to prevail into the future.

Delay of construction at this time would further impact costs to the ratepayer due to the very large carrying charges as the Units near completion.

CONSEQUENCES OF DELAY OF SEABROOK II

Is best summarized by the testimony of Mr. David Merrill, Executive Vice President:

"A two year delay in Seabrook II will increase the project cost by \$619 million***. This two year delay will cost PSNH's customers \$950 million more for power over the next 18 years."

"Savings are overwhelming, just as present costs are overwhelming.

"It would be a calamity to delay Unit II because it is the pay off. It represents 1/2 of Seabrook capacity yet only costs 20% of the total project due to common costs of project already open to complete Unit I."

Labor efficiency would be lost because many of the people presently experienced at building Seabrook I would leave the area for more steady employment elsewhere.

PSNH has committed 10 years to this project. Two years from now Unit I will be complete and on line for the long term benefit of New Hampshire ratepayers. Two years after that Unit II will be complete and for the first time in New Hampshire history the people of New Hampshire will be independent of the unstable foreign oil market and the whims of foreign politicians.

CONDITIONS FOR FUTURE FINANCING

I oppose any conditions on PSNH future financing as not being in the best interest of the ratepayers.

It has been stated that imposing financial conditions on Seabrook II will guarantee completion of Seabrook I.

The fallacy here is that PSNH on its own initiative, in 1980, stopped construction on Unit II when it became apparent that financial problems might slow down Unit I. This proof of responsible management has been evident throughout the years. PSNH must have the freedom to operate efficiently in its construction program, thus the fewer unnecessary burdens the better the chance for compatible labor relations, efficient operations, and positive partner participation.

PSNH Vice President Bayless and Eugene Meyer, Kidder, Peabody, both agree that PSNH can successfully finance the completion of Seabrook I and II and I see no reason to doubt their judgement based on their progress to date as planned.

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SITE EVALUATION

The Legislature under RSA 162-F created the Bulk Power Supply Facility Site Evaluation Committee to develop "A procedure for the selection and utilization of sites for generating facilities and the identification of a state position with respect to each proposed site".

That Committee found, after months of hearings, testimony, and evidence, that Seabrook would not unduly interfere with the orderly development of the region and would not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment, and the public health and safety. This Commission, sitting in concert with the Committee, found that Seabrook is required to meet the present and future demands of electric power and that it would not adversely affect system stability and reliability and economic factors.

That decision was rendered on January 29, 1974. No appeal or challenge through the court system has altered that decision. RSA 162-F has specific provisions whereby decisions made by the Committee can be reviewed, revoked or suspended. No such provisions have been offered.

This Commission has no authority to over-ride or over-rule the Committee's decision absent a finding of fraud or mismanagement on the part of the Company. We have made no such findings.

We have no authority to challenge the Seabrook Construction permit through the avenue of

financial hearings.

CONCLUSION

Public Service Company of New Hampshire continues to make sustained progress through the sale of Millstone III and the well planned application of these funds to facilitate construction of Seabrook Station.

Eugene Meyer, Vice President of Kidder, Peabody stated on page 551 of our recent proceedings that "As I have stated in my testimony, we believe that the capital can be raised to complete the Seabrook Units I and II at the 35% level."

He further states on page 556 — 7 that "If anyone up here concludes that they want to bring in these two units on line on time and they want to do it because of costs, the long term costs are less."

Mr. David Merrill, Executive Vice President of Public Service Company of New Hampshire stated that "A two year delay in Seabrook II will increase the project cost by \$619 million. This two year delay will cost PSNH's customers \$950 million more for power over the next 18 years."

Based upon the positive statements of Mr. Meyer regarding the availability of funds, and those of Mr. Merrill regarding cost savings, and, in fact, based on the support given by this Commission in the past to the timely completion of Seabrook Units I and II, a delay of Seabrook II should not be considered.

It would be a calamity to delay Unit II because it is the pay off. It represents 1/2 of Seabrook capacity, yet only costs 20% of the total project due to common costs of project already spent to complete Unit I.

Finally, the reading of the transcripts of this hearing do not indicate any need for further consideration of the three points covered in our hearing process.

1. PSNH has offered reliable evidence and witnesses to support their ownership of 35% of Seabrook.
2. PSNH has proven that delay of Seabrook II is not in the best interests of the ratepayers of New Hampshire.
3. PSNH has proved, through Mr. Eugene W. Meyer, Vice President of

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Kidder, Peabody, that conditioning of financing will cause unnecessary concerns of the financial market and Seabrook partners which would result in higher unnecessary costs to ratepayers.

All of the evidence received in these proceedings directly support the timely completion of Seabrook Units I and II. There was no evidence presented that contradicts the Company's witnesses or any witnesses presented by the Staff or intervenors that differs with the Company's witnesses.

I cannot find that the record in this proceeding can support the conclusion reached by the majority of the Commission.

FOOTNOTES

³It should be noted that in this case Green Mountain proposed trading part of its interest in Sears Island for an interest in Seabrook, so that the possibility of Seabrook being an alternative to Sears Island was raised in this instance in 1979.

⁴Value Line, a prominent investor service, also finds the Commission responsive Exhibit 45.

⁵Mr. Bayless later gave an example if 100 people were doing a job then they would increase the level to 300 (Transcript DF 82-141 Volume (6 page 750).

⁶PSNH cites our attention to the language of Re New Hampshire Gas & E. Co. 88 NH at p. 59, 16 PUR NS 322, where the Court states that a "utility may take or leave what the Commission permits and the Commission may not order it to take it and not leave it". However, under RSA 369 the Commission can tell the company where to "put it" (or conversely not) should it decide to "take".

⁷Because of the incident of Three Mile Island, NJCP&L was encountering problems including: exhaustion of short term debt limit, insufficient coverage for sale of long term debt and preferred stock, and inability to sell common equity at a reasonable price. Note that the record in this proceeding indicates ample reason for such concerns regarding PSNH because of its construction program. It is interesting to note that NJCP&L is one of only a few utilities with a bond rating as low as PSNH. The New Jersey Commission decision contrary to PSNH's interpretation, clearly supports a Public Utilities Commission intervention into management decisions when the financial situation of a given utility is on the brink of financial collapse.

⁸Elyria Teleph. Co. v Ohio Pub. Utilities Commission (1953) 158 Ohio St 441, 98 PUR NS 246, 110 NE2d 59; Ohio Central Teleph. Corp. v Ohio Pub. Utilities Commission (1934) 127 Ohio St 556, 2 PUR NS 465, 189 NE 650.

⁹48 Ala Code §§ 309, 310 (Code 1940).

¹⁰Hawaii Rev Stat, § 269-17 (1976).

¹¹Michigan statute, Act 144 of the Public Acts of 1909, § 1; Mich Stat Ann. § 22.101 (Supp 1982-83).

¹²Ohio Rev. Code Ann. §§ 4905.40 - 4905.42 (Page, 1977).

^{12A}66 Pa CSA §§ 1901-1904 (Purdon 1979).

¹³Wis Stat, Chap 184 (West 1957).

¹⁴Second Revised Motion of Chairman Susan M. Shanaman, Re Limerick Nuclear Generating Station Investigation (1982) 48 PUR4th 190, 56 Pa PUC 47.

¹⁵PSNH Clarification Report, DR 81-87 (1982).

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NH.PUC*07/22/82*[79333]*67 NH PUC 539*New England Power Company

[Go to End of 79333]

Re New England Power Company

DF 81-59, Third Supplemental Order No. 15,754

67 NH PUC 539

New Hampshire Public Utilities Commission

July 22, 1982

ORDER extending utility's authorization to sell or pledge securities.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by Order No. 14,836 of this Commission dated April 10, 1981 (66 NH PUC 127) (as amended by Order No. 15,249 dated October 30, 1981 [66 NH PUC 444]) New England Power Company (Company) was authorized, inter alia, to issue and sell one or more series, aggregating not exceeding \$100,000,000 principal amount, of General and Refunding Mortgage Bonds (G & R Bonds, and issue and pledge one or more additional series, aggregating not exceeding \$100,000,000 principal amount, of First Mortgage Bonds, and issue and sell Preferred Stock with an aggregate par value of not exceeding \$50,000,000; and

WHEREAS, such authority to issue the above-entitled securities was to be exercised on or before December 31, 1981, and not thereafter unless such period was extended by order of this Commission; and

WHEREAS, by a Second Supplemental Order No. 15,463 dated January 28, 1982, the Company's authority to issue, sell, or pledge the above-entitled securities was extended to June 30, 1982 (unless such permission was extended by order of this Commission); and

WHEREAS, \$100,000,000 of the G & R Bonds have been issued and sold and \$100,000,000 of the First Mortgage Bonds have been issued and pledged; but, due to market conditions, only \$25,000,000 of the Preferred Stock has been issued and sold; and

WHEREAS, the Company still desires to issue the remaining \$25,000,000 of Preferred Stock as market conditions

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warrant as consistent with the Company's cash needs; it is

ORDERED, that the Company's authorization to issue, sell or pledge the above-entitled securities is further extended to December 31, 1982 (unless a subsequent order of the Commission approves a later date); and, it is

FURTHER ORDERED, that except as expressly modified hereby, the authorization contained herein shall be subject to all the terms and conditions stipulated in our other orders in this proceeding.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 1982.

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NH.PUC*07/22/82*[79334]*67 NH PUC 540*Merrimack County Telephone Company

[Go to End of 79334]

Re Merrimack County Telephone Company

DE 81-295, Supplemental Order No. 15,762

67 NH PUC 540

New Hampshire Public Utilities Commission

July 22, 1982

ORDER, in telephone rate case, approving the use of "flash-cut" method in station connection accounting for inside wiring.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Merrimack County Telephone Company, a public utility engaged in the business of supplying telephone service in the state of New Hampshire, on October 2, 1981, filed with this Commission certain revisions of its tariff, NHPUC No. 7 — Telephone, relative to service connection charges, effective November 1, 1981; and

WHEREAS, said filing was suspended by Order No. 15,183 pending investigation and decision thereon; and

WHEREAS, said investigation is now complete and indicates the filing is for the public good; it is

ORDERED, that Index, 1st Rev. Pgs. 2, 6 and 8; Pt. III, Sec. 25, 1st Rev. Pgs. 4 and 5; and Pt. VI, Sec. 1, 1st Rev. Pgs. 1-5, and Orig. Pg. 6; Sec. 2, 1st Rev. Pg. 1; and Sec. 4, 1st Rev. Pg. 2 of Merrimack County Telephone Company tariff, NHPUC No. 7 — Telephone, be, and hereby are, approved for effect on August 1, 1982; and it is

FURTHER ORDERED, that the use of the so-called "Flash Cut" method of implementing the change in station connection accounting for inside wire is approved effective October 1, 1982; and it is

FURTHER ORDERED, that the investment in outside wire be depreciated at the rate of 5% until actual experience dictates a change in accruals and such is approved by this Commission; and it is

FURTHER ORDERED, that one-time public notice of this approved tariff filing be given by bill insert summarizing the changes.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 1982.

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NH.PUC*07/23/82*[79335]*67 NH PUC 541*Peak-shaving Fuel Storage

[Go to End of 79335]

Re Peak-shaving Fuel Storage

Intervenors: Gas Service, Inc., Concord Natural Gas Corporation, Manchester Gas Company Community Action Program, and Northern Utilities, Inc.

DRM 81-296, Order No. 15,768

67 NH PUC 541

New Hampshire Public Utilities Commission

July 23, 1982

ORDER imposing on gas company minimum requirements for on-site fuel storage facilities and establishing credit for reliable service.

1. EXPENSES, § 126 — Particular utilities — Gas — Storage of gas — Criteria to determine reasonable levels.

[N.H.] In determining reasonable on-site peak shaving gas storage requirements without causing unnecessary costs to be passed on to ratepayers, the commission concluded that a more appropriate measure or criterion of total demand over a period of time would be to determine on-site storage capacity equal to a design-cold week rather than a design-cold day. p. 543.

2. SERVICE, § 339.1 — Gas — Credit for reliability of service — Owned or leased tank truck capability.

[N.H.] Credit given for reliable gas delivery capacity was reduced from 80 per cent to 70 per cent of owned or leased tank truck capability over a five-day period as counted for on-site storage. p. 544.

APPEARANCES: Warren Nighswander (Sulloway, Hollis & Soden) representing Northern Utilities, Inc.; Howard M. Moffett (Orr & Reno) representing Gas Service, Inc., Concord Natural Gas Corporation, Manchester Gas Company; Gerald Eaton representing Community Action Program (CAP).

BY THE COMMISSION:

REPORT

In 1968, the Commission issued Supplemental Order No. 9343 which was promulgated as a result of shortages of liquid propane that developed during that period due to transportation problems. The order imposed a requirement that the natural gas companies shall maintain on-site fuel storage facilities used in connection with the operation of its peak-shaving plant an equivalent to five (5) days of the estimated maximum peak-shaving demand.

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After careful examination of this order, the Commission determined that there were some needed changes. The state of the art of peak-shaving operations has changed significantly since 1968, as have the methods and opportunities for fuel storage. Additionally, the Commission found that any resulting findings should be incorporated as rulemakings rather than as Commission orders.

Accordingly, on November 16, 1981, the Commission, after public notice, held a hearing in consideration of proposed changes to the "Rules and Regulations Prescribing Standards for Gas Utilities" which would provide that each gas utility maintain on-site storage of peak-shaving fuel.

First, since Supplemental Order No. 9343 only applies to natural gas companies, there was a need to technically apply it to all the gas companies in the state. Three propane distribution companies were not compelled to comply with this order. It should be noted, however, that these companies have satisfied the requirements nonetheless throughout the years.

Second, the Commission was concerned that with the increased demand for peak-shaving facilities that a closer look was necessary to determine whether the original Supplemental Order Number 9343 which prescribed on-site fuel storage equal to five (5) days of the estimated maximum peak-shaving demand was adequate, or whether it should be changed to seven (7) days supply.

Also included in the rulemaking were requirements that all companies submit an annual letter summarizing their peak-shaving capabilities for each coming year (Exhibit 2) (PUC 509.19 Peak-Shaving Storage Status), and additionally to provide weekly telephonic storage status reports during the winter period (Exhibit 3). These exhibits were accepted by the companies with minor changes approved by the Commission.

The companies that were represented at the hearing accepted the basic rationale for the proposed rule and agreed that in order to protect their customers against unexpected failures in the transportation or source of peak-shaving fuel, a minimum on-site storage capacity was necessary and justifiable.

The written comments and testimony involving the proposed rule change had four main areas of concern:

- 1.) What should be the minimum on-site fuel storage capacity of each company?
- 2.) If the Commission decides to change the requirements of Supplemental Order No. 9343, what criteria would be used to determine the minimum on-site storage capacity?
- 3.) How long would the minimum on-site storage have to be maintained during the winter

period; and

4.) What credit (if any) would be allowed for reliable delivery capacity from dependable bulk fuel supply points towards the minimum on-site storage capacity?

During the winter of 1980 — 1981, New Hampshire experienced one of the coldest periods in 110 years of recordkeeping. Some, peak-shaving facilities (propane/air and LNG) were operating at maximum output in meeting the demands of the distribution systems. Large quantities of supplemental fuel were used and transportation of the product was taxed to the limit. With the extreme cold weather coupled with the demand for gas conversions over the last few years, the Commission was concerned with the utilities' capability to protect their customers against shortages of

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product due to transportation delays during prolonged cold spells.

Under Supplemental Order No. 9343, the companies are required to maintain on-site storage capacity based on maximum peak-shaving demand days or in other terminology "design-cold day". A design-cold day is equivalent to a 70 degree day.

During the proceedings, the Commission heard testimony that changing the minimum on-site fuel storage capacity from five days to seven days would involve a major capital expenditure, and some companies were doubtful that the additional plant would actually be needed to meet peak demand. The cost estimates given were at least \$500,000 for increasing propane storage or \$1,500,000 if LNG was increased.

The cost of new tanks complying with existing regulations and the need for additional land for expansion of sites were the key factors in the figures used to increase storage.

Another item presented to the Commission was the criteria used to determine the minimum on-site storage. Company exhibits (7 and 8 respectively) showed that for an 11 year span for the Manchester area and a 20 year span for the Concord area, the average daily degree day for the coldest period of seven consecutive days did not equal a design-cold day. In other words, design-cold days rarely occurred together in a series. Therefore, the companies proposed that the Commission use a design-cold week as a criteria to determine the minimum on-site storage capacity instead of the original design-cold day.

Also as part of the minimum storage requirement was the question how long would it have to be maintained during the winter period. The Commission noted that Supplemental Order No. 9343, although it was specific on the quantity of product to be maintained, did not mention any time period. The Commission is aware of the differences in quantity of product that is necessary to meet the needs of utilities' customers demands in January versus the month of March. Some companies suggested a time period of December 1 through February 15, as requiring larger storage quantities than later in the winter. Staff was concerned with the possibility of exceptional cold weather that could occur at the end of February or even the odd cold days in March. Resolution of this time element will be addressed later in the report.

The last area of substantial concern is the credit (if any) that would be allowed for reliable delivery capacity from dependable bulk fuel supply points towards the minimum on-site storage

capacity. Although Supplemental Order No. 9343 stated:

"Where a gas company owns its own tank truck(s), eighty percent (80%) of this delivery capability ... " over a five day period could be used toward the minimum requirement, the Commission is well aware of the short falls of over-the-road movement of product. This was most evident, when during the winter of 1980 — 1981, the Commission because of its concerns of adequate supplies monitored the gas utilities to ascertain that a crisis would not occur in New Hampshire, cautiously watched as every available transport was used to its fullest to carry product from supply points to the utilities.

[1] After hearing both staff and company testimony, the Commission directed that staff meet with the companies so as to reach an informal settlement agreement. The Commission has reviewed this agreement and has carefully examined

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each company closely at how they could comply with the on-site storage requirements reliably without incurring unnecessary costs that would be passed on to the ratepayers. The Commission finds, based on historical data and staff concurrence, that individual design-cold days rarely occur consecutively, and are not a reliable indicator of total demand over a period of time. Therefore, the Commission concludes that a more appropriate measure or criteria would be to determine on-site storage capacity equal to a design-cold week (coldest period of seven consecutive days) based on each utility's data.

The companies will file this data with the Commission prior to the next winter period. As far as the time period for maintaining the storage requirements, the Commission will accept staff's recommendation (based on data and exhibits) that the crucial period exists between December 1 through February 14 and the companies should have 100% capacity and as the number of consecutive cold days drop, then 75% of capacity will adequately take care of the needs of the customers. The Commission does not want, and will not allow, any company to use this rule as an excuse to carry over excess supplemental fuel into the summer period and, therefore, will reduce the capacity requirement to 5070 between March 1 through March 31. The Commission will instruct staff to carefully monitor the weekly telephonic storage status reports and inform the Commission immediately of any indication of a problem in product supply.

[2] Finally, the Commission finds that although over-the-road transportation of product has never in the past been shut down for more than two days, the limitations that occurred during the winter of 1980-1981 warrant the reduction of credit given for reliable delivery capacity from 80% to 70%. However, the Commission is not comfortable with the Staff and Company settlement which bases 70% credit on a seven-day week. Based on its knowledge that over-the-road transportation is risky and too dependent upon weather conditions, the Commission will allow credit for seventy percent of owned or leased tank truck capability over a five-day period as counted toward on-site storage.

Several of the companies have obtained additional firm gas supplies that is available during the winter period and delivered through the pipeline. The Commission believes that not only is this method a reliable delivery capacity but also economical and in the best interest of the ratepayer.

Our Order authorizing new rules for Peak-Shaving Fuel Storage will issue accordingly.

ORDER

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

ORDERED, that the following rule-making is added to the Commission's Rules and Regulations for Gas Utilities: Puc 506.03 Peak Shaving Fuel Storage

(a) Storage Requirements

Between December 1 and February 14 of each year, each gas utility shall maintain an on-site storage capability in connection with the operation of its gas distribution system which will provide peak-shaving supplies for an estimated maximum design-cold period of seven consecutive days. Railway tank cars on gas company rail sites and guaranteed pipeline transmission capacity for firm gas supply will be considered as on-site storage. Where a gas company owns or leases tank trucks, seventy (70) per cent

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of this delivery capability from a dependable bulk fuel supply point over a five day period may be counted as on-site storage. Between February 15 and February 28, the above minimum on-site storage capacity may be reduced to seventy-five (75) per cent of the total requirement of each company. Between March 1 and March 31, the minimum on-site storage capacity may be reduced to fifty (50) per cent of the original total requirement.

(b) Annual Status Report

Each gas utility shall file with the Commission before October 1 of each year a report of its peak-shaving capabilities (Form PUC 509:21).

(c) Weekly Telephonic Report

Each gas utility shall notify the Commission each week during the period December 1 through April 1 of its on-site supply of supplemental fuel. This information will be reported on each Monday no later than 4 p.m. and may be made by telephone (Form PUC 509.22).

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1982.

CHAPTER Puc 500

Part PUC 509

PUC 509.21 Annual Peak Shaving Fuel Storage Capability Report.

An Annual Peak Shaving Fuel Storage Capability Report is to be filed once annually by each gas utility and will include projected design-week sendouts, production capabilities and storage requirements of utility gas operations. This report will be submitted by October 1.

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PEAK STORAGE SHAVING CAPABILITIES

New Hampshire Public Utilities Commission 8 Old Suncook Road, Bldg. No. 1 Concord, New Hampshire 03301

Gentlemen:

In anticipation of the upcoming winter heating season, the following updated status of our company's peak shaving capabilities is submitted:

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

- 1. Maximum projected design week demand _____
- 2. Amount to be furnished by natural gas pipeline. _____
- 3. Balance from peak shaving _____
- 4. Equivalent gallons LNG and/or LPG to satisfy requirements of Item #3
LPG / LNG
/
/ _____
- 5. Total facilities committed to service on December 1, 1981:

| | LPG (Gallons) | LNG (Gallons) |
|------------------------|---------------|---------------|
| a. Permanent | _____ | _____ |
| b. Railroad Tankers | _____ | _____ |
| c. Truck Tankers, etc. | _____ | _____ |
| TOTAL | _____ | _____ |
- 6. Does facility meet storage requirements Yes_No_ _____
- 7. Comments relative to suppliers delivery capabilities during the coming winter

We will immediately advise you of any unexpected circumstances surrounding our peak shaving capabilities. Very truly yours, Chapter Puc 500 Part Puc 509 PUC 509.22

Weekly Telephonic Gas Storage Report

Storage level reports will be submitted during the period December 1 through April 1. Reports will be submitted orally to the Gas Safety Engineer or his representative, before 4:00 p.m. on Monday of each week.

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

WEEKLY TELEPHONIC GAS STORAGE REPORT
 ITEM
 On Hand end prior weekly period
 Received during period
 Used during period
 Balance end of weekly period

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NH.PUC*07/23/82*[79336]*67 NH PUC 547*Lakes Region Water Company, Inc.

[Go to End of 79336]

Re Lakes Region Water Company, Inc.

DR 81-203, Third Supplemental Order No. 15,769

67 NH PUC 547

New Hampshire Public Utilities Commission

July 23, 1982

ORDER adopting temporary rates for a water company pending an investigation of just and reasonable rates.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS by Second Supplemental Order No. 15,699 (67 NH PUC 382) the Commission authorized Temporary Rates for Lakes Region Water Company;

WHEREAS by the aforementioned Order their existing rates were made the Temporary rates;

WHEREAS by such action both the Company and its customers were protected by the statutory provisions of recoupment and refund respectively;

WHEREAS the Company claims that the absence of any increase in revenues is leading to difficulties in obtaining relief for correcting a supply problem;

WHEREAS, the highest flat rate water charge allowed by the Commission to date is \$266 on an annual basis;

WHEREAS, the effect of such a flat rate charge applied to Lakes Region Water customers would be an increase of \$7,650; it is hereby

ORDERED, that the Commission will allow temporary rates to be increased by \$7,650 to be applied to all bills rendered on or after the date of this order until the Commission completes its investigation as to what rates are just and reason-able and with the protection still in place for either recoupment or refund.

By Order of the Commission this July 23rd, 1982.

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NH.PUC*07/23/82*[79337]*67 NH PUC 547*Hudson Water Company

[Go to End of 79337]

Re Hudson Water Company

Additional petitioner: W & E Artesian Well Company, Inc.

DF 82-158, Order No. 15,772

67 NH PUC 547

New Hampshire Public Utilities Commission

July 23, 1982

ORDER approving merger of two water companies and requiring the filing of new tariffs pursuant to the merger.

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APPEARANCES: Robert Wells and James F. Raymond, for the petitioners.

BY THE COMMISSION:

REPORT

By petition filed on May 27, 1982, Hudson Water Company and W & E Artesian Well Co., Inc., both New Hampshire corporations authorized by this Commission to operate as public utilities and both being wholly-owned subsidiaries of Consumer Water Company, a Maine corporation proposed to merge with Hudson Water Company to be the surviving corporation.

A duly noticed public hearing was held at 10:00 A.M. on July 20, 1982, at the Commission's offices in Concord.

During the course of the hearing, the petitioners, through witness Robert W. Phelps, President of Hudson Water Company, submitted exhibits:

A = action by consent of the stockholder of Hudson Water Co. B = action by consent of the stockholder of W & E Artesian Well Co., Inc. C-1 = financial status of Hudson Water Co. as of 12/31/81 C-2(a) = financial status of Hudson Water Co. as of 1/31/82 C-2(b) = financial status of Hudson Water Co. as of 2/28/82 D-1 = financial status of W & E Artesian Well Co. as of 12/31/81 D-2(a) = financial status of W & E Artesian Well Co. as of 1/31/82 D-2(b) = financial status of W & E Artesian Well Co. as of 2/28/82 E = Direct Testimony of Robert W. Phelps

In conjunction with the merger, W & E Artesian Well Co., Inc. requests authority to discontinue operations in the Town of Windham, and Hudson Water Company requests authority to expand its operations to include the portions of the Town of Windham now served by W & E Artesian Well Co., Inc. pursuant to RSA Chapters 374:26, 28 and 30.

Since the proposed merger should serve to strengthen the financial standing of the surviving corporation and since the Commission desires more stable water utilities in the State to acquire, where possible, smaller systems with the aim of improving water quality and service while minimizing costs to customers, the Commission feels that this merger is in the public good, as it did in the Dockets DF 79-34 and DF 77-81.

Witness Phelps stated the petitioners' desire to have a rate differential set through the systems' next rate case, which would last until the systems are physically connected. The major purpose of such would be to avoid the costs of maintaining more than one set of accounting records.

At this time, the Commission is not prepared to accede to that request, but would suggest that the Company in its next rate filing, file simultaneously for all its divisions, affiliates, etc., at

which time the Commission would have more data and inputs upon which to approve or disapprove of any major accounting or reporting changes.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the merger of Hudson Water Co. and W & E Artesian Well Co., Inc., with the surviving corporation to be Hudson Water Co., is consistent with the public good; and it is

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FURTHER ORDERED, that approval of this merger should not be interpreted as approval of adoption of a single consolidated set of financial and engineering records; and it is

FURTHER ORDERED, that when the merger is consummated, Hudson Water Co., the continuing corporation, will file with this Commission a tariff supplement covering the adoption of the tariff now on file; and it is

FURTHER ORDERED, that any costs of this acquisition incurred by either company are to be amortized over a period of five (5) years and recorded in Account 186, Miscellaneous Deferred Debits.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1982.

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NH.PUC*07/26/82*[79338]*67 NH PUC 549*Granite State Telephone Company

[Go to End of 79338]

Re Granite State Telephone Company

DR 82-7, Order No. 15,765

67 NH PUC 549

New Hampshire Public Utilities Commission

July 26, 1982

ORDER affirming the use of the "flash-cut" method of expensing station connections for telephone company and accepting procedures for offsetting cost of service connections through customer efforts.

BY THE COMMISSION:

REPORT

On July 29, 1981, subsequent to action by the Federal Communications Commission directing changes in the method of accounting for Account 232, the Commission's Finance

Director issued a letter to all telephone utilities outlining the FCC directive and asking each telephone utility to determine its cost and associated reserves allocable to both Station Connections — Inside Wire, and Station Connections — Outside Wire. Also requested was a detailed analysis of the effect of the "flash-cut" and "phase-in" methods of expensing station connections. Granite State Telephone responded to this request by letter of September 11, 1981, in which it requested the use of the "flash-cut" method effective on January 1, 1981. A formal petition requesting the same was filed with the Commission on December 4, 1981.

While the FCC in its order in Docket No. 79-105 indicated that the accounting change for station connections should take place no later than October 1, 1981, there was some allowance for state regulators to effect the change earlier that year. In its December petition, Granite State sought to have authorization to take this action effective January 1, 1981. This Commission has acted on this matter for other New Hampshire independent

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telephone utilities and consistently has specified an effective date of October 1, 1981. Nothing in the Granite State Telephone petition is found compelling to warrant change from this standard. The petition therefore is denied and our order will specify use of the "flash-cut" method effective October 1, 1981.

In an associated request, Granite State has also sought changes in its service connection charges. In the interest of conformity among telephone utilities, as well as having such charges more closely aligned with actual costs, the Commission accepts these changes.

Offsetting increased costs of service connection, the company has proposed methods by which certain of these costs can be avoided through customer efforts rather than those of the company. With modular construction and/or conversion, many actions can be performed by the customer which formerly required a visit to the premises by a company technician. For those thus willing, premises visit, station handling, and/or other charges can be avoided. The Commission finds such opportunity in the best interest of the consumer, and accepts such procedures.

Our order will issue accordingly.

ORDER

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

ORDERED, that Granite State Telephone effect the change in its Station Connection accounting of Inside Wire by the "flash-cut" method, effective October 1, 1981; and it is

FURTHER ORDERED, that the following service connection charges are accepted, effective August 1, 1982:

Element 1a — Initial Service Order \$ 7.00 " 1b — Subsequent Service Order 5.00 " 1c —
Records Service Order 3.00 " 2 — Central Office 10.00 " 3 — Premises Visit 8.00 " 4 —
Wiring 5.00 " 5 — Jack 2.00 " 6 — Station Handling 3.00

and it is

FURTHER ORDERED, that Granite State Telephone maintain records of such service

connection charges as well as the avoidance of same by willing customers, and report such information to this Commission no later than March 15, 1983 for the period August 1, 1982 through February 28, 1983, said report to include data on how closely these charges tracked actual cost; and it is

FURTHER ORDERED, that the following revisions to Granite State Telephone tariff, NHPUC No. 6 — Telephone, be, and hereby are, effective on August 1, 1982:

Section 3; 2nd Revised Sheet 9H and Original Sheets 28 and 29 " 4; 4th Revised Sheet 1, 2nd Revised Sheet 1a, and 1st Revised Sheet 1b; and it is

FURTHER ORDERED, that a onetime public notice of these tariff revisions be given by bill insert summary.

By order of the Public Utilities Commission of New Hampshire this 26th day of July, 1982.

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NH.PUC*07/26/82*[79339]*67 NH PUC 551*New England Telephone and Telegraph Company

[Go to End of 79339]

Re New England Telephone and Telegraph Company

DE 82-147, Order No. 15,775

67 NH PUC 551

New Hampshire Public Utilities Commission

July 26, 1982

ORDER approving placement of submarine plant by telephone company and directing company to file tariff amendments and cost data with the commission.

APPEARANCES: Wayne E. Snow, manager — engineering, for the company.

BY THE COMMISSION:

REPORT

On May 18, 1982, the New England Telephone & Telegraph Company filed with this Commission a petition for authority to place submarine plant under Squam Lake in Holderness, New Hampshire, said plant to provide telephone service to the residence of Lamar Soutter on Bowman Island.

An Order of Notice was issued by the Commission setting the matter for public hearing on June 30, 1982 at 10:00 a.m. The order directed onetime newspaper publication and also was sent directly to George Gilman of the Department of Resources and Development, John Bridges of Safety Services, and the Office of Attorney General.

At the unopposed public hearing on June 30, 1982, Mr. Snow described the proposed submarine plant as a single pair extending from Pole 45/26-2 on Mooney Point on property of Preston in Holderness, New Hampshire, proceeding underground about 122 feet to the short,

thence underwater approximately 4,620 feet to the shore of Bowman Island; continuing underground approximately 75 feet to the Soutter residence. Proper approvals had been granted by the Water Supply and Pollution Control Commission and the Wetlands Board.

With no objections voiced, the Commission finds the proposal in the public interest, and will issue its order accordingly.

There is, however, some concern about the cost of such plant, liability for such costs, and compliance with construction provisions in the approved Tariff, No. NHPUC 70 — Telephone. As part of Exhibit 1, Mr. Snow presented Drawing 28-23. This drawing indicated a buried pair running from Pole 45/26-2 122 feet to the shore, then submarine for 4,620 feet, and finally underground for an additional 75 feet to Mr. Soutter's residence. As Exhibit 4, Mr. Snow presented a work sheet on which a construction estimate was made. Exhibit 4 indicated the initial 122 feet would require trenching at \$3.00 per foot (\$366) and underground wire at \$0.129 per foot (\$16). The latter was netted against comparable aerial wire, listed at \$0.89 per

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foot (\$11). The total for the first leg therefore was \$371.

For the second leg ... the submarine portion ... boat rental was figured at \$150 for each of two days needed to lay the wire. The appropriate wire was the same price per foot as that of the first leg, as was the unit price of aerial cable. Here the distance was shown as 4,500 feet. (Note that Drawing 28-23 indicated 4,620 feet.) Net wire cost was shown as \$180. Listed also for this leg is a charge of \$1,870, shown as "Private Property Construction Charge", representing 17 poles @ \$110 each. Mr. Snow explained that the Company calculated this charge as though it were building an aerial extension for the customer on his private property. Under tariff provisions that private property construction is on a per pole basis, the first pole being supplied at no cost.

The third leg ... the underground portion of the island ... is represented on the construction worksheet as 130 feet, compared to the 75 feet shown on Exhibit 1. Pricing arrangements were listed the same as for leg one.

While these formulae may accurately depict costs of submarine construction, the procedure is not documented in Tariff 70. The so-called "Private Property Construction Charge" may well be a surrogate for costs of laying submarine cable, but it does raise some questions. Presumably, New England Telephone is attempting to bill the customer for costs of the service, yet provide that customer with those free services it normally allows a new customer according to the approved tariff. This is where it becomes grey ... the tariff having no provisions for submarine services. Another concern is the fairness of charges. For normal private construction, the costs are based on average cost per pole, most likely the cost of a pole shared with the electric utility. With services to islands, are there such averages? Can records show that these charges are adequate so the remaining ratepayers are not penalized? Is the island customer being over-charged? Also in question are the conflicting distances.

While our order will be issued to avoid delay in Mr. Soutter's service, we will also direct appropriate tariff amendments and cost data be filed with the Commission.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that New England Telephone & Telegraph Company be, and hereby is, granted authority to construct and maintain submarine plant extending from Mooney Point in Holderness, New Hampshire, to Bowman Island situated in Squam Lake; and it is

FURTHER ORDERED, that New England Telephone and Telegraph file appropriate amendments to its Tariff, NHPUC No. 70 — Telephone, said amendments to document procedures for construction of submarine extensions; and it is

FURTHER ORDERED, that New England Telephone & Telegraph Company file with the Commission details on exact costs of the Soutter construction and amounts billed to the customer; and it is

FURTHER ORDERED, that the Commission be advised formally the proper distances for which conflicts were cited in the Report.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of July, 1982.

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NH.PUC*07/26/82*[79340]*67 NH PUC 553*Rules and Regulations for Telephone Utilities

[Go to End of 79340]

Re Rules and Regulations for Telephone Utilities

Intervenors: New England Telephone and Telegraph Company, Continental Telephone Company, Merrimack County Telephone Company, Chichester Telephone Company, and Kearsarge Telephone Company

DRM 82-29, Order No. 15,777

67 NH PUC 553

New Hampshire Public Utilities Commission

July 26, 1982

ORDER approving late payment charge to be applied against telephone customers.

PAYMENT, § 53 — Discounts and penalties — Late payment charge.

[N.H.] It was reasonable to adopt a rule for late payment charges which permitted telephone companies to apply a 1.25 per cent charge per month to all nonresidential bills which remained unpaid over thirty days from the postmarked date of the bill.

BY THE COMMISSION:

REPORT

On January 26, 1982, this Commission initiated a rulemaking procedure which would provide for a 11/2% per month late payment charge to non-residential customers for unpaid bills.

On February 4, 1982, notices of the proposed rulemaking were forwarded to Donald S. Jennings, Director, Office of Legislative Services; Conrad L. Quimby, Chairman, Commerce and Consumer Affairs Committee; M. Arnold Wight, Jr., Chairman, Science and Technology Committee; Ward Brown, Chairman, Internal Affairs Committee; and to all telephone utilities and parties on the Commission service list. On March 10, 1982, a notice of hearing was sent to all telephone utilities advising them of a public hearing to be held on March 19, 1982 at 10:00 a.m. at the Commission's Concord offices.

On March 19, 1982, a Commission hearing was opened and continued until further notice.

On May 24, 1982, a notice of hearing was forwarded to all telephone companies advising them of a hearing to be held on July 12, 1982 at 1:00 p.m. at the Commission's Concord offices.

At the hearing the hearing officer noted that the attendees included representatives of the following companies:

New England Telephone Company
Continental Telephone Company
Merrimack County Telephone Company
Chichester Telephone Company
Kearsarge Telephone Company

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A written statement was accepted by the Commission from the Continental Telephone Company and was read into the record. Continental supports the proposed rule with the following exceptions:

1. The 11/2% charge on past due accounts should be cumulative.
2. It should apply to all classes of service.
3. The rule should state "may" rather than "will", thus making mandatory enforcement unnecessary.

Mr. Alderic O. Violette, President, Merrimack County Telephone Company also spoke in favor of the proposed rule and also recommended the use of the word "may" instead of "will".

No objections were filed or expressed at the hearing. In fact, no intervenors or interested parties were in attendance.

The hearing officer recommended that the Commission adopt the proposed rule with the modification of the word "may" as proposed by the participants. He recommends that the rule not be made to apply to all classes of service on the basis that notification of such has not been made, and would require a separate rulemaking. He recommends that the request which would make the charge cumulative is unnecessary since non-payment of any element of a valid bill

already becomes cumulative.

The hearing officer's proposed change thence becomes:

PUC 403.06 (b) all customers other than residential

(2) By Company

(d) Late Payment Charge. A 11/2% per month late payment charge may be applied to all non-residential bills which remain unpaid over 30 days from the post-marked date of the bill.

We accept the hearing officer's recommendation. Our Order will issue accordingly.

ORDER

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

ORDERED, that the Rules and Regulations for Telephone Utilities are modified as follows:

PUC 403.06 (b) all customers other than residential

(2) By Company

(d) *Late Payment Charge*. A 11/2% per month late payment charge may be applied to all non-residential bills which remain unpaid over 30 days from the post-marked date of the bill.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of July, 1982.

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NH.PUC*07/29/82*[79341]*67 NH PUC 555*Fuel Adjustment Clause

[Go to End of 79341]

Re Fuel Adjustment Clause

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

DR 82-177, Order No. 15,779

67 NH PUC 555

New Hampshire Public Utilities Commission

July 29, 1982

ORDER approving amendments to fuel charges, pursuant to fuel adjustment clauses, for eight electric companies.

BY THE COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1982, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Co., 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 for those utilities which file monthly unless requested or needed by one of those utilities; and the Commission would 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 or needed to have a hearing scheduled; and

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

ORDERED, that 1st Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 — Electricity, providing for a fuel surcharge credit of \$(0.03) per 100 KWH for the month of July, 1982, be, and hereby is, permitted to remain in effect for the month of August, 1982; and it is

FURTHER ORDERED, that 1st Revised page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of \$(0.03) per 100 KWH for the month of July, 1982, be, and hereby is, permitted to remain in effect for the month of August, 1982; and it is

FURTHER ORDERED, that First Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of 16.5 cents (\$0.165) per 100 KWH for the months of July, 1982, be, and hereby is, permitted to remain in effect for August, 1982; and it is

FURTHER ORDERED, that First Revised Page 30 of Granite State Electric

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Company, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the month of July, 1982, of \$1.48 per 100 KWH be, and hereby is, permitted to remain in effect for August 1, 1982; and it is

FURTHER ORDERED, that 17th Revised Page 15 of the N. H. Electric Cooperative, Inc. tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of \$3.26 per 100 KWH for the month of August, 1982, be, and hereby is, permitted to become effective August 1, 1982; and it is

FURTHER ORDERED, that 19th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$3.43 per 100 KWH for the month of August, 1982, be, and hereby is, permitted to become effective August 1, 1982; and it is

FURTHER ORDERED, that 103rd Revised Page 6 of Littleton Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$1.13 per 100 KWH for the

month of August, 1982, be, and hereby is permitted to become effective August 1, 1982; and it is

FURTHER ORDERED, that 71st Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of \$(0.76) per 100 KWH for the month of August, 1982, be, and hereby is, permitted to become effective August 1, 1982; and it is

FURTHER ORDERED, that 66th Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge debit of (\$0.14) per 100 KWH for the month of August, 1982, be, and hereby is, permitted to become effective August 1, 1982.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 1982.

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NH.PUC*07/29/82*[79342]*67 NH PUC 556*International Generation and Transmission Company, Inc.

[Go to End of 79342]

Re International Generation and Transmission Company, Inc.

DSF 82-30, Supplemental Order No. 15,781

67 NH PUC 556

New Hampshire Public Utilities Commission

July 29, 1982

ORDER denying rehearing for electric generation and transmission company.

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BY THE COMMISSION:

SUPPLEMENTAL ORDER

Upon consideration of the reasons set forth in International Generation and Transmission Company, Inc.'s (IGT) Motion for Rehearing, the Commission finds the Motion should be denied; and it is hereby

ORDERED, that the IGT Motion for Rehearing is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 1982.

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NH.PUC*07/30/82*[79343]*67 NH PUC 557*New England Electric Transmission Corporation

[Go to End of 79343]

Re New England Electric Transmission Corporation

Intervenor: Powerline Education Fund

DSF 81-349, Third Supplemental Order No. 15,780

67 NH PUC 557

New Hampshire Public Utilities Commission

July 30, 1982

ORDER approving application for certificate of site and facility to construct electric transmission line.

1. ELECTRICITY, § 1 — Generally — Definition of demand for certificate purposes.

[N.H.] In defining the word "demand" the commission must look to cost savings as well as capacity requirements for New Hampshire. p. 558.

2. CERTIFICATES, § 102 — Electric — Transmission line — Determination of need for power.

[N.H.] In determining the "need of power" in a transmission line certification proceeding it was appropriate to consider New England's needs along with the needs of New Hampshire in applying the language of RSA 162-F:8. p. 558.

3. CERTIFICATES, § 102 — Electric — Transmission line — Present and future demand.

[N.H.] In a certificate proceeding, if the evidence supported the conclusion that a transmission line would provide dollar savings to the state and would increase system reliability, the commission could reasonably conclude that it was required to meet the present and future demand for electric power. p. 558.

BY THE COMMISSION:

OPINION

On July 8, 1982, the Powerline Education Fund (PEF), intervenors in this proceeding, filed a Motion for Rehearing of this Commission's June 22, 1982 (67 NH PUC 409, 48 PUR4th 477), decision that the applicant, New England Electric Transmission Corporation (NEET), had met its burden of going forward on the "need for power" issue at this stage in

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the proceedings. Based on our review of that decision, the record to date in this proceeding and the motion of PEF, the Commission denies the Motion for Rehearing.

The grounds of error alleged in the motion are that the Commission misinterpreted the statutory language of RSA 162-F:8 and improperly considered the needs of the New England

region in applying the statutory language to the present case. PEF also argues that the Commission failed to attach significance to the word "required" in the statute.

RSA 162-F:8 requires the Commission to find, before a certificate of site and facility is issued, that the proposed facilities "are required to meet the present and future demand for electric power".

[1] This statutory language was carefully considered in the Commission's Opinion and Order of June 22, 1982. See 67 NH PUC at pp. 414-417, 48 PUR4th at pp. 481-484. The Commission reiterates what was said in that Opinion. The term "demand" in that statute is appropriately defined in economic and engineering terms given the technical nature of the inquiry required by the statute. In defining the word "demand" in these terms, the Commission must look to cost savings as well as capacity requirements for New Hampshire. To the extent that the proposed facilities provide cost savings to electric consumers in New Hampshire, these facilities serve the "demand" for power in New Hampshire.

[2] Secondly, the Commission in its opinion of June 22, described in considerable detail based on a thorough review of the record, the testimony and evidence on the interdependence of the New Hampshire electric system with the New England electric grid. See 67 NH PUC at pp. 416, 417, 48 PUR4th at pp. 483, 484. This testimony and evidence, when considered in a light favorable to the applicant at this stage in the proceedings, tended to establish that system reliability, capacity availability during scheduled and unscheduled out-ages, dispatch of lowest cost electric energy into New Hampshire and power systems planning were all highly dependent on the activities of the New England Power Pool (NEPOOL) of which Public Service Company of New Hampshire (PSNH) is a member. PSNH is by far the largest electric utility in the State and hence benefits conferred on NEPOOL in the form of increased and more assured energy supplies would flow through to PSNH. Accordingly, the Commission reaffirms its holding that it is appropriate to consider New England's needs along with the needs of New Hampshire in applying the language of RSA 162-F:8.

While the Commission recognizes the interdependence of the NEPOOL system, the Commission also noted in its decision that (67 NH PUC at p. 426, 48 PUR4th at p. 492):

"Throughout the applicant's case the applicant has stressed the benefits to New England of the facility at the risk of giving New Hampshire's benefits short shrift."

It was only through questioning by the Commission that evidence relative to New Hampshire was introduced. All parties are advised that greater emphasis must be given to New Hampshire's need for power. Although the Commission found that the evidence to date tends to establish dollar savings to New Hampshire, PEF and the other intervenors will be given full opportunity to address this issue in future hearings.

[3] PEF also urges the Commission to give more significance to the word "required"

Page 558

in the statute. PEF appears to take the position that only a facility providing capacity could meet the statutory standard of the word "required". The Commission recognized in its decision that this is the first case to come before the SEC which does not involve a particular generating

facility. The transmission line as proposed would provide energy and cost savings, not capacity. The Commission does not believe that the statutory requirement necessitates that a proposed facility provide capacity. If the evidence supports the conclusion that the transmission line will provide dollar savings to New Hampshire and will increase system reliability, the Commission can reasonably conclude that it is required to meet the present and future demand for electric power.

Finally, the Opinion of June 22 is intentionally narrow in scope. The Commission stated that NEET had "met its burden of going forward" at that stage in the proceedings, and further pointed out that PEF and the other intervenors would be given a full and fair opportunity to offer testimony and evidence on the "need for power" issue in subsequent proceedings. See paragraph 2 of the Order of June 22, 1982. The Opinion and Order is not a final order. PEF will have further "days in court" which have not been foreclosed by the Order of June 22.

SUPPLEMENTAL ORDER

For the foregoing reasons, it is hereby ordered that:

1. The Motion for Rehearing by the Powerline Education Fund is denied.

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NH.PUC*07/30/82*[79344]*67 NH PUC 559*New England Telephone and Telegraph Company

[Go to End of 79344]

Re New England Telephone and Telegraph Company

DE 82-159, Order No. 15,782

67 NH PUC 559

New Hampshire Public Utilities Commission

July 30, 1982

ORDER approving petition for a license to place and maintain an aerial cable across state-owned railroad right of way as in the public interest.

APPEARANCES: Wayne Snow, engineering manager, for the petitioner.

BY THE COMMISSION:

REPORT

On June 1, 1982, the New England Telephone Company filed with this Commission a petition seeking authority

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to place and maintain aerial cable over state owned railroad right-of-way in Meredith, New Hampshire. The Commission issued an Order of Notice on June 2, 1982 directing all interested parties to appear at a public hearing at 10:00 a.m. on July 20, 1982, 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 concerned. In addition to publication of said notice, copies of the hearing notice were directed to: John R. Sweeney, Director, Aeronotics Commission; the N.H. Transportation Authority; George Gilman, Commissioner, DRED; John Bridges, Director of Safety Services; and the Office of the Attorney General. An affidavit of publication, indicating that publication was made in the Union Leader on June 11, 1982 was received in the Commission's office at Concord, New Hampshire on June 18, 1982.

Wayne Snow, Engineering Manager, explained that the petition was necessary to provide adequate plant for new expansion in the Meredith area. It will provide for the erection of 100 pair cable beginning at Telephone Pole #12/24 (NHEC 34/224) of a transmission line east of the railroad right-of-way, south of Waukeewan Avenue, and extending in a more or less westerly direction 149 feet to Telephone Pole #12/25 (NHEC 34/ 227) west of said railroad right-of-way. The right-of-way crosses a railroad right-of-way owned by the State of New Hampshire and presently operated by the North Stratford Railroad Company, at a point approximately 1250 feet north of the switch to the Gerrity Building Center, and south of Waukeewan Avenue. Mr. Snow advises that the joint owned poles are already in place, and have been carrying an existing 100 pair cable since approximately 1964. This petition is requested to provide authority for both the newly placed cable and the existing cable.

Mr. Snow testified that the line will exceed the minimum height requirement of the National Electric Code.

The Commission notes that no objections were filed or addressed 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 that this petition for a license to place and maintain an aerial cable across state owned railroad right-of-way in Meredith, New Hampshire 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 to place and maintain an aerial cable across state owned railroad right-of-way in the town of Meredith, New Hampshire.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1982.

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NH.PUC*08/02/82*[79345]*67 NH PUC 561*Concord Natural Gas Corporation

[Go to End of 79345]

Re Concord Natural Gas Corporation

Intervenor: Office of Consumer Advocate

DR 82-34, Supplemental Order No. 15,783

67 NH PUC 561

New Hampshire Public Utilities Commission

August 2, 1982

ORDER approving temporary rates for natural gas company.

1. RATES, § 85 — Temporary or emergency rates — Gas — Reasonable rate of return.

[N.H.] Where a natural gas company was not earning a reasonable rate of return, it was reasonable to permit temporary rates to be adopted pending a decision on permanent rates. p. 561.

2. EVIDENCE, § 11 — Burden of proof — Temporary rates — Gas.

[N.H.] The legislative standard for temporary rates had been interpreted by the state supreme court to require a lesser level of proof than was necessary to justify permanent rates. p. 561.

APPEARANCES: Charles Toll for Concord Natural Gas; F. Joseph Gentili, Consumer Advocate's Office.

BY THE COMMISSION:

REPORT

On March 5, 1982, Concord Natural Gas complied with our filing requirements, and so doing asked for a rate increase of approximately \$368,600. The tariff pages designed to collect this increase were suspended by Order No. 15,537 on March 18, 1982. On March 24, 1982 Concord Natural Gas filed a petition for temporary rates. On April 20, 1982, Order of Notice was issued setting a hearing for temporary rates for May 27, 1982.

[1, 2] The testimony in that proceeding demonstrates that Concord Natural Gas is not earning a reasonable rate of return. The Legislative standard for temporary rates has been interpreted by the New Hampshire Supreme Court to require a lesser level of proof than is necessary to justify permanent rates. The Commission is not required nor is it allowed to conduct the type of in-depth investigation for temporary rates that it undertakes for permanent rates. Based upon this standard, the Commission finds that Concord Natural Gas has met its burden of proof, and will thereby allow the rates filed on March 5, 1982 to become effective as temporary rates.

The Company and the consumer are protected by the various provisions of RSA 378, which allow for either recoupment or refund upon the Commission issuing a final decision. As the Commission has noted in past decisions, the effective date for temporary rates will occur only after Notice and Hearing. Consequently, Concord Natural Gas is allowed temporary rates for all

usage rendered on or after May 27, 1982. The difference between the rates collected during the time period of May 27, 1982

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through August 2, 1982 will be part of the reconciliation undertaken by the Commission when it issues its final Order in this proceeding.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing Report which is made a part hereof: it is

ORDERED, that the rates filed by Concord Natural Gas on March 5, 1982 are made temporarily effective with all usage on or after May 27, 1982; and it is

FURTHER ORDERED, that these rates be made effective immediately on all bills as of August 2, 1982 until the Commission issues its permanent decision in this proceeding; and it is

FURTHER ORDERED, that the difference between the rates charged and the rates authorized for the time period May 27, 1982 through August 2, 1982 will be the subject of our final Order in this docket.

By Order of the Public Utilities Commission of New Hampshire this second day of August, 1982.

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NH.PUC*08/02/82*[79346]*67 NH PUC 562*Granite State Electric Company

[Go to End of 79346]

Re Granite State Electric Company

Intervenor: Office of Consumer Advocate

DR 81-361, Supplemental Order No. 15,784

67 NH PUC 562

New Hampshire Public Utilities Commission

August 2, 1982

ORDER adopting temporary rates for electric company pending an investigation of issues including the effect of canceled plant.

APPEARANCES: Michael Flynn for Granite State Electric Company; F. Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:

REPORT

Granite State Electric Company on December 1, 1981 filed a request to increase its purchased power rates by \$1,499,528. Hearings were held in February and March of 1982. The Company seeks to have this rate applied to all usage that occurred on or after March 1, 1982.

The Consumer Advocate has raised concerns involving (1) unfounded future tax liability (\$250,094 annually); (2) the cancellation of Pilgrim II (\$253,422 annually); and (3) the cancellation of Montague (\$30,750 annually). The position of the Consumer Advocate is that these expenses totalling \$534,266 on an annual basis should be excluded from charges to the ratepayer. Granite State Electric sets forth in its arguments that the Commission

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is without authority to question any expenses charged by its sister company, New England Power Company, to Granite State Electric that have received any form of approval of the Federal Energy Regulatory Commission (FERC).

The Commission is presently researching the question of our authority in these type of matters. During the interim, the \$965,262 on an annual basis left unchallenged will be allowed to be collected on a flat charge per KWH basis from all customer classes.

The Commission will make this a temporary rate that is to be applied to all usage rendered on or after March 1, 1982. The difference between this temporary rate, effective on all bills rendered on or after August 2, 1982 and the rates collected between March 1, 1982 and August 1, 1982 will be the subject of discussion in our final order. In that decision the Commission will set forth a mechanism designed to recover the differential between permanent rates and temporary rates. This differential will collect the difference between permanent rates and temporary rates for all usage rendered on or after March 1, 1982.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Granite State Electric Company file tariff sheets designed to collect an increased annual revenue figure of \$965,262 by a standard and flat KWH basis from all customer classes for use on all bills rendered on or after August 2, 1982.

By order of the Public Utilities Commission of New Hampshire this second day of August, 1982.

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NH.PUC*08/03/82*[79347]*67 NH PUC 563*Public Service Company of New Hampshire

[Go to End of 79347]

Re Public Service Company of New Hampshire

DE: 81-312, Tenth Supplemental Order No. 15,785

67 NH PUC 563

New Hampshire Public Utilities Commission

August 3, 1982

ORDER permitting environmental organization to participate in electric case as a consumer.

PARTIES, § 18 — Intervenors — Eligibility of organization as a "consumer" — Effect of environmental activities.

[N.H.] Although an organization had an environmental agenda, that fact did not preclude them from being considered "consumers" under the state statute and therefore the organization was allowed to participate in an electric case.

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BY THE COMMISSION:

Procedural History

The Commission issued its Report and Order No. 15,655 on May 21, 1982 (67 NH PUC 334), finding the Conservation Law Foundation (CLF) and the New Hampshire Energy Coalition (NHEC) eligible for consumer compensation pursuant to PUC Rules Part 205, in the above captioned docket. Public Service Company of New Hampshire (PSNH) filed a motion for rehearing and CLF has filed a response to that motion on behalf of the joint intervenors.

Discussion

Most of the arguments in PSNH's motion for rehearing were raised by the Company prior to the Commission's Report and Order and are addressed therein. The motion does raise some new points which the Commission wishes to address.

PSNH argues that the Commission may not award compensation pursuant to PURPA because Commission Staff and the Consumer Advocate insure consumer representation. The Commission rejects this argument. As CLF rightly points out, the Company's interpretation would render PUC Rule 205 meaningless, as the Commission could never award compensation for participation by consumers.

PSNH cites the recent case of *Federal Energy Regulatory Commission v Mississippi* (1982) 456 US 742, 47 PUR4th 1, 72 L Ed 2d 532, 102 S Ct 2126, as support for its position that DE 81-312 is not a PURPA proceeding. PSNH argues that *Mississippi* supports its narrow interpretation of the scope of PURPA. The Commission does not believe this is the case. In *Mississippi* the Court upheld the constitutional validity of PURPA and its procedural requirements including intervenor funding. However, this case does not define the precise content of PURPA proceedings and does not provide support for the position that this docket is not a PURPA proceeding.

PSNH continues to contend that CLF cannot be considered a consumer because it has environmental interests. Points 3B and 3C conclude that having environmental interests precludes CLF from having consumer interests as well.

The nature of CLF's et al testimony was set forth in a letter to the Commission dated December 24, 1981. The focus of this proposed testimony is on the potential and cost-effectiveness of conservation. CLF specifically proposes to examine the financial and rate effects of PSNH's investment in conservation. This is clearly a subject appropriate for consumer representation.

The Commission has found that CLF and NHEC are "consumers" within the meaning of PUC Rule 205.01 (f) because they are the authorized representatives of certain New Hampshire retail electric consumers who are concerned with conservation, the efficient use of resources and other appropriate PURPA issues. The Commission may not preclude the intervention of eligible consumers because these organizations also have environmental agendas.

Based upon the foregoing as well as the Commission's initial Report, the Commission finds that PSNH's motion for rehearing is denied.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the reasons set forth in Public Service Company of New Hampshire's Motion for Rehearing and the foregoing report, the Commission

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finds that the Motion should be denied; and it is hereby

ORDERED, that the PSNH Motion for Rehearing is denied.

By order of the Public Utilities Commission of New Hampshire this third day of August, 1982.

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NH.PUC*08/03/82*[79348]*67 NH PUC 565*New England Telephone and Telegraph Company

[Go to End of 79348]

Re New England Telephone and Telegraph Company

DE 82-171, Order No. 15,787

67 NH PUC 565

New Hampshire Public Utilities Commission

August 3, 1982

ORDER approving license to telephone company to place and maintain submarine plant within public waters.

APPEARANCES: Philip J. Blanchette, engineering manager, for the petitioner.

BY THE COMMISSION:

REPORT

On June 14, 1982, New England Telephone and Telegraph Company filed with this Commission a petition seeking license to place and maintain submarine plant within the public waters of Lake Wentworth, Wolfeboro, New Hampshire; said plant to provide telephone service to the Crossman, Sunderland, and Moyses residences on Triggs Island, as well as capability for future expansion of service on the Island.

An Order of Notice was issued on June 15, 1982, setting the matter for public hearing on July 29, 1982, at 10 a.m. One-time newspaper publication was directed, and these individuals were notified individually: George Gilman, Commissioner — DRED; John Bridges, Division of Safety Services; and the Office of the Attorney General.

At the duly-noticed public hearing, the Company was represented by Philip J. Blanchette, Engineering Manager. Mr. Blanchette described the crossing as a 25-pair cable, proceeding underground from Pole 105/2755 sixty-six feet to the shore of Lake Wentworth, thence submarine 1,000', continuing underground to Pole 927/1, a distance of 20'. The cable will initially serve the three customers indicated, with a capacity for growth. The plant is described on Company Drawing 30-9, and shown on a map filed by the Company. Copies of permits from the Wetlands Board, Water Supply and Pollution Control Commission, and the Special Board were presented. All construction will be according to the National Electrical Safety Code.

No intervenors were present, nor was there any written opposition. Appropriate easements had been obtained by the

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Company for both Triggs Island and Triggs Landing on the mainland.

All facts appear in order and the Commission finds such crossing 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 New England Telephone and Telegraph Company be, and hereby is, granted license to construct and maintain submarine plant originating at Pole 105/2755 at Triggs Landing and terminating at Pole 927/1 on the Aldrich property, Triggs Island in Lake Wentworth, Wolfeboro, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this third day of August, 1982.

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NH.PUC*08/04/82*[79349]*67 NH PUC 566*Public Service Company of New Hampshire

[Go to End of 79349]

Re Public Service Company of New Hampshire

DF 82-141, Third Supplemental Order No. 15,789

67 NH PUC 566

New Hampshire Public Utilities Commission

August 4, 1982

ORDER affirming previous decision requiring electric company to delay construction of a nuclear plant due to the company's financial position.

1. PARTIES, § 18 — Intervenors — Appearance at hearing on canceled plant — Scope of proceeding.

[N.H.] The limited appearance by three individuals in a proceeding concerning the treatment of a delayed plant in rates was proper in that the commission appropriately narrowed the scope of their testimony to the issues raised in the proceeding. p. 567.

2. CONSTRUCTION AND EQUIPMENT, § 1 — Generally — Nuclear plant — Delay due to financial condition of company.

[N.H.] Evidence as to the financial condition of an electric utility and to the understatement of costs for completion of a nuclear plant supported the conclusion that a delay in construction of a second plant was required. p. 567.

3. ELECTRICITY, § 1 — Generally — Ownership of share in nuclear plant — Reasonableness.

[N.H.] Since an electric utility was paying its entire level of common and preferred dividends out of future financings and the rate increases needed to achieve a 35 per cent ownership in a nuclear plant would cause a 50 per cent increase in every consumer's bill, a decision to disallow a company to increase its share in the plant above 28 per cent was reasonable and supported by the weight of the evidence. p. 568.

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BY THE COMMISSION:

OPINION

On July 28, 1982, Public Service Company of New Hampshire filed a motion for rehearing of this Commission's July 16, 1982 decision (67 NH PUC 490, 47 PUR4th 167). Based on our review of that decision, the record in the proceeding and the motion of PSNH, the Commission denies the motion for rehearing.

Virtually all of the arguments in PSNH's motion for rehearing were raised by the Company

prior to the Commission's Report and Order and are addressed therein. Other arguments presented are not substantiated with specific references to the Report and Order. The Commission does find that points 6 and 10 in the motion deserve additional comment.

In point 6 the Company states that certain limited appearance statements were permitted, while others were improperly excluded. While this point was discussed at length in the hearing record, it was not specifically discussed in the Commission Report.

The Commission has traditionally allowed limited appearances by citizens of the State who wished to make statements to the Commission. In this proceeding a number of utilities submitted statements and requested that these statements be included in the record as limited appearances. Utilities are accustomed to appearing before this Commission represented by counsel. The testimony presented by companies is given under oath and the Commission is afforded the opportunity of cross-examination. The Commission noted in its Report that although PSNH strongly suggested to the other Seabrook participants that they appear before the Commission, they were unwilling to do so. Under the circumstances, the Commission believed that the presentation of unsworn testimony by utilities which the Commission could not cross-examine through a limited appearance status was not proper. Accordingly, these statements were excluded from the record.

[1] The Commission did hear limited appearance statements from the following individuals: John Harrison, Joseph Moriarty, Lynn Chong, James Hoeveler and Mary Metcalf. The Commission carefully advised these participants of the scope of the proceedings and that while they would be allowed to make whatever statements they wished that the Commission would disregard any statements which went beyond the narrow scope of the proceedings. It has always been the practice of the Commission to encourage public comment. The Commission did not feel it necessary to treat this testimony in a formal manner, i.e. specifically allowing certain portions and striking others. The scope of the proceedings has been well defined, and the Commission has given this testimony the consideration it deems proper.

[2] The Company contends in point 10 that the preponderance of the evidence shows that delay would provide little additional financial flexibility to PSNH. The Commission does not agree with this assessment. The Commission found that the Company's forecasts upon which it based the estimates of the financial requirements to continue with Unit II construction were not realistic. In particular the Commission found that the forecasted completion date for Unit I and the forecasted construction costs were not reliable planning estimates. Consequently, the Commission found that the costs of continuing Unit II construction until Unit I is completed

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were likely to be much greater than PSNH estimates. Likewise, the Commission believes that the financial requirements estimated for completing Unit I are seriously understated. These findings coupled with the Commission's findings concerning the financial condition of the Company fully support the conclusion that a delay in Unit II construction is required.

[3] PSNH's own testimony was that it was absolutely necessary to achieve a level of ownership in Seabrook of 28%. Re Public Service Co. of New Hampshire (1979) 64 NH PUC 262, and (1979) 64 NH PUC 286. PSNH's decision to reduce to a 28% level was approved by

this Commission after PSNH gave sworn testimony that it was impossible to finance a 35% share.¹

When the Supreme Court reviewed that decision by PSNH *and* the Commission, the Court found that the evidence that PSNH could not support more than a 28% interest was "undisputed". Re Legislative Utility Consumers' Council (1980) 120 NH 173, 174, 412 A2d 738.

Public Service Company told its bondholders in late September of 1979 the following:

"The Company believes it can finance about a 35% ownership interest in the Seabrook plant assuming the completion of Unit #2, currently scheduled for 1985 is *deferred four years*."

Exhibit 39 - Supplement to Prospectus.

Exhibit 59, a financial forecast done in November of 1979 reveals PSNH's estimate of financings with no delay of Seabrook. At that time PSNH estimated that in 1982 they would issue \$120,000,000 in permanent financings. Exhibit 13 filed in these dockets has PSNH now estimating for 1982 permanent financings of \$254,250,000 plus \$95,000,000 in less traditional financings or \$349,250,000. The more recent PSNH estimate then proceeds to require another \$181,900,000 in permanent financing plus another \$75,000,000 in less traditional financing in 1983. This additional \$256,900,000 in permanent financing in 1983 was not contemplated in PSNH's 1979 estimate. (Exhibit 59) A total of \$606,150,000 in long term financings over the next two years as compared to a 1979 estimate of \$120,000,000 demonstrates the seriousness of PSNH's financial situation and further demonstrates a pattern of underestimating the amount of financings necessary to complete the construction program.

PSNH, in its 1979 estimate, had a prime interest rate, of 10% from 1981 through 1986, a cost of long term debt of 10.5% from 1981 through 1986, a cost of preferred stock of 10.5% for the same time period and a price of common stock in the \$23 to \$25 range. Reality has been a prime interest rate of 15.5% to 22%, long term debt costing 17% to 19%, preferred stock in excess of 17% and common stock selling in a price range of \$14 to \$16.

Yet, PSNH on those artificially low estimates arrived at the conclusion that if they held a 35% ownership interest they could do so only by delaying Seabrook II four years. PSNH's present position that they can achieve a 35% ownership level without delay or a reduction in ownership is against the overwhelming weight of this record and their own analysis as well.

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This Commission cannot ignore that this Company is paying its entire level of common and preferred dividends out of future financings. Nor can we ignore that they are now paying a portion of the interest costs from previous debt issuances at 14% with proceeds from new financings in excess of 18%.

The Commission does not accept Mr. Bayless' testimony as to the financings that will be saved by delay. The weight of this record is that PSNH has underestimated the level of financings because they have consistently underestimated the cost of construction, the cost of financings, the cost of maintaining previous financings and the completion dates. The aforementioned comparison of their 1979 forecast to a more recent forecast illustrates the magnitude of the error.

Nor does the Commission accept the cost estimates as to delay. PSNH is well aware that proper economic practice requires an analysis to be put in terms of a common factor of dollars such as 1982 dollars. A comparison of 1982 dollars versus 1990 dollars is of little economic value nor is it a fair comparison.

Neither are PSNH's financial forecasts as to rate increases reliable. The numbers used are not the result of the model or designed to achieve the financing assumed in the model. Rather, the numbers are merely guesses plugged into the model. The rate increases needed to achieve a 35% ownership interest without delay are in the range of \$200,000,000 to \$220,000,000 or a 50% increase in every consumers bill. Such an increase would require a return on common equity of 82%. Such a return, far in excess of that allowed any other utility, is simply precluded by any interpretation of just and reasonable rates and the landmark Supreme Court cases of Hope (320 US 591, 51 PUR NS 193, 88 L Ed 333, 64 S Ct 281) and Bluefield (PUR1923D 11, 67 L Ed 1176, 43 S Ct 675).

RSA 541:3 allows any party to file one motion for rehearing. Upon consideration of all the arguments raised by PSNH, the Commission finds that the motion for rehearing should be denied and that the Commission will not suspend the effectiveness of Report and Order No. 15,760 (67 NH PUC 490, 47 PUR4th 167).

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Public Service Company of New Hampshire's Motion for Rehearing is denied; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire's request to suspend the effectiveness of Report and Order No. 15,760 is denied.

By order of the Public Utilities Commission of New Hampshire this fourth day of August, 1982.

McQUADE, commissioner: Having decided, in my opinion of July 16, 1982, that this Commission cannot condition financing that would delay the completion of Seabrook based on the record of the proceedings; I stand on that opinion.

FOOTNOTE

¹See our decision in this docket, 67 NH PUC at pp. 499-502, 47 PUR4th at pp. 175-177. PSNH's "icing on the cake argument" ignores the basic theory of home economics whereby one makes sure one can finish the cake before one worries about the icing.

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NH.PUC*08/04/82*[79350]*67 NH PUC 570*Public Service Company of New Hampshire

[Go to End of 79350]

Re Public Service Company of New Hampshire

DR 79-187 Phase II, 59th Supplemental Order No. .15,790

67 NH PUC 570

New Hampshire Public Utilities Commission

August 4, 1982

ORDER denying rehearing on issue of intervenor compensation in PURPA related hearing.

COSTS — Intervenor compensation under Public Utility Regulatory Policies Act — Scope of permissible activities.

[N.H.] The consumer compensation rules were designed to provide financial assistance to those who sought and made a substantial contribution to Public Utility Regulatory Policies Act (PURPA) related proceedings and who, absent compensation, would cause a significant financial hardship; the rules were not designed to include press releases, questionnaires, responses to executive or legislative branch statements, and non-PURPA related proceedings.

APPEARANCES: As noted previously.

BY THE COMMISSION:

REPORT

The Business and Industry Association (BIA) filed on May 28, 1982 an objection excepting to the Commission Report and 58th Supplemental Order No. 15,625 (67 NH PUC 313) regarding the issue of consumer compensation. This filing contains a request to reconsider our action taken in the 58th Supplemental. After a review of the filing and the arguments and data contained therein the Commission finds its 58th Supplemental Order to be proper. To the extent that this BIA filing is a motion for rehearing it is denied.

The data provided in this filing further illustrates the Commission's previous concerns about the amount of these expenses. The detailed account raises further questions as to the reasonableness of these expenses.

There are expenses submitted in this docket, DR 79-187 — Phase II, that are not associated with this docket. For example, the petitioner acknowledges that 84.3 hours or approximately \$5,000 relates to another docket, DP 80-260 Lifeline, which is not yet completed. A review of the hourly billings lead to an even greater number of hours spent as to this docket. The expert witness fees associated with the lifeline docket are offered as being removed but the miscellaneous expenses are all attributed to DR 79-187, Phase II, a highly unlikely occurrence.

Other legal charges are submitted for responses to arguments related to (1) "the latest developments on CWIP controversy" and other assorted actions related to CWIP; (2) DR 81-87, a rate case subsequent to DR 79-187; (3) proceeding involving other utilities other than PSNH; (4) the preparation of public statements or press releases concerning Commission Orders; (5) the

development

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of an undescribed questionnaire; (6) comments before the Department of Energy; (7) activities associated with the Commission's drafting of a consumer compensation rule; (8) preparation of responses to a statement by the Governor; (9) a discussion of the "Blue Ribbon Committee"; (10) preparation of the petition for compensation; (11) preparation of the petition to reconsider the derival of compensation; and (12) time devoted to analyzing a motion to recuse, newspaper, publicity, and discussion of this Commission's PURPA department.

None of these factors are proper for recovery from consumers in that they neither further the goals of PURPA or are in any way related to the case to which PURPA rate design issues were handled in DR 79-187, Phase II.

The consumer compensation rules were designed to provide financial assistance to those who sought and made a substantial contribution to PURPA related proceedings and who absent compensation would cause a significant financial hardship. The rule is specific as to its allowance of only reasonable expenses even when a substantial contribution is made.

Reasonable expenses do not include press releases, questionnaires, responses to executive or legislative branch statements, non-PURPA related proceedings, PURPA related proceedings not the subject of the proposed compensation or the type of expenses such as \$20 lunches that permeate this petition.

This rule was not designed to be a catch all for activities generally associated with being a counsel on retainer. Rather, the rule is designed to provide information to the Commission that results in decisions that more closely adhere to the principles of PURPA than would have occurred absent the intervention. The rule was promulgated to alleviate financial hardship and not to create a dairy farm. It requires oversight not only by this Commission but also by the utilities subject to the PURPA standards.¹

Furthermore, the Commission reiterates that in our judgment it is improper to use a settlement procedure to achieve compensation. The precedent of such a position would open up the regulatory system to great abuses. Finally, the rate design finally adopted by this Commission is largely due to the efforts of the Commission Staff and PSNH staff and not the BIA.

To the extent that this petition is a motion for rehearing, it is denied.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the Motion filed by the Business and Industry Association on May 28, 1982 be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this fourth day of August, 1982.

FOOTNOTE

¹It is ironic that PSNH, an active litigant in other consumer compensation cases, chose to quietly accept costs that the Commission finds to be blatantly outside any definition of reasonableness.

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NH.PUC*08/05/82*[79351]*67 NH PUC 572*Concord Natural Gas Corporation

[Go to End of 79351]

Re Concord Natural Gas Corporation

DS 81-281, Second Supplemental Order No. 15,792

67 NH PUC 572

New Hampshire Public Utilities Commission

August 5, 1982

ORDER affirming previous decision assessing a penalty against a gas company for violation of a commission order.

FINES AND PENALTIES, § 3 — Jurisdiction and powers — Assessment of penalty versus recovery of fine.

[N.H.] The assessment of penalties for violation of a commission's order is a necessary part of the public utilities commission's administration and must be distinguished from the recovery of such a penalty which is properly left to the judicial system.

BY THE COMMISSION:

REPORT

On July 29, 1982 Concord Natural Gas Corporation filed a motion for rehearing of this Commission's June 9, 1982 (67 NH PUC 381) decision. In that decision Concord Natural Gas Corporation was fined \$500 for failure to report an accident as required by RSA 374:39, 374:17 and PUC Rule 508:03.

In support of this motion the petitioner states that the Public Utilities Commission has no authority to issue an order to a utility to pay a "fine". To substantiate this position petitioner relies on RSA 365:43, 44 which are statutory provisions covering the institution of an action to recover a forfeiture. The Commission does not accept the petitioner's interpretation of the statutes. The Commission makes the distinction between assessing a fine and the institution of an action for recovery in Superior Court. As the body with primary jurisdiction over matters concerning public utilities the Commission has the statutory authority to *assess* lines.

While traditionally courts have been reluctant to admit that agencies could be given the

power to impose fines, today such authority is widely conferred. This modern view is well summarized in *Tite v State Tax Commission* (Utah Sup Ct 1936) 57 P2d 734, 738, in which the Utah Supreme Court stated:

"In these latter days, therefore, we must be prepared to see that if some of the things that courts did in their traditional way are taken over by administrative bodies as part of their necessary administration of the subject-matter committed to them such powers must be considered administrative when so exercised ... We cannot let the fact that because certain institutions traditionally exercised certain powers blind us from the further fact that those same functions when necessary to administration are just and truly administrative functions."

This view is shared by Professor Bernard Schwartz whose 1976 text *Administrative Law* is a recognized authoritative source. Swartz at p. 75

The assessment of penalties for violation of a Commission order is a necessary part of the PUC's administration. That the N.H. PUC is vested with important judicial powers over public utilities

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is well-recognized. *Re Boston & Maine Corp.* (1969) 109 NH 324. "The establishment of the PUC was for the purpose of providing comprehensive provisions for the establishment and control of public utilities." *Id.*, 109 NH at p. 362 The establishment of administrative agencies vested with judicial powers has been held a constitutional delegation. *Id.*, 109 NH 324, see also *Re Opinion of Justice* (1935) 87 NH 492.

Concord Natural Gas Corporation relies on RSA 365:43 and 44 to support the argument that the Commission does not have the authority to levy fines. RSA 365:43 states:

"Recovery of Forfeiture Any forfeiture incurred under the provisions of this chapter shall be recovered in an action brought by the attorney general in the name of the State, and when recovered shall be paid to the State treasurer."

RSA 365:44 further provides that the Commission shall have the authority to institute such action for recovery. It is significant that RSA 365:43 and 44 refer to *Recovery of Forfeiture*. The recovery action is necessary because the Commission does not have the authority to enforce money awards by administrative execution or contempt proceedings. These are powers like injunctive powers which are only afforded to courts in this State. As indicated in *New Hampshire v New Hampshire Gas & E. Co.* 86 NH 16, 32, PUR1932E 369, 384, 163 Atl 724, "(t)he statute affords no machinery for the direct enforcement of statutory mandates or orders the Commission" by the Commission itself.

An orderly and reasonable interpretation of the statutory scheme is that infractions and forfeitures (fines)¹ are to be *assessed* by the Commission. If the utility fails to pay the forfeiture then the institution of an action for *recovery* follows as provided by statute.

Such a statutory scheme has been adopted in other states. For example, a Pennsylvania Superior Court has held that the issue of whether a utility complied with a commission order was outside its jurisdiction:

"When ... the issue of compliance was raised in this proceeding it was for the commission alone to determine whether its orders had been violated and to impose the penalties ... on proof that the duties properly imposed upon it by the commission ... the court of common pleas of Dauphin County is given jurisdiction, to the inclusion of all other courts, but only to *recover* the penalties after they have been imposed by the Commission." (Emphasis supplied by Court) York Teleph. & Teleg. Co. v Pennsylvania Pub. Utility Commission (1956) 180 Pa Super Ct: 11, 14 PUR3d 89, 97, 121 A2d 605.

The petitioner also objects to the statement in the Commission report that if the petitioner "should ever again fail to comply with our safety reporting requirements, the maximum fine of \$100 per day will be levied." The Commission reemphasized in its report that it considers safety to be of the utmost importance and that all utilities should be aware that the Commission will require the strictest compliance with all safety requirements. The statement in question merely places the company on notice that the Commission will enforce the full statutory provisions if future safety violations occur. The Company always has the right to request a hearing on the merits of an individual case should mitigating factors exist.

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For these reasons as well as the reasons given in the initial report, the motion of Concord Natural Gas Corporation is denied and our order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the reasons in the foregoing Report, which is incorporated herein as well as the reasons given in the initial Report; it is hereby

ORDERED, that the motion for rehearing is denied; .and it is

FURTHER ORDERED, that the petition to vacate Order No. 15,697 issued on June 9, 1982 (67 NH PUC 381) is denied.

By order of the Public Utilities Commission of New Hampshire this fifth day of August, 1982.

FOOTNOTE

¹"Forfeitures" and "fines" all deemed synonymous under New Hampshire law, New Hampshire v McConnell, 70 NH 158.

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NH.PUC*08/05/82*[79352]*67 NH PUC 574*Public Service Company of New Hampshire

[Go to End of 79352]

Re Public Service Company of New Hampshire

DR 82-216, Order No. 15,795

67 NH PUC 574

New Hampshire Public Utilities Commission

August 5, 1982

PETITION to open docket to adjust rates associated with nonenergy-related costs; denied for lack of adequate notice.

PROCEDURE, § 33 — Rehearings and reopenings — Adjustment of rates — Requirement of notice.

[N.H.] A petition to open a docket to adjust rates associated with nonenergy-related costs before a formal tariff has been filed must be denied since (1) procedural fairness dictates a filing of a tariff before a commission proceeds with an adjustment in rates and (2) proper notice requires that the public be notified as to the amount requested.

APPEARANCES: Martin Cross for Public Service Company of New Hampshire.

BY THE COMMISSION:

REPORT

Public Service Company of New Hampshire has filed a petition pursuant to RSA 378:7 to open a docket to adjust their rates associated with non-energy related costs. The petition does not carry with it either an amount nor is there a willingness to file a tariff.

The Commission has reviewed the petition and finds that it is appropriate to reject the petition without prejudice to future filings. The Commission bases its rejections on two concerns. The first is the Supreme Court's decision in Legislative Utility Consumers' Council v Public

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Service Co. of New Hampshire (1979) 119 NH 332, 353, 31 PUR4th 333, 402 A2d 626. In that decision the Court advised the Commission for its procedure on tariffs. The Court stated the following (119 NH at p 353, 31 PUR4th at p. 348):

" ... It was not good practice for the Commission to grant the Company a revenue increase in advance of its having demanded a formal filing of a revised tariff"

Procedural fairness dictates a filing of a tariff before this Commission proceeds with an adjustment in rates. While the Commission allowed for an abbreviated attrition procedure in June, the Commission does not judge this procedure adequate for a rate proceeding which goes beyond a make whole adjustment for expenses. The better practice when reviewing rates is a formal notice of exactly what is being requested and from which rate classes. To insure adequate notice to the public the Commission finds advisable that if PSNH seeks further adjustments to its non-energy related rates that a formal rate case be filed in full compliance with our filing requirements, tariff rules and regulations and the provisions related to a 30 days notice prior to

filing.

The Commission's second reason involves the necessity to maintain a proper balance between utilities and consumers. Public participation is enhanced by a requirement that notice to the public contain the amount requested and the scheduling of night hearings in various communities around the State. The Commission will hold eight to ten public hearings seeking public comment whenever PSNH should again file for a rate adjustment.

PSNH is by this Order instructed to make its next rate thing a full-blown rate case pursuant to RSA 378:6, 7, 27, and 28. All filing rules are to be honored. Furthermore, the following other issues are to be addressed: (1) PSNH testified in DR 81-6 and DR 81-87 that it was implementing a hiring freeze in 1981. Yet its level of employees increased by 171 from 1980 to 1981. Even further increases have occurred since that point in time. (DR 82-150) Consequently, since PSNH chose not to implement a hiring freeze, the Commission will require testimony as to PSNH's justification for the increased level of persons that were not employed as of the end of 1980 (1,874); and (2) PSNH in DR 81-6 and DR 81-87 testified to implementing cost control measures and reduced maintenance levels through deferrals, yet 1981 year end levels for expenses other than fuel increased by more than 19% and maintenance expenses increased by more than 27%. PSNH is instructed to file testimony as to its reasons for increasing maintenance and non-fuel related expenses by such large amounts. The Commission places PSNH on notice that the Commission is calling into question whether in fact PSNH took any steps in terms of a hiring freeze, wage freezes, maintenance and other non-fuel related expenses.

If PSNH seeks to increase basic rates above their present levels their rate request must be scrutinized in a proceeding that can only be described as a full-blown rate case. Consequently, PSNH's petition is denied.

ORDER

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

ORDERED, that Public Service Company of New Hampshire's petition to establish a docket to receive information

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relating to an increase in rates is hereby denied.

By order of the Public Utilities Commission of New Hampshire this fifth day of August, 1982.

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NH.PUC*08/06/82*[79353]*67 NH PUC 576*Gas Service, Inc.

[Go to End of 79353]

Re Gas Service, Inc.

DR 82-213, Order No. 15,797

67 NH PUC 576

New Hampshire Public Utilities Commission

August 6, 1982

ORDER approving gas company's interruptible gas service price.

BY THE COMMISSION:

ORDER

WHEREAS, Gas Service Inc. has filed changes to the prices for Interruptible Gas Service as provided under special contract; and

WHEREAS, policy regarding such rates are the subject of continuing investigation in Docket No. DE 80-29; and

WHEREAS, the Interruptible gas price has been increased to 41.5 cents per therm and no other changes have been made; it is

ORDERED, that Gas Service, Interruptible Gas price of 41.5 cents per therm is accepted subject to review in Docket No. DE 80-29.

By Order of the Public Utilities Commission of New Hampshire this sixth day of August, 1982.

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NH.PUC*08/06/82*[79354]*67 NH PUC 576*Public Service Company of New Hampshire

[Go to End of 79354]

Re Public Service Company of New Hampshire

DF 82-141, Fourth Supplemental Order No. 15,798

67 NH PUC 576

New Hampshire Public Utilities Commission

August 6, 1982

ORDER denying a motion for rehearing on the basis of lack of standing by intervenor association.

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PARTIES, § 19 — Intervenors — Associations — Standing for rehearing.

[N.H.] A party had no standing for rehearing where it had not participated in the original proceeding, its proposed testimony was not within the scope of the proceedings, and its proposed

issues had been addressed previously by the commission.

(MCQUADE, commissioner, concurs, p. 578.)

BY THE COMMISSION:

REPORT

On August 5, 1982 the Business and Industry Association (BIA) filed a motion for rehearing of this Commission's July 16, 1982 (67 NH PUC 490, 47 PUR4th 167), decision. Since the BIA was not a party in this proceeding, the Commission finds that the BIA has no standing for rehearing pursuant to the provisions of RSA 541:3.

In its motion the BIA contends that the Commission unlawfully and unreasonably denied intervention to the BIA in this case. The Commission does not agree.

Commission Order No. 15,649 (67 NH PUC 328) and Supplemental Order No. 15,663 (67 NH PUC 347) establishing this docket set forth the scope of the proceedings and gave notice to all persons seeking party status that notification of an intent to intervene and the reasons for intervention were to be filed with the Commission by June 10, 1982. Counsel for the BIA submitted a late filing on June 14.

In rejecting the BIA request for intervention the Commission also considered the following factors. First, the BIA had not participated in DR 81-87 and DF 82-63. This docket developed directly from the Commission concern expressed in these previous dockets. Since this docket emanated from DF 82-63, the Commission incorporated the entire record of that proceeding and made it clear that this docket would not relitigate the issues previously decided. Testimony proposed by the BIA would have relitigated those issues.

Second, the testimony proposed by the BIA introduced issues specifically reserved for DE 81-312, an investigation of issues related to the supply and demand of electricity for Public Service Company of New Hampshire. A procedural hearing was held in DE 81-312 in June setting dates for the filing of testimony and hearings. The BIA has not afforded itself the opportunity of intervening in that docket.

Third, the Commission excluded the intervention in this case of the Conservation Law Foundation (CLF), the Seacoast Antipollution League, the New England Coalition of Nuclear Pollution and Executive Councilor Dudley Dudley because it found that the evidence these joint intervenors proposed to present was beyond the scope of this proceeding and appropriate for DE 81-312. The Commission noted that while PSNH objected to this joint intervention on the basis that their testimony was beyond the scope of this proceeding, the Company did not object to the BIA submitting testimony on the same subject matter. (DF 82-141, Vol. I, p. 64)

The Commission must retain control of its own proceedings and must treat all parties and intervenor petitions in a fair and even-handed manner. This docket was a Commission initiated docket, and the Commission clearly reserves the right to determine the scope of the proceeding and to determine who will receive party status. The Commission properly excluded certain portions of PSNH's prefiled testimony and properly

excluded intervenors because the proposed testimony was not within the scope of these proceedings.

The BIA motion raises a number of additional points which were similarly raised by PSNH in its motion for rehearing. The Commission Report and Order of July 16th, No. 15,760 (67 NH PUC 490, 47 PUR4th 167) and the Supplemental Report and Order of August 4th, No. 15,789 (67 NH PUC 566) address these points and are incorporated by reference herein.

The United States Supreme Court in *Gulf States Utilities Co. v Federal Power Commission* (1973) 411 US 747, 98 PUR3d 262, 36 L Ed 2d 635, 93 S Ct 1870, found that pursuant to a similar statute, the Federal Power Commission had the authority to inquire into and evaluate the purpose of each issue of debt or equity and the use to which its proceeds would be put 411 US at 758. The New Hampshire statutory language is also clear as to the Commission's authority to inquire into and evaluate the purpose of each issuance of debt and equity as well as to place such conditions as are necessary in the public interest on the proceeds.

For these reasons, the motion of the BIA for rehearing is denied and 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 Business and Industry Association's Motion for Re-hearing is denied.

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1982.

MCQUADE, commissioner: I concur with this Report as far as it is consistent with my opinion of July 16, 1982 (67 NH PUC at p. 533, 47 PUR4th at p. 205).

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NH.PUC*08/12/82*[79355]*67 NH PUC 578*Concord Natural Gas Corporation

[Go to End of 79355]

Re Concord Natural Gas Corporation

DE 82-227, Order No. 15,799

67 NH PUC 578

New Hampshire Public Utilities Commission

August 12, 1982

ORDER, pursuant to a fire caused by accident, requiring gas company to inspect valves and connections at its LP/LNG facilities and notify gas safety engineer of any corrective measures.

BY THE COMMISSION:

ORDER

WHEREAS, on July 13, 1982 an incident occurred at Concord Natural Gas Corporation's LP/LNG facilities that involved liquid propane escaping from an underground piping and resulted in the ignition and fire of escaping vaporized LP gas; and

WHEREAS, Commission's Gas Safety Engineer has investigated this incident and has determined that the source of the leaking liquid propane was at a flanged connection on a 3-inch valve where the gasket material had ruptured; and

WHEREAS, further examination of such gasket material showed that the company had not used the proper material as required by National Fire Protection Association (NFPA) 58 and 59 when the company originally installed this flanged valve; and

WHEREAS, reasonable doubt exists that the company did not correct the problem by replacing the ruptured gasket material with the proper gasket material; it is

ORDERED, that Concord Natural Gas Corporation immediately inspect the flanged valve involved in this incident to ascertain that the correct measures were taken in putting the system back in service; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation immediately inspect all *flanged* valves and/or connections at their LP/LNG facilities so as to verify proper installation; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation notify the Gas Safety Engineer of their findings and of any corrective measures that were necessary to insure safe conditions.

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 1982.

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NH.PUC*08/13/82*[79356]*67 NH PUC 579*Pequod Associates

[Go to End of 79356]

Re Pequod Associates

DL 82-183, Supplemental Order No. 15,800

67 NH PUC 579

New Hampshire Public Utilities Commission

August 13, 1982

REQUEST by electric company for rehearing on rates to be granted limited electrical energy

producers; approved, since previous waiver of hearing was not made knowingly or intelligently.

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PROCEDURE, § 21 — Notice of hearing — Effect of waiver of right to be heard — Knowing and intelligent waiver.

[N.H.] Where a question exists as to whether a company's employee had the capacity knowingly and intelligently to waive a right of the company to be heard in a decision establishing rates for a limited electrical energy producer, the commission should grant a rehearing due to the special circumstances presented by the facts.

BY THE COMMISSION:

REPORT

On June 22, 1982, the Commission issued Report and Order No. 15,719 (67 NH PUC 427) in the above titled docket. The Order was predicated upon the Commission's authority under RSA 362-A, the Limited Electrical Energy Producers Act (LEEPA). RSA 362-A:4 delegates to the Commission the authority to set rates from time to time for certain "limited electrical energy producers." LEEPA also provides that any party having a dispute arising under the chapter may refer it to the Commission for adjudication (RSA 362-A:5). In the instant case, Commission staff members had been in communication with a limited electrical energy producer who was attempting to negotiate a long term selling price with Public Service Company of New Hampshire (PSNH). The Commission was led to believe by representations made to staff by an agent of PSNH that the Company wanted the Commission to exercise its jurisdiction under LEEPA to resolve the deadlock in negotiations over the pricing term of the contract. Furthermore, that agent stated the Commission could resolve the dispute without a hearing. As a consequence of these representations by the Company to Staff, the Commission issued Order No. 15,719 as an equitable, lawful and reasonable resolution of the dispute between PSNH and Pequod as to the pricing term for sales from that facility to PSNH.

On July 9, 1982, the Company entered a motion for rehearing with respect to Order No. 15,719. The Company alleged as a basis for rehearing that its constitutional rights had been violated because no hearing was held prior to the Commission's order. Staff responded to this motion by taking exception to the Company's allegation of a right to hearing being abrogated because the Company had been specifically offered the opportunity to fully present its case in a formal hearing. Staff's pleading was not an objection to a hearing; in fact it urged expeditious scheduling of one.

PSNH's memorandum of law supporting its motion for a rehearing states "(t)he fundamental requisite of due process (is) the *opportunity to be heard* at a meaningful time and in a meaningful manner ... " (at pg. 1 emphasis added). As the Staff points out such an opportunity to be heard was provided, but rejected by a company employee.

Ordinarily, the law estops a party from asserting rights already waived. *Re Irene W.* (1981) 121 NH 123. However, where there is a question as to whether a fundamental right has been knowingly and intelligently waived, courts may take a different view. *Schneckloth v Bustamonte* (1973) 412 US 218, 225, 237, 36 L Ed 2d 854, 93 S Ct 2041; *Re Irene W.*, *supra*.

In this instance, the Company will be given another opportunity to be heard since the Staff believes that there is a question as to whether the Company's employee had the capacity to knowingly and intelligently waive a right to be heard.

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However, granting a hearing after opportunity for one has been waived is an exception that will not be easily granted. This Commission can ill-afford the consequences of establishing a precedent of allowing rehearing based upon a similar argument where the facts clearly indicate that the parties have waived an opportunity for a hearing. It would be absurd, as well as not constitutionally required, to institute procedures where a staff member had to obtain a written waiver of a hearing from the parties and further inquire if the waiver was preceded by consultation with an attorney.

Administrative agencies must have more flexibility than that. In a study of federal regulatory agencies it was found that hearings were held in only 5% of the cases decided. *Report of the Attorney General's Committee on Administrative Procedure*, 35 (1941). The fact that hearings are held in only a small percentage of administrative matters has been cited as the reason why the process is workable. Schwartz *ADMINISTRATIVE LAW*, 194, (1976).

Accordingly a hearing will be scheduled for Tuesday, the seventeenth day of August, 1982, at the office of the Commission at one-thirty in the afternoon. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that a hearing will be held on the concerns made by Public Service Company of New Hampshire, Staff, and Pequod Associates on Tuesday, August 17, 1982 at one-thirty in the afternoon at the office of the Commission.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1982.

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NH.PUC*08/16/82*[79357]*67 NH PUC 581*New England Telephone and Telegraph Company

[Go to End of 79357]

Re New England Telephone and Telegraph Company

DR 82-70, Second Supplemental Order No. 15,808

67 NH PUC 581

New Hampshire Public Utilities Commission

August 16, 1982

ORDER approving telephone tariff revisions.

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BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, New England Telephone and Telegraph Company, on July 14, 1982, filed with the Commission various tariff revisions dated July 9, 1982, in lieu of those filed on April 12, 1982 and subsequently rejected by the Commission Order No. 15,752 (67 NH PUC 469); and

WHEREAS, the July 14, 1982 filing also included the following revised tariff pages:

NHPUC No. 70 - Definitions - Original Pg. 6.1 Revised Pages 3, 4 and 6 Pt. II. Sec. 3 - Revised Pg. 1 Pt. III. " 4 - Revised Page 1 " 6 - Original Pgs. 7 and 8 " 12 - Revised Pgs. 1 and 6A " 15 - Revised Pg. 3 " 18 - Revised Pg. 1 " 35 - Original Pgs. 7 and 8 Revised Pg. 1 Pt. IV, - Revised Pgs. 10.1, 11.1 and 39 Pt. VI, - Revised Pg. 1;

it is

ORDERED, that all New Telephone tariff revisions filed on July 14, 1982, be, and hereby are, approved for effect on July 17, 1982.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of August, 1982.

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NH.PUC*08/16/82*[79358]*67 NH PUC 582*Exempt Railroad Crossings

[Go to End of 79358]

Re Exempt Railroad Crossings

DX 81-28, Seventh Supplemental Order No. 15,810

67 NH PUC 582

New Hampshire Public Utilities Commission

August 16, 1982

ORDER authorizing certain towns to erect and maintain a standard exempt sign at particular railroad crossings and establishing rules for flagmen.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, several state, city, and town highways intersect the track of the Boston and Maine Railroad's Ports-mouth Branch at grade in the City of Manchester and Towns of Auburn, Candia, Raymond, Epping and Newfields; and

WHEREAS, operations over this section of railroad are practically nonexistent

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as there is no business being conducted on the line which has been authorized for abandonment by the Bankruptcy Court on behalf of the Boston and Maine Railroad; and

WHEREAS, three (3) separate petitions have been filed regarding the stopping of school buses at these crossings; and

WHEREAS, under present circumstances all motor vehicles carrying flammable or dangerous commodities or passengers are required to stop before proceeding over the said crossings; and

WHEREAS, this creates a hazard to highway traffic; it is

ORDERED, that the State of New Hampshire, City of Manchester and the Towns of Auburn, Candia, Raymond, Epping and Newfields be, and hereby are, authorized to erect and maintain a standard "exempt" sign on the mast which supports the advance warning disk at each approach to the following crossings:

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

| <i>In Manchester</i> | <i>AARDOT Nos.</i> |
|----------------------------------|--------------------|
| I 93 SB frontage road | 845755E |
| I 93 NB frontage road | 845753R |
| Candia Road - Double Crossing | 845752J |
| Proctor Road - Double Crossing | 845752J |
| Lake Short Road (Stop Signs) | 845750V |
| Londonderry Turnpike | 845749B |
| <i>Auburn</i> | |
| Bald Hill Road (Rt. 121) | 845748U |
| Auburn Depot | 845745Y |
| Hooks | 845744S |
| <i>Candia</i> | |
| Browns Road | |
| Candia Road | 845741W |
| Candia Road | 845740P |
| Emersons (Patten Hill Road) | 845739V |
| East Candia | 845738N |
| <i>Raymond</i> | |
| Gile Road | 845735T |
| Birch (Page Crossing) | 845733E |
| Raymond Station | 845732X |
| Prescott Road | 845730J |
| <i>Epping</i> | |
| Holts (Beede Road) | 845729P |
| W. Epping (Fremont Road) | 845728H |
| Willeys Jenness Road) | 845727B |
| Liddys (Fremont Road) | 845725M |
| Chicken Street | 845724F |
| Epping Station (Old Fremont Br.) | 845723Y |
| South Side Road (Old 101) | 845721K |
| Exeter Cross Road | 845720D |
| Exeter Road | 845719J |
| <i>Newfields</i> | |
| Littlefields (Rt. 87) | 845717V |
| Old Sols | 845710X |

thereby eliminating the necessity for stopping vehicles before proceeding over said crossings; and it is

FURTHER ORDERED, that all train movements before passing over said crossings shall stop and a flagman shall

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warn highway traffic by displaying a red flag during the hours of daylight and a lighted red lantern during the hours of darkness, or poor visibility, and when highway traffic has stopped, the train movement shall then proceed over the crossings.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of August, 1982.

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NH.PUC*08/18/82*[79359]*67 NH PUC 584*Public Service Company of New Hampshire

[Go to End of 79359]

Re Public Service Company of New Hampshire

DF 82-193, Order No. 15,812

67 NH PUC 584

New Hampshire Public Utilities Commission

August 18, 1982

ORDER approving the issuance and sale of preferred stock subject to the limits imposed by commission order on the use of the proceeds.

APPEARANCES: Frederick J. Coolbroth and Martin L. Gross, for the petitioner.

BY THE COMMISSION:

REPORT

By this unopposed petition filed June 25, 1982, Public Service Company of New Hampshire (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire, and operating therein as an electric public utility under the jurisdiction of this Commission seeks authority pursuant to the provisions of RSA 369 to issue and sell for cash not exceeding one million two hundred thousand (1,200,000) shares of Preferred Stock, twenty-five dollars (\$25) par value. A duly noticed hearing was held in Concord on August 11, 1982, continued on August 13, 1982, at which the Company submitted the testimony of Charles E. Bayless, its Financial Vice President. Eleven exhibits were submitted over the two days, five of which were prefiled.

Mr. Bayless stated that the proceeds of the sale of Preferred Stock will be used to pay off a portion of the short-term notes outstanding at the time of sale (estimated to be \$126,600,000 on August 16, 1982). With respect to the limitations stated in the Commission's Second Supplemental Order No. 15,760 in DR 82-141 precluding the use of proceeds from future Company financings to further the construction of Unit II at Seabrook Station until one or more of the three conditions stated in the Order are met, the two limitations will remain in effect, except that per agreement of all parties subject to their rights under appeal of DR 82-141, all reasonable expenses relating to mothballing of Unit II are allowable expenditures for the proceeds of this financing. The issue

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of mothballing, including the testimony of Company Witness, Paul T. Welch, proposed Exhibit 11, all Seabrook contracts, labor and total cost estimates, etc. were postponed until a future proceeding.

The Preferred Stock will be sold through a negotiated public offering. Mr. Bayless described the expected terms of sale to be negotiated and stated the reasons why the Company proposed an agreement with underwriters reached through negotiation rather than through competitive biddings.

Mr. Bayless presented testimony as to current securities market conditions and foreseeable trends prior to the offering of the Preferred Stock. Mr. Bayless concluded that the price of the stock would be \$25.00, that the dividend rate required to make the Preferred Stock marketable would most likely be in the 16.5 to 17.070 range, and the compensation to be paid to underwriters would most likely not exceed 4 1/2% of the selling price.

The Company submitted a balance sheet as of June 30, 1982, actual and proformed to reflect the issuance of Bankers' Acceptances in the aggregate amount of \$20,000,000 and the proposed sale of the Preferred Stock. Exhibits were also submitted showing: disposition of proceeds; estimated expenses of the issue; and capital structure as at June 30, 1982, actual and pro-formed to reflect the issuance of Bankers' Acceptances in aggregate amount of \$20,000,000 and the proposed sale of the Preferred Stock. Projected financing requirements and estimated construction expenditures were outlined in testimony and supplemented by further information supplied by the Company at the Commission's request. A certified copy of authorizing votes of the Company's Board of Directors was put in evidence.

The Commission will, as is our customary practice, reserve jurisdiction to approve the number of shares to be sold and the price thereof.

Based upon all of the evidence, the Commission finds that the proceeds from the proposed financing will be expended: (1) to pay off a portion of the short-term notes outstanding at the time of the sale; (2) to finance the purchase and construction of additional such property located in the State of New Hampshire; and (3) for other proper corporate purposes, all of the foregoing being subject to the conditions as follows:

(a) Pursuant to the provisions of RSA 369, to the extent these proceeds are used for the furtherance of work at Seabrook Station Site, these proceeds can only be used for the furtherance

of work on Seabrook I and common plant associated with both units.

(b) None of the proceeds of this issue can be used in whole or in part for construction of Seabrook Unit II with the only exception being the reasonable costs of mothballing Seabrook Unit II.

The Commission finds that the issuance of the Preferred Stock under the terms and conditions set forth by the Commission in this order will be in the public interest pursuant to RSA 369. 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 be, and hereby is, authorized to issue and sell not exceeding one million two hundred thousand (1,200,000) shares of Preferred

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Stock, twenty-five dollars (\$25) par value, for cash in accordance with the foregoing report and subject to the conditions set forth both in this Report and in Second Supplemental Order No. 15,760 (67 NH PUC 490, 47 PUR4th 167); and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall submit to this Commission the number of shares of said P referred Stock to be sold, the purchase price thereof, and dividend rate thereon, after which a Supplemental Order will issue approving the number of shares of the Preferred Stock to be sold and the purchase price and dividend rate thereon; and it is

FURTHER ORDERED, that the proceeds from the sale of said Preferred Stock shall be used for the purpose of discharging and repaying a portion of the outstanding short-term notes of said company and for the purposes set forth by the Commission in its Report in DR 82-141, Second Supplemental Order No. 15,760; and it is

FURTHER ORDERED, that pursuant to the provisions of RSA 369, to the extent these proceeds are used for the furtherance of work at Seabrook Station Site, these proceeds can only be used for the furtherance of work on Seabrook I and common plant associated with both units, and that none of the proceeds of this issue can be used in any fashion in whole or in part for construction of Seabrook Unit II, except for reasonable expenses associated with mothballing Seabrook Unit II, and the public interest standard of RSA 369 is only satisfied by strict adherence to these conditions; and it as

FURTHER ORDERED, that on January first and July first in each year, Public Service Company of New Hampshire 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 securities 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 eighteenth day of August, 1982.

MCQUADE, commissioner: I concur with this Report as far as it is consistent with my

opinion of July 16, 1982 in Docket No. DR 82-141 (67 NH PUC at p. 533, 47 PUR4th at p. 205).

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NH.PUC*08/24/82*[79360]*67 NH PUC 586*Public Service Company of New Hampshire

[Go to End of 79360]

Re Public Service Company of New Hampshire

DF. 82-193, Supplemental Order No. 15,816i

67 NH PUC 586

New Hampshire Public Utilities Commission

August 24, 1982

ORDER approving the issuance of preferred stock but limiting the use of the funds from the sale pending a state supreme court decision.

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SECURITY ISSUES, § 50.1 — Factors affecting authorization — Improvement of capital structure — Suspension of construction on plant.

[N.H.] It was reasonable, in light of a decision by the state supreme court staying the treatment of funds raised through the sale of stock towards a plant under construction, to permit a utility to offer for sale preferred stock for the specific purpose pay off a portion of the short-term notes outstanding at the time of the sale.

(MCQUADE, commissioner, concurs, p. 591.)

APPEARANCES: Pierre Cameron, and general counsel Frederick J. Coolbroth, and Martin L. Gross, for Public Service Company of New Hampshire (PNSH).

BY THE COMMISSION:

By an unopposed petition filed June 25, 1982, Public Service Company of New Hampshire (the "Company") a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as an electric public utility under the jurisdiction of this Commission seeks authority pursuant to the provisions of RSA 369 to issue and sell for cash not exceeding one million two hundred thousand (1,200,000) shares of Preferred Stock, twenty five dollars (\$25) par value. A duly noticed hearing was held in Concord on August 13, 1982, at which the Company submitted the testimony of Charles E. Bayless, its Financial Vice President. Eleven exhibits were submitted over the two days, five of which were prefiled.

The Commission heard the testimony of Mr. Bayless, in which he stated that the proceeds of

the sale of the preferred stock will be used to pay off a portion of the short-term notes outstanding at the time of sale (estimated to be \$126,600,000 on August 16, 1982). The Commission approved the issuance of 1,200,000 shares by its Order No. 15,812 on August 18, 1982 (67 NH PUC 584), subject to the conditions found to be required in the public interest in DF 82-141, Order No. 15,760 (67 NH PUC 490, 47 PUR4th 167).

On August 19, 1982, the Commission was made aware that the Supreme Court had suspended Order No. 15,760. Shortly thereafter, a filing was received from PSNH requesting an increase in the level of shares to be issued to 2,400,000 with corresponding amount of proceeds being approximately \$60,000,000. The increased level of shares was said to be justified because of the improved market conditions.

The Commission held an additional hearing on August 23, 1982 where the Commission again heard testimony from Mr. Bayless and received five additional exhibits.

The Commission raised the issue of whether or not a modification of Order No. 15,812 was necessary in light of the Supreme Court's suspension of Order No. 15,760.

During the questioning of Mr. Bayless certain additional information surfaced. One additional factor that emerged was still another example of a utility delaying a second unit of a twin unit project until the first unit was completed. The utility, Middle South Utilities, is a company with six times the revenue of PSNH, yet the responded to their financial problem resulting from negative cash flow by delaying the second unit until the first unit was completed. This Middle South first unit is scheduled for completion in early 1983 and its completion will lead to

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a resumption of work on their second unit. The importance of Middle South is that it was named as one of three companies with some of the same negative internal cash problems as PSNH. The two other companies mentioned that have negative internal cash problems are partners in Seabrook — United Illuminating and Maine Public Service Company.

This evidence, together with the evidence heard concerning other utilities in other proceedings, continues to demonstrate a pattern of delaying a second unit to allow completion of a first unit and to avoid the dangers of negative internal cash.

Evidence was also received that negative internal cash is increasing in magnitude from the shocking levels given in our proceedings in DF 82-141. At that time negative internal cash in 1982 was estimated to be at a level of negative \$44,606,000. Now the estimate has been revised to a worsened position of negative \$47,000,000.¹⁽⁷⁰⁾ Since 1982 has still another four months to go and since the 1983 level was previously estimated at a negative \$67,556,000, it would appear reasonable to assume that the 1983 level may increase to a negative \$70,000,000.²⁽⁷¹⁾

As to the question of delay of Sea-brook Unit II, the Commission was made aware that despite its position in DF 82-141 PSNH was itself considering delaying Seabrook Unit II. PSNH testified that it was waiting to see the results of a new construction forecast. PSNH last per-formed such an analysis in April of 1981. Breaking with its tradition of an annual update, PSNH is now waiting eighteen months to release a new construction forecast. PSNH Witness

Bayless testified that if the construction forecast reveals a significant increase in the total cost of the project and especially in the financial requirements between now and the advent of Seabrook I, PSNH would delay Unit II so as to preserve the completion of Seabrook I.³⁽⁷²⁾

The PSNH construction estimate given in April 1981 is by all accounts out of date. To continue to use that estimate in the face of an increased workforce,⁴⁽⁷³⁾ an increase in the borrowing costs (AFUDC), and an increase in the amount of time that the plant is behind schedule all support such a finding.

Furthermore, Moody's has stated that the level of construction costs associated with Seabrook will be higher regardless of any delay associated with Seabrook II. Moody's thus joins this Commission,⁵⁽⁷⁴⁾ the Vermont Public Service Board,⁶⁽⁷⁵⁾ Boston Edison Company⁷⁽⁷⁶⁾ and the Nuclear Regulatory Commission in finding that the present April 1981 estimate as to Seabrook to be outdated and low.

PSNH financial witnesses have continuously referred to the problems associated with uncertainty and the negative effects that such uncertainty causes in the financial markets. PSNH's proposed financings the latter part of 1982 are greatly affected by the level of construction necessary to finance. Based upon

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the evidence in this proceeding, the Commission finds that for PSNH's financings to proceed, the uncertainty as to PSNH's estimate as to the total cost of Seabrook must be alleviated.

Consequently, the Commission will require PSNH to file six copies of its proposed Seabrook construction cost estimate to be filed prior to any hearing on any further PSNH financings. This estimate is to include: (a) PSNH's best estimate as to the ultimate AFUDC costs that have occurred to date and any revisions for both 1982 and all subsequent years; (b) nuclear fuel costs; (c) due to the Supreme Court stay of our Order No. 15,760 and assumption of no delay in Seabrook II.

It is not in the public interest to have financial experts such as Bayless and Harrison attempting to sell securities without the most recent information available. While Mr. Bayless believes he can wait until PSNH's Mr. Merrill finishes his analysis in November, the Commission finds that for us to properly protect the public interest, Mr. Merrill must present his cost estimates sooner than November. If after all that has transpired over the last six months, PSNH is now actively considering delay or a slowdown of Unit II, it is in the interest of orderly regulation, both in front of this tribunal as well as others, to have PSNH's most recent information to review as soon as possible.

Furthermore, based on Mr. Bayless' testimony, the Commission finds that PSNH's previous assumption of a Mid-east bond financing is no longer an option due to the present political situation in the Mideast. The Commission also finds that there is not at this time any market for PSNH's proposed EURO-BOND financing. PSNH relied on these financings in DF 82-141 in taking its position that there was not a need to delay Unit II. Since their own testimony now rules out these options, the Commission will require PSNH to file testimony prior to its next proposed financing as to how it purports to replace these financings.

The Commission in DF 82-141, Order No. 15,760 and in Order No. 15,812 found, that the public interest standard of RSA 369 required the imposition of the following conditions:

(a) Pursuant to the provisions of RSA 369, to the extent these proceeds are used for the furtherance of work at Seabrook Station Site, these proceeds can only be used for the furtherance of work on Seabrook I and common plant associated with both units.

(b) None of the proceeds of this issue can be used in whole or in part for construction of Seabrook Unit II with the only exception being the reasonable costs of mothballing Seabrook Unit II.

These conditions would be imposed on this updated financing absent any other direction. However, due to the stay of that order and those conditions, the Commission will, absent clarification by the New Hampshire Supreme Court, find that the Court has stayed the two conditions pending the Court's decision with the reimposition of those conditions occurring should the Supreme Court uphold our Order No. 15,760, or provide a date when those conditions can again be applied to the proceeds.

The Commission with this understanding of the Court's existing order will as is our customary practice reserve jurisdiction to approve the number of shares to be sold and the price.

Based upon the Commission's understanding of the Court's order, the Commission will allow the proceeds to be used to pay off a portion of the short-term

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notes outstanding at the time of the sale.

The Preferred Stock will be sold through a negotiated public offering. Mr. Bayless described the expected terms of sale to be negotiated and stated the reasons why the Company proposed an agreement with underwriters reached through negotiation rather than through competitive biddings.

Mr. Bayless presented testimony as to current securities market conditions and foreseeable trends prior to the offering of the Preferred Stock. Mr. Bayless concluded that the price of the stock would be \$25.00 that the dividend rate required to make the Preferred Stock marketable would most likely be in the 15.5% range, and the compensation to be paid to underwriters would most likely not exceed 4 1/2% of the selling price.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire be and hereby is authorized to issue and sell not exceeding two million four hundred thousand (2,400,000) shares of Preferred Stock, twenty-five dollars (\$25) par value, for cash in accordance with the foregoing Report; and it is

FURTHER ORDERED, that because the Commission is entrusted with the protection of the public interest, the Commission would, independent of any other direction, find that the public

interest is only satisfied by adherence to the conditions set forth in DF 82-141, Order No. 15,760 (67 NH PUC 490, 47 PUR4th 167). However, due to the stay of that order and those conditions, the Commission will, absent clarification by the New Hampshire Supreme Court, find that the Court has stayed the two conditions pending the Court's decision with the reimposition of those conditions occurring should the Supreme Court uphold our Order No. 15,760, or provide a date when those conditions can again be applied to the proceeds; and as a consequence it is

FURTHER ORDERED, that the proceeds from the sale of said Preferred Stock shall be used for the purpose of discharging and repaying a portion of the outstanding short-term notes of said company; and it is

FURTHER ORDERED, that on January first and July first in each year, Public Service Company of New Hampshire 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 securities being authorized until the expenditure of the whole of said proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that prior to the next hearing concerning a Public Service Company financing, PSNH is to deliver six (6) copies of its estimate as to the total costs of Seabrook Station, including AFUDC and nuclear fuel and without any delay in Seabrook II for evaluation in the next PSNH financing; and it is

FURTHER ORDERED, that PSNH file testimony prior to its proposed financing as to how it purports to replace the Mideast Bond Financing and the Eurobond Financing.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of August, 1982.

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MCQUADE, commissioner: I concur with this Report as far as it is consistent with my opinion of July 16, 1982 in Docket No. DF 82-141 (67 NH PUC at p. 533, 47 PUR4th at p. 205).

FOOTNOTES

¹Report and Order No. 15,760 (67 NH PUC at p. 512, 47 PUR4th at pp. 187, 188.)

²Report and Order No. 15,760 (67 NH PUC at p. 513, 47 PUR4th at pp. 187, 188.) For perspective it is interesting to note the Commission records, which include the Forbes 500, indicates that Braniff International Airlines had a negative internal cash of 72,105,000 as of December 31, 1981.

³A position very close to the Commission's decision in DF 82-141 and in accordance with PSNH's prior position that they could afford a 35% ownership level only if Seabrook II was delayed four years.

⁴PSNH's workforce at Seabrook is 1400 workers over that estimated to be employed at this time in the April 1981 forecast.

⁵DF 82-141, Order No. 15,760 (67 NH PUC 490, 47 PUR4th 167).

⁶Re Washington Electric Co-op., Inc. (Vt 1982) 45 PUR4th 178.

⁷DF 82-141, Order No. 15,760 (67 NH PUC 490, 47 PUR4th 167).

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NH.PUC*08/25/82*[79361]*67 NH PUC 591*Fryeburg Water Company

[Go to End of 79361]

Re Fryeburg Water Company

DR 82-25, Supplement Order No. 15,818

67 NH PUC 591

New Hampshire Public Utilities Commission

August 25, 1982

ORDER granting an increase in revenues for a water company in light of a decision by the Maine commission finding the increase just and reasonable.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Fryeburg Water Company, a public utility engaged in the business of supplying water service in the State of New Hampshire, filed certain revisions to its tariff NHPUC No. 7, seeking an increase in revenues from its General Service customers of 17.9%; and

WHEREAS, a similar filing was made before the Maine Public Utilities Commission which has jurisdiction over 91% of the customers served by Fryeburg; and

WHEREAS, the Maine Commission has found the tariff rates to be just and reasonable as filed; and

WHEREAS, this Commission is satisfied that the deliberations and decision of the Maine Commission is in the best interest of Fryeburg's New Hampshire Customers; it is

ORDERED that Order No. 15,466 that suspended Fifth Revision Sheet 2 and Third Revision Sheet 3 and 4 of Tariff NHPUC No. 7 is hereby lifted; and it is

FURTHER ORDERED, that Fifth Revision Sheet 2 and Third Revision Sheet 3 and 4 of Tariff NHPUC No. 7, Fryeburg Water Company shall become effective for all service rendered on or after August 12, 1982; and it is

FURTHER ORDERED that such tariff pages shall bear the notation "Authorized by NHPUC Order No. 15,818 in case DR 82-25, dated August 25, 1982.

By Order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1982.

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NH.PUC*08/25/82*[79362]*67 NH PUC 592*Public Service Company of New Hampshire

[Go to End of 79362]

Re Public Service Company of New Hampshire

DF 82-193, Second Supplemental Order No. 15,821

67 NH PUC 592

New Hampshire Public Utilities Commission

August 25, 1982

PETITION of an electric company for authority to issue and sell preferred stock; granted.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, our Report and Supplemental Order No. 15,816 dated August 24, 1982 (67 NH PUC 586), issued in the above-entitled proceeding, authorized Public Service Company of New Hampshire to issue and sell not exceeding two million four hundred thousand (2,400,000) shares of Preferred Stock, \$25 par value, subject to further order of this Commission; and

WHEREAS, in compliance with said Report and Supplemental Order No. 15,816, following negotiations with underwriters, the Company submitted to this Commission the details concerning the number of shares of Preferred Stock to be sold, and the price, dividend rate and other terms thereof, which contemplate the issue and sale of two million four hundred thousand (2,400,000) shares of a new series of its Preferred Stock, \$25 par value, designed "Sinking Fund Preferred Stock 15.44% Dividend Series, \$25 par value", either to the public, through an offering by underwriters on behalf of the Company, or to underwriters who will make a public offering thereof, or both; said Preferred Stock to be sold bearing a dividend rate of fifteen and forty-four hundredths percent (15.44%) per year, at a price to the Company of twenty-five dollars (\$25) per share, and to provide for a mandatory sinking fund under which one hundred twenty thousand (120,000) shares will be redeemed annually beginning August 15, 1987, and for optional redemption of an additional one hundred twenty thousand (120,000) shares on each mandatory sinking fund redemption date with compensation to the underwriters in the aggregate amount of two million three hundred fifty-two thousand dollars (\$2,352,000), all as set forth in the Underwriting Agreement between the Company and the underwriters, a copy of which is to be filed with the Commission; and

WHEREAS, after due consideration, it appears that the issue and sale of said Preferred Stock upon the terms, conditions and price, hereinabove set forth or referred to, is consistent with the public good; it is

ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue and sell at a price of twenty-five dollars (\$25) per share in cash two million four hundred thousand (2,400,000) shares of its Sinking Fund Preferred Stock, 15.44% Dividend Series, \$25

par value, as hereinabove set forth, with compensation to the underwriters

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in the aggregate amount of two million three hundred fifty-two thousand dollars (\$2,352,000); and said Stock to be sold at said price of twenty-five dollars (\$25) per share either to the public, through an offering by underwriters on behalf of the Company, or to underwriters who will make a public offering thereof, or both, all as set forth in the Underwriting Agreement between the Company and the underwriters; and it is

FURTHER ORDERED, that all other provisions of said Report and Supplemental Order No. 15,816 of this Commission are incorporated herein by reference.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1982.

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NH.PUC*08/25/82*[79363]*67 NH PUC 593*New Hampshire Department of Public Works and Highways

[Go to End of 79363]

Re New Hampshire Department of Public Works and Highways

Intervenors: Boston and Maine Corporation et al.

DX 82-154, Order No. 15,823

67 NH PUC 593

New Hampshire Public Utilities Commission

August 25, 1982

PETITION of a highway authority for permission to retire overhead bridge and substitute grade crossing; granted.

CROSSINGS, § 32 — Establishment — Re-placement of bridge by grade crossing — Safety considerations.

[N.H.] In view of the facts that a bridge crossing over a rail line did not meet current requirements for highway facilities, that automobile traffic on the roadway was increasing, and that the possibility of abandonment of the rail line and further deterioration of the bridge existed, the commission granted authority to remove the bridge and to replace it with a grade crossing.

APPEARANCES: Roderick Cyr, for the N.H. Department of Public Works and Highways; John Adams, manager of agreements, for the Boston and Maine Corporation; John Hoar, Jr., representative Rockingham District No. 8, pro se.

BY THE COMMISSION:
REPORT

By petition filed May 21, 1982, the Department of Public Works and Highways seeks to retire an overhead bridge which carries Railroad Avenue across the tracks of the Boston and Maine Corporation in the Town of Seabrook and construct a grade crossing at the same location. Hearing thereon was held at

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the office of the Commission in Concord on July 14, 1982.

Plans have been developed for a Federal Aid Project, BRZ401 (1), N.H. Project No. S-3861 for improvement of a section of Railroad Avenue on which is an overhead bridge with steep approaches. The project is 0.24 miles in length and estimated to cost \$275,000.00 It will provide two 11 ft. lanes with 4-ft. shoulders and would cross the railroad tracks at grade. The bridge is posted for 8-ton loads. It is a timber structure and does not meet current requirements for present highway facilities. The verticle clearance is approximately 16-feet above the rails and the approaches are constructed on a steep grade. Rather than reconstruct or replace the structure it is proposed to remove the bridge and it's approaches and construct a grade crossing at the same location. The area is generally flat with no obstructions other than buildings and growth to obscure the views once the present fill for the approaches is removed. Eighty percent of the cost will be borne by Federal participation with twenty percent to be borne by the State. No contribution is asked from the Railroad Corporation.

A public hearing was held before the New Hampshire Public Utilities Commission at the Seabrook Town Hall on April 5, 1982, following which it was recommended that the project be approved.

The Selectmen of Seabrook have advised the Commission by letter of June 7, 1982, that they support the project.

Traffic counts indicate that 2200 cars use the highway daily which is projected to be 5,000 per day within 20 years.

Sight distances for the grade crossing are submitted from two points at each highway approach; at 350 feet distance on the approach from the west a view to the north for approaching trains would be 140 feet and to the south 100 feet. At 350 feet east of the crossing trains approaching from the north would be visible for 40 feet while to the south it would be 75 feet. At a point 100 feet east of the crossing the view would increase to 100 feet in both directions and from 100 feet west of the crossing the views would be equal or greater than those at 350 feet distance.

While the petitioner is willing to construct a grade crossing in lieu of the overhead bridge it requests authority to eliminate the crossing by removing ties and rails if during the construction period, it should develop that the line of the railroad should be authorized to be abandoned.

The Railroad witness stated that the line of railroad from milepost 41.44, which is the Massachusetts-New Hampshire Line, to 42.70, a distance of 1.26 miles has been authorized to be

abandoned by a decision dated April 1, 1982 of the United States Federal Court for the District of Massachusetts, Justice Frank J. Murphy, under whose jurisdiction the bankruptcy proceedings of the Boston and Maine Corporation are being handled. This line of railroad extends into Massachusetts and crosses the Merrimack River via a drawbridge. This bridge has not been operable for approximately ten years and the rails south of New Hampshire were being removed. However, the line in Massachusetts has been purchased by the Massachusetts Bay Transportation Authority and the rails were required to be replaced to keep the line intact.

It is apparent that when the petition was filed the Court's decision had already been issued authorizing the abandonment of the portion of the line over

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which the involved bridge and crossing is located.

The Railroad Corporation does not oppose the project provided it is not required to bear any direct or incidental costs relative to its construction. It is opposed to the elimination of the crossing because there are no plans for the tearing up of the rails even though the authority has been received for abandonment.

Representative Hoar, Jr. does not oppose the substitution of the grade crossing for the overhead bridge but strongly opposes the change if the highway should be constructed over the railroad right-of-way without retaining the rails for any possible future train operations.

This line of railroad was formerly a main line over which freight and passenger trains were operated between Boston, Massachusetts and Portland, Maine via Newburyport, Massachusetts; Hampton and Portsmouth, New Hampshire, and Maine points to Portland. Its Massachusetts connection was severed several years ago when operations over the Merrimack River Draw Bridge became defective. Even though abandonment has been authorized for several lines in this State, the Railroad Corporation does not proceed forthwith to tear up the tracks and thus far, it has not petitioned this Commission for such authority under the provisions of RSA 365:24a. There is also a strong feeling in many quarters that rails should not be removed on any lines in the State because once removal has been accomplished reversionary rights may become effective and the possibility of future replacement is forever lost.

The abandonment of a certain few lines in New Hampshire began in the early twenties subsequent to World War I. It was accelerated in the late 1930's following the floods of 1936 and 1938 and since the Boston and Maine Corporation was forced into bankruptcy in 1970 there have been several more such attempts. In only two instances have abandoned lines been reactivated throughout this period and in both, the State of New Hampshire has purchased them and contracted for their operations. One is the Concord-Lincoln Line, formerly a part of the Boston and Maine system, and the other is the Beecher Falls Branch, formerly of the Maine Central Railroad.

The rail-line under consideration herein is presently connected to the Boston & Maine system via the easterly section of the Manchester-Portsmouth Branch from Rockingham Junction through Portsmouth. It is the only rail access to the Hamptons and the Sea-brook Nuclear Plant now under construction. The presently authorized abandonment does not affect the ability to continue service to this construction.

To require the continuance of a grade crossing on an abandoned railroad line creates certain problems as to its maintenance. It is doubtful that a bankrupt Railroad would maintain such a crossing to the standards required by the traveling public.

Upon consideration of all the facts, the Commission is of the opinion that the highway should be constructed across the railroad right-of-way at grade and the ties and rails removed for the width of the crossing only so that the interruption of the track will extend only on that portion which is within the bounds of the highway. It is further of the opinion that the removed rails and ties should be held in stock to be relaid across the highway should rail service be reactivated or until, through the statutory

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procedure, the rail-line adjacent thereto be authorized to be torn up.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the N.H. Department of Public Works and Highways, and the Boston and Maine Corporation be, and hereby is, authorized to remove the bridge which crosses the railroad track at Railroad Avenue and the approaches thereto, in the Town of Sea-brook, and construct a highway at grade in lieu thereof in accordance with plans on file at the office of this Commission marked DX 82-154; and it is

FURTHER ORDERED, that the rails and ties shall be removed within the width of the highway, but the rails shall be retained for a suitable crossing should future developments require the operation of trains, or until otherwise ordered by the Commission; and it is

FURTHER ORDERED, that no portion of the costs of the construction of the crossing, the removal of the bridge and the approaches thereto, nor the removal of rails and ties shall be borne by the Boston and Maine Railroad Corporation.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1982.

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NH.PUC*08/25/82*[79364]*67 NH PUC 596*Hudson Water Company

[Go to End of 79364]

Re Hudson Water Company

DR 82-179, Supplemental Order No. 15,841

67 NH PUC 596

New Hampshire Public Utilities Commission

August 25, 1982

ORDER permitting a water company tariff that allowed the installation of back-flow prevention devices to become effective.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, Hudson Water Company, on June 16, 1982, filed certain revisions of its tariff, NHPUC No. 7 — Water, that would provide for the installation of back-flow prevention devices; and

WHEREAS, this Commission, by Order No. 15,731 suspended the filing (3rd Revised Page 8) for further review and investigation; and

WHEREAS, revisions have been made and we are satisfied that the acceptance of this filing will be for the public good; it is

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ORDERED, that Fourth Revised Page 8 shall be allowed to become effective as of August 26, 1982.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1982.

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NH.PUC*08/26/82*[79365]*67 NH PUC 597*Hampton Water Works Company

[Go to End of 79365]

Re Hampton Water Works Company

Intervenors: Town of Hampton et al.

DE 82 -170, DE 82-184, Order No. 15,843

67 NH PUC 597

New Hampshire Public Utilities Commission

August 26, 1982

PETITION exemption from a zoning ordinance to permit construction of a water tank and tower; petition for condemnation of property; granted.

1. ZONING — Overriding local ordinance — Exercise of commission authority — Criteria considered.

[N.H.] The commission, while acknowledging its authority to override local zoning ordinances when such zoning impeded the rendering of adequate service to all customers of a

utility, noted that it would not summarily disregard the decision of a zoning board but would carefully review the utility's request to invoke the statutory provisions governing zoning exemptions and determine whether the exemption was necessary for the utility to provide adequate and safe service to its service territory. p. 599.

2. ZONING — Ordinance prohibiting construction — Power to override ordinance — Grounds for refusal.

[N.H.] The commission dismissed a petition to override a local zoning ordinance prohibiting the construction of a water tank and tower in a residential neighborhood, finding: (1) the potential damage to neighboring property; (2) the loss of value to nearby landowners from the weakening of the zoning ordinance; (3) the need to preserve legitimate local planning purposes; (4) the absence of meaningful discussion as to other sites; (5) the questionable procedure used in the purchase of the subject property; and (6) the recognition that the proposed construction was more industrial oriented than residential, individually and collectively supported the dismissal. p. 599.

3. EMINENT DOMAIN, § 5 — Taking of residential property — Utility construction — Necessity as a factor.

[N.H.] Where an alternate site for the construction of a water tank and tower was better suited to the constructor, met the same selection criteria used by the water company in selecting the requested site, and was a permissible construction site under a local zoning ordinance, the commission found that the taking of the property would be for the convenience and welfare of the public good. p. 600.

APPEARANCES: Michael Lenehan, and Dom S. D'Ambruoso, for Hampton Water Works Company (hereafter called the Company); John H. McEachern for the town of Hampton; Thomas J. Donovan for Chester Davis, Jr. and Marion Davis;

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John D. Colliander for group of concerned residents.

BY THE COMMISSION:

REPORT

On June 11, 1982, the Hampton Water Works Company filed a petition for an exemption from the Zoning Ordinance of the Town of Hampton to permit the construction and maintenance of a water tank and tower on premises known as 225 Exeter Road.

On the same day the Hampton Water Works Company filed a petition for condemnation of certain property located off of Exeter Road owned by Chester Davis, Jr. and Marion Davis.

The Commission on June 23, 1982 issued an Order of Notice for a public hearing to be held on August 10, 1982 at 10:00 a.m. and 7:00 p.m. at the Selectman's office at 136 Winnacunnet Road, Hampton.

A motion was filed on behalf of the Davis' to continue the issuance of damages to their

property to a future date subsequent to a determination of the necessity for a taking of a portion of the premises owned by them.

The motion was granted. A request was made to the Commission to view both properties in issue before the Commission. A viewing took place prior to the public hearing with all counsel present.

The Commission consolidated the two dockets for the convenience of all the parties, witnesses, and members of the general public and permitted testimony, exhibits, and comments to be used in both proceedings regarding the necessity for a water tank and tower to be located in the "Coffin Hill" area of Hampton and the costs associated with the construction of a water tank and tower at each of the locations.

The Company presented three witnesses, Theodore K. Hillabrand, James Salser, and Gino D. Games who testified and were cross-examined by the parties. Testimony was also given by Chester Davis and Merle Straw a realtor. Attorney Colliander presented the testimony of Edward Jackson a realtor. Statements were made by many residents of the area. William McClelland, Carol Geissler, Albert Morse, Richard Howe, Richard Smith, Mimi Water, Ann Hubbard, Don Otto, John Walker, Henry Stone, F. James Carr, William Forgarty, John Lowry, George Coburn, Art Moody, Paul Thurlow, Fred Donovan, Hank Richardson, Mr. Walker, Ralph Colliander and Bertha Quimby.

It should be noted at the outset that there is no dispute that a water tank and tower is necessary in the Coffin Hill area for the water company to provide adequate and safe service to the customers of Hampton Water Works and the Commission so finds.

The paramount issue before the Commission is where shall the water tank and tower be located. The Company maintained that the proper location is 225 Exeter Road because they presently own the land and the tank and tower can be constructed at the least cost. They maintain that all of the alternate sites are more expensive to purchase and they would require additional engineering and site location costs. The Company maintains that the Davis property is suitable but costs more to acquire and requires additional engineering and site work. However, they petitioned the Commission to condemn the Davis land if the request to utilize the 225 Exeter Road location is denied and to fix compensation for the taking, as they were

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unsuccessful in private negotiations to purchase same.

Mr. Davis contends that a portion of his land is not the best location, that the 225 Exeter Road is better suited, that his property is not for sale, and a taking of a portion of his property will substantially damage his remaining parcel.

The majority of the area residents and counsel for the Town of Hampton contend that the 225 Exeter Road location violates the Zoning Ordinance of the Town and will severely damage the value of their properties. In their opinion, the water tank and tower should be located on the Davis site in the industrial zone or in some other location in an industrial zone.

The Commission's jurisdiction is invoked for the 225 Exeter Road site pursuant to RSA 31:62 of which the pertinent language reads as follows:

"* * * 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."

[1] The Zoning Board of Adjustment at the request of the Company had a full hearing for a variance from the provisions of the zoning ordinance to allow the construction and maintenance of a water tank and tower at 225 Exeter Road and denied the request. When a utility seeks relief from a zoning ordinance from a Zoning Board this Commission will not summarily disregard that board's decision. The Commission under those circumstances will carefully review the utility's request to invoke the provisions of RSA 31:62 and determine whether the exemption is necessary for the utility to provide adequate and safe service to the total region serviced by the utility. The Commission acknowledges its authority to override local zoning ordinances when such zoning impedes the rendering of adequate service to all of the customers of the utility. However, in this case the Company falls short in its proof that it is necessary to locate the water tank and tower at 225 Exeter Road.

There is a potential that it "may" cost more to locate at a different location where zoning permits such use. However, this result is far from certain based on this record. Placement of the water tank and tower at 225 Exeter Road would result in a literal taking of neighbor Quimby's property. The value of the town zoning ordinance to its residents would be significantly and quite possibly permanently weakened by the placement of a water tower and tank in a residential neighborhood. The loss of value to nearby lot owners resulting from a loss of that zoning ordinance protection would be sizeable.

The costs to date associated with the purchase of the 225 Exeter Road property were not prudently incurred. The record reveals a failure to pursue reasonable damage claims due to a fire in the existing house located on the property. The Company is to undertake reasonable methods to effectuate the recovery of insurance for the fire damage and is hereby placed on notice that the facts surrounding the purchase of the 225 Exeter Road property are by all accounts questionable and will be further analyzed in any future rate proceeding.

[2] The damage to the Quimby property, the loss of value to nearby landowners resulting from the weakened zoning ordinance, the preservation of legitimate

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local planning purposes, the absence of meaningful discussion as to other sites, the questionable procedure used in the purchase and retention of the 225 Exeter Road property, and a recognition that this proposed construction is more industrial oriented than residential, individually and collectively support a dismissal of the petition to override the local zoning ordinance.

[3] The Commission finds that the Davis property is better suited for the construction of the water tank and tower. The site is on the same ridge as Exeter Road and meets the same selection criteria used by the Company. Equally important, it is also permitted by the zoning ordinance. The Commission further finds the taking of the portion of the Davis land to be for the convenience and welfare of the public good. The selection of this site will preserve the value of

the land in the industrial zone by providing water and access.

The Commission having postponed the question of damages to the Davis property will address that question at a hearing to be held in the future. The Commission finds that meaningful discussions concerning damages to the Davis property have not taken place and the parties are directed to meet in a good faith effort to negotiate as to size, location, and price. If such negotiation cannot be accomplished by August 30, 1982, the Secretary of the Commission shall schedule a hearing on September 1, 1982 at 11:00 A.M. at its offices in Concord to adjudicate the issue of damages.

Our Order shall issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the petition filed in Docket DE 82-170 is denied; and it is

FURTHER ORDERED, that the petition filed in DE 82-184 is granted in part. That a taking of the subject property is necessary for the convenience and welfare of the public good; and it is

FURTHER ORDERED, that the parties negotiate in good faith as to the price for the land to be taken. If said negotiation is not complete by August 30, 1982, the Secretary is directed to schedule a hearing to determine the exact location of the parcel needed for the construction and maintenance of the water tank and tower and to fix damages on September 1, 1982 at 11 a.m.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of August, 1982.

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NH.PUC*08/26/82*[79366]*67 NH PUC 601*Concord Natural Gas Corporation

[Go to End of 79366]

Re Concord Natural Gas Corporation

DE 82-8, Second Supplemental Order No. 15,844

67 NH PUC 601

New Hampshire Public Utilities Commission

August 26, 1982

ORDER levying fine against natural gas utility for failure to submit a distribution system plan of action.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on January 7, 1982, this Commission ordered Concord Natural Gas to perform a distribution system analysis and to submit, within six months, a written summary of the results

including any actions the Company has taken or will take because of their findings; and

WHEREAS, on January 27, 1982, the Company filed a Motion for Rehearing which, among other things, requested a three-month extension of that requirement; and

WHEREAS, on March 4, 1982, Commission denied such motion; and

WHEREAS, on June 3, 1982, the Company requested a one-month extension of that requirement to July 30, 1982; and

WHEREAS, that extension was verbally granted by the Commission; and

WHEREAS, a further request for an extension to August 2 was subsequently verbally approved by the Commission; and

WHEREAS, a Company letter of July 31, 1982, advising of their intent to inform the Commission after the week of August 16, 1982, of their intended actions has no basis of authority and, in fact, contravened the instructions of the Commission; and

WHEREAS, as this date, the Company has not complied with that portion of the Commission's order requiring that it submit to the Commission the actions the Company has taken or will take because of their findings; it is

ORDERED, that Concord Natural Gas Corporation be fined \$10.00 per day for each day after August 2, 1982 that the Company has been delinquent in forwarding the required information containing the Company's plan of action resulting from its distribution system analysis.

By Order of the Public Utilities Commission of New Hampshire this twenty-sixth day of August, 1982.

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NH.PUC*08/26/82*[79367]*67 NH PUC 602*City of Laconia

[Go to End of 79367]

Re City of Laconia

DX 82-188, Order No. 15,845

67 NH PUC 602

New Hampshire Public Utilities Commission

August 26, 1982

PETITION for authority to construct a seasonal, nonsignaled, nongranted, grade crossing over state-owned railroad track; granted.

CROSSINGS, § 34 — Establishment — Hazards and public convenience — Seasonal crossing.

[N.H.] The commission consented to the construction of a grade crossing for use only during

the winter where the evidence indicated that the crossing was necessary to provide year-round residents of the area with access to the store and post office during the winter season.

APPEARANCES: Kenneth Bohner, city manager, and Frank R. DeNormandie, director of public works, for the city of Laconia; Christine Kister, pro se; John Clement, assistant director, for the railroad division of N.H. Public Works and Highways; Keith Hall, pro se.

BY THE COMMISSION:

REPORT

By petition filed June 22, 1982, the City of Laconia seeks authority to construct a crossing at grade over the tracks of the State-owned Concord-Lincoln Railroad at Weirs Beach in the City of Laconia. Hearing thereon was held at Concord on August 4, 1982 at which no one appeared in opposition to the granting of the petition.

At Weirs Beach there is a boardwalk just east of the single track line which extends for several hundred feet. North of this area is the portion formerly known as the Methodist Camp Ground. There are several year round residents in the Camp Ground area whose only access is via a narrow overhead highway bridge with very steep approaches and a private grade crossing approximately one quarter (1/4) mile north of the bridge.

During winter months the snow and ice contribute to very slippery approaches and nearly impossible walking conditions on the bridge. The steep approaches level-off at the top so that long wheelbase trucks and busses are prevented from using this crossing.

It is proposed to construct a twenty foot roadway from Lakeside Avenue opposite Tower Street crossing the tracks at an angle of approximately 40° to Centenary Avenue which generally parallels the Railroad track easterly thereof. Its use is requested from November 1 of each year to the following May 1. During the summer months it would be closed by erecting a suitable chain or cable barrier. By doing so the residents of the area easterly of the railroad track will have a convenient access to the store and Post Office, both of which are westerly of the tracks. The overhead bridge would be closed and eliminate the necessity of trying to keep it open for traffic.

Six witnesses from the area appeared in support of the petition and letters were presented from over forty individuals

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all favoring the use of a crossing. The City Government of Laconia has appropriated \$15,000.00 for the construction of the crossing and does not expect any of the costs to be borne by the State-owned railroad. Plans call for a 2 1/2 inch asphalt surface over a crushed rock base adjacent to and between the rails. Due to the acute angle of the crossing its total width would be approximately 40 feet. The general terrain is relatively level. In the northwest quadrant there is a diner which limits the view of southbound trains from the westerly approach. The view for northbound trains from this approach is open except for evergreen trees which are placed along the west side of the track opposite the boardwalk.

The view on the easterly approach for both southbound and northbound trains is relatively good, but the angle of the crossing requires an over the shoulder view of southbound trains as is also the case for northbound trains on the opposite approach.

Train service in the area consists basically of daylight operations with a train operated in each direction on an average of two days per week. Operations are conducted at very slow speeds through the Weirs Beach boardwalk area because the boardwalk is immediately adjacent to the track and is the continuation of a station platform. A parking area abuts the track on the westerly side opposite the boardwalk and pedestrians use the track and boardwalk in this area.

The representative of the railroad division does not oppose the petition but desires a defined limit for the use of the crossing to enable it to coordinate properly with officials of the City of Laconia so that train service and traffic will be operated without difficulty or misunderstandings.

Upon consideration of all the facts the Commission is of the opinion that its consent should be given to the construction of the crossing for use only during the period from November 1 to May 1 of each year. The Commission is further of the opinion that public safety requires train speeds limited not to exceed ten miles per hour through the area and that one long whistle signal be given by all approaching trains when within 500 feet of the crossing during the period above specified and that cross buck signals be mounted on masts at the righthand side of each approach, which shall be removed during the period from May 1 to November 1 of each year when the crossing shall be closed. Our Order will issue accordingly.

ORDER

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

ORDERED, that the City of Laconia be, and hereby is, authorized to construct a grade crossing over the tracks of the N.H. State-owned railroad north of the Boardwalk at Weirs Beach in accordance with plans on file at this office marked DX 82-188; and it is

FURTHER ORDERED, that the use of the crossing be permitted only between November 1 and the following May 1 of each year and the rest of the season shall be closed to both pedestrian and vehicular travel; and it is

FURTHER ORDERED, that a cross-buck sign shall be mounted upon a mast at the righthand side of each approach, which sign shall be removed during the period from May 2 to October 31; and it is

FURTHER ORDERED, that all trains approaching the crossing shall give one long whistle when within 500 feet of the crossing and proceed over the crossing

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at a speed of not more than ten (10) miles per hour from November 1 to the following May 1 of each year.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of August, 1982.

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Re Information to Consumers

DE 80-174, Fourth Supplemental Order No. 15,846

67 NH PUC 604

New Hampshire Public Utilities Commission

August 27, 1982

APPLICATION of an intervenor group for compensation for participation in a Public Utility Regulatory Policies Act proceeding; granted in part and denied in part.

1. COSTS — Intervenor funding — Attorneys fees — Time spent in recovering PURPA compensation.

[N.H.] Attorney time spent on the recovery of compensation awarded in a Public Utility Regulatory Policies Act information to consumers investigation is not itself subject to an award of compensation. p. 605.

2. COSTS — Intervenor funding — PURPA proceeding — Guideline for compensation.

[N.H.] The prevailing salaries paid to in-house counsel with similar experience and training provides a reasonable guideline for compensation for time spent on the preparation and presentation of an intervenor's position in a Public Utility Regulatory Policies Act information to consumers investigation. p. 605.

3. COSTS — Intervenor funding — PURPA proceeding — Eligibility determination.

[N.H.] In determining whether an intervenor is eligible for an award of compensation for participating in a Public Utility Regulatory Policies Act proceeding, the commission must find that the intervenor made a substantial contribution to the commission's decision, weigh the extent of the contribution, and then award the full costs of advocacy after proper apportionment among utilities. p. 606.

4. COSTS — Intervenor funding — PURPA proceeding — Division of award among utilities.

[N.H.] Where the Public Utility Regulatory Policies Act rule governing an award of intervenor compensation clearly stated that liability for the amount of the award should be divided among the utilities involved, but did not specify how the division was to be made, the commission found that the fairest method of allocation would be to divide the award based upon the gross revenues of the participating companies. p. 606.

APPEARANCES: As previously noted.

BY THE COMMISSION:
REPORT

In Report and Third Supplemental Order No. 15,645 (67 NH PUC 323) the Commission found VOICE eligible for compensation in this docket. A hearing was held on May 21, 1982 for the parties

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to present evidence relevant to the fair compensation of VOICE under Rule 205.02. Subsequently, on July 2 VOICE filed a revised request for compensation. Public Service Company of New Hampshire (PSNH) filed a reply to the revised request on August 2.

FINDINGS

1. Time spent on compensation is not subject to an award of compensation. Only time spent on the preparation and presentation of a PURPA position is an eligible expense for intervenor compensation.
2. Prevailing salaries paid to in-house counsel of similar experience and training serve as a reasonable standard for compensation in this case. The Commission will accept PSNH's recommendation of \$10 - \$25 per hour.
3. VOICE substantially contributed to the Commission decision in Report and Order No. 14,545 (65 NH PUC 517) to prepare a separate statement of consumers' rights and responsibilities rather than allow each utility to provide its own summary.
4. VOICE substantially contributed in this docket through its comments on substance and format relative to the Staffs' draft Information to Consumer pamphlet.
5. Pursuant to Rule 205.02, the Commission will determine PSNH's liability by proportioning the amount of the award in relation to all of the utilities involved.
6. The appropriate assessment for PSNH will be determined in the same manner that the Utilities Assessment Tax is calculated, according to gross revenues.
7. Photocopying and travel expenses related to preparation of a PURPA position where substantial contribution has been found are eligible expenses for compensation.

DISCUSSION

[1] VOICE in this docket has requested compensation for 24 hours of attorney's time in efforts devoted to the recovery of compensation. Compensation can only be awarded for expenses incurred in the preparation and advocacy of a PURPA position as set forth in Rule 205.01 (c), (d) and (e). Time spent on the recovery of compensation is not subject to an award. (See also Report and Third Supplemental Order No. 15,626 (67 NH PUC 317).)

[2] VOICE contends that appropriate attorney's fees should be awarded based on the rates charged by private law firms. The Commission agrees with PSNH that such a standard does not take into account government funding of NHLA's overhead expenses. Accordingly, the prevailing salaries paid to in-house counsel with similar experience and training provides a reasonable guideline. The Commission will accept the range of \$10 - \$25 per hour. The

Commission also notes that VOICE increased the hourly amount from its initial request. The Commission does not look with favor on increases following a finding of eligibility.

PSNH argues that VOICE is not eligible for compensation because a "Rights and Responsibilities Pamphlet" has not yet been adopted. The Commission has found that VOICE contributed substantially to the decision to produce a separate pamphlet and to revising the draft proposal of the staff. Thus, in this docket the Commission did adopt a position advocated by VOICE — that a separate pamphlet on consumer rights and responsibilities be prepared.

Compensation

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in this docket only covers the time through February 1982, when the new rulemaking was initiated and DRM 82-28 was opened. While the Commission has ruled that VOICE is eligible for compensation in DRM 82-28, a finding of substantial contribution in that docket will not be determined prior to adoption of the pamphlet and other pertinent rules.

[3] PSNH further argues that compensation should only be awarded for the time spent on the specific positions advocated which were adopted by the Commission. In this case the only advocacy position for which VOICE has requested compensation relates to the pamphlet on which they prevailed. However, the Commission does not accept PSNH's interpretation of the rule. In determining whether the intervenor is eligible for compensation, the Commission must find substantial contribution to the Commission decision. In making this determination, the Commission weighs the extent of the contribution before making a finding that an award is appropriate. Given a favorable finding, the Commission awards the full costs of advocacy after proper apportionment among utilities. To attempt to keep some kind of box score on every issue in a proceeding and allocate time accordingly would be unworkable and make compensation proceedings as complex as the cases themselves.

[4] Finally, PSNH argues that any award should be divided by the number of utilities participating pursuant to Rule 205.02 to determine PSNH's liability. VOICE argues that all of the time required should be allowed since it would have spent the same amount of time had PSNH been the only utility involved. The Commission believes that the rule clearly states that the liability shall be determined by dividing the amount of the award among the utilities involved. However, the rule does not specify how this division shall be made. The Commission believes that the fairest method of allocation is a division of the award based upon the gross revenues of the participating companies. This is the same method employed with the utility assessment tax.

Based on the foregoing discussion, the Commission calculates the allowable compensation in this case as follows:

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

| <i>Attorney's Fees</i> | <i>HoursRate</i> | <i>Total</i> |
|--------------------------------------|------------------|--------------|
| Linder | 12 \$ 25 | \$ 300.00 |
| Hotham | 13 15 | 195.00 |
| | | \$ 495.00 |
| Travel | | 14.24 |
| Photocopying \$288 pages × .0315/pg. | 9.07 | |
| | | \$ 518.31 |

PSNH Allocation (73.155%)* = \$ 379.17

See Attachment A.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report, which is made a part hereof; it its hereby ORDERED, that VOICE is awarded \$379.17 for consumer intervention in this docket; and it is

FURTHER ORDERED, that PSNH will render to VOICE \$379.17; and it is FURTHER ORDERED, that PSNH award will be an allowed expense for

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ratemaking purposes to be charged to regulatory expense.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1982.

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

ATTACHMENT A

ASSESSMENT RATIO BY GROSS REVENUES (8/26/82)

COMPANY

Concord Electric

Exeter & Hampton Electric

Granite State Electric

N. H. Electric Coop.

PSNH

Northern Utilities, Inc.

Gas Service, Inc.

Manchester Gas

Concord Natural Gas

TOTAL

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NH.PUC*08/30/82*[79369]*67 NH PUC 607*New Hampshire Department of Public Works and Highways

[Go to End of 79369]

Re New Hampshire Department of Public Works and Highways

Intervenors: Boston and Maine Corporation et al.

DX 82-49, Order No. 15,811

67 NH PUC 607

New Hampshire Public Utilities Commission

August 30, 1982

ORDER authorizing the removal of rails for the construction of a highway.

Page 607

CROSSINGS, § 32 — Establishment — Construction of highway over railroad property — Effect of state statute.

[N.H.] Where a railroad company had been ordered by a federal district court to abandon a section of its railroad lines, it was reasonable, notwithstanding a court order to the contrary, for the commission to permit landfill to be placed over the tracks for the purposes of building a highway despite a state law prohibiting such destruction of railroad property.

APPEARANCES: Roderick Cyr for the Department of Public Works & Highways; Representative John Hoar, Jr., Rockingham District No. 8, pro se; and Stanley Barrigin, pro se.

BY THE COMMISSION:

REPORT ON REHEARING

The Report and Order No. 15,659 was issued on May 21, 1982 (67 NH PUC 338), authorizing the removal of rails and the construction of New Hampshire Highway 101, for both the east and west bound lanes and a ramp leading thereto across the railroad right of way on fills.

Representative John Hoar, Jr., by letter of June 18, 1982 requested a rehearing claiming that the authority contained in the Report and Order totally disregards the provisions of RSA 21-E:11a as passed by the legislature on June 22, 1982, (Chapter 450:1 Laws of 1981) also that testimony of the Highway Department and others was not considered or disregarded. Rehearing was held on August 4, 1982.

Chapter 450 section I introduces section 11a to RSA 21-E which contains five subsections which became effective August 22, 1981. The subsections pertinent to this proceeding are sections I and IV which are as follows: I. No railroad right-of-way in this state shall be used for any purpose that would unreasonably limit the ability to restore rail service over the right-of-way at minimum cost if such service were to be required in the future; IV. No railroad right-of-way that existed prior to the year 1969, except those that are in present use of have been in use by the railroads at any time since 1969, shall be subject to the provisions of this section. The provisions of subsections II, III and V relate to acquisition of railroad rights-of-way by condemnation, their use for statewide trail systems, and the extinguishing of reversionary rights by the act of

condemnation.

Testimony was introduced at the rehearing that the estimated cost of three bridges to carry the east and west bound route 101 and the ramp would be \$750,000 each, a total of \$2,250,000. The time to construct them would take two construction seasons or the equivalent of two years. The designs, however, are all available as the plans were drawn before the Court's decision was issued authorizing the abandonment. The testimony also indicates that it would take a year to upgrade the line of railroad to comply with the Federal Railroad Administration's Class I requirements and also to construct a plant for any future rail freight receiver or shipper.

Testimony was also introduced to the effect that this line was used in November of 1973 for an inspection by this Commission and that 39 cars destined to the Seabrook Plant were transported over the line within 10 years subsequent to 1969. Other testimony submitted merely corroborated that which was presented in the original hearing.

The United States District Court, District of Massachusetts, upon motion of the trustees of the Boston & Maine Corporation, held a hearing on December 16, 1981, at which no one appeared

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to object to the abandonment of the line from East Manchester to Rockingham Junction, although a letter filed by the Railway Labor Executives Association protested the proposal. This decision pointed out that an embargo was placed upon the line on December 19, 1979, following an inspection of the right-of-way. The physical condition of the road beds and tracks had deteriorated to a level below the minimum standard, Class I, for continued operation of trains permitted by the Federal Railroad Administration.

The Court's decision issued January 25, 1982, authorizes the abandonment of this line between mile posts 2.8 in Manchester and 27.2 at Rockingham Junction and also authorizes the trustees to utilize elsewhere on the Debtor's railroad system, and sell or otherwise dispose of, such materials as may be recovered from the abandoned lines.

From this decision it is clear that the Federal Court has authorized the trustees of the Boston & Maine Corporation to abandon and dispose of such materials as may be recovered from the abandoned lines, which means the track structure. Whether this authority supersedes the provisions of RSA 21-E:11a paragraph IV may eventually be determined by future decisions of competent jurisdiction.

The problem presented in this case is merely decision as to whether the Department of Public Works and Highways should be permitted to remove three sections of rail to provide a fill for new sections of highways or require the construction of three bridges at a total cost of \$2,250,000 over a line which can not be operated in its present condition and which has been authorized by the Federal Court to be abandoned and the track structure disposed of.

By this petition only that section of the line over which a highway is to be constructed is authorized to be removed and if the remaining portions of the line should be rebuilt and the line restored the Commission has authority to require the removal of the fill and the construction of the required bridges.

Upon consideration of all the facts the Commission is of the opinion that the Report and Order in the original proceeding should be and hereby is reaffirmed.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the Motion for Rehearing is denied.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1982.

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NH.PUC*08/31/82*[79370]*67 NH PUC 610*Lifeline Rates

[Go to End of 79370]

Re Lifeline Rates

DP 80-260, 14th Supplemental Order No. 15,857

67 NH PUC 610

New Hampshire Public Utilities Commission

August 31, 1982

APPLICATION of an intervenor group for compensation for participation in a Public Utility Regulatory Policies Act proceeding; granted in part and denied in part.

1. COSTS — Intervenor funding — Attorney fees — Time spent in recovering PURPA compensation.

[N.H.] Attorney time spent on the recovery of compensation awarded in a Public Utility Regulatory Policies Act lifeline rate proceeding is not itself subject to an award of compensation. p. 611.

2. COSTS — Intervenor funding — PURPA proceeding — Guidelines for compensation.

[N.H.] The prevailing salaries paid to in-house counsel with similar experience and training provides a reasonable guideline for compensation for time spent on the preparation and presentation of an intervenor's position in a Public Utility Regulatory Policies Act lifeline rate proceeding. p. 611.

3. COSTS — Intervenor funding — PURPA proceeding — Eligibility determination.

[N.H.] In determining whether an intervenor is eligible for an award of compensation for participating in a Public Utility Regulatory Policies Act proceeding, the commission must find that the intervenor made a substantial contribution to the commission's decision, weigh the extent of the contribution, and then award the full costs of advocacy after proper apportionment among utilities. p. 611.

4. COSTS — Intervenor funding — PURPA proceeding — Division of award among utilities.

[N.H.] Where the Public Utility Regulatory Policies Act rule governing an award of intervenor compensation clearly stated that liability for the amount of the award should be divided among the utilities involved, but did not specify how the division was to be made, the commission found that the fairest method of allocation would be to divide the award based upon the gross revenues of the participating companies. p. 611.

APPEARANCES: As noted previously.

BY THE COMMISSION:

REPORT

In Report and Eleventh Supplemental Order No. 15,642 (67 NH PUC 318), the Commission found VOICE eligible for compensation in this docket. A hearing was held on May 21, 1982 for the parties to present evidence relevant to the fair compensation of VOICE under Rule 205.02. As clarified at the hearing, compensation in this proceeding covers "Phase 1" of the lifeline docket through April 30, 1981, the date of issuance of Order No. 14,872 (66 NH PUC 166) adopting lifeline rates. Subsequently, on July 6, 1982 VOICE filed a revised request for compensation. Public Service Company of New Hampshire (PSNH) filed a reply to the revised request on August 2, 1982.

FINDINGS

1. Time spent on compensation is not subject to an award of compensation. Only time spent on the preparation and

Page 610

presentation of a PURPA position is an eligible expense for intervenor compensation.

2. Prevailing salaries paid to in-house counsel of similar experience and training serve as a reasonable standard for compensation in this case. The Commission will accept PSNH's recommendation of \$10 - \$25 per hour.

3. Pursuant to Rule 205.02, the Commission will determine PSNH's liability by proportioning the amount of the award in relation to all of the utilities involved.

4. The appropriate assessment for PSNH will be determined in the same manner that the Utilities Assessment Tax is calculated, according to gross revenues.

5. Photocopying and travel expenses related to preparation of a PURPA position where substantial contribution has been found are eligible expenses for compensation.

DISCUSSION

[1] VOICE in this docket has requested compensation for 29 1/2 hours of attorney's time in efforts devoted to the recovery of compensation. Compensation can only be awarded for expenses incurred in the preparation and advocacy of a PURPA position as set forth in Rule 205.01 (c), (d) and (e). Time spent on the recovery of compensation is not subject to an award.

(See also Report and Third Supplemental Order No. 15,626 [67 NH PUC 317].)

[2] VOICE contends that appropriate attorney's fees should be awarded based on the rates charged by private law firms. The Commission agrees with PSNH that such a standard does not take into account government funding of NHLA's overhead expenses. Accordingly, the prevailing salaries paid to in-house counsel with similar experience and training provides a reasonable guideline. The Commission will accept the range of \$10 - \$25 per hour. The Commission also notes that VOICE increased the hourly amount from its initial request. The Commission does not look with favor on increases following a finding of eligibility.

[3] PSNH further argues that compensation should only be awarded for the time spent on the specific positions advocated which were adopted by the Commission. PSNH lists certain positions advocated by VOICE which were not adopted by the Commission and other positions which were advocated by VOICE and one or more other parties. It is PSNH's position that no award should be made until VOICE allocates and documents the time spent on each position, and the Commission makes a ruling on substantial contribution for each position argued. The Commission does not accept this interpretation of the rule. In determining whether the intervenor is eligible for compensation, the Commission must find substantial contribution to the Commission decision. In making this determination, the Commission weighs the extent of the contribution before making a finding that an award is appropriate. Given a favorable finding, the Commission awards the full costs of advocacy after proper apportionment among utilities. To attempt to keep some kind of box score on every issue in a proceeding and allocate time accordingly would be unworkable and make compensation proceedings as complex as the cases themselves.

[4] Finally, PSNH argues that any award should be divided by the number of utilities participating pursuant to Rule 205.02 to determine PSNH's liability.

Page 611

VOICE argues that all of the time required should be allowed since it would have spent the same amount of time had PSNH been the only utility involved. The Commission believes that the rule clearly states that the liability shall be determined by dividing the amount of the award among the utilities involved. However, the rule does not specify how this division shall be made. The Commission believes that the fairest method of allocation is a division of the award based upon the gross revenues of the participating companies. This is the same method employed with the utility assessment tax.

Based on the foregoing discussion, the Commission calculates the allowable compensation in this case as follows:

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

| <i>Attorney's Fees</i> | <i>Hours</i> | <i>Rate</i> | <i>Total</i> |
|--------------------------------------|--------------|-------------|--------------|
| Linder | 148 | \$ 25 | \$ 3,700.00 |
| Hotham | 118.25 | 15 | 1,773.75 |
| | | | \$ 5,473.75 |
| Travel | | | 41.06 |
| Photocopying 2,121 pages × .0315/pg. | | | 66.81 |
| Mailing | | | 17.80 |
| Miscellaneous | | | 69.52 |

PSNH Allocation (80.06%)* =

\$ 5,668.94
4,538.55

See Attachment A.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that VOICE is awarded \$4,538.55 for consumer intervention in this docket; and it is

FURTHER ORDERED, that PSNH will render to VOICE \$4,538.55; and it is

FURTHER ORDERED, that this award will be an allowable expense for ratemaking purposes to be charged to regulatory expense.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of August, 1982.

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

ATTACHMENT A

*GROSS REVENUE
COMPANY*

Public Service Company

Concord Electric Company

Exeter & Hampton Electric

Granite State Electric

N. H. Electric Coop.

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NH.PUC*08/31/82*[79371]*67 NH PUC 613*Fuel Adjustment Clause

[Go to End of 79371]

Re Fuel Adjustment Clause

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

DR 82-218, Order No. 15,859

67 NH PUC 613

New Hampshire Public Utilities Commission

August 31, 1982

ORDER permitting electric fuel surcharge credits to remain in effect or to become effective.

BY THE COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1982, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Co., 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 for those utilities which file monthly unless requested or needed by one of those utilities; and the Commission would 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 or needed to have a hearing scheduled; and

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

ORDERED, that 1st Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 — Electricity, providing for a fuel surcharge credit of \$(0.03) per 100 KWH for the month of July and August, 1982, be, and hereby is, permitted to remain in effect for the month of September, 1982; and it is

FURTHER ORDERED, that 1st Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of \$(0.03) per 100 KWH for the month of July and August, 1982, be, and hereby is, permitted to remain in effect for the month of September, 1982; and it is

FURTHER ORDERED, that First Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of 16.5 cents (\$0.165) per 100 KWH for the months of July and August, 1982, be, and hereby is permitted to remain in effect for September, 1982; and it is

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FURTHER ORDERED, that First Revised Page 30 of Granite State Electric Company, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the month of July and August, 1982, of \$1.48 per 100 KWH be, and hereby is, permitted to remain in effect for September, 1982; and it is

FURTHER ORDERED, that 18th Revised Page 15 of the N. H. Electric Cooperative, Inc. tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of \$2.59 per 100 KWH for the month of September, 1982, be, and hereby is, permitted to to become effective September 1,

1982; and it is

FURTHER ORDERED, that 20th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$2.72 per 100 KWH for the month of September, 1982, be, and hereby is, permitted to become effective September 1, 1982; and it is

FURTHER ORDERED, that 104th Revised Page 6 of Littleton Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$1.44 per 100 KWH for the month of September, 1982, be, and hereby is permitted to become effective September 1, 1982; and it is

FURTHER ORDERED, that 72nd Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of (\$1.35) per 100 KWH for the month of September, 1982, be, and hereby is, permitted to become effective September 1, 1982; and it is

FURTHER ORDERED, that 67th Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of (\$0.42) per 100 KWH for the month of September, 1982, be, and hereby is, permitted to become effective September 1, 1982.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of August, 1982.

=====

NH.PUC*08/31/82*[79372]*67 NH PUC 614*Lifeline Rates

[Go to End of 79372]

Re Lifeline Rates

DP 80-260, 13th Supplemental Order No. 15,860

67 NH PUC 614

New Hampshire Public Utilities Commission

August 31, 1982

ORDER denying motion for consolidation of intervenor presentations.

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BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, an objection was made by VOICE to Order No. 15,642 (67 NH PUC 318) which provided that presentations by VOICE and CAP be consolidated; and

WHEREAS, the Commission has received information by the parties that VOICE and CAP

will consolidate all of their presentations except as to the issue of recovery of revenue; and

WHEREAS, the Commission, upon reviewing the motion and agreement of VOICE and CAP, agrees that the issue of recovery of revenue should be presented by each of the parties; it is hereby

ORDERED, that the Motion filed by VOICE on May 21, 1982 is denied in part; and it is

FURTHER ORDERED, that Order No. 15,642 is amended to the extent that VOICE and CAP may make separate presentations as to the issue of recovery of revenue which includes treatment of space heating and water heating customers.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of August, 1982.

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NH.PUC*09/01/82*[79373]*67 NH PUC 615*Peak-shaving Fuel Storage

[Go to End of 79373]

Re Peak-shaving Fuel Storage

DRM 81-296, Supplemental Order No. 15,864

67 NH PUC 615

New Hampshire Public Utilities Commission

September 1, 1982

ORDER denying motion for rehearing of a rule-making order pertaining to peak-shaving fuel storage.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on July 23, 1982, this Commission issued its Order No. 15,768 (67 NH PUC 541) in the rulemaking pertaining to the Commission's Rules and Regulations for Gas Utilities, as regards PUC 506.03 Peak Shaving Fuel Storage; and

WHEREAS, on August 12, 1982, Northern Utilities filed, pursuant to RSA 541:3, its Motion for Rehearing and/or Clarification of that Commission Order; and

WHEREAS, the Company proposes, in lieu of rehearing, that the Commission accept an amendment to the last sentence of paragraph (a) of Rule 506.03 as follows:

"Where a gas company owns or leases tank trucks *or has a fuel supply purchase contract which includes guaranteed daily delivery capability*, 70% of this delivery capability from a dependable bulk fuel supply point over a five-day period may be counted as on-site storage".;

and

WHEREAS, on August 6, 1982, Counsel for Gas Service, Inc., Concord Natural Gas Corporation, and Manchester Gas Company submitted a letter of its intent to file a Motion for Rehearing on the limited issue of dedicated delivery capability, if the Commission position is such that its Order intended to disallow credit for dedicated delivery capacity; and

WHEREAS, the Commission is unwilling to accept the offerings of either party as being in the public interest, based on its review of the evidence presented to date; it is

ORDERED, that the Motion of Northern Utilities, Inc. for Rehearing and/or Clarification is granted; and it is

FURTHER ORDERED, that all interested parties are invited to appear at the Commission's Concord offices on September 8, 1982 at 1 p.m. to present further testimony on the limited issue of "dedicated delivery capability."

By order of the Public Utilities Commission of New Hampshire this first day of September, 1982.

=====

NH.PUC*09/01/82*[79374]*67 NH PUC 616*Portsmouth Water Works

[Go to End of 79374]

Re Portsmouth Water Works

DR 82-226, Order No. 15,865

67 NH PUC 616

New Hampshire Public Utilities Commission

September 1, 1982

ORDER approving water tariff revisions that provided for charging customers for the cost of materials and installation of new service connections.

BY THE COMMISSION:

ORDER

WHEREAS, Portsmouth Water Works is a public utility engaged in providing water service in the Towns of Durham, Greenland, New Castle, Newington, Madbury, and Rye; and

WHEREAS, Portsmouth has filed certain revisions to its tariff to provide that the customer requesting a new service connection will now be charged for the cost of materials and installation for such connection from the main to the property line, with maintenance of this section remaining the responsibility of the water works; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition sought will be for the public good; it is

ORDERED, that 3rd Revised Page 3 and 1st Revised Pages 3A and 4, Portsmouth Water Department Tariff NHPUC No.2 — Water, shall be allowed to become effective on August 15, 1982.

By Order of the Public Utilities Commission of New Hampshire this first day of September, 1982.

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NH.PUC*09/02/82*[79375]*67 NH PUC 617*Concord Natural Gas Corporation

[Go to End of 79375]

Re Concord Natural Gas Corporation

DE 82-8, Third Supplemental Order No. 15,866

67 NH PUC 617

New Hampshire Public Utilities Commission

September 2, 1982

ORDER continuing fine levied against natural gas utility for failure to submit a distribution system plan of action.

BY THE COMMISSION: SUPPLEMENTAL ORDER

WHEREAS, on January 7, 1982, this Commission ordered Concord Natural Gas Corporation to perform a Distribution System Analysis and to submit within six months a written summary of the results including any actions the Company has taken or will take because of their findings; and

WHEREAS, as a result of Company requests, extensions of time were granted which resulted in a submission date of August 2, 1982; and

WHEREAS, on August 2, 1982 the Company filed a letter with this Commission attesting to the completion of the Distribution System Analysis, and attaching a written summary of the results; and

WHEREAS, the Company failed to inform the Commission at that time of the actions the Company has taken or will take because of their findings; and

WHEREAS, the Commission, in its Second Supplemental Order No. 15,844, ordered that the Company be fined \$10 per day for each day after August 2nd that the Company has been delinquent in forwarding the required information containing the Company's plan of action resulting from its Distribution System Analysis; and

WHEREAS, the Company, on August 30, 1982, filed with this Commission a letter; and

WHEREAS, the Commission finds the letter to be unresponsive to the extent of the actions necessary to implement the results stemming from their distribution system analysis; it is hereby

ORDERED, that the amount of the fine shall continue to be \$10 a day and as of the date of this order \$310 is due to owing; and it is

FURTHER ORDERED, that if the Commission's orders and concerns are not responded to and followed by September 9, 1982, the fine will increase to \$20.00 a day.

By order of the Public Utilities Commission of New Hampshire this second day of September, 1982.

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NH.PUC*09/03/82*[79376]*67 NH PUC 618*City of Concord v Concord Electric Company

[Go to End of 79376]

City of Concord v Concord Electric Company

DC 82-194, Order No. 15,869

67 NH PUC 618

New Hampshire Public Utilities Commission

September 3, 1982

ORDER directing an electric company to pay interest on an overcollection.

REPARATION, § 42 — Award of reparation — Interest — Billing error.

[N.H.] Where an electric company had through its own error overbilled a customer, the commission found that the customer was, as a matter of equity, entitled to interest on the overcollected amount and that the interest payment should not be treated as an allowable ratepayer expense.

BY THE COMMISSION: REPORT

On June 25, 1982 the City of Concord requested a determination by the Commission of a dispute between the City and the Concord Electric Company involving an overcollection by the Company on the City's Outdoor Street Lighting account. Since the parties had not been able to resolve this matter, the Commission scheduled a hearing for July 27, 1982.

At the hearing the parties agreed that the facts concerning the overcollection were not in dispute. The Company agreed that through their error the City's Outdoor Street Lighting account had been overbilled by \$19,480 during the period from October, 1981 to March, 1982. The only issue of dispute is whether the Company should pay the City interest on the overbilled amount.

Concord Electric Company's position is that since there is no mechanism in its filed tariff for interest payments for overbilling, the Commission does not allow such payments.

The City contends that as a matter of equity it should be paid interest at the rate of 1 1/2% per month since the Company charges this rate on overdue accounts. In fact, the City cites two small overdue charges on other City accounts during the period of overcollection on the Outdoor Street Lighting account. The City contends that the Commission has the authority to order interest payments citing the Supreme Court's decision in the appeal of Granite State Electric Company. ([1980] 120 NH 536, 421 Add 121.) In this case the Court found that the Commission has discretionary power to order interest payment.

In keeping with equitable principles, the Commission agrees with the City of Concord that it should, in fairness, be paid interest for overcollection caused by Company error. Our Order will issue accordingly.

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ORDER

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

ORDERED, that Concord Electric Company pay the City of Concord \$706 in interest on the overcollection on the City's Outdoor Street Lighting account; and it is

FURTHER ORDERED, that the interest payment is not an allowable ratepayer expense.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1982.

=====

NH.PUC*09/07/82*[79377]*67 NH PUC 619*Hampton Water Works Company

[Go to End of 79377]

Re Hampton Water Works Company

DE 82-217, Order No. 15,1374

67 NH PUC 619

New Hampshire Public Utilities Commission

September 7, 1982

PETITION of a water company for authority to issue and sell general mortgage bonds and common stock; granted.

SECURITY ISSUES, § 106 — Interest rate — Bonds — Revision prior to approval.

[N.H.] Although the commission authorized a water company to issue and sell general

mortgage bonds and common stock for the purposes of retiring short-term debt, financing construction, and for other corporate purposes, the commission stated that it would examine future agreements more closely, noting the absence of a mechanism in the company's agreement that would permit revision of the tax exempt bond rate prior to commission approval for significant changes in interest rates.

APPEARANCES: Joseph S. Ransmeier and Michael Lenahan, of Ransmeier and Spellman, for the petitioner.

BY THE COMMISSION: REPORT

By this unopposed petition, filed August 6, 1982, Hampton Water Works Company, a duly organized New Hampshire corporation, operating as a public water utility in Hampton, North Hampton and Rye, seeks authority, pursuant to RSA 369, to issue and sell for cash, \$1,200,000 principal amount of General Mortgage Bonds, such Bonds to be tax exempt and to bear an interest rate not in excess of 14.0% due October 1, 1997, and 26,000 shares of its \$25 par value common stock for a total consideration of \$650,000.

A duly noticed hearing on the petition was held in Concord on September 1, 1982, prior to, and at which the petitioner submitted the details which led to the

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filing of this petition for the proposed sale of said Bonds and Common Stock. The bonds issued, pursuant to RSA 374C, through the N.H. Municipal Bond Bank are tax exempt and are to be sold to the Guardian Life Insurance Company, under an Original and Supplemental Indentures of Mortgage, copies of which have been or will be filed with this Commission. The Common Stock is to be sold at par value for cash to Greenwich Water Systems, Inc., a Delaware Corporation, which is the present holder of all of the outstanding shares of Common Stock of the Company.

The Company represents that the proceeds from the new financing of \$1,850,000 will be used to retire short-term notes, reimburse the Company's Treasury for expenditures made from it in the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of the Company's business; to finance the future purchases and construction of such property and facilities; to defray the costs and expenses of the financing contemplated by this petition, or for other proper corporate purposes.

At the hearing, the petitioner introduced as Exhibits, various financial information pertaining to the contemplated application of the proceeds of the securities to be issued and sold under this issue.

Among some of these Exhibits were the following:

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

Exhibit A1 Net Capital Additions from January
1, 1977 to, and including, December
31, 1981.

Exhibit A1-A Construction Budget for 1982.

Exhibit A2 Estimated Financing Expenses.

Exhibit A4 Income Statement for 12 months
ending December 31, 1982, adjusted
to give effect of the proposed fi-
nancing.

The following Balance Sheet, as of December 31, 1981, adjusted to give effect of the proposed financing, was submitted by the petitioner as Exhibit No. A3.

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[Graphic Not Displayed Here]

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

*Balance Sheet at December 31, 1981
Giving Effect to the Proposed Financing*

Liabilities and Other Credits

Capital stock:

*Common stock - \$25 par value
Authorized - 50,000 shares
Issued and outstanding - 21,715 share
New issue - 26,000 shares
Cumulative preferred stock - \$100 par value
6% series - authorized - 700 shares
Issued and outstanding - 622 shares
7% series - authorized - 5,000 shares
Issued and outstanding - 1,250*

Premium on capital stock

Total capital stock

Long-term debt:

*First mortgage bonds
Series C. 5% - due 10/1/3
Series D, 4-3/4% due 11/1/93
General mortgage bonds
7-3/8% series - due 7/1/93
9-1/4% series - due 4/1/96
8-7/8% series - due 10/1/97
14% series - due 10/1/97*

Total long-term debt

Current and accrued liabilities:

*Notes payable
Accounts payable
Payable to affiliated companies
Dividends declared
Taxes accrued
Interest accrued
Miscellaneous current liabilities
Miscellaneous accruals*

Total current & accrued liabilities

Deferred credits:
Miscellaneous unadjusted credits

Total deferred credits

Reserves:
Depreciation
Amortization
Uncollectible accounts

Total reserves

Contribution in aid of construction

Earned surplus

Total liabilities and other credits

Certified copies of the necessary authorizations were submitted, as well as the proposed forms of Bond Purchase Agreements to be entered into with the Purchaser, and Fourth Supplemental Indenture to be given to the Fidelity Bank, Trustee, as further security for the issue and supplementing the Company's Original Indenture of Mortgage to the Trustee dated as of May 1, 1968, and authorized in proceedings before this Commission, captioned D-F5345, Re Hampton Water Works Co. 52 NH PUC 143. An agreement with Greenwich Water System Inc., was submitted for the

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purchase of 26,000 shares of common stock, par value \$25.00 per share.

Upon investigation and consideration of the evidence submitted, this Commission is of the opinion that the granting of the authorization requested herein will be for the public good with certain reservations. The tax exempt bond rate of 14.0% was negotiated in May, 1982, when the prime rate was significantly higher than today, but no mechanism was added to the agreement to revise the rate prior to Commission approval for significant changes in interest rates.

In the future, the approach used by the Company will be looked at alot more closely. The Commission, however, does appreciate management's efforts and success in achieving a tax-exempt offering.

Our Order will issue accordingly. ORDER

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

ORDERED, that Hampton Water Works Company, be, and hereby is, authorized to issue and sell at private sale, \$1,200,000 principal amount of its General Mortgage Bonds, such Bonds to bear interest at a rate not in excess of fourteen percent (14.0%) due October 1, 1997, under its Original Indenture of Mortgage to The Fidelity Bank, Trustee, of Philadelphia, Pennsylvania, dated as to May 1, 1968, as supplemented by First Supplemental Indenture from the Company to the Trustee, dated as of March 1, 1971, Second Supplemental Indenture dated as of October 1,

1975, and Third Supplemental Indenture dated as of September 1, 1977, and a Fourth Supplemental Indenture to be dated as of October 1, 1982; and it is

FURTHER ORDERED, that the petitioner be, and hereby is, authorized to mortgage all, or any part, of its present and future property, both real and personal, tangible and intangible, including its franchises, as security, among other things, for the payment of said Bonds; and it is

FURTHER ORDERED, that the petitioner be and hereby is authorized to issue and sell 26 thousand (26,000) shares of its twenty-five dollar (\$25.00) par value common stock at par to Greenwich Water System, its present sole shareholder, for a total consideration of six hundred fifty thousand dollars, (\$650,000); and it is

FURTHER ORDERED, that the proceeds from the issue and sale of the Bonds and common stock authorized hereunder shall be used to retire existing short-term notes; to reimburse working capital for capital expenditures, and to pay the costs of the subject financing; and it is

FURTHER ORDERED, that on January first and July first of each year, the Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of such Bonds until the whole of such proceeds have been fully accounted for.

By Order of the Public Utilities Commission of New Hampshire this seventh day of September, 1982.

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NH.PUC*09/09/82*[79378]*67 NH PUC 624*Continental Telephone Company of Maine

[Go to End of 79378]

Re Continental Telephone Company of Maine

DR 82-212, Supplemental Order No. 15,876

67 NH PUC 624

New Hampshire Public Utilities Commission

September 9, 1982

ORDER lifting suspension of tariff that clarified terms of service connection charges.

BY THE COMMISSION: SUPPLEMENTAL ORDER

WHEREAS, on July 20, 1982, Continental Telephone Company of Maine filed with this Commission its Section 6, 5th Revised Sheet 3 and 4th Revised Sheet 6, said revision proposed to clarify terms of service connection charges; and

WHEREAS, said filing was suspended by Commission Order No. 15,794 pending investigation thereof; and

WHEREAS, said investigation is now complete and the filing appears in the public interest; it is

ORDERED, that said suspension is now lifted and the filing allowed to become effective on the date of this order.

By order of the Public Utilities Commission of New Hampshire this ninth day of September, 1982.

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NH.PUC*09/13/82*[79379]*67 NH PUC 624*New Hampshire Electric Cooperative, Inc.

[Go to End of 79379]

Re New Hampshire Electric Cooperative, Inc.

DE 82-186, Order No. 15,879

67 NH PUC 624

New Hampshire Public Utilities Commission

September 13, 1982

PETITION for authority to install and maintain submarine power cables; granted.

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BY THE COMMISSION:

REPORT

On June 21, 1982, the New Hampshire Electric Cooperative, Inc. filed with this Commission its petition seeking authority to place and maintain submarine power cables in four locations of Lake Winnepesaukee, said cables to replace overhead power lines no longer meeting the requirements of the National Electrical Safety Code.

An Order of Notice was issued on June 23, 1982, setting the matter for hearing on August 3, 1982 at 10:00 a.m.

The duly noticed public hearing was held on the date and time specified at which petition and various supporting data were entered as exhibits. Among the latter were approvals from the Water Supply and Pollution Control Commission and the Wetlands Board, maps, and staking sheets.

The Commission, hearing no objections, finds the submarine crossings in the public interest, particularly since they replace overhead lines found in non-compliance with the National Electrical Safety Code.

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 to install and maintain the following submarine power cables:

- 1) From Pole 17304.1/1.1 situated on Cow Island to Pole 17304.1/2 situated on Squirrel Island, a distance of approximately 200 ft;
- 2) From Pole 17304.1/1.1 situated on Cow Island to Pole 17304.1/3 situated on Birch Island, a distance of approximately 470 ft.;
- 3) From Pole 17003/8.1 situated on the mainland to Pole 17003/8.2 situated on Farm Island, a distance of approximately 475 ft.; and
- 4) From Pole 17308.1/6 situated on Ragged Island to Pole 17308.1/7 situated on Little Pine Island, a distance of approx. 320 ft. and it is

FURTHER ORDERED, that all construction comply with requirements of the National Electrical Safety Code; and it is

FURTHER ORDERED, that overhead lines being replaced by authorized submarine cables be removed following completion of submarine construction.

By Order of the New Hampshire Public Utilities Commission this thirteenth day of September, 1982.

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NH.PUC*09/13/82*[79380]*67 NH PUC 626*New Hampshire Department of Public Works and Highways

[Go to End of 79380]

Re New Hampshire Department of Public Works and Highways

Intervenors: Boston and Maine Corporation

DX 82-155, Order No. 15,880

67 NH PUC 626

New Hampshire Public Utilities Commission

September 13, 1982

PETITION of state highway department for authority to reconstruct a portion of highway across railroad tracks; granted.

HIGHWAYS AND STREETS, § 1 — Highway across rail line — Removal of rail line — Reconstruction of highway.

[N.H.] Where a railroad company had obtained federal authority to abandon a rail line and no other operator had expressed an interest in obtaining the line, the commission granted the petition of the state highway department for authority to reconstruct the highway across the rail line; however, in view of its interest in preserving all railroad lines until such time as there was no possibility of resumption of service thereon, the commission authorized the removal of rails and ties only within the limits of the highway, with the understanding that a crossing would be

constructed if rail service was resumed.

APPEARANCES: Roderick Cyr, for the Department of Public Works and Highways; John Adams for the Boston and Maine Corporation; Representative John Hoar, Jr., Rockingham District No. 8 pro se.

BY THE COMMISSION: REPORT

The New Hampshire Department of Public Works and Highways has through the cooperation of the Federal Highway Administration approved plans, identified as Federal Aid Secondary Project RS-318 (3), N.H. Project No. P-3934, designed to reconstruct Route 107 in the vicinity of a new location of Route 101 in the Town of Raymond. Hearing thereon was held at Concord on July 14, 1982.

At the present time Highway Routes 101 and 107 are common to each other from the point where they converge north of the crossing to a point on a new location for Route 101, in the Town of Raymond. This project commences at the intersection of these routes with old Route 101 about 900 feet north of a grade crossing with the Manchester-Portsmouth Branch tracks and extends for a distance of approximately 5,000 feet to a point south of the interchange. The new construction will carry traffic on Route 107 and there will be an interchange with Route 101 constructed within the limits of the new construction. Upon completion of this project and another project relocating Route 101, the traffic over the railroad right-of-way will be confined to Route 107.

The project was considered by a layout Commission at a public hearing in Raymond held on March 31, 1982. It was

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reported favorably to proceed with the project.

The reconstructed highway will cross the railroad tracks at the same location and grade as presently exists but will be widened in an easterly direction. Because the railroad has been authorized to be abandoned by the United States Federal Court for the District of Massachusetts, the petitioner desires to take up the rails and ties and remove the automatic lights to provide a smooth highway and avoid the costs incident to the maintenance of a grade crossing that is normally required. The present is 40 feet wide. It is protected by automatic flashing lights. The reconstructed highway would require a crossing 60 feet in width. The automatic flashing light masts would have to be removed or relocated.

Present traffic volume is between 10,000 and 11,000 vehicles per day. Upon completion of the new Route 101, this route will be separated from Route 107, thus the traffic on this portion of Route 107 will drop to about 5,000 to 6,000 per day. With normal growth in 20 years it will increase to its present volume.

No estimate of costs is presented. Bids are planned for advertising in the winter of 1982-83, and the work would be completed in the Fall of 1983.

Opposition is voiced to the elimination of the crossing from several sources. Representative Hoar, Jr. opposes any interruption in the continuity of the rails and brought out upon cross-examination that the restoration of a crossing would cost from \$50,000 to \$60,000 and would take from six months to a year to be accomplished should the rail service be reactivated.

Everett Feldblum, presenting Industrial Development Division of the New Hampshire Development opposes the elimination of the crossing. It is testified that the State is running out of railroad sites for industrial development. Along this line of railroad are many possibilities for locations for railroad sidings. He stated that his department is active in increasing the use of the Port of Portsmouth which might well have a bearing on the use of the Manchester-Portsmouth line. It is his recommendation that the crossing be retained and paved over so that it would be available in the future on short notice if rail service should be restored.

The Railroad Corporation is not opposed to the project but does not wish to have the rails taken up piece meal. It desires to have them retained until such time as it is determined to remove the entire abandoned portion of the line.

This is the same line that is involved in the petition of the New Hampshire Department of Public Works and Highways for authority to remove the rails and fill at three locations in the Town of Candia in connection with the construction of Route 101 at a new location (DX 82-49). The decision in that case authorizes the removal of the rails and ties and to construct the new highway on fill to save the expense of \$2,225,000 to construct three bridges. This location is west of Raymond while the crossing under consideration herein is east of Raymond. If the petitioner is permitted to remove the rails as requested the business center of Raymond would be between the removed sections of rail while the retention of the crossing at Route 107 would still permit rail access to Raymond from the East.

The record indicates that one industry located in Raymond within the last few years used rail service until the line was embargoed. When the service was

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interrupted by the embargo this customer received its freight at either Exeter, New Hampshire or Haverhill, Massachusetts, and the railroad assumed all or a portion of the trucking charges from the other railhead. No complaints have been filed with the Commission and this patron has made no representations to the Federal Court or to this Commission in these proceedings.

This Commission has for more than a decade used its authority to prevent the tearing up of railroad tracks even after authority has been granted by the Interstate Commerce Commission or the Federal Courts handling Boston and Maine bankruptcy proceedings. During this period there has been no resumption of rail service on any of the abandoned lines. The State has, however, purchased two lines, the Concord-Lincoln line from the Boston and Maine by condemnation proceedings, and the Beecher Falls Branch by mutual agreements from the Maine Central Railroad Company, both of which were authorized to be abandoned to facilitate acquisition by the State.

There is no suggestion that the State or any other operator is interested in obtaining the

Manchester-Portsmouth Branch although Representative Hoar, Jr. suggests that it might be feasible to operate the line as an intrastate railroad. No such service could possibly be viable without interchanging equipment with the connecting carriers at either Rockingham Junction or Manchester. While the Commission is sympathetic with attempts to provide for industrial locations along railroad rights-of-way there is no substantive evidence that there is any interested party seeking to locate on this line. There is substantial rail mileage in other sections of the State where rail track structures are of heavier construction and which can be rehabilitated at less expense.

The provision of R.S.A. 365:24a and R.S.A. 21-E:11a require authority from this Commission to remove rails and track structure. Once the rails are removed reversionary rights, if any, apply to abutting land-owners. Such is not the case however at a public crossing. This Commission is interested in preserving all railroad lines until such time as there is no possibility of resumption of service thereon. At the same time we are of the opinion that public funds should not be required to construct a crossing on an abandoned line. By removing the rails and ties only within the limits of the highway, with the understanding that a crossing will be constructed if rail service is resumed, seems to be a reasonable and economical course under the circumstances testified to in this proceeding.

Upon consideration of all the facts, the Commission is of the opinion that the grade crossing should be eliminated with the understanding that rails and ties be held in readiness to construct a crossing should rail service be resumed in the future, also, that all costs relating to the removal of the rails and ties shall be borne by the State of New Hampshire, Department of Public Works and Highways. Our Order will issue accordingly. ORDER

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

ORDERED, that the New Hampshire Department of Public Works and Highways be, and hereby is, authorized to construct the highway at the intersection of New Hampshire Routes 101 and 107 across the right-of-way of the Manchester-Portsmouth Branch of the Boston & Maine Corporation, in the Town of Raymond

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in accordance with plans on file at the office of this Commission marked DX 82-155; and it is

FURTHER ORDERED, that the rails and ties may be removed for the width of the highway subject to the provisions that should rail service be reactivated a suitable crossing be constructed; and it is

FURTHER ORDERED, that all costs incurred in the removal of the track structure as authorized herein shall be borne by the New Hampshire Department of Public Works and Highways.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of September, 1982.

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NH.PUC*09/15/82*[79381]*67 NH PUC 629*Hudson Water Company

[Go to End of 79381]

Re Hudson Water Company

DE 82-264, Order No. 15,883

67 NH PUC 629

New Hampshire Public Utilities Commission

September 15, 1982

ORDER directing a water company to make no-cost main connections for customers whose individually owned wells were adversely affected by operation of a new company well.

BY THE COMMISSION: ORDER

WHEREAS, Hudson Water Company has recently placed in operation its newly developed Weinstein Well in Litchfield, New Hampshire; and

WHEREAS, the operation of this well may have adversely affected individually owned wells of several homeowners in the vicinity of the Weinstein Well; it is

ORDERED, that those customers that are adversely affected, as defined by and in the agreement reached between the Town of Litchfield and the Hudson Water Company, shall be connected to the water company mains and the costs for such connection shall be borne by the Company; and it is

FURTHER ORDERED, that the water consumed by these customers shall be at no charge for the first 2,000 cu. ft. consumed each billing quarter, however, all water consumed over 2,000 cu. ft. shall be billed at the regular tariff rate; and it is

FURTHER ORDERED, that this 2,000 cu. ft. allowance shall terminate only upon the sale of the affected property by the owner of record as of the date of this Order and regardless of the duration of service by the Weinstein Well.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 1982.

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NH.PUC*09/16/82*[79382]*67 NH PUC 630*Granite State Electric Company

[Go to End of 79382]

Re Granite State Electric Company

DF 82-201, Order No. 15,884

67 NH PUC 630

New Hampshire Public Utilities Commission

September 16, 1982

PETITION by an electric company for authority to increase its short-term debt granted.

PUBLIC UTILITIES, § 134 — Operation and practice — Finances — Short-term debt.

[N.H.] Where any increase in an electric company's short-term borrowings would be at a lower rate of interest than long-term borrowings and where the extension of the company's short-term line of credit will be at no cost if unused, the commission permitted the borrowings for the purpose of financing the repayment of a sinking-fund requirement and projected construction costs.

APPEARANCE: Kirk L. Ransauer for the petitioner.

BY THE COMMISSION: REPORT

By this unopposed Petition, filed July 9, 1982, Granite State Electric Company, a New Hampshire utility, seeks authority pursuant to RSA 369:7 to increase their short-term debt to an amount not exceeding \$5,500,000.

A duly noticed public hearing was held on the petition on September 8, 1982 at 10 a.m. at the Commission's offices in Concord, New Hampshire.

The Company provided one witness, Donald E. Rose, his affidavit including the Company's balance sheet and income statement as of December 31, 1981; and a 1982 estimated source and application of funds.

Mr. Rose was extensively cross-examined by Mr. Traum of the Commission Finance Department, and the following facts surfaced:

(1) The Company estimates its outstanding short-term debt should in the normal course of business exceed \$5,000,000 by December, 1982;

(2) The additional \$2,000,000 short-term line of credit will not cost the Company anything if unused;

(3) Mr. Rose estimates current short-term debt borrowings to be in the 13.5% range for Granite State Electric Company, while issuance of long-term debt now would be more costly. In addition, he feels long-term rates will fall, at which time the Company may borrow long-term; and

(4) The additional \$2,000,000 of short-term borrowings are needed to help finance the repayment of an \$800,000 sinking fund requirement in December of 1982 and projected construction expenditures of \$2.0 million for the 15-month period ending March 31, 1983.

Upon investigation and consideration of the evidence submitted, this Commission

is of the opinion that the granting of the authorization requested herein is in the public good. Our order will issue accordingly. September 16, 1982

ORDER

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

ORDERED, that by Order No. 13,500 (DF79-38) of this Commission dated February 27, 1979 (64 NH PUC 32), Granite State Electric Company was granted an exemption from Commission Regulations permitting it to issue and renew, from time to time, its Bonds, Notes and other evidence of indebtedness payable less than twelve (12) months after the date thereof; and it was

ORDERED, that by Third Supplemental Order No. 15,557 (DF79-38) of this Commission dated March 26, 1982 (67 NH PUC 266), this Commission continued the exemption of Granite State Electric Company and authorized Granite State Electric Company to issue and renew short-term indebtedness (not including such indebtedness which is to be retired with the proceeds of any such issue or renewal) not in excess of \$3,500,000; and it was

ORDERED, that Granite State Electric Company is granted authorization to increase its short-term indebtedness to an aggregate amount not in excess of \$5,500,000 (not including such indebtedness which is to be retired with the proceeds of any issue or renewal of the indebtedness); and it is

ORDERED, that Granite State Electric Company be, and hereby is, authorized, from time to time, to issue and renew its Notes, Bonds, or other indebtedness payable in less than twelve (12) months after the date thereof, with the aggregate amount of Granite's borrowings hereunder (not including short-term indebtedness to be retired with the proceeds of any borrowings) to not exceed \$5,500,000; and it is

FURTHER ORDERED, that on January First and July First of each year said Granite State Electric Company shall file with this Commission a detailed statement, duly sworn to by its treasurer, showing the disposition of the proceeds of said Noted, Bonds, or other indebtedness.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1982.

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NH.PUC*09/21/82*[79383]*67 NH PUC 631*Town of Andover

[Go to End of 79383]

Re Town of Andover

Intervenor: Boston and Maine Corporation

DX 82-77, Order No. 15,886

67 NH PUC 631

New Hampshire Public Utilities Commission

September 21, 1982

INVESTIGATION into the safety and adequacy of safeguards of railroad overhead bridges; allocation of costs of repair and reconstruction determined.

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APPEARANCES: Dwight Schnare, Chairman of the Board of selectment and Peter Chamberlin, for the town of Andover; John Adams and Clarence Pierce, for the Boston and Maine Corporation; John McAuliffe representing Commissioner John Clements in an advisory capacity.

BY THE COMMISSION:

REPORT

By petition filed March 4, 1982, the Town of Andover requests an investigation of the adequacy and safe-guards of three railroad overhead bridges in the Town of Andover. Hearing thereon was held at Concord on April 28, 1982.

Three bridges are involved in this case. The Lawrence Street Bridge No. 097/086 is near the business section of Andover. It is located at milepost 102.60, and is a timber-framed, 3-span structure, 63 feet in length and 16 feet in width. It is decked with 4" planking which was renewed in 1976. It is posted for vehicles of 13 ton capacity and was originally designed for 13-ton loads.

The valuation section indicates that the highway preceded the railroad at this location because the parcel on which the bridge is situated was deeded to the railroad by the Town of Andover on November 14, 1845, as a right to cross highway and was filed with the Secretary of State on June 7, 1846. The Commission records indicate that the present structure was built in 1930 for a capacity of 16 tons.

An inspection by the Department of Public Works and Highways made on October 4, 1979 and July 1, 1980 indicates that this timber deck is in fair condition, the south abutment is in marginal condition, but the timber bridge rail does not meet current requirements. The cribbing was found to be poorly designed and of questionable durability. The wingwalls were in fair condition, and the timber piers and concrete pier footings were in fair condition.

As a result of these inspections, it was recommended that the gross weight limit be reduced to ten tons, add bridge and approach rails to meet current criteria, monitor south abutment washout repair frequently and replace worn and rotted deck planks.

Estimates submitted by the railroad witnesses for repairs to the fences and guard rails for this bridge total \$2,414.00 of which \$1,584.00 represents labor, \$600.00 material, and \$230.00 for equipment.

This bridge leads to an area in the Town of Andover which includes some 30 residences, and summer camps on Bradley Lake. While the Town is not completely satisfied with the width of the structure it is requesting at this time that it be repaired to adequately handle the designed load limit and the fence and guard rails be replaced to adequately perform their intended function.

The Maple Street Bridge No. 173/130 is located near East Andover at milepost 98.16. It is a 3-span timber stringer bridge with a timber deck. It is 62 feet in length and the curb to curb width is 14 feet, 8 inches and is posted for a ten ton limit.

The valuation section indicates that the highway preceded the railroad at this location because the parcel on which the bridge is situated was deeded to the railroad by the Town of Andover on November 14, 1945, as a right to cross the highway and was filed with the Secretary of State on June 17, 1946. The

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Commission records indicate that the present structure was built in 1920, for a capacity of ten tons.

An inspection performed on October 10, 1979 indicates that the timber-deck is split and worn, and in marginal condition. The timber stringers are in generally good condition. The timber bridge rails are in poor condition, and do not meet current criteria. The abutments are in generally good condition as are the bridge piers and concrete footings. A stress analysis indicates that the bridge is adequate for passenger cars only, and the controlling element is the condition of the 3-inch planked deck.

It is the position of the Town that this bridge should be maintained for passenger cars only. In this section of the Town, N.H. Highway Route 11 closely parallels the railroad track to the south. The grade of the highway descends for northbound vehicles, but the approach to the bridge from the highway ascends to the center of the structure and then descends at a greater degree on the north approach. These conditions contribute to collisions with the railings, particularly on slippery highway surfaces. The approach from the highway requires negotiation of a sharp right-angle intersection. Because of this, trucks do not generally attempt to use this bridge, and the Town representatives do not wish to encourage its use except for passenger car traffic. There is a grade-crossing approximately 1,000 feet west of the bridge which is much preferred by the operators of heavy vehicles.

The recommendations of the State Bridge Inspector are to post the bridge for passenger cars only and add bridge and approach railings to meet the current criteria. Railroad estimates total \$2,070.00 for replacing fences and guard-rails of which \$1,584 is labor, \$262.00 for material and \$224.00 for equipment.

The Tucker Mountain Road Bridge No. 179/146 is located at milepost 97.26. It is a timber-framed 5-span trestle, 80 feet in length with a width between curbs of 15 feet, 1-inch. It is posted for ten-ton load limits.

The valuation section indicates that the highway preceded the railroad at this location because the parcel on which the bridge is situated was deeded to the railroad by the Town of Andover on November 14, 1845, as a right to cross highway and was filed with the Secretary of State on June 17, 1846. The Commission records indicate that the present structure was built in 1917.

The October 10, 1979 inspection reports the timber-deck in marginal condition due to minor dry rot. The timber stringers are in generally good condition, but the timber rail is in poor

condition and does not meet current criteria. The north abutment breastwall is timber and is in marginal condition. The south abutment breastwall and wingwalls are dry cut stone and are in fair condition. The abutment backwalls and bridge seats are in generally good condition. The timber piers are in generally good condition. There are no approach rails.

The stress analysis indicates that this bridge is adequate for a weight limit of six tons, the controlling element being the timber plank deck. The inspectors' recommendation calls for a weight limit of six tons, and approach rails meeting current criteria and to regrade and pave the approaches within 50 feet of the bridge. The record indicates that there are no full-time residents beyond the Tucker Mountain Bridge, but the road is plowed throughout the winter.

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Railroad engineers testified that the condition of this bridge does not require a reduction in load limits from 10 to 6 tons. The estimate for replacing bridge fences and guard-rails is placed at \$2,259.00 of which \$1,584.00 is for labor, \$454.00 for material and \$221.00 for equipment.

The line involved in this proceeding is the Northern Railroad which is operated under lease by the Boston & Maine Corporation. There is no regular train service on this line. The patrons in the Lebanon area are served from White River Junction, Vermont, and the southern area by a local from Concord. This service has at times travelled over the line over which the bridges are located to reach Potter Place which is a station in Andover west of these locations. Emergency detours also use this line whenever a blockage or an interruption of service may involve the Connecticut River line between East Deerfield, Massachusetts and White River Junction, Vermont. Such a detour was required subsequent to the hearing when a derailment involved a bridge near Vernon, Vermont.

All of the three bridges have been maintained by the railroad for many years. They were built prior to 1930 and do not conform to present standards for width, guard-rails and railings. Neither do they provide for sufficient load limits for the more modern highway maintenance vehicles.

The immediate problem appears to be the maintenance of proper guard-rails and railings to reasonably provide for the protection of highway traffic using these structures.

It is the position of the Town that it is the responsibility of the railroad to properly maintain the bridges, fences, and all appurtenances. The position of the rail-road would require the Town to participate to some extent the cost of maintaining the fences and guard-rails because the maintenance of these safeguards is required essentially from damage sustained from collision with highway vehicles.

At the close of the April 28 hearing it was agreed to continue the record for the submission of estimates on the cost of replacing the fences and guard-rails in kind by the railroad within two weeks and the Town representatives were asked to consider the possibility of closing the Maple Street Bridge to all vehicular traffic, but to maintain the bridge only as a pedestrian crossing. If interested parties desire to cross-examine the railroad witnesses on these figures, an opportunity would be made available by arranging a continued hearing.

The figures were received May 13, 1982, and on May 20 a letter was addressed to the Chairman of the Board of Selectmen to determine whether those representing the Town of

Andover desire to cross-examine on the figures and to determine if the Selectmen have any further comment on the possible closing of the Maple Street Bridge to all vehicular traffic. No reply has been received so it is assumed that there is no further evidence to submit.

The Railroad Corporation has in the past maintained the bridges, the wearing surfaces, and the guards and rails, and the Town has maintained the approaches. At the present time there is no regularly scheduled train service and there is no desire by either party to eliminate the structures.

The Provisions of R.S.A. 373:2 titled "Reconstruction" provide that the Commission after notice and hearing may require a railroad "(c) to reconstruct or otherwise alter or improve any existing

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bridge or underpass and the approaches thereto in instances where separation of grades has been effected", and Section 3 entitled "Apportionment of Costs" provides that any order issued under the preceding section shall provide for the apportionment of the cost "(2) between the railroad and the state if such crossing is located at the intersection of a railroad and a state highway, trunk line or state aided highway, or (3) between the railroad and the municipality if such crossing is located at the intersection of a railroad and a highway other than those above specified. In making such apportionment the Commission shall give due consideration to whether the railroad or the highway was first constructed, to the nature and volume of highway traffic, to the number of trains operated by the railroad at the crossing, and all other relevant facts and circumstances. After such reconstruction the abutments and superstructure of the bridge or underpass shall be maintained by the railroad, but the Commission may direct that the wearing surface of a highway at the crossing be maintained by the State or by the Town or City whenever it finds that justice so requires."

The facts presented in this proceeding indicate that the reduction in load limits of the bridges under consideration herein is due to wear and deterioration of the planking. It is clear, however, that the guard-rails need to be replaced or reconditioned to meet the present requirements.

Upon consideration of all the facts the Commission is of the opinion that it is the duty of the railroad corporation to maintain the substructure including the abutments and intermediate supports as well as the stringers and girders which support the structure. It is further of the opinion that since there is no longer scheduled rail service on the line, the responsibility for maintaining the wearing surface and guard-rails should be borne by the Town of Andover. Since the present condition of all three bridges is the result of deferred maintenance over a long period during most of which regularly scheduled train service was provided, the Commission feels that it is the responsibility of the railroad to make such repairs to the bridge planking, guards, and railings at the Lawrence Street and the Tucker Mountain Road Bridges, as to provide for safe loadings as called for in the original design, following which the Town of Andover shall be responsible for maintaining the wearing surface, guards, and railings. It is further of the opinion that the railroad should make suitable repairs to the guards and railings of the Maple Street Bridge as to conform to the present standards, and that such repairs to the wearing surface as to safely carry passenger type vehicles shall be the responsibility of the Town of Andover, also, future maintenance of the wearing surface, guards, and railings. In reaching this decision, the

Commission is joined by the representative of the Commissioner of Public Works and Highways sitting in an advisory capacity in the proceeding. Our Order shall issue accordingly.

ORDER

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

ORDERED, that the Boston & Maine Corporation be, and hereby is, directed to make such repairs to the overhead highway bridges known as: Lawrence Street at milepost 102.60, and Tucker Mountain Road at milepost 97.26 as to safely carry traffic in accordance with the original design of each, also to repair or

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reconstruct guards and railings to meet present highway standards and bear the costs therefore; and, it is

FURTHER ORDERED, that said Boston & Maine Corporation shall make such repairs or reconstruction to the rails and guards of the Maple Street Bridge at milepost 98.16 as to meet present highway standards and bear the cost of the same; and, it is

FURTHER ORDERED, that the Town of Andover shall hereafter bear the cost of maintaining the wearing surface, guards, and rails of each of the overhead bridge structures referred to in this Order following the reconditioning for which the railroad corporation is ordered to provide herein.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of September, 1982.

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NH.PUC*09/21/82*[79384]*67 NH PUC 636*Hampton Water Works Company

[Go to End of 79384]

Re Hampton Water Works Company

DE 82-170, DE 82-184, Supplemental Order No. 15,887

67 NH PUC 636

New Hampshire Public Utilities Commission

September 21, 1982

MOTION for rehearing of a condemnation of property order; denied.

EMINENT DOMAIN, § 9 — Procedure — Motion for rehearing — Adequacy of condemnation proceeding.

[N.H.] Where the commission found that in a condemnation proceeding it: (1) had applied

the appropriate standard to the taking in finding that it was "necessary for the convenience and welfare of the public good," (2) had considered alternative sites, (3) possessed the statutory authority to approve the taking of land by public utilities to meet public demands, (4) appropriately balanced the integrity of the town zoning ordinances against the rights of the property owners, and (5) found that there was no irreparable harm shown to the property owners and that there were adequate statutory safeguards to protect the landowners, it denied a motion for rehearing of the condemnation order.

BY THE COMMISSION:

REPORT

On August 26, 1982 the Commission issued a Report and Order No. 15,843 (67 NH PUC 597). A Motion for Rehearing was filed by Chester P. Davis et al on September 13, 1982. On September 14, 1982 Hampton Water Works Company filed an objection to the Motion for Rehearing.

The Davises' motion contained eight grounds to support the granting of the motion. The Commission has reviewed the contentions and will treat each one separately hereafter.

1. The Commission applied an erroneous standard of law. A stricter standard of review is required for

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condemnation proceedings and requires a finding of necessity.

Order No. 15,843 reads as follows (67 NH PUC at p. 600):

"FURTHER ORDERED, that the petition filed in DE 82-184 is granted in part. That a taking of the subject property is "*necessary*" for the convenience and welfare of the public good." (emphasis supplied)

The above provision of Order No. 15,843 expressly stated that the taking was necessary. A review of the proceeding discloses that the Commission applied the strict standard of review even though the New Hampshire Supreme Court appears to have eliminated any distinction between "reasonable necessity and necessary" *White Mountain Power Co. v Maine C. R. Co.* (1964) 106 NH 443, 445 -A2d-, in which the Court held that once "reasonable necessity" is shown, a public utility may take property pursuant to RSA 371:1. Thus, by judicial interpretation the less strict standard of "reasonable necessity" is the standard of review for proceedings under RSA 731:1.

2. The Commission Order is clearly unlawful, unreasonable, and erroneous in that it failed to consider alternative sites.

The Commission has reviewed the record and finds that the Company considered at least four alternative sites and explained why each site was less desirable than the subject property on Exeter Road.

3. The Commission's decision is against the clear weight of the evidence.

The Commission does not agree with the above contention and sets forth that a review of the record supports a finding consistent with Order No. 15,843.

4. The Commission's decision violates the Davises' constitutional rights.

The Commission clearly has authority under RSA 371 to approve the taking of land by public utilities to meet public demands. See *Rockingham Light & Po. Co. v Philbrick* (1919) 79 NH 279; *White Mountain Power Co. v Whittaker* (1965) 106 NH 436, 61 PUR3d 166, 213 A2d 800; *White Mountain Power Co. v Maine C. R. Co.* (1964) 106 NH 443, 445; *Exeter & Hampton Electric Co. v Harding* (1964) 105 NH 317; *Lovejoy v Public Service Co. of New Hampshire* (1974) 114 NH 630.

5. The Commission applied an erroneous standard of law in placing more weight in its decision upon rights of neighbors and upon legal zoning ordinances than upon the rights of the Davises'.

The Commission had the obligation to balance the integrity of the Town's zoning ordinance against the property rights of the Davises'. The Commission found that it is in the public good to take a parcel of industrial zoned land for an industrial use rather than place an industrial use in a high residential zone. The Commission found that the imposition of an industrial use in this high residential district would severely affect adjoining property values without any compensation to those residents. The Davises' will receive fair compensation for a taking of their land in a proceeding that is expressly designed for that purpose.

6. The Commission failed to consider the legal position of the Davises' and failed to comply with RSA 363:17b(II) and III.

The Commission's Report and Order is clear and concise and adequately sets forth the issues raised in the proceeding and the reasons therefore.

7. Commission treatment of the petition with respect to 225 Exeter Road

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property is inconsistent with and differs from treatment afforded others before the Commission on similar cases.

The Commission disagrees that the petition was treated differently than other petitions previously submitted.

8. The Davises' will suffer irreparable harm.

The Commission finds that there is no irreparable harm shown and there are adequate safeguards in RSA 371:1 proceedings to protect the landowner. (See RSA 371:9).

The Commission does not find any merit in the contention raised by the Davises'. The Commission further finds that there is no good reason to grant the Motion for Rehearing and said Motion is denied.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion for Rehearing is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of September, 1982.

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NH.PUC*09/21/82*[79385]*67 NH PUC 638*Town of Raymond

[Go to End of 79385]

Re Town of Raymond

DX 82-221, Order No. 15,888

67 NH PUC 638

New Hampshire Public Utilities Commission

September 21, 1982

PETITION of a municipality for authority to remove rails and pave over a grade crossing; granted.

CROSSINGS, § 42 — Closing or abolition — Abandoned line — Poor road conditions.

[N.H.] Authority to remove rails and ties and to pave over a grade crossing located in the center of a municipality's business district was granted where the railroad had obtained authority to abandon the line and where the poor surface conditions at the crossing made driving over the tracks hazardous.

APPEARANCES: Gordon A. Cannett, Sr., chairman, board of selectmen, for the town of Raymond; Dana Kingston, administrator, town of Raymond; Representative Ralph Blake; Representative Calvin Warburton, Rockingham County District 8; Roderick Cyr, department of public works and highways; Representative John Hoar, Jr., District 8, pro se; John Adams, Boston and Maine Corporation.

BY THE COMMISSION:

REPORT

By petition filed July 28, 1982, the Town of Raymond seeks authority to remove the rails and construct a highway

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across the right-of-way of the Boston and Maine tracks known as the Manchester-Portsmouth Branch in the Town of Raymond. Hearing thereon was held at Concord on September 15, 1982.

It is the desire of the Selectmen of Raymond to remove the rails and pave over the highway where it crosses the railroad right-of-way at three crossings; Main Street, Lane Road and the Prescott Crossing.

The Main Street crossing is in the center of the business section of Raymond. There are two tracks at this crossing and is described as a very rough way. In attempting to avoid the worst spots it is claimed that very near collisions result from the drivers of cars turning sharply to avoid them.

Lane Road is a single track crossing. It was originally the main highway carrying Route 101 across the track, but reverted to a Town Road after changes were made in that route many years ago. It is located west of business section of the Town.

Prescott Road is easterly of the Town. It crosses the single track line at which the grade is approximately four (4) feet below that of the approaches. It is desired to fill the section after removal of the rails to improve the highway grade.

The Town is not pleased with the fact that rail service is no longer operated. It is in hopes that it will be restored in the future, but with a Court Order having been issued authorizing the abandonment of the line through Raymond it takes the position that the rails should be removed and the area paved over because there is every likelihood that the crossings will not be properly maintained and will become even more of a hazard than is presently the case. It is suggested that after removal of the rails, the Raymond Historical Society might be interested in having them on display, but in any case, they feel that they should be available in case future circumstances require the renewal of rail service.

The Railroad representative does not oppose the petition. His testimony indicates that the limited funds available should be used to maintain actively used crossings rather than attempt to maintain crossings which are not in use and particularly when authority to abandon the line has been received.

The Railroad is willing to cut the rails where they are to be removed and store them on the right-of-way so they will be available if necessary for future use. It would also like a commitment from the Town to obtain a release so that the crossing can be restored if future use should be required. Present laws, however, authorize this Commission to provide for grade-crossings and to apportion their cost whenever circumstances require.

Upon consideration of all the facts the Commission is of the opinion that it should permit the removal of rails and ties at each of the three crossings to eliminate the necessity for their maintenance. It is also of the opinion that such material that is removed and is suitable for reuse should be held in readiness to restore a crossing should future circumstances require. Our Order will issue accordingly.

ORDER

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

ORDERED, that the Town of Raymond be, and hereby is, authorized to remove the rails and ties at the grade crossings, in the Town known as Main Street, Lane Road and Prescott Road and to construct a paved highway over the location of the crossings; and it is

FURTHER ORDERED, that the rails and ties removed shall be held by the Boston and Maine Corporation or the Town of Raymond for use in the restoration of a crossing should they be required in future restoration of train service; and it is

FURTHER ORDERED, that the Town of Raymond shall bear the cost of the removal of the rails and ties and the construction of the highway at the respective locations.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of September, 1982.

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NH.PUC*09/22/82*[79386]*67 NH PUC 640*Association of New Hampshire Utilities

[Go to End of 79386]

Re Association of New Hampshire Utilities

DF 81-258, Fourth Supplemental Order No. 15,892

67 NH PUC 640

New Hampshire Public Utilities Commission

September 22, 1982

ORDER amending previous order so as to disallow recovery of the expenses of the Governor's Council on Energy.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the New Hampshire Supreme Court, by its decision of September 3, 1982, reversed the finding of the New Hampshire Public Utilities Commission Order No. 15,354 (66 NH PUC 531) and remanded the matter to the Commission; it is hereby

ORDERED, that Order No. 15,354 is amended, modified, and changed to the extent that the expenses of the Governor's Council on Energy are not proper or allowable; and it is

FURTHER ORDERED, that a copy of this Order be sent to the State Treasurer who is authorized to refund the amounts collected according to law.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of September, 1982.

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NH.PUC*09/22/82*[79387]*67 NH PUC 641*Tilton and Northfield Aqueduct Company

[Go to End of 79387]

Re Tilton and Northfield Aqueduct Company

DR 82-51, Second Supplemental Order No. 15,894

67 NH PUC 641

New Hampshire Public Utilities Commission

September 22, 1982

PETITION of a water company for a rate increase and authority to borrow; granted.

BY THE COMMISSION:

REPORT

Tilton and Northfield Aqueduct Company, a N.H. Public Utility, filed certain revisions to its tariff NHPUC No. 4, seeking an annual increase in revenue of \$75,643, (52%).

On June 11, 1982, a duly noticed public hearing was held, the result of which was Order No. 15,721 issued on June 22, 1982 for a temporary increase in revenues of \$45,000 or \$29.7% effective for all service rendered on or after July 1, 1982.

In addition, a procedural schedule was established. Since no parties other than the Company and PUC Staff appeared in the case, settlement conferences on permanent rates were held on July 30, 1982 and August 7, 1982, with an additional hearing held on August 17, 1982. At the August 17, 1982 hearing, the settlement agreed upon by all parties was summarized for the record and for Commission approval.

The settlement included a \$52,900 increase in permanent rates effective with the October 1, 1982 billing; plus one half of reasonable and prudent Commission approved rate case expenses of \$1,742. Also included is an immediate recoupment via a surcharge of the one quarter's shortfall between the temporary and permanent rates, and a step increase effective with the April 1, 1983 billing which would alter permanent rates on an annual basis by \$8,900 plus the known change in property taxes and BC/BS from the test year end level. In addition, as of April 1, 1983, the Company will shift its rate structure to a more equitable flat or single block rate.

In reaching this settlement, the agreed upon rate of return was 15.2% which included \$180,000 of 10 year long-term notes proformed at 17.0%.

This \$180,000 figure is to be used to refinance \$115,000 due to the Bank of New Hampshire, NA; \$5,000 per year for 2 years to install new meters in the system; and the balance to pay the balance due the towns of Tilton and North-field for past due property taxes.

The Company had filed for Permission to Borrow on July 27, 1982, so as to expedite the procedure and reduce overall regulatory costs the filing was included in the settlement package.

During the course of the August 17, 1982 hearing, the background and propriety of the past due property taxes was questioned, but since in DF 80-42 and Order No. 14,573 (65 NH PUC 548), the Commission has stated that the Company was "authorized to issue and sell \$22,000 of

long term debt with maturity in 10 years; and it was

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"FURTHER ORDERED, that the proceeds from such debt shall be used to pay past due property taxes to the Towns of Tilton and Northfield, and it was

"FURTHER ORDERED, that this authorization should be exercised on or before 12 months have expired from the date of this Order."

Based on this, the Commission doesn't deem it proper to go back and question a previous Report and Order. Had the Company acted within the 12 month period, the issue would be moot, but as they didn't act due to high interest rates, which have recently declined, the Commission cannot fault the Company for waiting.

These back due property taxes were recognized as a legitimate balance sheet item in DR 76-102, the first rate case proceeding of the present owners.

Based on the preceding Report, the Commission will accept the proposed settlement agreement and Petition to Borrow, but will revise the amount of the increase based on the actual interest rate on the long term borrowing proformed to 16.0% which reduces the \$52,900 figure by \$1,840.

The resulting approved rate increase is thus $(\$52,900 - \$1,840 + 1,742) \$52,802$. In addition the recoupment between temporary and permanent rates will commence as of October 1, 1982, as per the Settlement agreement, but will be spread over a 9 month period. Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Tilton and Northfield Aqueduct Co. be, and hereby is, authorized to borrow up to \$180,000 of 10 year long term notes for the purposes set forth in this Report; and it is

FURTHER ORDERED, that Tilton and Northfield Aqueduct Co. shall submit to this Commission the actual final terms of the borrowing, after which a Supplemental Order will be issued approving such terms, and final adjustment to the rate increase if needed; and it is

FURTHER ORDERED, that Tilton and Northfield Aqueduct Co. shall on January 1st and July 1st in each year, file with this Commission a detailed statement, duly sworn by its President and Treasurer, showing the disposition of the proceeds of said securities being authorized until the expenditure of the whole and said proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that Tilton and Northfield Aqueduct Co. shall surcharge the 3 month shortfall in revenues between temporary and permanent levels on an actual per customer basis commencing with the October 1, 1982 billing over a 9 month period; and it is

FURTHER ORDERED, that Tilton and Northfield Aqueduct Co. may after filing of the appropriate workpapers and tariff pages, alter its rates as of April 1, 1983 in accordance with the attached Report and the Commission tariff filing rules; and it is

FURTHER ORDERED, that as of April 1, 1983, the Company will shift its rate structure to a

flat rate; and it is

FURTHER ORDERED, that 4th Revised Pages 11, 12, 13, and 14, suspended by Order No. 15,540 are rejected; and

FURTHER ORDERED, that 6th Revised Pages 11, 12, 13, and 14 shall be filed to reflect a \$52,802 increase spread percentage wise in all steps of all rate schedules as approved in this Report; and it is

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FURTHER ORDERED, that 1st Revised Pages 8, 9, 10, and 10A shall be refiled bearing the effective date of July 1, 1982; and it is

FURTHER ORDERED, that all tariff pages filed in accordance with this Report and Order shall bear the notation "Authorized by NHPUC Order No. 15,894 in Case DR 82-51, dated September 22, 1982.

By Order of the Public Utilities Commission of New Hampshire this twenty-second day of September, 1982.

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NH.PUC*09/24/82*[79388]*67 NH PUC 643*Tilton and Northfield Aqueduct Company

[Go to End of 79388]

Re Tilton and Northfield Aqueduct Company

DR 82-51, Third Supplemental Order No. 15,897

67 NH PUC 643

New Hampshire Public Utilities Commission

September 24, 1982

ORDER approving utility loan.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Second Supplemental Order No. 15,894 (67 NH PUC 641) authorized Tilton and Northfield Aqueduct Company to borrow \$180,000 for 10 years; and

WHEREAS, the Bank of New Hampshire has agreed to lend the Company the sum of \$180,000 for 10 years at an interest rate of 16%; and

WHEREAS, the Commission approves the terms of the aforementioned loan; it is hereby

ORDERED, that the terms and conditions agreed between the Bank of New Hampshire and Tilton and Northfield Aqueduct Company as set forth in the letter dated September 22, 1982 is approved; and it is

FURTHER ORDERED, that Tilton and Northfield Aqueduct Company shall on January 1st and July 1st in each year, file with this Commission a detailed statement, duly sworn by its President and Treasurer, showing the disposition of the proceeds of said securities authorized until the expenditure of the whole and said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of September, 1982.

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NH.PUC*09/24/82*[79389]*67 NH PUC 644*New England Power Company

[Go to End of 79389]

Re New England Power Company

DF 82-271, Supplemental Order No. 15,898

67 NH PUC 644

New Hampshire Public Utilities Commission

September 24, 1982

ORDER further delineating authority to issue and sell refunding bonds.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by Order No. 14,020 (65 NH PUC 57) and 14,128 (65 NH PUC 125) New England Power Company (the Company) was authorized to issue and sell one or more series not exceeding \$90 million principal amount of General and Refunding Mortgage Bonds (the Refunding Bonds), to mature in not more than 30 years from date as of which the Bonds are issued, to conform to the terms of Pollution Control Bonds to be issued simultaneously therewith by the Massachusetts Industrial Finance Agency (MIFA) under the Indenture dated March 15, 1980, (the Indenture) pursuant to the Loan Agreement between the Company and MIFA; and it is

FURTHER ORDERED, that the Refunding Bonds, authorized herein, shall be issued for the replacement of the Series C General and Refunding Mortgage Bonds, and shall be delivered to the trustee under the Indenture for the purpose of evidencing the obligation of the Company to pay the principal of, interest on, and premium, if any, on Pollution Control Bonds to be issued by MIFA simultaneously with the Refunding Bonds; and it is

FURTHER ORDERED, that New England Power Company be, and hereby is, authorized to issue and pledge one or more series, aggregating and exceeding \$90 million principal amount, of First Mortgage Bonds, to bear the same interest rate and have the same maturity as the Refunding Bonds; and it is

FURTHER ORDERED, that New England Power Company be, and hereby is, authorized to

execute and deliver any amendments to the Loan Agreement between the Company and MIFA to reflect the terms of the Refunding Bonds; and it is

FURTHER ORDERED, that New England Power Company be, and hereby is, authorized to mortgage its present and future property, tangible and intangible, including franchises in New Hampshire, and to confirm the mortgage thereof, as security for the outstanding General and Refunding Mortgage Bonds, the proposed Refunding Bonds, the outstanding First Mortgage Bonds, the proposed Pledged Bonds, and, bonds thereafter issued under the provisions of the Company's General and Refunding Mortgage and First Mortgage Indentures; and it is

FURTHER ORDERED, that the authorization to issue the Refunding Bonds contained herein shall be exercised on or before March 30, 1983, unless such period is extended by order of the Commission; and it is

FURTHER ORDERED, that the authorization to issue the Pledged Bonds shall be exercised, from time to time, as permitted by the provisions of the First

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Mortgage and General and Refunding Mortgage Indentures; and it is

FURTHER ORDERED, that in all other respects our orders, 14,020 and 14,128, of January 29, 1980 and March 13, 1980, shall remain in full force and effect; and it is

FURTHER ORDERED, that on or before January first and duly first in each year, said New England Power Company 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 securities, until the expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of September, 1982.

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NH.PUC*09/27/82*[79390]*67 NH PUC 645*Northern Utilities, Inc.

[Go to End of 79390]

Re Northern Utilities, Inc.

Intervenor: Office of Consumer Advocate

DR 82-105, Third Supplemental Order No. 15,901

67 NH PUC 645

New Hampshire Public Utilities Commission

September 27, 1982

PETITION for authority to increase a cost of gas adjustment and to abandon gas roots customers; denied.

1. EXPENSES, § 76 — Gas — Interruptible sales — Management prudence.

[N.H.] On rehearing, the commission determined to allow the costs associated with certain of a gas company's interruptible sales on the basis of a more detailed explanation of the events leading to the decisions of management which revealed that, while management could have taken steps that would have been more prudent than those that occurred, its actions were not imprudent. p. 646.

2. SERVICE, § 117 — Duty to serve — Obligation of sole provider of service — Economics not a factor.

[N.H.] Concomitant with the advantage of being the sole provider of utility service within a specific area is the obligation to provide service to all customers within the service territory regardless of economics. p. 647.

3. SERVICE, § 230 — Factors affecting right to discontinue service — Revenues and losses — Economics not factor.

[N.H.] Permission to disconnect customers who were not encompassed by a utility's program for converting "gas roots" customers from propane to natural gas was denied where the commission found that (1) the company was imprudent in not pursuing a conversion program at an earlier date, and (2) a decision to allow the utility to disconnect customers because of difficulty or the economics associated with providing service would set a dangerous precedent. p. 648.

4. EXPENSES, § 39 — Propane versus natural gas service — Cost differential — Below-the-line item.

[N.H.] A utility's imprudence in not pursuing a program for the conversion of propane customers to natural gas resulted in below-the-line treatment of the cost differential between

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the cost of propane for the customers and the overall average cost of gas absent the propane costs to serve the customers. p. 648.

APPEARANCES: Eaton W. Tarbell, Jr., for the company; F. Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:

SUPPLEMENTAL REPORT

The Commission, on May 5, 1982, issued Report and Order No. 15,617 (67 NH PUC 306), ordering the Company to file revised tariff pages reflecting a cost of gas adjustment of \$0.03428/therm for the Summer Period, 1982, effective May 1, 1982.

This rate was substantially below the Company's original request of \$0.3623/therm subsequently revised to \$0.3598/therm.

The difference between the revised request and the Commission's Report and Order were:

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

| | |
|---|---------------------------|
| (1) "gas roots" additional costs | \$ 42,448.50 |
| (2) winter costs in summer period | 17,062.78 |
| (3) "cool down" costs | 4,400.00 |
| (4) cost mark-up on LNG | |
| (5) summer, 1981 interruptible sales | 44,886.00 |
| (6) Tenn. refund & interested computation | 30,000.00 |
| (7) prior period undercollection adjustment | 4,425.00 |
| | \$143,222-net adjustments |

On June 4, 1982, Northern Utilities, Inc. filed a motion for rehearing with respect to items I and 5 listed above.

The Commission in Second Supplemental Order No. 15,771 dated July 23, 1982, granted the Company's Motion for Rehearing. A hearing was scheduled for August 6, 1982 at 10:00 A.M. at the Commission's offices in Concord. In granting the Motion, the Commission Order added to the scope of the proceedings, "Northern is directed to file tariff revisions consistent with this Order including schedules and calculations" referring to "more accurate amounts of refunds and interest calculations".

A duly noticed public hearing was held at the scheduled time and place, however, the Company inadvertently failed to have available the required revised information it was ordered to provide by Order No. 15,771. Such data was required to be filed in writing the week following the hearing, and the Company complied in a timely fashion.

At the hearing, the Company called two witnesses who submitted two exhibits. Those witnesses were extensively and rigorously cross-examined by Mr. Traum of the PUC Finance Department.

The first witness, Mr. Ellis, discussed the Commission's disallowance of \$44,886 related to certain interruptible sales made in the summer of 1981 to Public Service Company of New Hampshire.

[1] Due to a more detailed explanation of the facts and the chronological events leading to management's decision in this particular instance, the Commission will allow the costs. Management could have taken steps that would have been more prudent than what actually occurred. However, based on this record, management's actions are found

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not to be imprudent. The \$44,886 will be allowed for reconciling purposes. However, management is placed on notice that prior to any future sale of this type, the terms of the agreement and the potential effect on consumers is to be provided to this Commission prior to the consummation of the contract.

The second witness, Mr. Davis, testified on the phase-out of the "gas roots" program. Through his testimony, the Commission learned that of the 76 "gas roots" customers as of December 31, 1981, eighteen have been connected to natural gas, with eleven more conversions expected by year end. These customers pursuant to the tariff provisions were or will be

converted at no cost.

While the twenty-nine customers that have or will be satisfactorily hooked up the system is progress, there remains for resolution the fate of forty-seven additional customers. The Company has requested permission to discontinue service to these customers within 30 to 60 days due to an alleged financial hardship. The Company's request to discontinue service is denied.

[2] The conferral of utility status on a business operation has certain statutory ramifications that cannot be ignored. One of the advantages bestowed upon a business operation becoming a utility is the right to be the sole provider of utility service within a specified area. Concomitant with this advantage is the obligation to provide service to any and all customers within the service territory.

Obviously, the costs of providing service to a wide variety of customers range from being extremely lucrative to uneconomic. A telephone or an electric utility rarely, if ever, breaks even serving some of the rural customers and communities located in any given state. All utilities welcome growth in demand for their services in centralized urban areas as opposed to more rural or outlying areas. Yet, the trade-off for the obligation to service all customers regardless of economics is the exclusive right to be the only supplier of service.

The gas utilities in this State have primarily served the central cities. Unlike the telephone and electric utilities, their service territory has been more concentrated and this has assisted in minimizing the costs to provide service on a per-customer basis. These gas roots customers were customers that were from the very beginning and are today utility customers and within the service territory of Northern Utilities.

While these customers were initially to be served by propane, the planned permanent connection was to be to the entire Northern Utilities gas supply system. Northern Utilities has failed for a considerable number of years to take the necessary steps to connect these customers. During that time, the costs of propane have increased to a present position considerably greater in cost to the price of: natural gas or the average total gas supply cost. Until the Commission focused its attention on this issue, no steps had been taken to connect these customers.

The widening price differential between the total propane costs necessary to serve these customers as unconnected customers and the average cost of gas supply was in essence paid for by other Northern Utilities customers through primarily the cost of gas adjustment. Thus, this adjustment provision which was designed to recognize prudent changes in the cost of gas supply was used by Northern to avoid making the necessary capital expenditures required of a utility.

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The Commission in this docket disallowed these additional costs from being passed on to consumers as an entity. Nor is it equitable at this point in time to charge these customers based entirely on the costs of propane. Such a decision would increase rates for these customers in excess of 50%. This result would be a violation of the standard of just and reasonable rates and, furthermore, the problem has arisen because of Northern's decision not to live up to its statutory obligations as a franchised public utility.

In this docket, the Commission after granting the motion for rehearing is faced with a request

to discontinue service that can only occur after a demonstration that the disconnection is in the public interest. A 50% increase in rates coupled with the inability to connect to the larger system demonstrate that the public interest is only served by retaining these consumers as a part of the Northern Utilities franchised area. Furthermore, the remaining forty-seven customers are to be connected to the system within a year and a half from May 5, 1982. (November 5, 1983)

[3] Northern Utilities should have pursued a course of connecting these forty-seven customers prior to this year. The Company's failure to follow their obligation to connect customers to their system was imprudent. A decision to allow this utility to disconnect customers because of difficulty associated with providing service or due to economics would set a dangerous precedent. The Commission could reasonably assume similar requests by electric and telephone utilities seeking to abandon certain portions of their franchise or to request level or rates that would in essence achieve the same purpose by making the utility service unaffordable.

[4] Northern's imprudence will result in the cost differential between the cost of propane for these customers and the overall average cost of gas absent the propane costs to serve these customers to be placed in a below-the-line account. Northern's request to have the additional costs of the "gas roots" program allowed in the cost of gas adjustment is rejected. So as not to permanently penalize Northern, these gas roots customers are to be connected by November 5, 1983.

In the hearing held after the motion for rehearing was granted, Staff expanded the inquiry to examine two additional issues. The first was the actual refund from Tennessee Gas to Northern and the second was how the estimated cost of gas adjustment, the subject of the May 5th Order No. 15,617 (67 NH PUC 306) was tracking costs. The testimony by Northern Witness Davis was that the actual refund was \$64,807 rather than the \$30,000 estimate that the Company testified to in the initial set of hearings. This \$34,807 reduction in the cost of gas adjustment is a proper adjustment, because it reflects a return of consumer money from a prior time period that should be returned as soon as possible.

The testimony of Mr. Davis was that the cost of gas adjustment was overcollecting as of June 30, 1982 by a level of \$58,119. The Commission will adjust the amount collected through the cost of gas adjustment by this amount.

The summary of adjustment allowed are as follows:

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

| | |
|--------------------------------------|------------|
| 1. Summer 1981 - Interruptible Sales | \$44,886 |
| 2. Updated Refund | (\$34,807) |
| 3. Overcollection | (\$58,119) |
| Total | |
| | (\$48,040) |

The final result is a reduction in the cost of gas adjustment for October, 1982 of \$48,040 prior to interest adjustments. Northern's request for an increased cost of gas adjustment of \$87,334.50 if found not be justified. The request to abandon service to the forty-seven remaining gas roots customers is denied. Rates are ordered to be ordered to be reduced by \$48,040 for the

month of October, 1982. Northern Utilities will file tariff sheets reflecting this reduction equally on a per therm basis across its customer classes excluding interruptible. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof, it is hereby ORDERED, that Northern Utilities' request to increase the cost of gas adjustment by \$87,334.50 is denied; and it is

FURTHER ORDERED, that Northern Utilities' petition to abandon gas roots customers is denied; and it is

FURTHER ORDERED, that Northern Utilities is to connect all gas roots customers to its gas supply system prior to November 5, 1983; and it is

FURTHER ORDERED, that the difference between the propane costs to serve the gas roots customers and the average gas supply cost of the remaining customers are to be booked below-the-line; and it is

FURTHER ORDERED, that Northern Utilities is to file revised tariffs effective October 1, 1982 in which rates are reduced on an equal per-therm basis for all customer classes except interruptible by \$48,040.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of September, 1982.

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NH.PUC*09/27/82*[79391]*67 NH PUC 649*Warner Amex Cable Communications, Inc.

[Go to End of 79391]

Re Warner Amex Cable Communications, Inc.

Additional petitioner: Cheshire Cable Corporation

DE 82-232, Order No. 15,902

67 NH PUC 649

New Hampshire Public Utilities Commission

September 27, 1982

PETITION of a cable television company for authority to construct and maintain antenna facilities and transmission lines over state-owned land; granted.

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BY THE COMMISSION:

REPORT

On August 13, 1982, the Warner Amex Cable Communications Inc. petitioned this Commission to change the title of ownership on a license granted to construct and maintain antenna facilities and transmission lines on certain State-owned land in the Town of Hinsdale.

On August 18, 1982, an Order of Notice was issued setting a hearing for September 15, 1982, at 10:00 a.m. at the Commission's Concord offices. Notices were sent to Terry Ray Gould, General Manager, Warner Amex Cable Communications Inc. for publication; Clayton N. Health, Jr., Chief, Land Management, DRED; George Gilman, Commissioner, DRED; John R. Sweeney, Director, Aeronautics Commission; John Bridges, Director, Safety Services; and the Office of the Attorney General. An affidavit indicating that publication was made in the Brattleboro Reformer on Wednesday, September 1, 1982, was received at the Commission's offices on September 3, 1982. Mr. Gould testified that Warner Amex Cable Communications Inc. is the owner of Cable Communications Facilities, formerly owned by Brattleboro TV Inc., and provides cable television to customers in Brattleboro and West Chesterfield. Cheshire Cable Corporation has contractual rights to the Mt. Wantastiquet facilities and provides cable television to customers in North Hinsdale.

On May 8, 1961, Cheshire Cable Corporation and Brattleboro TV Inc. petitioned this Commission for a license to construct and maintain antenna facilities and transmission lines on, over and across State-owned land in the Town of Hinsdale. This Commission approved the license in Order No. 7657 on June 7, 1961. A five year license was approved at an annual rental of \$25.00 per year, as agreed upon by the petitioners and the N.H. Forestry and Recreation Commission.

In December, 1965, Brattleboro TV Inc., changed its name to the X Corporation, in order that another Vermont cable company, The United Cable Division of Vermont, Inc., could, in turn, change its name to the Brattleboro TV Inc. The new Brattleboro TV Inc. filed for a transfer of rights of the former Brattleboro TV Inc., and was granted that right by Commission Order No. 8497 on January 20, 1966. No changes were made to the provisions of the license or the compensation of \$25.00 per year.

Warner Amex now requests that the Commission authorize a new license in the name of Warner Amex Cable Communications Inc. Cheshire Cable Corporation requests that the license continue to reflect Cheshire as a co-licensee. Clayton N. Heath, Jr., representing DRED, request that the compensation rate be increased to \$500.00 per annum. No party objected to the others requests. Mr. Gould testified that Warner Amex assumes all responsibility for construction, operations, and maintenance expenses. He proposes to remove an existing primitive building and five separate antenna facilities, and to replace them by a new smaller, less conspicuous building, and a single 100 ft. antenna tower. He also intends to upgrade the road and replace two bridges on State-owned land. Estimated construction costs exceed \$18,500.

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The Company provided exhibits attesting to certificates of Public Good by the State of Vermont Public Service Board authorizing the operation of a cable television system in the Town of Brattleboro Vermont.

The agreement to a \$500.00 annual fee was made by Warner Amex, and included no

contributing fee by Cheshire Cable. As a result of cross-examination, Cheshire Cable agreed to pay a fee of \$50.00 per year, in addition to the \$500.00 assessed to Warner Amex. A five year period was set for the period of the lease.

Upon review of the testimony and evidence submitted, this Commission finds the recommended changes to be in the public interest.

Our Order will issue accordingly:

ORDER

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

ORDERED, that a license be, and hereby its granted to Cheshire Cable Corporation and Warner Amex Cable Communications, Inc. to construct and maintain antenna facilities and a line of poles with wires and fixtures thereon, across approximately 2,700 ft. of Mt. Wantastiquet, easterly of the summit, thereof, from a point southerly of the Childs Monument, and a straight line to the so called Old Mountain Road just easterly of the Connecticut River; and it is

FURTHER ORDERED, that Cheshire Cable Corporation pay to the Department of Resources and Economic Development the sum of \$50.00 per annum as compensation for its share of said license; and it is

FURTHER ORDERED, that Warner Amex Cable Communications, Inc., pay to the Department of Resources and Economic Development the sum of \$500.00 per annum as compensation for its share of said license.

By Order of the Public Utilities Commission of New Hampshire this twenty-seventh day of September, 1982.

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NH.PUC*09/27/82*[79392]*67 NH PUC 651*Manchester Gas Company

[Go to End of 79392]

Re Manchester Gas Company

DR 82-251, Order No. 15,903

67 NH PUC 651

New Hampshire Public Utilities Commission

September 27, 1982

ORDER approving contract amendments that increased the formula price for interruptible gas.

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BY THE COMMISSION:

ORDER

WHEREAS, Manchester Gas Company filed revised Schedule A's for all existing Special Contracts for interruptible gas service with this commission on August 31, 1982, designed to increase the formula price for interruptible gas from 87% to 95% of the price of residual oil effective October 1, 1982; and

WHEREAS, the Commission finds the change to be necessary and in the best interest of all Manchester Gas Company customers; it is hereby

ORDERED, that said contract amendments are approved, subject to review in Docket DE 80-29, Investigation of Interruptible, Seasonal or Non-Firm Gas Service by Special Contract.

By Order of the Public Utilities Commission of New Hampshire this twenty-seventh day of September, 1982.

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NH.PUC*09/28/82*[79393]*67 NH PUC 652*Tariff Filing Requirements

[Go to End of 79393]

Re Tariff Filing Requirements

DRM 82-126, Supplemental Order No. 15,908

67 NH PUC 652

New Hampshire Public Utilities Commission

September 28, 1982

ORDER vacating previous order that involved tariff filing requirements for certain utilities.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Order No. 15,759 (67 NH PUC 468) involving tariff filing requirements; and

WHEREAS, the aforementioned Order affected utilities that are involved in toll bridges, toll roads, power boats engaged in the carriage of passengers or freight and amusement railroads; and

WHEREAS, the Commission has become aware that toll bridges, toll roads, power boats and amusement railroads presently are not in the position to comply with the requirements set forth in Order No. 15,759; and

WHEREAS, the Commission finds that it is fair and equitable to exempt these utilities from the requirements of the filing requirement rule; it is hereby

ORDERED, that that portion of Order No. 15,759 as it pertains to toll bridges, toll roads, power boats and amusement railroads is hereby vacated and set aside.

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

September, 1982.

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NH.PUC*09/29/82*[79394]*67 NH PUC 653*Public Service Company of New Hampshire

[Go to End of 79394]

Re Public Service Company of New Hampshire

DF 82-262, Order No. 15,911

67 NH PUC 653

New Hampshire Public Utilities Commission

September 29, 1982

PETITION for authority to issue and sell unsecured debentures; granted.

SECURITY ISSUES, § 94 — Kings and proportions — Sale of debentures — Reasons for approval.

[N.H.] While the commission noted that the sale of debentures was not a usual financing mechanism for utilities, given the fact that alternative and innovative financing plans had not been successful in alleviating a utility's construction financing difficulties, it approved the issuance of the debentures for the length of time requested and approved the cost rate as a reasonable expense.

Before McQuade, commissioner.

APPEARANCES: Public Service Company of New Hampshire as represented by Frederick J. Coolbroth and Pierre Cameron. Limited appearances: Mary Metcalf.

BY THE COMMISSION:

REPORT

By this unopposed petition filed September 10, 1982, Public Service Company of New Hampshire (the "Company" or "PSNH") a corporation duly organized and existing under the laws of the State of New Hampshire, and operating therein as an electric public utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369 to issue and sell for cash not exceeding \$75,000,000 of unsecured Debentures (the "Debentures"). A duly noticed hearing was held in Concord on September 23, 1982, continued on September 27, 1982 at which the Company submitted the testimony of Charles E. Bayless, its Financial Vice President. Pursuant to Commission request, Executive Vice President David M. Merrill was also called as a witness to discuss progress on a new construction cost estimate for Seabrook. During the testimony of Mr. Merrill, questions from the Commission focused on absenteeism, previous cost estimates, possible factors that might affect the new cost estimate, and previous estimates as

to peak work force and payroll. Mr. Bayless was questioned as to changes in the financial forecast from previous financial forecasts. Questions were also asked involving possible uses of the Millstone proceeds, pollution control financings, Eurobond and Mideast debt issues.

The Debentures will be sold through a negotiated public offering. Mr. Bayless described the major terms of the proposed Debentures and explained why the Company proposed a negotiated rather than a competitive sale.

In analyzing the petition, the Commission must be mindful of the recent history concerning PSNH's requests for financings. In Report and Order No.

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15,760 (67 NH PUC 490, 47 PUR4th 167) this Commission stated that because of our findings that PSNH was facing severe financial difficulties until Seabrook I was completed, the Commission stated that it would attach conditions to the proceeds of future financings preventing their use for any further work at Seabrook II until either Seabrook I was completed, PSNH achieved a reduction in Seabrook ownership down to 28% or a demonstration of an equivalent response by other utilities to alleviate PSNH's financial condition is made. None of these alternatives has occurred. PSNH did, however, appeal that Order and argued in part that the Commission does not have the authority to examine or rule on the underlying purposes for which the financing is being sought. The PSNH appeal also raised significant questions concerning our authority in this area and if they ultimately prevail the Commission's authority would be so narrow as to be effectively a mere formality in most instances.

The New Hampshire Supreme Court based on PSNH's motion to suspend our Order did in fact suspend our Order which would, but for its existence, result in the attachment of the conditions set forth in Order No. 15,760 to this financing. Because the Supreme Court has for the present, granted PSNH's motion as to our limited authority, the Commission will obviously use that standard until the Commission is instructed as to its proper authority by a final Supreme Court decision.

Because of this situation, the Commission will not pass judgment on the purposes for which the proceeds of the financing are to be used. Mr. Bayless discussed what purposes the Company wished to apply the proceeds. However, due to the temporary acceptance of PSNH's position that we are without authority to examine the purposes of the proceeds, we will not pass judgment on Mr. Bayless' testimony on these matters.

The instrument sought to be authorized is debt rather than equity. Debt has tax advantages over equity. This debt instrument is unsecured, which is not as advantageous to either the Company or its customers as secured debt. As to the standing of purchasers of these debt instruments, these purchasers establish a new third class level behind those who hold First Mortgage Bonds and behind PSNH's usual debt financing instrument, General and Refunding Mortgage Bonds.

Unlike previous PSNH security issues, this instrument has no call provisions. The rate paid will be approximately 16% plus expenses for an effective rate of approximately 16.5%. This rate, because of the absence of the call provision, will last for the next six years no matter what occurs with interest rates.

At the present time, the prime is 13.5%, CD's or relatively risk-free investments are near 10.5%, long term government bonds are at 11.7% and five-year immediate term government bonds are at 12.2%. From the various standard financial resource data available at the Commission, we are aware that new bond issue yields by utilities for mid-term bonds are as follows: AAA - 13.13%, A - 13.88%. PSNH is rated below these ratings.

The Commission would expect that a rate of 15.5% to 16% given the aforementioned other investment possibilities are significantly below that rate will lead to a favorable reception of these issues. The protection of this rate for six years regardless of the interest rates will be attractive to some investors, especially to

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those who believe interest rates will drop even further.

Debentures are not a usual financing mechanism for utilities. Most utilities use either first or second mortgage level debt. The use of debentures without a call provision is discussed in our record as an indication of a continued deterioration of the Company's financial position since the start of the year.

A financial scenario submitted for our evaluation in DR 81-87 and DF 82-63 dated at the end of 1981 was estimating G&R (or second) mortgage bonds of \$230,000,000 for the years 1982-1983. This level has now been reduced to \$115,000,000 due to coverage problems. This coverage problem has led to projections of significantly greater levels of equity which have the effect of increasing rates, the cost of AFUDC and the cost of any project under construction.

Alternative and innovative financing plans have not to date achieved success. The testimony provided indicates that due to uncertainty in the Mideast, financings placed in that market are impossible for all companies. The same situation exists in the Eurobond market. PSNH's attempts to get around their extremely restrictive first mortgage indenture so as to make positive use of the proceeds from their sale of a portion of Millstone III has been blocked.

The pollution control bonds, which the Company has only recently raised as an option, will take a considerable amount of time to become reality in a meaningful way at least as to their major construction program. To succeed in this attempt various tax rulings and appeals will be necessary and it is more likely that this option as to its major construction program will either not be an optional financing or it will be late 1983. While some pollution control bonds, up to \$20 million may be issued this year, this level will fall short of the projected financial program of \$54,000,000. In summary, the less traditional financings are not developing into the financing options that both PSNH and the Commission had hoped.

The Commission will approve the issuance of the debentures for the length of time requested. The cost rate is approved as are reasonable Commission expenses.

In our prior Orders, the Commission has continuously raised questions concerning the estimates provided by PSNH for total construction costs and thereby the total levels of financings necessary. The Commission has also questioned the level of cost control including number of employees at construction sites. We have indicated in this proceeding that although our inquiry into these matters again was thorough we were not raising issues of what is or is not

prudent in this proceeding. Rather, we will await the review of our July 16th Report and Order No. 15,760 before going any further into the prudency question.

However, if our powers are found to be something more than merely a rubber stamp, the evidence in this proceeding raises some areas of natural inquiry.

Employee Levels and Attendance

Questions were asked by the Commission as to the level of employees now at the plant. We were told that the level on payroll is 8,500 or an increase of over 1,300 since the start of the year and an increase of 3,000 since this time last year. Testimony by Mr. Merrill was that the Commission should recognize that this did not mean that the level of employees actually working was 8,500. Rather, that there was an average absentee rate of 15%. The Commission asked

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whether in light of high unemployment levels, it was reasonable to have this high level of absenteeism. Mr. Merrill's answer was that (1) the general contractor, United Engineering, had told him that this was "pretty good" compared to other jobs United Engineering was working on; and (2) besides if people didn't show they didn't get paid.

The Commission would suggest to the Company that a fair determination of what is reasonable is unlikely to come from the general contractor and that the Company, like the Commission in our previous Orders, should be looking at a minimum to the experience at other nuclear sites.

The Commission also questioned whether all employees were hourly and thus only paid when they appeared for work. The answer was no, that supervisory help were salaried and they did get paid even when they were absent. PSNH was to get back to us as to how many workers fit this classification. The Commission pressed further and was subsequently told there was a second group, clerical, that also were salaried and thus paid during absenteeism. Again, the percentage of absenteeism has not been provided but is assumed to be forthcoming.

The Commission again focused on the estimated peak work force that was to be involved at the plant. Mr. Merrill testified that it will approach 7,800 working and 8,700 on payroll in the near future. The Commission then presented Mr. Merrill with presentations made by PSNH to the bond rating agencies of Standard & Poor's, Moody's and Duff and Phelps. These presentations contain a standardized "Construction Fact Sheet" that originates in the departments that report to Mr. Merrill.

The rating agencies are extremely important to the fate of any utility. They repeatedly ask for updated information so as to make sure that their ratings accurately reflect a company's financial picture. A commission must assume that every attempt is made to provide these agencies accurate data.

The first such "Construction Fact Sheet" presented to Standard & Poor's in October of 1980 (Exhibit 13 and Attachment A to this decision) demonstrates an estimate of 4,500 workers at peak of construction. This estimate, allegedly from the April 1980 forecast, is 3,300 workers or 73% less than PSNH's present estimate provided in this proceeding. If that number is a payroll

rather than an actual "working" number, then it is a difference of 4,200, or a 93% difference.

In November, 1980, another presentation was made to Standard & Poor's. (See Exhibit 24 and Attachment B to this decision.) In that "Construction Fact Sheet" again the number of workers at peak was estimated to be 4,500.

In April of 1981 another presentation was made to Standard & Poor's and Moody's. This time the "Construction Fact Sheet" (Exhibit 10 and Attachment C to this decision) is stated to be based on then newly-revised April 1981 construction cost estimate. Again, the peak work force is shown to be 4,500. In addition, two new pieces of information appear; the first is current construction work force (3,500) and payroll-craft (\$1,500,000 a week).

Mr. Merrill was asked to reconcile this "Construction Fact Sheet" with a document (Exhibit 7 and Attachment D to this decision) provided in the last financing docket that stated the projection for the peak work force was 6,050 as of the April, 1981 estimate. Mr. Merrill returned

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at our next hearing to state that no one in his shop would admit to calculating the April, 1981 presentation for Standard & Poor's and Moody's. Furthermore, he stated his belief that the 6,050 number was more reliable than what PSNH was estimating as of its last, and for that matter, current construction. estimate.

In January of 1982, a presentation was made to Duff and Phelps, in which the "Construction Fact Sheet" (Exhibit 11 and Attachment E to this decision) reveals the same total construction cost, but now there is an estimate of \$2,500,000 a week for payroll craft. This \$1,000,000 a week increase in payroll is given no discussion, but interestingly the previous inclusion of a peak workforce is now gone. The actual construction work-force is now given as growing from 3,500 to 6,300, which may explain the payroll increase. However, no change is made to the total construction estimate. These estimates as to payroll and number of actual employees are stated to be as of December 31, 1981.

In a presentation to Standard & Poor's and Moody's in April-May 1982, the new "Construction Fact Sheet" now shows an actual construction work force of 7,500 and a payroll for craft workers of \$2,900,000 a week as of the end of February, 1982. (See Exhibit 12 and Attachment F to this decision.)

Even a comparison of these two later estimates is difficult, since it would appear that the earlier of the 1982 estimates is based on those working while the latter is based on payroll; if in fact there are really differences which absent greater investigation including an audit we are unprepared to accept.

This Commission, we believe, should be attempting to insure that efficiency is maintained in any utility operation. An estimate of peak construction work force that in two years goes from 4,500 to 7,800, or possibly 8,700, is a major change. A payroll for craft workers alone that goes from \$1,500,000 a week to \$2,900,000 a week to even higher at the present time in such a short period of time is again, major change.

This Commission is concerned that PSNH's previous cost estimates are too low. In fact, we found this to be the case in our decision presently upon appeal to the Supreme Court. Recent

events have shown the construction cost estimate for Millstone III rising from 2.6 billion dollars to 3.59 billion dollars. This 990 million dollar increase between an old cost estimate, two years ago, and the new estimate was a 36% increase. This nearly billion dollar change increased the price per KWH of that plant on the day it comes into service to in excess of 18¢ per KWH.

PSNH has not performed a cost estimate in what amounts to be eighteen months. There is testimony in this docket that certain factors are likely to increase. Whether there are offsets or other factors that also increase, it is clear that labor by itself will increase the overall cost of the plant.

A utility is no different from any other corporate entity, in that it must operate within its means. The financial journals are overflowing with announcements by non-regulated companies freezing wages, cutting back on work force, and generally minimizing expenses. The issues for this Company are not a question of fuel type, but rather one of straight forward business economics and planning.

Our statutory responsibility is to set rates based on standards of reasonableness. In time of economic difficulty it is necessary for regulated firms to make

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the same difficult choices as non-regulated firms.

The attachments to this decision are made part of this decision and our order will issue accordingly.

Commissioner Paul R. McQuade disagrees with the written Report in the following areas:

"The PSNH appeal also raised significant questions concerning our authority in this area and if they ultimately prevail the Commission's authority would be so narrow as to be effectively a mere formality in most instances."

1. The PSNH has a legal right and responsibility to request clarification of the Public Utilities Commission's authority. The New Hampshire Supreme Court agreed with the PSNH request. Thus, no conclusion reached.

"Because the Supreme Court has for the present, granted PSNH's motion as to our limited authority ... "

2. PSNH's request is for clarification of responsibility of management vs. Public Utilities Commission intervention in management decisions.

"This debt instrument is unsecured, which is not as advantageous to either the Company or its customers as secured."

3. The record does not support this statement.

"The use of debentures without a call provision is discussed in our record as an indication of a continued deterioration of the Company's financial position since the start of the year."

4. The record supports this financing as being innovative and imaginative in coping with the market conditions.

"Alternative and innovative financing plans have not to date achieved success."

5. On the contrary, PSNH has been successful in all its financing. It (PSNH) has never had a financing that was unsuccessful.

"In summary, the less traditional financings are not developing into the financing options that both PSNH and the Commission had hoped."

6. Again, our records prove that PSNH has been successful in its quest for tight dollars in a very competitive market place.

"However, if our powers are found to be something more than merely a rubber stamp, the evidence in this proceeding raises some areas of natural inquiry."

7. PSNH's request for legal clarification of Order No. 15,760 does not suggest or imply "rubber stamp" but rather dealing in management without any indication of impropriety.

Pages 7 - 10

8. This commissioner believes that the construction estimate given for workers and related dollars are for a given period only. Thus, overall construction costs may not increase significantly if projected costs of overall construction included these increases in the PSNH projection, as I believe they do, based on almost 3 years of hearings.

Agreeing with Order No. 15,911.

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ORDER

Upon consideration of the attached Report and Attachments A-F, which are made a part hereof; it is hereby

ORDERED, that Public Service Company of New Hampshire (PSNH) be and hereby is authorized to issue and sell not exceeding seventy-five million dollars (\$75,000,000) of its unsecured Debentures for cash in accordance with the foregoing Report as written by Commissioners Aeschliman and Love; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall submit to this Commission the principal amount, term purchase price and rate of interest of said Debentures, following which a Supplemental Order will issue as to the terms of the issue and sale of the securities, including the principal amount, term, purchase price and rate of interest thereof; and it is

FURTHER ORDERED, that proceeds from the sale of these debentures would carry the conditions set forth in Order No. 15,760 absent a stay of that order by the Supreme Court.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1982.

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NH.PUC*09/29/82*[79395]*67 NH PUC 665*Public Service Company of New Hampshire

[Go to End of 79395]

Re Public Service Company of New Hampshire

DF 82-262, Supplemental Order No. 15,912

67 NH PUC 665

New Hampshire Public Utilities Commission

September 29, 1982

ORDER authorizing electric company to sell debentures.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, our Order No. 15,911 dated September 29, 1982 (67 NH PUC 653), issued in the above-entitled proceeding, authorized Public Service Company of New Hampshire to issue its unsecured Debentures (the "Debentures"), in a principal amount not exceeding \$75,000,000; and

WHEREAS, in compliance with said Order No. 15,911 the Company has submitted to this Commission details concerning the sale of the Debentures, including the principal amount, the term and purchase price thereof, and the interest rate thereon, the principal amount of the Debentures being \$75,000,000, said term being six years from October 1, 1982, said price of the

Debentures being ninety-seven and two tenths percent (97.2%) of the principal amount, and said interest rate being fifteen and three fourths percent (15-3/4%) per annum, all in accordance with the Underwriting Agreement, a copy of

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which is to be filed with the Commission; and

WHEREAS, after due consideration, it appears that the issue and sale of \$75,000,000, of the Debentures hereinabove described under the terms and conditions of the Debenture Indenture, dated as of October 1, 1982 upon the terms presented to this Commission, including the term, purchase price and interest rate hereinabove set forth or referred to, and including the cost rate to the company of 16.5% are approved; and it is

ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue and sell for cash its 15 3/4% Debentures due 1988, in the principal amount of seventy-five million dollars (\$75,000,000) at a price of ninety-seven and two tenths percent (97.2%) of the principal amount, said Debentures to bear interest at the rate of fifteen and three fourths percent (15 3/4%) per annum; and it is

FURTHER ORDERED, that all other provisions of said Order No. 15,911 of this Commission are incorporated herein by reference.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1982.

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NH.PUC*09/30/82*[79396]*67 NH PUC 666*Keene Gas Corporation

[Go to End of 79396]

Re Keene Gas Corporation

DR 81-305, Third Supplemental Order No. 15,913

67 NH PUC 666

New Hampshire Public Utilities Commission

September 30, 1982

PETITION of a gas company for a permanent increase in rates; granted as modified.

RATES, § 85 — Temporary rates — Reduced expenses — Reduced permanent rate level.

[N.H.] Where a gas company had successfully cut back on its expenses where the commission had made other adjustments, the commission found that the permanent rate increase granted to the company should be reduced from the level granted by a temporary rate increase and that the amount collected due to the rate differential should be refunded to customers.

APPEARANCES: Harry B. Sheldon, Jr., for Keene Gas Corporation; and F. Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:

REPORT

This docket was initiated on October 14, 1981 when Keene Gas Corporation, a New Hampshire public utility, filed revisions to its tariff seeking an increase in rates. Subsequent filings made by the Company increased the request to a final figure of \$220,201. The Commission by its Order Nos. 15,255 (66 NH PUC 447)

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and 15,431 (67 NH PUC 99) approved the Company's request to collect these rates on a temporary basis until there could be an investigation of the reasonableness of the proposal by the Consumer Advocate, the Commission Staff and the Commission.

Hearings were held on the request in October of 1981, January 12, 13, 1982 and September 13, 1982. During the course of the Commission's investigation, numerous areas were examined by Staff and the Consumer Advocate.

The first area of concern raised was in terms of the proper test year. The Commission policy is to within reason use the most current data available so as to allow the rates set to be a proper reflection of what the Company will face in the future. The Company originally requested a 1980 test year, whereas Staff and the Consumer Advocate contend that 1981 is a more reflective test year, and the Commission finds reasonableness to their position.

The 1981 figures versus the 1980 figures do demonstrate an improvement in the operations by Keene Gas. They, on their own, have turned around a company that has been fortunate in the past to financially survive. The owners and employees of this company have frozen their wages and benefits, the number of jobs and cut back on expenses. Significant progress has been made in reducing their lost and unaccounted-for gas. Not only does this latter step improve revenues, but more importantly demonstrates a true concern for safety by the ownership of Keene Gas. The willingness of Keene Gas employees and officers to cut back expenses to improve the Company's financial situation is a reflection of what non-regulated businesses do on a regular basis and a standard to hold other utilities accountable. Furthermore, this cutback in expenses during 1981 allows for a reduction in rates.

Other factors leading to the reduction from that originally requested is the removal of rate base or expenses associated with materials and supplies that were spent when this Company was formed in the late 1970's. This requested inclusion in rate base is removed in accordance with the Commission's chart of accounts.

The result of these adjustments and minor adjustments to the utility assessment tax, capital structure and rate of return lead to a reduction in rates from that presently being collected of \$55,900.

These reduced rates are to be made effective October 10, 1982. In addition, because the higher level of rates have been collected for some time pursuant to temporary rates, refunds must be made totaling approximately \$13,000. This refund is to be returned on a per therm basis over the next twelve months beginning October 10, 1982. The refund is to be labeled on the bill as "PUC Ordered Refund".

The Commission will allow a bad check penalty of \$5.00, or 5% of the amount of the check, whichever is higher. A connection or reconnection charge of \$20 is approved. Where costs are greater due to problems in scheduling, such as after working hours, the amount allowed will be \$30.

The charges for all classes of customers, whether residential or commercial/industrial, are to be the same. The rate design is to reflect conservation considerations due to increasing costs associated with propane. The customer charge is to be reduced from \$3.19 to \$3.10, and there are to be two usage blocks. The first is 1 to 80 therms usage at 81.5¢ per

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therm. The second block is to be over 80 therms per month, and the rate approved is to be 77.5¢. These rates are reductions from the present levels of 87¢ per therm and 78¢ per therm, respectively.

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 present rates of Keene Gas Corporation are to be reduced by \$55,900 beginning with all billings on or after October 10, 1982; and it is

FURTHER ORDERED, that this new revenue level is below that presently being collected on a temporary basis, and, therefore, \$13,000 in refunds are to be returned to customers over the next twelve months beginning on all bills rendered on or after October 10, 1982; and it is

FURTHER ORDERED, that the refunds are to bear the label, "PUC Ordered Refund"; and it is

FURTHER ORDERED, that the customer charge is to be reduced from \$3.19 to \$3.10, and that the rate schedule for all customer classes is to be for 1-80 therms at a rate of 81.5¢ per therm and over 80 therms at 77.5¢ per therm instead of the present 87¢ and 78¢ per therm charges; and it is

FURTHER ORDERED, that the charges for bad checks, connections and reconnections as discussed in the Report are approved and effective on all transactions occurring on or after October 10, 1982.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1982.

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NH.PUC*09/30/82*[79397]*67 NH PUC 668*Concord Natural Gas Corporation

[Go to End of 79397]

Re Concord Natural Gas Corporation

Intervenor: Office of Consumer Advocate

DR 82-34, Third Supplemental Order No. 15,915

67 NH PUC 668

New Hampshire Public Utilities Commission

September 30, 1982

APPLICATION of a natural gas company for an increase in rates; granted as modified.

1. EXPENSES, § 22 — Betterments — Amortization of damage cost — Expenses in excess of normal.

[N.H.] Distribution expenses incurred over two years in correcting natural gas leaks caused by municipal street excavation projects and in performing other work accomplished at the same time were capitalized with the excess of normal years expenses amortized over five years. p. 671.

2. EXPENSES, § 46 — Charitable contributions — Reasonableness — Health and welfare of community.

[N.H.] A natural gas company was permitted to include in operating expenses as a charitable deduction a contribution to the local YMCA building fund where the commission found the expense reasonable based upon the aid to the health and welfare of the community provided by the YMCA. p. 671.

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3. EXPENSES, § 89 — Regulation expense — Assessment against utility — Known and measurable.

[N.H.] The commission reduced a natural gas company's estimated utility assessment since the actual amounts were now known and measurable. p. 672.

4. EXPENSES, § 114 — State income taxes — Tax benefits — Normalization versus flow through.

[N.H.] A natural gas company's argument that the treatment of state tax benefits should conform with federal tax legislation permitting normalization of similar tax benefits — that is, the accelerated cost recovery system tax benefits — in order to encourage investment in plant and equipment, was found inapplicable since accelerated depreciation had been available to the company since 1970 and the company failed to take advantage of it for most years since that time; the commission ordered that the company continue to flow through state tax benefits. p.

673.

5. RETURN, § 26.4 — Cost of equity — Traditional tests — Comparable utilities.

[N.H.] By application of its traditional tests used for measuring return on common equity, the commission found that the return on equity for a gas company should be significantly below those allowed to other gas companies when interest rates and risk-free investments were higher than at present and that the significant equity ratio independently required a lower equity return than comparable state gas utilities. p. 673.

6. RETURN, § 26.4 — Cost of common equity — Discounted cash-flow method — Market-to-book ratio.

[N.H.] In determining a natural gas company's return on common equity under the discounted cash-flow method, the commission rejected the goal of seeking a market-to-book ratio of higher than one since such a process would elevate the needs of inventory over the interests of consumers and since there was no adequate proof to provide support for a market-to-book ratio in excess of one when sales of equity were infrequent. p. 673.

7. RETURN, § 26.4 — Cost of common equity — Discounted cash-flow method — Yield component.

[N.H.] In determining a gas company's return on common equity under the discounted cash-flow method, the commission found that the company's yield component should be reduced since its analysis was performed when the cost of money was higher and there could be no doubt that utility money costs were affected by the drop in the prevailing cost of money. p. 673.

8. RETURN § 26.4 — Cost of common equity — Range of reasonableness — Risk factor.

[N.H.] Given that its measurement of the risk demonstrated by a gas company was significantly lower than the risk demonstrated by other jurisdictional gas utilities, the commission adopted an equity return at the low end of the range of returns found reasonable under the discounted cash-flow analysis. p. 673.

9. RETURN, § 35 — Economic conditions — Attrition adjustment — Earnings erosion.

[N.H.] The commission rejected a gas company's request for an attrition adjustment because, while the company's analysis was performed at a time of double digit inflation, there had been a significant slowdown in the inflationary trend which indicated a lesser likelihood of attrition in the future; however, the commission allowed a second step adjustment for earnings erosion caused by reasonable capital expenditures for plant expansion to correct an erosion problem. p. 677.

APPEARANCES: David W. Marshall on behalf of Concord Natural Gas Corporation; F. Joseph Gentili, Consumer Advocate.

BY THE COMMISSION:

REPORT

On March 5, 1982 Concord Natural Gas Corporation (hereinafter the "Company")

or "Applicant") filed revisions to its tariffs seeking thereby to increase its annual revenues by \$368,600 or 5.6%. By its Order No. 15,537 the Commission suspended those revisions, preventing them from becoming automatically effective on April 5, 1982.

On April 29, 1982, the Commission issued an Order establishing a hearing for May 27, 1982 in response to the Company's petition for a temporary rate increase. At that hearing a schedule was set for a hearing on permanent rates and for discovery related thereto. Moreover, the Company sponsored two witnesses who testified to the need for temporary rate relief; Mr. Cedric Dustin, President of the Company and Mr. Ronald Bisson, Assistant Treasurer. As a result of the record compiled at this hearing combined with the low burden of proof required by law for temporary rates, interim relief in the amount of the permanent filing was granted by Commission Order No. 15,783 dated August 2, 1982 (67 NH PUC 561). Said Order was effective for all bills dated August 2 and subsequent thereto for service rendered on or after May 27, 1982.

August 2 also marked the first day of hearings on permanent rates, a hearing requiring two (2) additional days, August 3 and August 4, to complete. Three witnesses testified for the Company on permanent rates, two of whom, Mr. Dustin and Mr. Bisson, had previously testified on temporary rates. A third and additional witness was Mr. Robert S. Jackson, Senior Vice President of Stone and Webster Consultants who was retained as a consulting expert on the cost of money and who in fact did testify on that subject. Mr. Eugene Sullivan, Director of Finance of the New Hampshire Public Utilities Commission, testified on behalf of the Commission staff.

Also made a part of this record by incorporation, was the evidence produced in DR 82-48, a docket that examined in depth the Company's rate structure. Mr. Russell A. Fiengold, a senior consultant on rates for Stone and Webster, testified on behalf of the Company at a hearing on March 11, 1982.

As a starting point, it is necessary in every rate case that a test year be selected. A test year should be representative of future operations thereby permitting the Commission to determine the amount of revenue the Company needs to collect from ratepayers to cover those expenses found to be reasonable by the Commission. The parties to this docket have selected calendar year 1981 as the test year and the Commission finds that period to be recent enough to provide a reasonable proxy for future costs and as such it is an acceptable test period.

Rate Base

The record, particularly Applicant's brief, discloses agreement by the parties on a rate base amounting to \$3,339,944 which consists of used and useful plant valued at original cost net of depreciation of \$2,955,832 and working capital of \$384,162. Although the parties were never at great odds with each other over the items comprising the \$3,339,944, it did require some compromise to reach a position of consensus. With respect to plant, Staff proposed elimination of the net book value of the Gas Street LP plant and use of a 13 month average rate base. In turn the Company accepted these differences from its original case if Staff was willing to agree that consistent with the elimination of pro forma plant, pro forma revenue should also not be recognized, a position to which Staff then agreed.

Reaching agreement on Working Capital was a bit more complicated. Staff first sought to reduce materials and supplies by allocation of propane inventory between utility and non-utility. The Company while agreeing to the logic of this revision pointed out that consistency would require Accounts Receivable and Accounts Payable also be allocated between utility and non-utility, to which Staff agreed. A correction was also made that increased Staff's Working Cash by a \$12,938 amortized debt expense item inadvertently included in cash working capital. Finally as the last significant revision, the Company agreed to reduce working capital by the \$35,432 found in its Liability Insurance Reserve. Including some minor revisions acceptable to all parties, these changes result in the above mentioned working capital of \$384,162.

As will be discussed in some detail infra in the section on permissible expenses, an additional \$17,750 must be added to rate base due to the effects of capitalized maintenance expense. A revision recognizing disallowance of state deferred taxes raises rate base an additional \$795. The final result is a rate base of \$3,358,489.

Revenue

Applicant originally proposed test revenues of \$5,995,489 but later acceded to Staff's determination of \$6,100,557 for the same period. (Brief p. 10). The Commission finds that test year revenues for rate making purposes are \$6,100,557.

Expense

[1, 2] Most of the controversy in this case occurs in the area of operating expenses. Probably the most significant issue in this category involves disagreement over distribution expenses which have developed in correlation with Concord's municipal street projects. Its city streets have been excavated numerous times over the last two summers, exposing Company gas lines or causing earth to shift around its pipes, in either event, causing or exposing leaks. Corrective action has resulted in either repair of the leaks or replacement of the pipe. In addition, other pipe has been replaced and other work accomplished to take advantage of the opportunity to do so at a reduced cost since the gas lines are exposed. These activities have resulted in substantial outlays that would otherwise have been delayed perhaps by many years.

Regarding these distribution expenses Staff makes several proposals at wide variance with the Company's. First, since the higher than usual 1981 outlays can be argued to be non-recurring and since the Company's also booked all of them the Staff recommends they be disallowed. Staff then recommends that a portion of the 1982 outlays be capitalized with those remaining in excess of a normal years expenses to be amortized over five years. Applicant notes it can find no authority that would justify requiring any of these outlays to be capitalized, however, the Commission shall quote a most pertinent authority. The Uniform System of Accounts provides with respect to retirement of fixed capital assets that:

"Items not carried as units of the Continuing Property Record, and group units of small unit value, may be replaced in kind through maintenance accounts, but all replacements where the new property differs in general physical characteristics or efficiency from the property removed *or where its location is exactly recorded in the Continuing Property Record* and supporting files,

shall be

accounted for through the Fixed Capital accounts." (Emphasis supplied)

Mr. Sullivan recommended that \$ 16,128 of the 1981 distribution outlays be capitalized. His recommendation complies with the Uniform System of Accounts and is adopted. The Commission also finds it appropriate to use Mr. Sullivan's 1981 ratio of capitalized to total outlays in arriving at the amount of 1982 distribution outlays to be capitalized. Although seeking a three year write off, the Applicant does not object strongly to the five year amortization schedule proposed by Staff for 1982.

It does not appear to the Commission that Staff's recommended amortization of 1982 outlays is consistent with recommending no deferral of the 1981 outlays. Thus, the Commission finds the excess expense related to both years should be amortized over five years. The Commission accepts the Company's estimate of the 1982 distribution outlays finding its estimate based on six (6) months actual experience to be reasonable.

The amount of 1981 expenses to be amortized over five years is \$70,081, after taking into consideration the \$16,128 of costs to be capitalized. Applying the same factors to the revised estimate of 1982 expenses results in \$48,576 to be deferred and amortized over five years, or \$9,715 per year.

The capitalization of \$16,128 results in several other adjustments. To understand those adjustments it is first necessary to understand that the capitalized items were added to plant over the period of an entire year so that on average for the test year the increase was \$8,064. An offset is required for a related tax savings of approximately \$4,032 since the entire amount was expensed for tax purposes. This results in a 4,000 net capitalization. Amortization over five years of the remaining \$70,081 in abnormal maintenance expenditures for 1981 equals approximately \$14,000 per year. The \$14,000 for 1981 test year purposes is already included in Mr. Sullivan's proposed operating expenses leaving \$56,000 to be capitalized. That \$56,000 was also expensed for tax purposes and following the above described reasoning applicable to capitalization net of tax effect, results in an additional \$14,000, which including the first \$4,032 results in a total increase to rate base of approximately \$18,000. Deducting depreciation of approximately \$250 leaves a net capitalization to rate base due to abnormal maintenance of \$17,750, or the previously mentioned revised total rate base of \$3,357,694.

Staff submitted that three of the charitable contributions were unreasonable and should be deducted from operating expenses. The Company challenges but one of those staff deductions, the supposedly recurring \$2,000 contribution to the Concord Y.M.C.A. Building Fund. Applicant not only claims it is a recurring expense but further argues that charitable contributions are permissible by law if "reasonable". The Commission, however, agrees with Applicant. The Y.M.C.A. provides reduced rate programs to those who would otherwise not be able to afford them, especially to children, and in doing so aids the health and welfare of the entire community.

Utility Assessment

[3] The Staff recommended an adjustment of \$886 based on estimated costs for the utility assessment and gas safety assessment at the time that the testimony was filed. Final assessment figures are now available and the Supreme Court has found that the assessment for the Governor's Council on Energy must be

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refunded. Therefore, the actual utility and gas safety assessments that will be booked in calendar year 1982 will be used to arrive at an adjustment to test year expenses. The utility assessment amounts to \$7,742 and the gas safety assessment is \$2,433, or a total of \$10,184. The Company charged \$10,547 in the test year. An adjustment to reflect a \$362 reduction will be made as the amounts are now known and measurable.

Tax Benefits

[4] A final issue involving operating expense addresses the Applicant's argument that the treatment of state tax benefits should conform with the "spirit" behind Federal legislation permitting similar tax benefits, i.e. the ACRS (Accelerated Cost Recovery System) Tax Benefits. Federal legislation and applicable regulations do explain that the purpose of ACRS is to encourage investment in plant and equipment and as an aid to achieving that objective it is a condition of those tax benefits that they be normalized. This logic can hardly apply to Applicant when it is realized accelerated depreciation has been available since 1970 and Applicant failed for most of the subsequent years to take advantage of it. Those state benefits will continue to be flowed through to rate-payers consistent with current practice are reflected in Staff's presentation. State taxes have been reduced by \$1,450 to reflect the flow through the tax benefits of ACRS to the ratepayer.

The revision to maintenance expense the Commission has made in Staff's methodology as originally filed increase Mr. Sullivan's adjusted operating expense by \$14,284. Depreciation expense on capitalized items amounts to an additional \$500.

A reduction in Staff's operating expense that has been agreed to by the Company is \$8,316 associated with an established annual insurance reserve of \$12,000. Originally intended to be a \$50,000 reserve, the \$8,316 represents overfunding. Another reduction is the \$382 related to utility assessments.

State and Federal Tax consequences are reduced by \$1,486 and \$6,845 respectively.

The above findings on operating expense and revenue result in a test year net operating income of \$379,296.

Rate of Return

[5-8] The Commission has historically applied the criteria set forth by the United States Supreme Court. In the case of *Bluefield Water Works & Improv. Co. v West Virginia Pub. Service Commission*, 262 US 679, PUR1923D 11, 20, 21, 67 L Ed 1176, 43 S Ct 675, the court ruled that:

" ... 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 right to profits such as are realized or anticipated 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

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high or too low by changes affecting opportunities for investment, the money market, and business conditions generally.

The court elaborated further in the *Federal Power Commission v Hope Nat. Gas Co.* (1944) 320 US 591, 603, 51 PUR NS 193, 200, 201, 88 L Ed 333, 64 S Ct 281:

"The rate-making process under the (Natural Gas) Act — i.e., the fixing of 'just and reasonable rates' — involves a balancing of the investor 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 US at p. 590, 42 PUR NS 129.) But such considerations aside, the investor 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 ... "

The evidence in this proceeding will be considered in light of this standard.

Mr. Jackson testified on the cost of money to Applicant. He concluded that the embedded cost of long-term-debt was 12.62%, short-term debt was 15.75%, preferred was embedded at 5.5% and equity costs were 16.5% calculating to an overall cost of money of 14.29%.

Mr. Jackson stated that he relied on two approaches to determine the cost of equity. One approach is DCF analysis based on the use of 10 comparable companies and the other a risk premium analysis. He also looked at the historical earnings performance of Concord Gas including several types of historical statistics, although he draws no conclusions from this material and states it is simply preparatory to this overall analysis. Mr. Jackson then looks at 1200 companies comprising 39 "key" industries. He then states that the applicant has to earn returns equal to alternative investments with corresponding risks. Mr. Jackson makes this observation without tying it to the 1200-company overview. It is left to the Commission to determine if the 1200 companies are alternatives of equal or greater risk, or in what manner they are relevant. The failure to tie the stated principle to the data base does not meet the requisite level of proof to be accepted in this proceeding.

The companies testified as comparable by Mr. Jackson do not focus on that aspect of Bluefield relating to a comparison of companies situated in the same region. Noteworthy is the

absence of any New Hampshire utility. In terms of size, locality, accessibility to the capital markets and business risks, New Hampshire gas utilities are more comparable than the companies offered by Witness Jackson.

In comparing Concord Natural Gas to other New Hampshire utilities, it is appropriate to compare the return on equity granted by this Commission to these other companies, the financial markets at the time of those decisions, and the tests the Commission uses in measuring risk factors. Concord Natural Gas requests a return on common equity of 16.5%. In *Re Gas Service, Inc.* (1982) 67 NH PUC

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193, 47 PUR4th 262, the Commission allowed a 15.50% return on common equity. The prime interest rate at that time was approximately 17% and common equity represented 35.7% of the capital structure.

In *Re Manchester Gas Co.* (1982) 67 NH PUC 438, the Commission accepted a settlement agreement in which a return on common equity factor was set at 16.00%. When this case was under consideration, prime interest rates were in the range of 17%, and Manchester had a common equity ratio of 35.3%.

In *Re Northern Utilities Co.* DR 80-104, May, 1981, the Commission allowed a return on common equity of 15.50% on a capital structure with a common equity ratio of 35.8%. The prime interest rate at that point in time was slightly above 17%.

The factors of stock market prices, prime interest rates and alternative investment opportunities are important in measuring a proper return on common equity set at a time when prime interest rates are 17% and CD's or risk-free investment is at 15% is markedly too high to retain when prime interest rates drop to 13% and CD's are in the 10-11 range. Correspondingly, such a return on common equity would be too low if the prime interest rate climbed to 22% and the CD's were available at a 20% interest rate. This policy is clearly set forth in the *Bluefield* decision, which notes that a rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investments, the money market and business conditions generally. *Bluefield Water Works Improv. Co. v. West Virginia Pub. Service Commission*, 262 US 679, 692, 693, PUR1923D 11, 67 L Ed 1176, 43 S Ct 675, also *Re Public Service Co. of New Hampshire* (1980) 65 NH PUC 45, 51.

The market for CD's or relatively risk-free investments is near 10.5%, *Re Public Service Co. of New Hampshire* (1982) 67 NH PUC 653, 654. Long-term government bonds are at 11.7% and five-year immediate-term government bonds are at 12.2%. (*Id.*, 67 NH PUC at p. 654.) These alternative investments, together with the reduced prime interest rate of 13%, indicated significantly improved financial markets from when the Commission set the return on common equity for the three other natural gas utilities in New Hampshire. Consequently, the return on common equity for Concord Natural Gas should be correspondingly lower.

Utility stocks are interest sensitive. *Re Gas Service, Inc.* (1982) 67 NH PUC 193, 47 PUR4th 262. As interest rates drop the appropriate returns allowed on equity drop. Correspondingly, as interest rates rise so does the appropriate allowed return on common equity. Compare *Re Public Service Co. of New Hampshire* (1980) 65 NH PUC 251 with *Re Public Service Co. of New*

Hampshire (1982) DR 81-87.

The Commission has developed certain risk factors that have been demonstrated to be reliable. Re Pennichuck Water Works (1979) 64 NH PUC 206; Re Public Service Co. of New Hampshire (1978) 63 NH PUC 127. These include: (1) equity ratios and (2) coverage ratios. In the Public Service Company case, the Commission referred to equity ratios as follows: "This measure indicated that the Company has used less common equity to finance assets thereby assuming greater financial risk than other industry composites." (63 NH PUC at p. 156) However, applying this same criteria in the Pennichuck case, the Commission

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found Pennichuck because of its thicker equity to be less risky than other comparable water utilities. (64 NH PUC 206)

The Concord Gas common equity ratio is 55.65% of capital structure. As such, this ratio represents one of the highest percentages and thus lowest risk of the utilities that we as a Commission regulate. This factor indicates that Concord Gas is significantly less risky than its New Hampshire counterparts.

No comparable discussion exists on the record to evaluate coverage ratios, and as such, this failure must be assigned to Concord, as it is their burden of proof.

The use of our traditional tests used for measuring return on common equity leads to a conclusion that the return on equity allowed this utility should be significantly below those allowed other gas utilities when interest rates and risk-free investments were significantly higher than the present. Furthermore, the significant equity ratio independently requires a lower return on common equity than comparable New Hampshire gas utilities.

Returning to Mr. Jackson's analysis, the Commission rejects as a goal the seeking of a market-to-book ratio higher than 1. As we have noted previously, such a process would elevate the needs of inventory over the interests of consumers. Re Public Service Co. of New Hampshire (1980) 65 NH PUC 251, 281. Furthermore, there has not been adequate proof offered to provide support for market pressure when sales of equity are infrequent. Without any need for a market-to-book ratio in excess of one, Applicant's witness has determined the appropriate DCF related growth rate is 4.79%.

Mr. Jackson further testified that the appropriate yield to use in his DCF approach was 11.30%. Of course, it must be recognized that this testimony was filed when money costs were substantially in excess of those currently prevailing. For example, since May Treasury bills have plummeted from 12.57% to almost 8%, the former is an eye catching 50% more than the latter. There can be no doubt utility money costs have also been affected dramatically. Notably, at mid-August the Dow Jones Utility Average made significantly more (approximately 10%), from around 105 to slightly in excess of 115. Perhaps of more help in resolving the immediate issue it is noted that *U.S. Financial Data* prepared by the Federal Reserve Bank of St. Louis shows on page 6 of its September 17, 1982 release that Corporate Baa bond yields have fallen practically 100 basis points subsequent to Mr. Jackson's testifying in this docket. These dramatic changes demand recognition and require that the Commission correspondingly reduce Mr. Jackson's estimates, commencing with his early January 1982 spot yield of 11.30% for his 10 comparison

companies. A 10% reduction of the 11.30% consistent with the change in Dow leaves a 10.20% yield while a simple 100 basis point reduction based on the falling Baa bond yield indicates a 10.30% yield. Again, it is noted that unlike Mr. Jackson, the Commission has made no adjustments to the yield portion of the DCF analysis to correct for market pressure and issuance costs, since as discussed earlier those adjustments are unnecessary in this case.

Taking the 10.20% yield in conjunction with the 4.79% growth rate produces a DCF derived cost of equity for the Applicant of 14.99%. But this is a maximum cost. Mr. Jackson also used

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what he appears to believe is an equally valid unadjusted yield of 10.12% as an adjunct to his 11.30%. (Jackson Prefiled, page 12). Following the same reduction process for the 10.12% as for the 11.30%, the Commission obtains a yield of 9.11%, which combined with the 4.79% growth produces a DCF cost of money of 13.90%. In sum, by analysis of Mr. Jackson's study using principles that are consistent with what the Commission observes in his testimony, the Commission finds a DCF range of 13.80 to 15.0% from which to select a cost of equity. The mid-point of that range is 14.45%. Given that our measurements of risk demonstrate that Concord Gas is significantly less risky than other utilities, the Commission will adopt 14%.

Next, the Commission reviews Mr. Jackson's risk spread analysis and promptly rejects it as being flawed. He derives a risk spread debt and equity costs based on "earned returns". However, he also states (Prefiled, page 9) that it is the investor's perceived or "required" return that is a relevant return for deriving cost of equity. It would thus appear to the Commission that the relevant risk spread is the difference between the required return to invest in debt as opposed to the required return to invest in equity. Having failed to analyze the proper components in his risk spread analysis, the Commission rejects this approach to cost of equity and being left with only the DCF derived cost of 14.0% is the cost of equity to the Applicant.

The Commission takes notice of the fact that the prime rate is currently 13.00% and adopts 13.00% as the Applicant's cost of short-term debt.

Substituting the Commission's findings on short-term debt and cost of equity into Mr. Jackson's capital structure on his Schedule 4 produces an overall cost of capital to Applicant of 13.14% as seen below:

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

CONCORD NATURAL GAS CORPORATION

December 31, 1982 Capital Structure

Line

No.

1. Long-Term Debt
2. Short-Term Debt
3. Total Debt
4. Preferred Stock
5. Common Equity

6. Total Capital

Notes:

(1) Variable rate series 1995, currently 12.00%; variable rate series

2001, currently 16.61%.

(2) Excludes investment in Concord Gas Service Corporation.

Attrition

[9] *New England Teleph. & Teleg. v New Hampshire* (1973) 113 NH 92, 98 PUR3d 253, 302 A2d 814, is the principle case for the requirement that the Commission examine the attrition question. The Court defined attrition as "an erosion in the earning power of a revenue

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producing investment". (113 NH at p. 97, 98 PUR3d at p. 257).

The Court went on to state the following (113 NH at p. 97, 98 PUR3d at p. 257):

"If the existence of attrition can be established by the company the commission should evaluate the impact of this factor on the earnings of the utility and make an appropriate allowance for it. *Re Public Service Co.*, *supra* *Re New England Teleph. & Teleg. Co.* (1957) 39 NH PUC 284, 291. See also *New England Teleph. & Teleg. Co. v Massachusetts Dept. of Pub. Utilities* (1971) 360 Mass 443, 92 PUR3d 113, 275 NE2d 493, 500. The methods generally used to offset attrition are: (1) an increase in the otherwise allowable rate of return (*Re Hampton Water Works Co.* [1967] 49 NH PUC 323; *Re Hudson Water Works Co.* [1967] 49 NH PUC 50); (2) use of a year-end rate base instead of the average test year rate base (*Re Public Service Co. of New Hampshire* [1953] 35 NH PUC 14, 15; see *Chicopee Mfg. Co. v Public Service Co. of New Hampshire* [1953] 98 NH 5, 18, 98 PUR NS 187, 93 A2d 820, 828, 829); (3) a combination of the previous two methods. *Re Chesapeake & P. Teleph. Co. of Virginia* (Va 1957) 21 PUR3d 239."

In *Re Hampton Water Co.* 64 NH PUC 374, 379, the Commission stated that:

... [T]he area of attrition must be recognized if proven by the Company, and such proof must support the adjustment actually requested. To put that another way, not only must a company prove attrition, but it must also carry the burden as to quantifying the adjustment."

Concord Natural Gas Corporation requests an attrition allowance of .86%. The testimony offered for support is given by Mr. Jackson and Mr. Dustin. The testimony focuses on Concord Gas from 1977 to 1981.

There are problems with the analysis that makes reliance upon the conclusion inappropriate. The time period in question was one of double digit inflation. The recent experience is a significant slowdown in that inflationary trend. Attrition adjustment is a protection that attempts to be future oriented in application. Thus, this change in the inflationary spiral indicates a lesser likelihood of attrition.

Mr. Dustin indicates that the Company anticipates additional earnings erosion due to expansion of plant connected with a belated attempt to solve safety concerns of this Commission in terms of preventing corrosion. Since safety is our primary concern, the Commission will allow a second step adjustment for reasonable capital expenditures in correcting its corrosion problem once they are completed as part of the attrition adjustment.

The Company's case is defective due to its failure to make recognition between utility and non-utility income, its treatment of over and under collections in the cost of gas adjustment and an adjustment to net operating income to reflect disallowed expenses.

The Commission's last finding as to an overall rate of return was 10.78. Re Concord Nat. Gas Co. (1978) 63 NH PUC 303, 313. Mr. Jackson's data reveals that the overall rate of return earned for the years 1978 to 1981 for this utility has averaged 10.43%. At the maximum, the evidence reveals an attrition factor of .35%. The Commission will, however, use an attrition factor of .30% based on: (1) our recognition of a second step increase for reasonable additions pursuant to the corrosion control program

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recently undertaken by the Company; and (2) the reduction of the inflationary rate.

Revenue Deficiency

As displayed below the record in this case results in a revenue deficiency in the amount of \$146,609:

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

| | |
|---------------------------------------|-------------------|
| Rate Base | \$3,358,489 |
| Rate of Return & Attrition x 13.44 | <u> </u> |
| Required Net Operating Income | 451,381 |
| Adjusted Net Operating Income | <u>379,396</u> |
| Required INC in Net Operating Revenue | 71,985 |
| Tax Effectuated 49.1% | 146,609 |

Rate Design

The Commission instructs the company to use as a temporary rate design beginning on all bills rendered on or after October 1, 1982 the following rate design: The customer charge for all classes but seasonal is to be \$3.35. The seasonal customer charge is to be \$7.00. The rate for gas lights is to remain the same as is presently being collected or \$5.00 per light per month. The remaining revenue is to be recovered on a per therm charge for all customer classes. The Company's cost of service study is at this point in time rejected as non conforming to past Commission precedent. Furthermore, the study as we understand it does not give proper recognition to the increasing marginal costs of gas. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Concord Natural Gas Corporation tariffs that are presently collecting an increased level of basic rates on a temporary annual basis of \$368,600 are hereby rejected; and it is

FURTHER ORDERED, that revised tariff pages are to be filed by October 5, 1982 providing for a \$221,991 reduction from this temporary annual rate level and it is

FURTHER ORDERED, that these tariffs at this reduced level of revenues are as of October 1, 1982 the permanent rates of Concord Natural Gas; and it is

FURTHER ORDERED, that these new revised tariffs are to reflect the rate design described in the foregoing Report; and it is

FURTHER ORDERED, that Concord Gas Corporation file a plan with us reconciling the increased level of rates by this order they are entitled to in the time period between May 27, 1982 through August 2, 1982 and the amount refundable to consumers for overcollection between August 2, 1982 and October 1, 1982; and it is

FURTHER ORDERED, that upon receipt of the aforementioned plan, the Commission will order a temporary surcharge or a refund provision depending on the net effect; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation file with the Commission by October 6, 1982 work sheets containing calculations that demonstrate its filed tariffs which fully comply with the foregoing directives; and it is

FURTHER ORDERED, that the rates in this Order are to be effective with all bills rendered on or after October 1, 1982.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1982.

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NH.PUC*09/30/82*[79398]*67 NH PUC 680*Hampton Water Works Company

[Go to End of 79398]

Re Hampton Water Works Company

Intervenors: Town of Hampton et al.

DE 82-184, Second Supplemental Order No. 15,916

67 NH PUC 680

New Hampshire Public Utilities Commission

September 30, 1982

PETITION for condemnation of real estate for construction of water tower; granted with award of damages.

1. EMINENT DOMAIN, § 8 — Compensation — Basis of appraisal — Most advantageous and profitable use.

[N.H.] In eminent domain proceedings, the landowner is entitled to have the property taken appraised for the most advantageous and profitable use to which the property could be placed on the day it was condemned p. 681.

2. EMINENT DOMAIN § 8 — Compensation — Basis of appraisal — Fair market value before and after taking.

[N.H.] The owner of land taken in an eminent domain proceeding is entitled to recover as damages for taking the difference between the fair market value of the whole property at the time of the taking and the fair market value of what remained after the taking. p. 681.

3. EMINENT DOMAIN, § 8 — Compensation — Fair value determination — Severance damages.

[N.H.] Damages awarded to the landowner as a result of a taking of property by eminent domain are to be awarded in consideration of, not only what might be the fair value of the property taken, but also the effect, if any, on the entire property of what is termed severance damage. p. 681.

4. EMINENT DOMAIN, § 8 — Compensation — Basis of fair valuation — Comparable sales approach.

[N.H.] The commission found that the comparable sales approach was the proper method to be used for the purpose of valuing property before a taking by eminent domain and of valuing the remaining property, with the difference representing the compensatory damages. p. 682.

5. EMINENT DOMAIN, § 8 — Compensation — Severance damages — Offset not required.

[N.H.] The commission rejected an argument that there should not be an award of severance damages in an eminent domain proceeding where the commission could not agree that the construction of a water tank and tower on the portion of land taken conferred a specific benefit on the remainder of the land, but rather found that any benefit to the area resulting from the construction of the water tower and the availability of water to that area was a general benefit against which no severance damages allowed would be offset. p. 682.

6. EMINENT DOMAIN, § 8 — Compensation — Severance damages — Grounds for award.

[N.H.] Since the determination of fair compensation for a partial taking of land by eminent domain must consider the effect on the remaining land, the commission found that the fact that the portion of the land taken was the highest elevation of the entire parcel entitled the landowner to severance damages for the loss of landfill that could have been used to elevate the remaining portion of the land, a parcel of considerably lower elevation. p. 683.

APPEARANCES: Michael Lenehan and Dom S. D'Ambruoso, for Hampton Water Works Company (hereafter called the Company); John H. McEachern for the town of Hampton; Thomas J. Donovan for Chester Davis, Jr., and Marion Davis; John D. Colliander, for group of concerned residents.

BY THE COMMISSION:

REPORT

On June 11, 1982 the Hampton Water Works Company filed a petition for condemnation under RSA 371 et seq along with a companion case DE 82-170 seeking an exemption from the zoning ordinance of Hampton (See Report and Order No. 15,843 [67 NH PUC 597]).

On August 26, 1982 the Commission issued a Report which found that a taking of a .83 acre parcel of property owned by Chester and Marion Davis was necessary for the convenience of the public good.

On September 10, 1982 a public hearing was held on the issue of damages and just compensation for the aforementioned taking. At such hearing the Company produced George H. Sumner a certified real estate appraiser and the Davises produced Merle Straw a real estate broker with appraisal experience.

The Company witness, Sumner submitted his appraisal report (Exhibit 21) wherein he utilized the comparable sales approach. He testified that two other recognized approaches, cost approach and capitalization of net income method, could not be used because the land has no improvements, nor does it produce any income. In his comparable sales approach, Mr. Sumner listed five sales for his analysis although he relied principally on two of those sales. Mr. Sumner valued the entire 21.7 acre parcel at \$347,220 or \$16,000 per acre. He determined that there was no severance damage to the remaining parcel and if there was any damage, it was offset by the increased value to the property as a result of the availability of water. He based his opinion on what he considered comparable sales of industrial property in the Town of Hampton.

Mr. Straw, the witness for the Davises, did not use any of the recognized appraisal approaches. He could not find any comparable sales, so he utilized a new and novel approach which we can call the assessment method. In this method you determine the total amount invested in the property adjusted by an inflation factor. The figure is divided by the number of acres to arrive at a per acre price. The per acre price is then multiplied by a factor. The multiplication factor is the ratio between assessed valuation and the total funds invested in the property. We will detail the above calculation, *infra*.

[1] In eminent domain proceedings, the landowner is entitled to have his property appraised for the most advantageous and profitable use to which the property could be placed on the day it was condemned. *OK Fairbanks Co. v New Hampshire* (1967) 108 NH 249, 205; *Amoskeag — Lawrence Mills v New Hampshire*, 101 NH 392, 396; *Roy v New Hampshire*, 104 NH 513, 516, 517.

[2, 3] The landowner is entitled to recover as damages for the taking the difference between the fair market value of the whole property at the time of taking and the fair market value of what remained after the taking *OK Fairbanks Co. v New Hampshire*, *supra*; *Edgecomb State Co. v New Hampshire*, 100 NH 480, 486, 487; *Amoskeag — Lawrence*

Mills v New Hampshire, *supra*. Damages are to consider not only what might be the fair value of the property taken but also its effect, if any, on the entire property of what is termed severance damage.

The witnesses in this proceeding differ as to their opinion of the Fair Market Value at the time of taking. Mr. Sumner places a value for the entire parcel at \$347,220 or \$16,000 per acre (See Exhibit 21) or \$13,000 fair and just compensation for the property taken. Mr. Straw placed a value of \$72,000 for the parcel taken.

Mr. Sumner did not include any severance damage but considered the improvements to be made by the taking to be of benefit to the remaining parcel. In his opinion, those benefits more than offset any severance damage. Mr. Sumner arrived at his value by using the comparative sales method. He found five sales of which he relied on two properties to formulate his opinion (See Exhibit 21).

Mr. Straw utilized a novel approach referred to as the assessment approach. He began by fixing the original cost of the property at \$70,000. He then added a 10% inflation factor for each year Mr. Davis owned the land increasing the value to \$135,308, real estate taxes were added in the sum of \$5,600 increasing the value to \$140,908 (See Exhibit 23). At this point he divided the \$140,908 by the Value assessed by the Town of Hampton \$32,800 and obtained a factor of 4.2959. This factor is the ratio between assessed valuation and appraisal value. Mr. Straw then determined that the adjusted investment by Davis of \$140,908 was for only 13 usable acres, therefore, he divided \$140,908 by 13 to arrive at a figure of \$10,839 per acre. The \$10,839 figure was then multiplied by the factor 4.2959 to arrive at the value of \$46,563.29 per acre. It appears that the rationale for the multiplication factor is based on the comparison of the land purchased at 225 Exeter Road wherein he went through the same process. In addition to the value of \$46,563.29 per acre, severance damage was added in the sum of \$26,000.

[4] The Commission having reviewed the testimony and exhibits filed in this docket finds that the methodology and approach used by Mr. Sumner is the proper approach to be used. Damages should be determined by taking the value of the property before the taking and the value of the remaining property. The difference represents the compensation to be paid for the parcel taken. Mr. Straw's approach cannot be accepted as his methodology has not been recognized by any authority or used by any appraiser. Although the Commission can appreciate the lack of sales in the area to use as comparables, the Commission cannot accept the uncertainty or reliability of the Town assessment on the logic of the multiplication factor.

Mr. Sumner calculated the damages to be \$13,000 for the parcel taken, however, he candidly stated that he did not assess any severance damages because, in his opinion, any such damages would be offset by the improvements available to the remaining parcel owned by Davis.

[5] The Commission determines that severance damages should have been calculated in assessing the value before and after the taking along with any value to the remaining land resulting from a special benefit. The Commission has reviewed the record and finds that any benefits to the area resulting from the construction of the water tower and the

availability of water to that area is a general benefit and that no specific benefit is conferred on the Davis land hence no severance damage allowable would be offset.

[6] The determination of fair compensation for a partial taking of land must consider the effect on the remaining land. Mr. Sumner did not include this element of damages so the Commission shall rely on the record. In so doing the Commission recognizes that the parcel being taken is the highest elevation of the entire parcel. The remaining land, some of which is considerably lower than the subject parcel, will be deprived of fill available to be utilized to elevate the lower land. The Commission finds the sum of \$1,000 per acre for the remaining 12 usable acres as fair severance compensation.

The Commission for the above reasons finds that the fair value of the land taken is \$13,000 plus \$12,000 severance damages to the remaining land or a total of \$25,000. The Commission finds no damages to the other Davis land which consists of 16 acres and adjacent to the 21.7 acre tract.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Hampton Water Works Company be, and hereby is, authorized to take, pursuant to RSA 371, property described in its petition which is in the Commission files on this matter; and it is

FURTHER ORDERED, that Hampton Water Works Company pay damages for said taking in the amount of twenty-five thousand dollars (\$25,000) to Chester Davis, Jr. and Marion R. Davis.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1982.

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NH.PUC*09/30/82*[79399]*67 NH PUC 683*Connecticut Valley Electric Company

[Go to End of 79399]

Re Connecticut Valley Electric Company

DR 82-67, Supplemental Order No. 15,917

67 NH PUC 683

New Hampshire Public Utilities Commission

September 30, 1982

ORDER establishing temporary electric rates.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, on March 1, 1982, Connecticut Valley Electric Company filed a petition to increase its purchased power costs, effective April 1, 1982; and

WHEREAS, on March 18, 1982 by Order No. 15,538 the Commission suspended the filing; and

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WHEREAS, Connecticut Valley Electric Company filed a motion for temporary rates on March 26, 1982; and

WHEREAS, on March 29, 1982 Order of Notice was issued setting hearing for April 23, 1982 at 10:00 A.M.; and

WHEREAS, at said hearing Connecticut Valley Electric Company met the minimum requisite proof for the establishment of temporary rates; it is hereby

ORDERED, that Connecticut Valley Electric Company's rates as of April 23, 1982 are made temporary; and it is

FURTHER ORDERED, that the level of rates being collected on any and all service after April 23, 1982 is to be viewed as being collected pursuant to the temporary rate statute, RSA 378:27; and it is

FURTHER ORDERED, that as a result of this order, existing rates as of that point in time are made temporary rates and are thereby subject to the provisions of RSA 378:29.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1982.

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NH.PUC*10/04/82*[79400]*67 NH PUC 684*New Hampshire Electric Cooperative, Inc.

[Go to End of 79400]

Re New Hampshire Electric Cooperative, Inc.

DE 82-241, Order No. 15,919

67 NH PUC 684

New Hampshire Public Utilities Commission

October 4, 1982

PETITION for authority to erect an electric power line over state-owned railroad land; granted.

ELECTRICITY, § 7 — Grant or refusal — Electric power line — Public interest.

[N.H.] The commission granted an electric company's petition for a license to erect a power line over state-owned railroad land, where it found that (1) the petition was in the public interest, (2) it had been properly publicized, (3) proper public notice had been given, and (4) no objection had been raised.

APPEARANCE: Earl Hansen, plant manager, for the petitioner.

BY THE COMMISSION:

REPORT

On August 19, 1982, the New Hampshire Electric Cooperative, Inc., filed with this Commission, a petition seeking authority to erect a Power Line over State-Owned railroad land of the so-called Concord to Lincoln line near Station 2130+05 +/- on Waukewan Road in the Town of New Hampton, New Hampshire. The Commission issued an Order of Notice on August 24, 1982 directing all interested parties to appear

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for public hearings at 10:00 a.m. on September 22, 1982 at the Commission's Concord Offices. Notices were sent to Earl Hansen, Plant Manager, New Hampshire Electric Cooperative Inc., for publication; New Hampshire Department of Public Works and Highways Railroad Administration; George Gilman, Commissioner, DRED; John Bridges, Director, Safety Services; John R. Sweeney, Director, Aeronotics Commission; and the Office of the Attorney General. An affidavit indicating that publication was made in the Union Leader on September 6, 1982 was received at the Commission's office on September 14, 1982.

Earl Hansen explained that the petition results from a customer request of Mr. Gardner Fisher to extend Cooperative lines over the railroad right-of-way to his residence. The line from which the extension will be made presently serves railroad signal control boxes at the railroad crossing of Waukewan Road. The Fisher residence is approximately 150 ft. beyond the track. Mr. Hansen confirmed that the line would be installed in accordance with the provisions of the National Electric Safety Code.

Mr. John Clement, representing the N.H. Department of Public Works and Highways, Railroad Division, confirmed that his office did not object to the crossing and had, in fact, executed a license for the same.

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 license to erect a power line over the State-owned Concord to Lincoln near station 2130+05 +/- on Waukewan Road, said section of land and railroad tracks in the New Hampton, New Hampshire 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 Hampshire Electric Cooperative Inc., to erect a power line over the State-owned Concord to Lincoln line, near station 2130+05 ± on Waukegan Road in the Town of New Hampton, New Hampshire.

By Order of the Public Utilities Commission of New Hampshire this fourth day of October, 1982.

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NH.PUC*10/06/82*[79401]*67 NH PUC 686*Fuel Adjustment Clause

[Go to End of 79401]

Re Fuel Adjustment Clause

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

DR 82-243, Order No. 15,910

67 NH PUC 686

New Hampshire Public Utilities Commission

October 6, 1982

ORDER establishing fuel adjustment clause surcharge for several electric utilities.

APPEARANCES: Warren Nighswander for Concord Electric Company and Exeter and Hampton Electric Company; Michael D. Flynn for Granite State Electric Company; Kenneth E. Traum for the public utilities commission staff.

BY THE COMMISSION:

REPORT

The Public Utilities Commission held duly noticed public hearings on the fuel adjustment clause filings of Concord Electric Company, Exeter & Hampton Electric Company and Granite State Electric Company for the fourth quarter of 1982 at its office in Concord on September 24 and 27, 1982.

Concord Electric Company and Exeter & Hampton Electric Company were represented by one witness, Peter J. Stulgis. Concord Electric Company originally filed for an energy charge of 5.382¢ per KWH, up from the 4.494¢ per KWH charge of September. Exeter & Hampton Electric Company originally filed for an energy charge of 5.479¢ per KWH, up from the 4.659¢

energy charge of September. These adjustments, if granted, would increase rates for a 500 KWH customer by \$4.44 for Concord Electric customers and \$4.11 for Exeter & Hampton customers.

These increases result mainly from two items. First, a larger percentage of lost and unaccounted KWH's based upon historical averages, and second higher estimated fuel costs from both companies, sole provider of power, Public Service Company of New Hampshire (PSNH). The higher estimates by PSNH are due to higher loads estimated to occur in the late fall and early winter as compared to the previous quarter that was for the most part summer. Such higher levels of usage lead to bringing into service more expensive generating units. Scheduled outages for the efficient Merrimack I and II, Mass. Yankee and Maine Yankee in preparation for their availability for winter loads is also a factor. Partially offsetting these costs are lower oil estimates.

Upon cross-examination by Mr. Traum of the PUC Staff, the (Commission learned that PSNH had submitted to the Company by letter dated September 21, 1982 a re-estimate of its fuel

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charge rate for September, 1982. This revision had not been incorporated into the Company's calculations, so updated calculations were requested which yield for Concord a 5.259¢ per KWH energy charge and 5.363¢ per KWH for Exeter & Hampton. These results were more reasonable than the original submission, in that these figures reflected some recognition of the soft oil market. However, these figures and the model used by PSNH were not supported by a witness that could be cross-examined. These reduced PSNH oil estimates of \$27.24 per barrel in October, \$27.61 in November and \$28.56 in December were lower than previous estimates given to us by PSNH, and thus will necessitate opening a hearing to examine a reduction in PSNH's rates in October. However, in this docket are even lower oil price forecasts submitted by New England Power through Granite State Electric. These figures were subject to lengthy scrutiny by Staff and are found to be more accurate as to the oil price information the Commission is aware from trade publications. Furthermore, these numbers were properly evaluated by the Commission and subject to cross examination. These oil price estimates by NEPCO reflect the stagnant market for oil. PSNH in its most recent docket, DR 82-146, provided oil price estimates as follows: July \$27.74, August \$28.80 September \$28.88, October \$29.22 November \$29.22 December \$29.10. PSNH's revised estimates reveal the continual softening of the oil market.

The substitution of NEPCO'S oil price estimates leads to an estimated PSNH fuel charge for both companies of \$.03942. In November the substitution of the lower oil price leads to a November PSNH fuel charge for both companies of \$.04005. In December, the substitution of the lower oil price estimate leads to a PSNH fuel charge for both companies of \$.03763. The Commission finds that these adjustments based on more realistic oil price estimates are reasonable.

Cross examination was conducted by Staff Assistant Finance Director Traum into the reasons for this large increase. The task was made difficult because of the failure of either Concord Electric or Exeter Hampton Electric to call a witness from PSNH as to changes in their model, since it was evaluated and subject to cross examination in DR 82-146. A comparison between the model submitted in that docket and the model submitted in this docket reveals numerous

changes of which the major change is the slight modification in price of oil. While this aforementioned adjustment favors the consumer the Commission found that the adjustment didn't go far enough. There are other adjustments that merit consideration and weight different than that proposed by the Company. The Commission Staff questioned sales, lost and unaccounted for estimates, and historic monthly trends in over/under collections.

An examination of Concord reveals an estimate of October 1982 sales to be greater than last year with a corresponding lost and unaccounted for and co-use of 9.92% for October 1982 versus 4.80% for October, 1981 and 10.23% for October, 1980. For November, the estimated sales growth is 2.23%; with lost and unaccounted for and company use varying from a November, 1982 of 8.96% to actual November, 1981 of 12.89% and November, 1980 of 2.44%.

For December, the estimated sales growth is 0.70% with lost and unaccounted for and company use varying from December, 1982 estimate of

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14.58% to actual December, 1981 of 14.88% and December, 1980 of 16.15%.

The Commission finds that a standard rate of .7 of 1% is more reliable and just. This translates into estimated KWH sales for October, 1982 of 23,730,034; November, 1982 sales of 23,075,550; and December, 1982 sales, remaining at the Company's estimate of 25,506,100 KWH.

For lost, unaccounted-for, and company use, the Commission recognized that a large portion of these arise due to billing lags, weather, etc., but at the same time the Commission is well aware and congratulates the Company on the actions it has taken to reduce line losses, company use, etc. Recognizing that many of these actions have occurred in the last few years, the Commission will use the last two years of lost, unaccounted-for, and company use to calculate a percentage for October, November and December, 1982.

Since October, 1981 had a percentage of 4.80% and 10.23% for October, 1980; the Commission will use 7.515% for October, 1982, lost, unaccounted-for, and company use.

Correspondingly, the November 1982 figure will be 7.66570 and 15.515% for December, 1982.

Taking all of these revised estimates into account acts to reduce the billing rate for Concord Electric Company. Similar calculations for Exeter & Hampton result in a billing rate lower than requested.

The Commission also feels that additional reductions are justified in another respect; by looking historically at the status of Concord's (or Exeter & Hampton's for that matter) under (over) collections of its FAC. Over the last six months the Company has overcollected five times, while over the last year, the Company has overcollected in 10 of 12 months. Over the last 12 months, on average, Concord overcollected by \$45,895 (monthly) while the corresponding figure for Exeter & Hampton was \$70,759 (monthly).

The procedure used for the quarterly fuel adjustment should on average yield an approximately equal level of over and under collections. There is enough of a record to

reexamine the estimating procedure now employed by the utilities. This will occur in the month of October, 1982. The amount of overcollections increased sharply in September 1982. The Commission finds that consumers should receive the benefit of this over-collection as quickly as possible. Consequently the Commission finds that a reasonable adjustment for past over/ under collections lies in a range between the historical average and the average of the last three months. The average for the last three months has been for Concord \$109,890 and for Exeter Hampton the average has been \$116,957. The Commission finds that striking the proper balance between the companies that are regulated and their customers, these latter numbers are more appropriate for use in reducing the requested level of rates. The Commission finds that this adjustment is more likely to achieve a fuel adjustment that neither under or overcollects. Since the adjustment is set for three months it is necessary to multiply these numbers by three to achieve a downward reduction for Concord Electric of \$329,670 and a downward reduction for Exeter Hampton Electric of \$350,871.

The result for Concord Electric is an estimated fuel expense of \$3, 148,395 minus a prior period adjustment of \$176,605 and this adjustment to reflect the inclination of the technique used to

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overcollect of \$329,670. This yields an accepted net estimated fuel expense of \$2,642,120. The estimated kwh sales is found to be 72,311,685 and the resulting billing rate is \$.03653- \$.03488= \$.00165 per KWH. The energy charge approved for the quarter is thereby found to be 4.689¢ or about \$3.47 less for a 500KWH customer than requested. For Exeter Hampton, the estimated fuel expense is \$3,399,790 minus \$259,438 as to the adjustment for prior period overcollection and minus \$350,871 for the tendency to over estimate by the model yields \$2,789,481. This is then divided by 76,995,000 as the found estimated KWH sales to arrive at the following: \$.00135 or an energy charge of 4.824¢ or \$3.28 less than requested amount for a 500 KWH per month customer.

Granite State Electric requested the FAC be lowered 86¢ /100 KWH to \$0.62/100 KWH, while the OCA be lowered 2¢ /100 KWH to \$0.145/100 KWH.

The OCA decrease is principally due to an overcollection in the third quarter of 1982 and less coal generation at Mt. Tom and Salem Harbor Units 1, 2, and 3. GSEC is continuing to estimate approximately a \$10.00 differential between coal and oil on an equivalent basis, which continue to economically justify the conversions to coal.

Reasons for the decrease in the FAC, as requested, include an estimated reduction in the cost of fuel in the fourth quarter versus the third quarter estimates; and an estimated overcollection going into the fourth quarter, 1982, of approximately \$376,500 based upon \$3,000,000 in fuel revenue.

The \$376,500 overcollection was due to a number of factors:

- (1) Brayton Point III outperformed estimates in the third quarter of 1982, for which the Commission applauds the Company.
- (2) Vermont Yankee had a 4-week scheduled outage in the third quarter that was

substantially reduced; thus providing more nuclear generation than estimated.

(3) Oil costs were lower than estimated, partially as a result of NEEI savings. Here, the Commission again applauds the Company for the NEEI operation, but also must note that in calculating a future FAC, estimated NEEI savings may be taken into account.

In conclusion, the Commission believes the requested rates of \$0.62/100 KWH for the fourth quarter of 1982, FAC and \$0.145/100 KWH for the fourth quarter of 1982, OCA; the combined impact of which will be a monthly reduction of \$4.40 in the bill of an average 500 KWH customer are in the public good, and our Order will issue accordingly.

ORDER

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

ORDERED, the Commission, in correspondence dated March 2, 1982, 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 for

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those utilities which file monthly unless requested or needed by one of those utilities; and 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 or needed to have a hearing scheduled; and

WHEREAS, this is not one of the two off months of quarterly FAC utilities, hearings were held for Concord Electric Company, Exeter & Hampton Electric Company and Granite State Electric Company; it is

ORDERED, that second and third Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 — Electricity, providing for a fuel rate for the month of October, 1982, be, and hereby are, rejected; and it is

FURTHER ORDERED, that Concord Electric Company file a revised page 19A to its tariff, NHPUC No. 8 — Electricity, providing for an energy charge of 4.689¢ for the month of October, 1982; and it is

FURTHER ORDERED, that 2nd and 3rd Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge for the month of October, 1982, be, and hereby are, rejected; and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company file a revised page 19A to its tariff NHPUC No. 15 — Electricity, providing for an energy charge of 4.824¢ per KWH for the month of October, 1982; and it is

FURTHER ORDERED, that 2nd Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an energy conservation adjustment of \$0.145 per 100 KWH for the months of October through December, 1982, be, and hereby is, permitted to go into effect for October, 1982; and it is

FURTHER ORDERED, that 2nd Revised Page 30 of Granite State Electric Company, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the months of October through December, 1982, of \$0.62 per 100 KWH be, and hereby is, permitted to go into effect for October, 1982; and it is

FURTHER ORDERED, that 19th Revised Page 15 of the New Hampshire Electric Cooperative, Inc. tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of \$2.57 per 100 KWH for the month of October, 1982, be, and hereby is, permitted to become effective October 1, 1982; and it is

FURTHER ORDERED, that 21st Revised Page 11B of Municipal Electric Department of Wolfboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$2.70 per 100 KWH for the month of October, 1982, be, and hereby is, permitted to become effective October 1, 1982; and it is

FURTHER ORDERED, that 105th Revised Page 6 of Littleton Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$1.34 per 100 KWH for the month of October, 1982, be, and hereby is, permitted to become effective October 1, 1982; and it is

FURTHER ORDERED, that 73rd Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge/credit of \$(0.83) per 100 KWH for the month of October, 1982, be, and hereby is, permitted to become effective October 1, 1982; and it is

FURTHER ORDERED, that 68th Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for an

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energy surcharge credit of (\$0.03) per 100 KWH for the month of October, 1982, be, and hereby is, permitted to become effective October 1, 1982.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 1982.

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NH.PUC*10/06/82*[79402]*67 NH PUC 691*Town of Derry

[Go to End of 79402]

Re Town of Derry

DE 82-283, Order No. 15,920

67 NH PUC 691

New Hampshire Public Utilities Commission

October 6, 1982

ORDER precluding disconnection of water customers and directing reinstatement of service at no cost to disconnected customers.

WATER, § 13 — Water utilities — Operation — Service as regulated entity.

[N.H.] Where a municipal water department proposed to disconnect customers in order to retain the exemption from regulation that it believed it had, the commission found that the water department had misconstrued the exemption statute, that the water department was and had been a utility subject to regulation for some time, that the number of the utility's customers precluded an exemption, and that the water department had failed to justify the disconnection of any customers; therefore, the water department was precluded from disconnecting any customers and was ordered to reinstate service at no cost to any customer already disconnected.

BY THE COMMISSION:

REPORT

The Commission initiates this docket, DE 82-283, to resolve any and all problems associated with the Town of Derry Municipal Water Department serving outside its town boundaries. By letter, Rodney A. Bartlett, Director, informed the Commission that the Town of Derry is serving twenty-seven (27) customers outside the municipal boundaries of Derry. These customers are located in the community of Londonderry. In Mr. Bartlett's original letter, he set forth the proposition that the Town of Derry Municipal Water Department is not a regulated entity, and that they were fearful of becoming regulated because there was consideration being given to adding three customers. The Town of Derry asserted that they had been given an exemption from regulation and they were fearful that reaching the statutory limit, they believed to be 30, would result in being regulated.

On August 2, 1982, Chairman Love wrote to Mr. Bartlett and the Town of Derry Municipal Water Department stating that in 1973 the legislature changed the statute, RSA 362:4, as to the level of customers that might lead to an exemption from regulation. The number was reduced from thirty to ten. Chairman

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Love correctly indicated that the Town of Derry Municipal Water Department was now a utility and subject to our jurisdiction. Furthermore, there has been no citation to any written order granting any exemption from this Commission. Chairman Love correctly indicated that an exemption could only result if an entity was servicing less than ten customers and only if the Commission after notice and hearing found that the public good justified the exemption.

Somehow, the Town of Derry has misconstrued this statutory situation and is informing customers of its intentions to disconnect customers. The Town of Londonderry has responded threatening class action suits and calling the Commission's action arbitrary and capricious. The Commission action, to which Londonderry objects, simply has not occurred. Rather, the Town of Derry Municipal Water Department is without any authority to disconnect any customer outside its municipal boundaries.

RSA 374:1 obligates every utility to provide adequate and safe service to any customer within its service territory. RSA 374:28 states that the Commission, and only the Commission, can authorize a temporary or permanent disconnection of service. This statute requires notice, hearing and finding of public good. The Commission has adopted an extremely difficult standard to disconnection since the role of a utility is the exclusive right to serve within in a given area of the State. See *Re Northern Utilities, Inc.* (1982) 67 NH PUC 645.

The Town of Derry has no authority to disconnect any customer outside its municipal town boundaries due to their failure to present any facts before this tribunal. If the Town of Derry or its Municipal Water Department, or any agent, employee, or designee attempted to disconnect any customer located in Londonderry, the Commission will find the Town of Derry in direct violation of our orders, rules, regulations and governing statutes. Such a violation will result in a fine, reinstatement of service and use of RSA 374:41 whereby the Commission will place the facts before the Attorney General for purposes of obtaining an injunction against any disconnection.

The Town of Derry Municipal Water Department is and has been for nine years a public utility. The number of customers precludes any exemption. The Town of Derry Municipal Water Department is to contact Water Engineer Robert Lessels of the Commission for proper determination of a water utility boundary. The Town of Derry Municipal Water Department is to contact Kenneth Traum, Assistant Finance Director, as to the necessary financial information to file. These contacts are to be made within seven days of this order. If the Town of Derry seeks to charge these twenty-seven customers money for the water they provide, then there must be a petition filed requesting approval of rate tariffs. Absent this approval, the Town of Derry cannot charge these customers located in Londonderry.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Town of Derry Municipal Water Department is a public utility pursuant to RSA 362:4 based on providing service to twenty-seven customers outside its municipal boundaries; and it is

FURTHER ORDERED, that the Town of Derry Municipal Water Department

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is by this order precluded from disconnecting any of the twenty-seven customers it presently serves outside its municipal boundaries; and it is

FURTHER ORDERED, that the Town of Derry Municipal Water Department is to reinstate service at no cost to the customer for any customer it has disconnected outside its municipal boundaries prior to its order; and it is

FURTHER ORDERED, that within seven days the Town of Derry Municipal Water Department is to contact the staff members referred to in the report; and it is

FURTHER ORDERED, that prior to any further rates being charged, these twenty-seven utility customers, the Town of Derry Municipal Water Department is to file its tariffs for our evaluation, and our ruling on the appropriateness of these rates; and it is

FURTHER ORDERED, that any violation of this order will carry, at a minimum, fines and, at a maximum, the facts will be placed before the Attorney General pursuant to RSA 374:41.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 1982.

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NH.PUC*10/06/82*[79403]*67 NH PUC 693*Union Telephone Company

[Go to End of 79403]

Re Union Telephone Company

Intervenor: Office of Consumer Advocate

DR 81-310, Fifth Supplemental Order No. 15,921

67 NH PUC 693

New Hampshire Public Utilities Commission

October 6, 1982

ORDER approving settlement agreement regarding telephone rates.

APPEARANCES: Dom S. D'Ambruoso and Wallace Flaherty, vice president, Union Telephone Company; F. Joseph Gentili, Consumer Advocate; Eugene Sullivan, commission finance director, and Edgar Stubbs, commission assistant chief engineer.

BY THE COMMISSION:

REPORT

PROCEDURAL HISTORY

On October 16, 1981 Union Telephone Company filed with the Commission a proposed tariff to be effective November 16, 1981 that provided for a rate increase calculated to yield an annual increase in base revenues of \$246,996. On October 28, 1981 Union Telephone Company (hereinafter "the Company") revised its request to provide for an annual increase in base revenues of \$275,435 to be effective November 28, 1981. The Commission, on November 5, 1981, issued Order No. 15,237 (66 NH

PUC 457) suspending the proposed effective date of the rate filing pending investigation.

On November 4, 1981 the Commission held a hearing on the Company's request for temporary rates. Commission Report and Second Supplemental Order No. 15,308 dated November 20, 1981 (66 NH PUC 517) allowed a \$92,948 increase to become effective as temporary rates on or after November 16, 1981. On December 11, 1981 the Company filed appropriate tariffs to implement the temporary rates and at the same time filed a Motion to Amend Order No. 15,308 requesting a recalculation of the Company's required revenue on a temporary basis. Based upon new information presented concerning a new average schedule for New England Telephone pertaining to inter-state revenues and the Company's REA financing, the Commission issued Report and Fourth Supplemental Order No. 15,490 dated February 16, 1982 (67 NH PUC 161) revising the temporary rates. Additional temporary revenues of \$32,386 were allowed to become effective March 1, 1982.

Subsequently, Company representatives, the Staff and the Consumer Advocate held a series of settlement conferences with sessions occurring on July 12 and July 19, 1982. From these meetings came a proposed settlement agreement entered into by all parties on September 20, 1982. The Commission, upon review of the Agreement, finds the settlement to be in the public good and finds the agreement to establish just and reasonable rates.

BASE REVENUES

The Company's revised request for a permanent annual increase in base revenues of \$274,435 was based on a test year ended June 30, 1981. Staff required the Company to update the test year to December 31, 1981. The settlement agreement allows a total permanent rate increase of \$161,544 which is an increase of \$36,110 above the temporary rates allowed. The difference between the permanent rates allowed and the temporary rates will be provided for by surcharge in accordance with RSA 378:29. The surcharge will be recovered over 6 months from the effective date of this Order.

SECOND STEP INCREASE

The Commission denies an attrition allowance in this settlement, but accepts the provision of a step increase one year from the date of this order to cover actual increases or decreases of annual operating expenses. While the Company will be allowed to include rate base adjustments in the step increase, neither the parties nor the Commission have agreed to any additional equity return adjustment. While the Company has not waived the right to seek rate of return adjustments, the Commission, on the other hand, retains its authority to disapprove as part of any second step increase any expense which the Commission determines to be unjust or unreasonable.

COST OF CAPITAL

The Company's original request was based on overall required rate or return of 15.16% (original Exhibit 7). The settlement agreement provides for a 12% required rate of return. Whereas, the original request suggested a common equity rate of 1870, the settlement agreement allows a 15% rate.

RATE DESIGN

The settlement agreement accepts the rate design proposed in the Company's original tariff for the portion of the

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permanent rates already allowed in temporary rates. The additional new revenues of \$36,110 will be applied to charges for customer premises equipment, as this terminal equipment will now be "unbundled" or separated from basic service charges.

PROPOSED CABLE TV CHARGES

The Company has advised the Commission of plans to enter into the provision of cable television services. A franchise has been signed with the Town of Barnstead and discussions are being held with the Towns of Alton, New Durham and Gilmanton. While the Commission does not oppose this diversification into non-utility operations, the Commission is concerned with ensuring that utility operations and telephone customers do not subsidize the cable operations. To this end, the Commission will require the Company to meet with our Finance Staff prior to commencing cable operations to ensure that proper accounting procedures are established in accordance with the Commission's Chart of Accounts.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Union Telephone Company be, and hereby is, granted permanent increase in revenues of \$161,544 to become effective with all bills rendered on or after October 1, 1982; and it is

FURTHER ORDERED, that the following tariff pages be, and hereby are rejected:

Section 1 — 1st Revised Page 5A and 2nd Revised Page 3A Section 2 — 1st Revised Pages 2-4 Section 2 — 4th Revised Page 1A Section 2 — 16th Revised Page 1 Section 3 — Original Pages 8A-C Section 3 — 1st Revised Pages 1B, 16E, 17-19, 21, 22. 32 Section 3 — 2nd Revised Pages 1D, 6, 7C, 24 Section 3 — 3rd Revised Pages 4, 12, 23, 25 Section 3 — 4th Revised Pages 5, 20 Section 3 — 7th Revised Page 8 Section 4 — 1st Revised Page 3 Section 4 — 4th Revised Page 2 Section 4 — 5th Revised Page 1

and it is

FURTHER ORDERED, that Union Telephone Company file with this Commission appropriate revised tariff pages in lieu of those rejected, said conforming to directions contained in the attached report; and it is

FURTHER ORDERED, that if said filing continues to bear the designator NHPUC No. 6 — Telephone, the Company also file its Supplement No. 5, to that tariff, said supplemental to cancel supplements 2, 3, and 4; and it is

FURTHER ORDERED, that the difference between temporary rates granted earlier and the amount finalized by this Order (\$36,110) be applied to "unbundled" customer premises

equipment, and it is

FURTHER ORDERED, that the difference between rates authorized herein and those revenues collected as temporary rates between the period November 16, 1981 and October 30, 1982 be recovered by surcharge over a six month period starting October 1, 1982; and it is

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FURTHER ORDERED, that said surcharge be documented by tariff supplement and the Company provide reconciliation of this recovery to the Commission; and it is

FURTHER ORDERED, that Union Telephone Company file with this Commission no later than September 30, 1983, supporting documentation for the step increase outlined in the report; and it is

FURTHER ORDERED, that Union Telephone Company give public notice of this order via one-time publication of a summary of the findings in a newspaper having general circulation in the areas served, or one-time bill insert as the Company chooses, affidavit of such to be filed with the Commission.

By Order of the Public Utilities Commission of New Hampshire this sixth day of October, 1982.

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NH.PUC*10/06/82*[79404]*67 NH PUC 696*Granite State Electric Company

[Go to End of 79404]

Re Granite State Electric Company

DR 81-361, Second Supplemental Order No. 15,922

67 NH PUC 696

New Hampshire Public Utilities Commission

October 6, 1982

ORDER approving temporary electric rate increase.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission pursuant to Supplemental Order No. 15,784 (67 NH PUC 562) has allowed Granite State Electric Temporary rates of \$965,262 on an annual basis as of August 2, 1982; and

WHEREAS, the Commission pursuant to Order No. 15,784 has allowed temporary rates as to any usage rendered after March 1, 1982; and

WHEREAS, the Granite State Electric Company did not receive any revenue pursuant to

Supplemental Order No. 15,784 for usage between March 1, 1982 and July 1, 1982; it is hereby

ORDERED, that Granite State Electric Company temporarily increase its basic rates by \$.0040 per KWH for all KWH's rendered in October and November of 1982 to collect the difference between \$0 and the annual level of increase, \$965,262, the Company was entitled to for the time period of usage between March 1, 1982 end dully 1, 1982; and it is

FURTHER ORDERED, that Granite State Electric is to file a monthly report fifteen days after the end of the previous month reporting the revenue level collected pursuant to this order and the level left to be collected.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 1982.

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NH.PUC*10/08/82*[79405]*67 NH PUC 697*Connecticut Valley Electric Company

[Go to End of 79405]

Re Connecticut Valley Electric Company

Intervenors: Office of Consumer Advocate et al.

DR 82-67. Third Supplemental Order No. 15,923

67 NH PUC 697

New Hampshire Public Utilities Commission

October 8, 1982

ORDER denying rate increase to the extent abandoned plant costs were included in wholesale rates.

1. COMMISSIONS, § 10 — Nature and functions.

[N.H.] The commission acts in a quasi-judicial fashion as the arbiter between consumer interests and the interests of regulated utilities, and can also conduct independent inquiries and implement policy and safety standards. p. 700.

2. EXPENSES, § 39 — Commodity or supply cost — Electricity — Wholesale rate.

[N.H.] The commission held that a wholesale rate increase approved by the Federal Energy Regulatory Commission (FERC), submitted by a utility in support of an application for a rate increase, was inadequate in meeting the utility's burden of proof and a denial of due process where: (1) there was no notice to customers in the affected service territory to the wholesale rate filing; (2) no public hearings were held at FERC; (3) there was no notice that the requested rate was significantly increased by over 500 per cent; (4) the utility applying for the increase did not make an appearance in the FERC proceeding; and (5) there was no reconciliation between figures used for the future test year in setting wholesale rates and actual rate base and expenses.

p. 700.

3. RATES, § 32 — Jurisdiction, powers, and duties of state commissions — Interstate rates.

[N.H.] The commission has statutory authority to investigate interstate rates and regulations where any act thereunder may take place in the state. p. 701.

4. EXPENSES, § 86 — Payments to affiliated interests — Payments for commodity or supply — Electricity.

[N.H.] Transactions between public utilities that are affiliates must be scrutinized by the commission with special care to protect the public interest and to insure that the regulatory process functions effectively because a subsidiary may not be motivated to challenge the expenses of a parent. p. 701.

5. RATES, § 367 — Electric — Wholesale — Underlying costs.

[N.H.] The commission has authority to examine the underlying costs of wholesale rates. p. 702.

6. CONSTITUTIONAL LAW, § 31 — Preemption — Apportionment of abandoned plant costs.

[N.H.] The constitutional doctrine of federal preemption of state regulation does not apply to the apportionment of costs from abandoned plants because the doctrine is based on the federal power to regulate interstate commerce and abandoned plants do not generate electricity that enters the stream of commerce. p. 704.

7. CONSTITUTIONAL LAW, § 31 — Preemption — Apportionment of abandoned plant costs.

[N.H.] The planning of energy facilities is a state, rather than a federal, matter; therefore, state interests predominate over federal interests in apportioning the costs associated with abandoned generating plants. p. 705.

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8. RATES, § 367 — Electric — Wholesale — Abandoned plant costs as a component.

[N.H.] The commission rejected the costs associated with an abandoned plant as a component of wholesale electric rates where no evidence was offered as to the amortization period used in setting wholesale rates, the rate base treatment of the uncollected balance, the tax consequences of cancellation, or when the tax benefits associated with the losses were taken. p. 707.

9. RATES, § 367 — Electric — Wholesale — Abandoned plant costs as a component.

[N.H.] The costs associated with an abandoned plant were denied as the basis for wholesale rates where there was neither a demonstration of prudence in the utility's involvement in the plant nor proper consideration of the regulatory treatment of the abandoned plant issue. p. 708.

APPEARANCES: Gerald Cook, for the petitioner; F. Joseph Gentili, for the Consumer Advocate. Limited appearances: Bill Scala, Burt MacIntyre, Rocky Monetta, Arnold Mullen and

Paul Hand.

BY THE COMMISSION:

REPORT

HISTORY

Connecticut Valley Electric Company (hereinafter referred to as "the Company", "Coeval", or the "subsidiary") filed on February 25, 1982 for authority to pass a \$ 1,259,000 increase in its purchased power expense from its sole supplier and parent, Central Vermont Public Service Company (CVPS) as to its retail customers for effect April 1, 1982.

The increase is attributable to Federal Energy Regulatory Commission approval of CVPS' rate filing R-S-2 effective January 1, 1982. The history that leads up to this Federal Energy Regulatory Commission (FERC) decision is of value to understand the procedure by which the FERC used to proceed with this case. In approximately July of 1981, CVPS filed with the FERC which requested a rate increase from Connecticut Valley of slightly less than \$200,000, or about 3 or 4%. (Transcript, page 7) This increase was based on an historical time period ending year end 1980. (Transcript, page 21)

A meeting was then held with the FERC staff to review the filing. The FERC staff told CVPS to refile using a future test year ended 1982. (Transcript, pages 10, 21) The rates designed to reflect the \$200,000 had been suspended in September. In October or November of 1981, CVPS "corrected and changed" its existing filing to reflect a 1982 future test year and now an increase to Connecticut Valley of \$ 1,259,310. (Transcript, pages 10-11) The filing was immediately accepted and made effective January 1, 1982 by the FERC. (Transcript, page 11)

The increased request of over one million dollars over the prior request received no hearings, nor did for that matter the original \$200,000 request receive any open hearings. Rather, there were negotiations from the beginning between FERC staff representatives, FERC staff counsel, Central Vermont personnel and Central Vermont counsel. Connecticut Valley didn't appear; rather they offer that "since they are a wholly-owned subsidiary the usual FERC position is that they (the FERC staff) take the place of the subsidiary". (Transcript, page 11 Mr. Cook Testimony) The Commission is then asked in this docket to pass on these costs to Connecticut Valley Customers.

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CONNECTICUT VALLEY ELECTRIC POSITION

The position taken by Connecticut Valley Electric simply stated is that the New Hampshire Public Utilities Commission lacks jurisdiction to question the reasonableness of costs underlying the wholesale rate set by the Federal Energy Regulatory Commission (FERC). The position taken is that the Commission must approve without question any and all expenses approved as reasonable between parent and subsidiary utility companies and then allow these expenses in their entirety to be collected from the subsidiary utility's customers. To support its contention, Connecticut Valley cites the decisions of the Rhode Island Supreme Court, *Narragansett Electric Co. v Burke* (1977) — RI — , 23 PUR4th 509, 381 A2d 1358, and the North Dakota Supreme Court, *Northern States Power Co. v Hagen* (ND Sup Ct 1981) 45 PUR4th 630, 314 NW2d 32.

CONSUMER ADVOCATE POSITION

The Consumer Advocate contends that the 100% inclusion of the costs associated with the FERC filing is unreasonable. In particular, the Consumer Advocate contends that it is unreasonable to pass through 100% of the costs of the abandonment of Pilgrim II in light of the Massachusetts Department of Public Utilities (MDPU) decision to prohibit the lead owner of the Pilgrim II plant, Boston Edison, from full recovery of its costs associated with that unit. The Massachusetts DPU only allowed Boston Edison to pass along 40% of the costs to ratepayers based on a finding that at a point prior to the actual cancellation, Boston Edison and the other owners faced a combination of events leading to an unacceptable level of risk that the plant would not and should not be built. *Re Boston Edison Co. (Mass 1982) 46 PUR4th 431, 470*, The Consumer Advocate contends that a co-owner should be held to no lesser a standard.

The Consumer Advocate also contends that while the decisions of the Rhode Island and North Dakota Courts are against his position, there is no reason that this Commission should be bound by those decisions in that New Hampshire laws are different and that this is a case of first impression.

COMMISSION ANALYSIS

This case presents a collision of many State and Federal statutory guidelines. In many instances the issues in this proceeding have ramifications far beyond the facts of this particular proceeding. Existing within this record are issues concerning rate treatment for abandoned plants, due process, rate discrimination between jurisdictions and agreements and relationships between a parent and subsidiary company. These issues, which have been the subject of literary debate, are presented to the Commission in a record that is extremely sparse as to information. Furthermore, what exists in this record is a reflection of the position of the parties. Connecticut Valley, believing that we are nothing more than a rubber stamp for the FERC decision, did little if anything in terms of arguing the merits of this proposed 13.7% increase. Rather, they cited the FERC's decision and were satisfied that this was sufficient. The Consumer Advocate, while contending that the Commission did not need to be bound by the decisions of the Rhode Island Supreme Court and the North Dakota Supreme Court, none the less admitted the difficulty for a state commission to prevail in any proceeding involving a federally approved rate. Noting that there had been inadequate notice and neither he nor the Commission had the funds to intervene

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had they known that the rate request had been sharply increased during negotiations, the Consumer Advocate rested on the legal points that there were not sufficient proof offered and that the State of New Hampshire did have legal authority to examine costs underlying the approved wholesale rate.

COMMISSION ROLE

[1] The Commission according to RSA 363:17-a shall be the "arbiter between the interests of the customer and the interests of the regulated utilities". Our function is to act in a quasi-judicial fashion and to render legal decisions discussing the issues, the positions of the parties as to each issue and our reasoning behind our decision as to each issue. RSA 363:1 7-b. However, unlike a

judicial court the Commission performs a daily function of policy implementation and safety protection. Unlike a court, the Commission can conduct an independent inquiry into an act or a rate charged or an omission done or not done by a utility without waiting for a case to be presented by petition, RSA 365:5. The Commission is specifically given the power under RSA 374:3,8 and 365:8 to propose and adopt rules to carry out policy considerations. Pursuant to RSA 374:4 the Commission has the statutory obligation to keep informed as to all activities of all utilities within reason. Often this information places us in a role of having more awareness of a particular problem than those that appear before us.

The Commission does not and should not approach any proceeding and expect that the wealth of all the available knowledge will be delivered at our bench. We do over time develop an expertise that must be brought to bear in all the proceedings that we are involved. We and not the utilities or the consumers entrusted with the statutory obligation to ensure that service is adequate and safe, RSA 374:1 and that rates are just and reasonable, RSA 378:7.

The Commission has the statutory obligations through RSA 374:1, as well as others, to insure that the facilities constructed to provide gas, electricity, water, etc. are safe. These roles of policy formulator, safety protector, arbitrator, protector of reasonable rates and conducting proceedings in a quasi-judicial fashion often lead to difficulties as to how the Commission is to act in a given proceeding. For example, if the Commission is aware that a rate proposed by a utility is unreasonable, the Commission has the statutory obligation to reject that rate even if all parties have agreed to its adoption. Such a situation begins to draw fine lines between an arbitrator, a judge and a policy formulator. This proceeding crosses this fine line on numerous occasions.

BURDEN OF PROOF

[2] The burden of proof to collect the increased annual revenues of \$1,259,310 is upon the applicant, Connecticut Valley Electric Company. For the reasons stated in this section, as well as in the remainder of the decision, the Commission finds that the Company has not met its burden or proof. The Commission finds that the submission of a FERC-approved rate is not sufficient when there has been (1) no notice to the customers in the affected service territory¹⁽⁷⁷⁾; (2) no public hearings held at the FERC; (3) no notice that the requested rate was significantly increased by over

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500% (4) no appearance by the subsidiary utility based upon a mistaken statutory interpretation that the FERC staff is to act in place of the subsidiary; (5) a rate filed based on estimates of 1982 expenses, rate base and return for a parent corporation that may or may not be the expenses, rate base and return of that parent corporation and where there is no provision demonstrated to achieve a reconciliation with actual 1982 expense rate base and return of the parent corporation. Due process has been denied.

/f2COMMISSION AUTHORITY OVER RATES BETWEEN PARENT AND SUBSIDIARY & SUBSIDIARY CUSTOMER/f1

[3] The Commission pursuant to RSA 363:22 "may investigate all existing or proposed

interstate rates, fares, charges, classifications and rules and regulations relating thereto, where any act thereunder may take place within this state." This statute, which was modified in 1979 to eliminate the phrase "upon complaint", has been in existence since 1913. The recent modification by the legislature indicates a willingness and a desire by the legislature to increase our power in this area of regulation. The fact that the Commission must no longer wait for a complaint before examining the validity of these proposed changes is clear indication of the concern that the legislature has in this area concerning the potential for abuse. The existence of this statute, yet to be interpreted, since 1913 signifies a lengthy history of concern in this area. Consequently, based on this statute the Commission exerts authority to investigate the rates proposed to be collected from Connecticut Valley Electric ratepayers.

[4] The Commission also has the authority pursuant to RSA 378:7 to set just and reasonable rates. The duty to set just and reasonable rates is not an obligation that this Commission can ignore. Our scrutiny of any proposed rate must be a complete and extensive analysis. There can be no doubt that intercompany relations may demand close scrutiny by regulatory bodies such as the Public Utilities Commission. Re New Hampshire Gas & E. Co. PUR1931D 230, Opinion of Chairman Morse. "Transactions between public utilities which are affiliates are not necessarily equivalent to bargains arrived at arm's length, but must be scrutinized with special care if the public interest is to be protected adequately and if the regulatory process is to function effectively." Re White Mountain Power Co. (1937) 18 PUR NS 321. Thus, this Commission has a history of carefully monitoring these inter-corporate charges and there is not sufficient evidence in this record to alter that procedure.

The Commission is not the only regulatory agency to be concerned about the lack of motivation of a subsidiary to challenge expenses of the parent. In California, the Commission there has stated that there is a necessity to sedulously scrutinize the relations between a utility and its affiliates where the affiliate or parent company renders services or sells articles to the utility especially as to the return earned in such transactions. Re Suburban Water Systems (Cal) Decision No. 59646, Application No. 39299, Feb. 9, 1960.

The greatest level of cases concerning such inter-utility corporation transfers, sales and providing service has arisen out of the telephone industry with special emphasis on operating companies at the local level being controlled in its dealing with its parent, A.T.&T. and not bargaining at arm's length with its sister affiliate, Western Electric. The case of

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Smith v Illinois Bell Teleph. (1930) 282 US 133, PUR1931A 1, 75 L Ed 255, 51 S Ct 65, stands for the proposition that intercorporate relations must (not may) be scrutinized by regulatory agencies. The sale of services or goods between affiliated telephone interests is a sale of services and goods to itself. Re Southwestern Bell Teleph. Co (Kan 1960) 34 PUR3d 257. The closeness of such affiliated utilities and companies requires close scrutiny in order that no unfair advantage is taken by the controlling parent company Illinois Commerce Commission v Chicago Teleph. Co. (1923) PUR1924A 213, 246.

The Federal Power Commission, the forerunner of today's FERC, has stated that contracts between affiliated companies apparently entered into for the convenience of the parties, are not

arm's length transactions and cannot be considered controlling. Re Clarion River Power Co. (7PC 1935) Opinion No. 19. Finally, the New York Supreme Court has found that the New York Commission is authorized to inquire into the affiliated interests of a public utility, the extent and propriety of transactions with such interests and whether they are in the public interest. New York State Electric & Gas v New York Pub. Service Commission (1938) 169 Misc 144, 26 PUR NS 236, 7 NYS2d 235.

In this case, the Commission is faced with a subsidiary which is totally owned by its parent, a subsidiary that did not appear in the FERC proceedings and did not object to the charges being increased by over 50070 from that originally requested. This subsidiary did not contend that the increase in the return on common equity to 17% despite the parent only being allowed 16% in Vermont was unreasonable. In fact, the subsidiary in this instance did nothing to protect its customers from unreasonable rates. Its position is whatever its parent corporation charges is fair which is not a surprising position given that its stock is owned 100% by the parent but their lack of concern does not alleviate our authority or our obligation to serve the public interest through inquiry.

The Commission also finds that it has authority to inquire and reject certain aspects of this filing based upon the provisions of RSA 378:10 which precludes a public utility from providing any undue or unreasonable preference or advantage to any person, or corporation, or locality, or service. This section of RSA 378 also precludes a utility from placing any person, corporation, locality or service in a position where they are in an undue or unreasonable disadvantage or they have been prejudiced. In this proceeding, in the areas of abandoned plant, rate of return, return on common equity and expenses the retail customers of Connecticut Valley are being discriminated against as compared to the retail customers of Connecticut Valley's parent, Central Vermont Public Service Company.

[5] The decisions by the Connecticut and Massachusetts Commissions as to the lead participant's ability to recover costs associated with the Montague and Pilgrim II plants do not allow for full recovery. Yet, the rate put forward in this docket would impose a proportionately higher level of rates associated with the costs of these abandoned plants for the customers of Connecticut Valley than what CVPS', its parent, customers are paying or what the customers of the lead participants of these abandoned plants are obligated to pay. The Commission finds that such a situation is discriminatory as to the customers of Connecticut Valley Electric. The Commission

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is sworn to uphold state statutes and therefore cannot sanction this proposed violation of RSA 378:10. Based upon the foregoing, together with the other statutory obligations required of this Commission to honor, the Commission finds that it has the authority to examine the costs underlying the wholesale rate.

The Commission must recognize that there exists in this type of proceeding certain questions involving federal supremacy through the existence of the Federal Power Act. While these are more thoughtfully reviewed in the next section, the Commission does find that § 205(b) of the Federal Power Act, 16 U.S.C.A. § 824d(b) prohibits discrimination in rates. This provision is

closely modeled on the Interstate Commerce Acts, 49 U.S.C.A. § 1 et seq. *St. Michaels Utilities Commission v Federal Power Commission* (CA4th 1967) 69 PUR3d 304, 377 F2d 912, 915. The purpose of the latter is "to prevent favoritism by insuring equality of treatment of treatment on rates for substantially similar services. *United States v Chicago Heights Trucking Co.* (1940) 310 US 344, 351, 34 PUR NS 176, 84 L Ed 1243, 60 S Ct 931, 935.

While rates can be different, to be so they must be predicated upon difference in facts that justify the variation. There must exist a factual record that allows and justifies classification among customers and the differences among the rates charged them. *St. Michaels Utilities Commission v Federal Power Commission* (CA4th 1967) 69 PUR3d 304, 377 F2d 912, 915. There exists no factual record of the FERC and none in this proceeding to justify the differences in rate treatment accorded customers of Connecticut Valley Electric from similar if not an almost identical type of customers served by its parent corporation CVPS, as to issues of abandoned plant, rate of return, expenses or any other differences in the regulatory rate equation. Nor is there any factual record to support the proposed variation from the rate treatment accorded the abandoned plants" lead owners by their respective state commissions.

/f2Rhode Island and North Dakota Supreme Court Decisions/f1

The Rhode Island Supreme Court was one of the first to rule on the question of federal vs. state regulatory authority as to the existence of a FERC approved rate.²⁽⁷⁸⁾ The Rhode Island Supreme Court overturned the Rhode Island Public Utilities Commission decision which rejected a filing by a subsidiary of an approved FERC rate between the subsidiary and the parent. The Rhode Island Court based its decision on the doctrine of pre-emption which has its roots in the supremacy clause, United States Constitution — Article VI. When Congress legislates in an area within the federal domain, it may if it chooses, take for itself all regulatory authority over the subject, share the task with the states, or adopt as federal policy the state scheme of regulation. *Rice v Santa Fe Elevator Corp.* (1947) 331 US 218, 230, 69 PUR NS 202, 91 L Ed 1447, 1459, 67 S Ct 1146, 1152. The question in each case is the intent of Congress.

The Federal Power Act extended federal regulatory power to the "sale of electric energy at wholesale in interstate commerce". 16 U.S.C.A. § 824b. Based upon their interpretation of the Federal Power Act the Rhode Island Supreme

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Court found that the FPC, forerunner of the FERC, had the exclusive jurisdiction to determine the reasonableness of a wholesale rate of a parent to a subsidiary electric utility and that the Rhode Island Commission could not undermine the FERC's decision.

The Rhode Island Court placed particular emphasis on the obligation to allow reasonable expenses. The Court cited the following passage from *Mississippi River Fuel Corp. v Federal Power Commission* (1947) 82 US App DC 208, 69 PUR NS 129, 163 F2d 433, 437:

"Expenses (using that term in its broad sense to include not only operating expenses but depreciation and taxes) are facts. They are to be ascertained, not created, by the regulatory authorities. If properly incurred, they must be allowed as part of the composition of the rates. Otherwise, the so-called allowance of a return upon the investment, being an amount over and

above expenses, would be a farce."

The Court went on to note that a reasonable rate is that rate approved by the FPC (FERC) and cited *Montana Dakota Utilities Co. v Northwestern Pub. Service Co.* (1951) 341 US 246, 251, 88 PUR NS 129, 95 L Ed 912, 919, 74 S Ct 692, 695. "Not even a court can authorize commerce in the commodity on other terms." 341 US at p. 251, 88 PUR NS at p. 133. Thus the Rhodes Island Court concluded that the FPC (FERC) approved rate is by its FPC (FERC) approval a reasonable expense and must be passed on to the ultimate consumer.

The North Dakota decision, *Northern States Power Co. v Hagen* (ND Sup Ct 1981) 45 PUR4th 630, 314 NW2d 32, for the most part adopted the same rationale as *Narragansett* and in fact extensively quotes from that opinion. The Northern States decision extends the concept that state PUC's must accept FERC approved rates even where the costs in question relate to an abandoned plant in another state.

In attempting to evaluate these decisions in light of New Hampshire law, the Commission recognizes that our Supreme Court has yet to rule on this question. Furthermore, this Commission, as noted earlier, is provided specific statutory authority to examine interstate rates which we are sworn to uphold. Finally, a closer examination of the *Narragansett* opinion lends support for our exertion of authority in this area.

[6] The Federal Power Act extended federal regulatory power to the "sale of electric energy at wholesale in interstate commerce. (Emphasis supplied) There is not now nor will there ever be any electric energy coming from either Pilgrim II or the Montague Units. Since there is no electrical energy being generated, there is nothing from these units entering interstate commerce. Consequently, as to canceled generating units that never generate one KWH of electrical energy the Federal Power Act and the doctrine of Preemption do not apply.

The extensive quotes from the *Mississippi River Fuel* decision as to the definition of expenses states that they are to be "ascertained not created by regulatory agencies". Here the FERC staff rejected expenses that were facts and created future expenses that may or may not be incurred without the minimum level of due process. Such an action does not fit within either the spirit or the letter of the Federal Power Act which has "a constant purpose to protect rather than to supervise the authority of the states". *Connecticut Light & P. Co. v Federal Power Commission* (1945) 324 US 515, 525, 58 PUR NS 1, 98 L Ed 1150, 1158, 65 S Ct 749, 754.

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[7] In the area of abandoned plant the state interest rather than the federal interest predominates. The planning of energy facilities is a state related rather than a federally related question.

In a recent decision by the Ohio Supreme Court, *Office of Consumers' Counsel v Ohio Pub. Utilities Commission* (1981) 67 Ohio St 2d 153, — NE2d —, that Court held that the extraordinary loss sustained by a utility in connection with a terminated nuclear plant cannot be "transformed into an ordinary operating expense". 67 Ohio St 2d at p. 164. The Ohio Court took the position that plants do not render service whatsoever to utility customers cannot be a proper consideration for ratemaking as an expense. Therefore, the Ohio Court's decision supports the proposition that canceled nuclear plants are not expenses and therefore by application need not

be engrafted on a federal regulatory scheme.

The Minnesota Commission recently held that Minnesota ratepayers should not hear any of the cancellation costs of the nuclear plant that was the same subject as that of the North Dakota decision. *Re Northern States Power Co.* (Minn 1981) 42 PUR4th 339. In that decision the Minnesota Commission set forth its opinion that it is they and not the FERC that has the obligation to set intrastate rates. The Minnesota Commission rejected the argument offered by Northern States Power that the Commission's role was one of a rubber stamp for the FERC. 42 PUR4th at p. 361. The Minnesota Commission stated that "no federal pre-emption has stripped state regulatory bodies of the authority to determine what various retail customers will pay for their electricity". 42 PUR4th at p. 361.

As to the abandoned nuclear plant, the Minnesota Commission stated that even the most expansive reading of the FERC's jurisdiction could only conclude that the FERC can apportion the costs between the parent and the subsidiary. Contending that even if the FERC can go that far, it must stop at that point, and allow the state to carry the process further. 42 PUR4th at p. 361. The Commission concurs with this reasoning.

The culmination of this review of other jurisdictions is that the question of rate treatment for abandoned nuclear plants is a state question and we so find. Second, that operating expenses do not necessarily include recognition of costs associated with the cancellation of nuclear or any other form of uncompleted power plants and the Commission so finds. Third, that actual and not created expenses are the upper limit of the FERC's authority and we so find. Fourth, that the question of whether this Commission must recognize without question FERC approved rates is a question of New Hampshire law that ultimately is within the province of the New Hampshire Supreme Court and we so find. Fifth, the decisions of the Rhode Island and North Dakota Supreme Court are advisory in nature and we so find. Sixth, this Commission does have statutory authority to review intrastate rates and we so find. Seventh, that the Federal Power Act does not under the broadest interpretation, extend to resolving issues of abandoned plant since these plants will never generate electricity and thus result in interstate commerce and we so find. And, Eighth, none of the cases from either Rhode Island or North Dakota involve the factual circumstances in this case where procedural due process has been denied the subsidiary customers

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and there is no factual record upon which to base a decision and we so find.

/f2PRICE SQUEEZE/f1

The issue that has been involved in many proceedings before the Federal Energy Regulatory Commission has been "price squeeze". In *Federal Power Commission v Conway Corp.* (1976) 426 US 271, 14 PUR4th 331, 48 L Ed 2d 626, 96 S Ct 1999, the Supreme Court stated that the Federal Power Commission "must arrive at a rate level deemed by it to be just and reasonable, but in doing so it must consider the tendered allegations that the proposed rates are discriminatory and anticompetitive in effect". 426 US at 279, 14 PUR4th at p. 335.

Connecticut Valley Electric didn't even appear so as to protect its customers from a possible discriminatory situation. Price squeeze, the issue of whether a wholesale supplier is engaging in

price discrimination so as to gain a competitive advantage, should be a concern of Connecticut Valley. Its business customers like those that testified in this proceeding often are in competition with similar companies across the river in Vermont. As such a 13.770 increase has the potential of causing these customers harm of which there is not protection because there is no appearance.

Now in reality it may well be that since the two companies in question are in essence one, there may not be a price squeeze issue. But there may well be a problem with an improper and thus discriminatory allocation of costs to the subsidiary to make up for the lack of recognition of costs in the retail side governed by the Vermont Public Service Board.

Connecticut Valley must be aware that the settlement agreement approved by the FERC commits Connecticut Valley to pay in its payments to CVPS a 17% return on common equity and an overall rate of return of 12.90% while CVPS has only been allowed a 16% return on common equity and a 12.5370 overall rate of return by the Vermont Public Service Board. Re Central Vermont Pub. Service Corp. (Vt 1982) 49 PUR4th 372. There would appear to be major differences in the calculations for rate base and expenses between the FERC approved rate and the decision of the Vermont Public Service Board as to CVPS. Yet, Connecticut Valley's settlement agreement of the FERC sets up a formula in which only the customer (Connecticut Valley) or a party (there are none other than CVPS) can object. Consequently, there is now a nearly automatic formula for these two related companies without a shred of consumer input. Such a situation raises a very real potential for discrimination.

/f2ABANDONED NUCLEAR PLANTS/f1

/f2General Observations/f1

It is extremely difficult to approach the issue of rate treatment for abandoned nuclear plants in a proceeding in which the applicant is a subsidiary of another utility located in an adjoining state, Vermont, and where the abandoned nuclear plants at issue are located in still another state, Massachusetts (Pilgrim II and Montague). Adding further complexity is that neither the applicant nor its parent were the lead owner in either of the two canceled units. Finally, decisions by the regulatory bodies in these two host states have significantly restructured the recoverable costs due from ratepayers of the lead participants. Whereas, the settlement negotiated between the applicant and its parent and routinely approved by the Federal Energy

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Regulatory Commission allows for total recovery of all costs from ratepayers.

Decisions concerning abandoned plant have for the most part been rendered at the Commission level. Office of Consumers' Council v Ohio Pub. Utilities Commission (1981) 67 Ohio St 2d 153, — NE2d — . Most of the Commissions that have ruled on the issue of abandoned plant have allowed some recognition of these costs. Office of Consumers' Council, 67 Ohio St 2d at 162. The Maine Commission has allowed the recovery of the costs of a canceled nuclear plant to be amortized over a five year period but denied any recovery of AFUDC and denied a return on the amortized balance. This decision was upheld at the Maine Supreme Court as a reasonable balance between stockholders and ratepayers. Central Maine Power Co. v Maine Pub. Utilities Commission (Me Sup Jud Ct 1981) 433 A2d 331. In Florida, the Florida Commission allowed Gulf Power to amortize the costs of a canceled unit and to include the

amortization in rate base, a decision that was upheld by the Florida Supreme Court in *Gulf Power Co. v Cresse* (Fla Sup 1982) 410 So 2d 492. Rate base treatment was denied in Wisconsin but costs were allowed to be amortized. *Re Northern States Power Co.* (Wis 1981) CA-5447. The Minnesota and North Dakota Commissions, as noted earlier, disallowed any recovery but the North Dakota Commission was overturned on appeal.

The Massachusetts DPU, in its Boston Edison decision, denied some of the costs based on imprudence, including the AFUDC component, however allowed the remainder to be amortized over 13 years with the company receiving a 14% carrying charge on the unrecovered remainder. (Mass 1982) 46 PUR4th 431. The Vermont Public Service Board found no imprudence but allowed the costs to be amortized over ten years with no rate base treatment. *Re Central Vermont Pub. Service Corp.* (Vt 1982) 49 PUR4th 372.

The issues to be resolved concerning abandoned plant involve issues of (1) prudence, (2) balancing the interests of ratepayers and stockholders, (3) the treatment of the AFUDC component; (4) tax considerations; and (5) amortization period.

The portion of the rate increase alleged to be associated with abandoned plant in this case are relatively small, less than 345,000. However, the ramifications as to other proceedings is large. Furthermore, the amount sought includes costs for two different units, Pilgrim II and Millstone III, which must be viewed independently.

/f2PILGRIM II/f1

[8] In the instance of Pilgrim II, it is clear that the lead participant nor CVPS sought approval of its investment in the Pilgrim II site from the governmental authorities in either Massachusetts or Vermont. *Re Boston Edison Co.* (Mass 1982) 46 PUR4th 431, *Re Central Vermont Pub. Service* (Vt 1982) 49 PUR4th 372. Nor has there been any approval or sanction by this Commission as to the prudence of going forward with this project. Thus, we are not faced with any governmental authority approving the construction of the unit.

Nor does the record of this proceeding or our records demonstrate that CVPS has sought to replace this lost capacity.

Our records and decisions note that there is a very real possibility that CVPS will be losing additional capacity through loss of PASNY power. *PSNH DR*

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81-87, DF 82-63, DR 82-141 (1982). Yet neither CVPS or Connecticut Valley have demonstrated a willingness to invest in purchasing additional capacity. A reasonable concern to draw from this is that CVPS is not concerned about capacity. As such, it is difficult to assume prudence as to the Pilgrim II Investment.

Not only was there not any state regulatory approval but there is also no NRC regulatory approval as to the project. Again there has been no demonstration of prudence.

As the Massachusetts DPU noted in its opinion it was very clear that long before the actual cancellation of Pilgrim II there were factors that should have led to a reasonable conclusion that the plant would not be built. *Re Public Service Co. of New Hampshire* (1980) 65 NH PUC 251,

285. Yet costs were continued to be allowed to be accumulated.

No evidence has been offered as to the reasons why CVPS and indirectly Connecticut Valley became involved in the Pilgrim II project. Furthermore, there has not been any evidence offered as to the amortization period used by the FERC, the rate base treatment as to the uncollected balance, the tax consequences of the cancellation or when the tax benefits of these losses were taken. Consequently, the Commission rejects any recovery of the Pilgrim II costs on the basis of this record. There has been no demonstration of any benefits to the ratepayers of Connecticut Valley as to this investment. Due to our finding of a failure to carry the burden of proof, we do not reach the issue of the anti-CWIP statute, RSA 378:30-a, or the considerations of the Ohio Supreme Court as to whether this type of expense is proper for ratemaking.

/f2Montague/f1

[9] The Montague nuclear plant was to be sited in Connecticut. In 1977, the Connecticut Department of Public Utility Control (CDPUC) advised utilities involved in the Montague project that their commitment to the project was "ill advised" that they should "re-evaluate" their commitment and that the project should be postponed "until its need is established". Re Connecticut Light & P. Co. Docket No. 770319, Oct. 25, 1977; Re Hartford Electric Light Co. Docket No. 770320, Oct. 25, 1977.

The project was indefinitely postponed in 1978 and canceled in 1980. The lead participant, Northeast Utilities, through its subsidiary, Connecticut Light & Power Company, was provided only a limited recovery of cancellation costs for the Montague nuclear plant by the Connecticut Department of Public Utility Control in its 1981 decision. Re Connecticut Light & P. Co. Docket Nos. 810602, 810604, Nov. 25, 1981. The rationale for the limited recovery was that the CDPUC charged the utilities in question was ignoring the 1977 decision and in fact denied any recovery for any costs incurred after 1977. The Connecticut utilities were allowed to amortize costs incurred through 1977 over a three-year period, but were denied a return on the unamortized balance. Re Connecticut Light & P. Co. Docket Nos. 810602, 810604, Nov. 25, 1981. Clearly, in Connecticut there was a rejection by the CDPUC of Montague costs based upon (1) imprudence and (2) prior Commission decisions.

As with the Pilgrim II costs, there has not been any demonstration of the prudence of CVPS' involvement in Montague. Nor has there been any offer as to the other considerations involved in determining what is proper in consideration

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of a regulatory treatment of an abandoned plant issue. Given the Connecticut Commission's findings as to imprudence and the failure of Conval to carry its burden of proof, the Commission denies these costs.

The Commission recently allowed for temporary rates of \$900,000 of the requested \$1,259,310 requested. The Commission has been instructed by the Supreme Court that if a utility demonstrates that they are not earning their allowed rate of return, they must be allowed temporary rates without the type of scrutiny that is involved in the final ultimate permanent proceedings. The Commission, due to the scarcity of the information provided, has been unable to reconcile FERC's estimated costs of CVPS for Conval with the recent decision of the Vermont

Public Service Board involving CVPS. The Commission must be in a position to reconcile the costs collected under a purchase power adjustment so as to make sure of its accuracy. This situation is made impossible in this instance due to no record at the FERC nor any attempt by Conval to discuss, much less prove, the reasonableness of these expenses. The Commission will not accept any further rate adjustment until Conval provides the Commission with evidence between actual and estimated costs for CVPS and a method for our auditors to track these costs. Furthermore, any future proceedings involving this company in this docket must be conducted within the scope of a full rate investigation including non-purchase power costs, an option recognized even in *Narragansett v Burke*. The remainder or the requested rate relief of approximately \$359,000 is rejected at this time.

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 portion of the requested rate increase dealing with the abandoned nuclear units of Pilgrim II and Montague is denied; and it is

FURTHER ORDERED, that any further rate relief in this docket is denied at this point in time.

By order of the Public Utilities Commission of New Hampshire this eight day of October, 1982.

FOOTNOTES

¹Transcript pages 39-40

²*Narragansett Electric Co. v Bulke* (1977) — RI — , 23 PUR4th 509, 381 A2d 1358.

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NH.PUC*10/13/82*[79406]*67 NH PUC 709*Western Union Telegraph Company

[Go to End of 79406]

Re Western Union Telegraph Company

DR 82-207, Supplemental Order No. 15,924

67 NH PUC 709

New Hampshire Public Utilities Commission

October 13, 1982

ORDER lifting suspension of telegraph tariff.

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BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, on July 8, 1982, the Western Union Telegraph Company filed with this Commission its Supplement No. 1 and 97th Revised Page 1 of its Tariff NHPUC No. 1 Telegraph; and

WHEREAS, said filing was suspended by Commission Order No. 15,793 on August 5, 1982 pending investigation and decision of the Commission; and

WHEREAS, said investigation is now complete and it is concluded that deregulation of intra-state Western Union record communications as necessary in light of federal pre-emption pursuant to the "Record Carrier Competition Act of December 29, 1981," ("RCCA") 47 U.S.C. § 222 as reaffirmed by said Act's Legislative History; it is therefore

ORDERED, that suspension of the above referenced tariff pages be lifted and the pages allowed effective on the date of this Order; said revision thereby cancelling Western Union Tariff No. I and effectively terminating regulation by this Commission.

By Order of the Public Utilities Commission of New Hampshire this thirteenth day of October, 1982.

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NH.PUC*10/13/82*[79407]*67 NH PUC 710*New Hampshire Electric Cooperative Inc.

[Go to End of 79407]

Re New Hampshire Electric Cooperative Inc.

Additional petitioner: New England Telephone and Telegraph Company

DE 82-257, DE 82-261, Order No. 15,925

67 NH PUC 710

New Hampshire Public Utilities Commission

October 13, 1982

PETITION for authority to install and maintain submarine telephone cables crossing state-owned public waters; granted.

CERTIFICATES, § 123 — Grant or refusal — Submarine telephone cable — Public interest.

[N.H.] The commission granted a petition for a license to install and maintain submarine telephone cables crossing state-owned public waters where it found that (1) the petition was in the public interest, (2) it had been properly publicized, (3) proper public notice had been given, and (4) no objections had been raised.

APPEARANCES: Wayne Snow, engineering manager, New England Telephone Company and Ellsworth Cotton, operating manager, New Hampshire Electric Cooperative, Inc., for the petitioners.

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BY THE COMMISSION:

REPORT

On September 7, 1982, The New Hampshire Electric Cooperative Inc., filed with this Commission, a petition for authority to install and maintain submarine power cables under the public waters of Lake Winnepesaukee in the Town of Moultonboro, New Hampshire. Said crossing from Moultonboro Neck to Long Island on the south side of Long Island Bridge. On September 9, 1982, an Order of Notice was issued by this Commission directing all interested parties to appear at a public hearing at 10:00 a.m. on October 12, 1982 at the Commission's Concord offices. The petitioner was directed to publish a public notice in a newspaper having general circulation in the area concerned. In addition to the publication of said notice, copies of the hearing notice were directed to John Bridges, Director of Safety Services; George Gilman, Commissioner, DRED; and the Office of the Attorney General. An affidavit indicating that publication was made in the Union Leader on September 17, 1982 was received at the Commission's office at Concord, New Hampshire on September 22, 1982.

On September 9, 1982, The New England Telephone and Telegraph Company petitioned this Commission for authority to place and maintain submarine plant crossing state-owned public waters in Moultonboro, New Hampshire under Lake Winnepesaukee. Said crossing from Telephone Pole #85/9 on the shoreline in Moultonboro, New Hampshire to Telephone Pole #85/12 on Long Island in Moultonboro, New Hampshire.

The Commission issued an Order of Notice on September 10, 1982 directing all interested parties to appear at a public hearing at 10:00 a.m. on October 5, 1982. On September 21, 1982, the Commission issued a new Order of Notice setting the hearing for October 12, 1982 at 10:00 a.m. The petitioner was directed to publish a public notice in a newspaper having general circulation in the area concerned. In addition to the publication of said notice, copies of the hearing notice were directed to John Bridges, Director, Division of Safety Services; George Gilman, Commissioner, DRED, and the Office of the Attorney General.

An affidavit indicating that publication was made in the Union Leader on September 27, 1982 was received in the Commission's offices at Concord, New Hampshire on October 1, 1982.

The Commission heard the dockets as a joint petition.

Wayne Snow, Engineering Manager, New England Telephone Company, explained that the Telephone Plant will consist of a 600 pair submarine cable extending from Telephone Pole 85/9 on the shoreline in Moultonboro to Telephone Pole 85/12 on Long Island in Moultonboro, N.H. It will replace an existing aerial crossing, and will provide increased communication facilities to customers on Long Island. He testified that the crossing would be constructed and maintained with due regard for established minimum safety standards in order to meet the reasonable

requirements for service to the public, and offered exhibits showing the 905 ft. submarine crossing extending 25 ft. underground from each shoreline to existing utility poles. Approved permits by the Wetlands Board and the Water Supply and Pollution Control Commission were offered and accepted as exhibits.

Mr Earl Hansen, Plant Manager, New Hampshire Electric Cooperative Inc. testified

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that the proposed submarine crossing will also replace overhead wire which does not presently meet the requirements of the National Electric Safety Code. Approved permits from the Water Supply and Pollution Control Commission and the Wetlands Board were offered and accepted as exhibits.

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 these petitions for licenses to place and maintain submarine telephone and electric cables under the public waters of Lake Winnepesaukee in the Town of Moultonboro, New Hampshire, said crossing from Moultonboro Neck to Long Island on the southerly side of Long Island Bridge, 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 New Hampshire Electric Cooperative Inc., and New England Telephone and Telegraph Company to place and maintain submarine Electric and Telephone cables under the public waters of Lake Winnepesaukee in the Town of Moultonboro, New Hampshire, said crossing from Moultonboro Neck to Long Island on the southerly side of Long Island Bridge.

By Order of the Public Utilities Commission of New Hampshire this Thirteenth Day of October, 1982.

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NH.PUC*10/18/82*[79408]*67 NH PUC 712*City of Laconia

[Go to End of 79408]

Re City of Laconia

DE 82-249, Order No. 15,930

67 NH PUC 712

New Hampshire Public Utilities Commission

October 18, 1982

PETITION for authority to construct a sewer line along and across state-owned land; granted.

CERTIFICATES, § 120 — Grant or refusal — Municipal sewer line — Public interest.

[N.H.] The commission granted a municipality's petition for a license to erect a sewer line along and across state-owned railroad land where it found that (1) the petition was in the public interest, (2) it had been properly publicized, (3) proper public notice had been given, and (4) no objections had been raised.

BY THE COMMISSION:

REPORT

On June 24, 1982, the City of Laconia filed a petition for authority to construct a sewer line along and across State

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owned railroad property on Channel Lane, Laconia, New Hampshire.

The Commission issued an Order of Notice on September 1, 1982 directing all interested parties to appear at public hearings at 10:00 a.m. on October 6, 1982 at the Commission's Concord Offices. Notices were sent to Kenneth D. Boehner, City Manager, City of Laconia, for publication; John R. McAuliffe, Railroad Administrator, N.H. Department of Public Works and Highways, George Gilman, Commissioner, DRED; John Bridges, Director, Safety Services; and the Office of the Attorney General.

An affidavit indicating that publication was made in the Laconia Evening Citizen on September 20, 1982, was received in the Commission's office at Concord, New Hampshire on September 27, 1982.

Frank D'Normandy, Director, Public Works, City of Laconia, testified that a city sewer project is in process to provide service to approximately 35 homes on the Weirs Channel. They will be reached by a 4" ductile iron pipe extending from the existing 48" West Paugus Interceptor across railroad tracks owned by the state of New Hampshire and extending through an 8" ductile iron casing to a point adjacent to the present Channel Marine Driveway.

Mr. D'Normandy testified that the installation at the point of crossing will be by open-cut of approximately 5 feet, but that coordination with the railroad would assure no delays of regularly scheduled rail traffic. Construction is to begin in the Spring of 1983.

Mr. John Clements, Representing the Department of Public Works and Highways, Railroad Division, testified to his approval of the project.

The Commission notes 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 construct a sewer line along and across State owned railroad property on Channel Lane, Laconia, New Hampshire to be in the public interest.

Our Order will issue accordingly.

ORDER

Based upon that foregoing Report which is made a part hereof; it is

ORDERED, that Authority be granted to the City of Laconia to construct a sewer line along and across State owned railroad property on Channel Lane, in the Town of Laconia, New Hampshire.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1982.

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NH.PUC*10/18/82*[79409]*67 NH PUC 714*Information to Consumers

[Go to End of 79409]

Re Information to Consumers

Intervenors: Public Service Company of New Hampshire, Concord Electric Company, Northern Utilities, Inc., Exeter and Hampton Electric Company, Concord Natural Gas Corporation, Gas Service, Inc., New Hampshire Electric Cooperative, Inc., Volunteers Organized in Community Education, and Community Action Program

DRM 82-28, Second Supplemental Order No. 15,933

67 NH PUC 714

New Hampshire Public Utilities Commission

October 18, 1982

RULE MAKING regarding the implementation of the Public Utility Regulatory Policies Act information to consumers standard; order directing publication and distribution of information pamphlet.

1. SERVICE, § 172 — Public relations — PURPA information to consumers standard — Distribution of consumer pamphlet.

[N.H.] Pending a determination of the demand regarding a pamphlet designed to make residential customers aware of their consumer rights and responsibilities, the commission found that distribution of the pamphlet to every customer was neither cost effective nor necessary and

set as a minimum distribution base 10 per cent of total residential customers. p. 718.

2. COSTS — PURPA compliance — Information to consumers pamphlet — Allocation of printing costs.

[N.H.] The commission found that it was inequitable to allocate the cost of printing a consumer information pamphlet between electric and gas utilities on a 50/50 basis due to the disparity in the number of gas and electric customers; rather, the commission based the cost allocation upon its own method of levying the utility assessment tax; that is, upon the ratio of the utility's gross revenues to the total gross revenues of all electric and gas utilities. p. 718.

3. SERVICE, § 172 — Public relations — PURPA information to consumers standard — Notification of availability of consumer pamphlet.

[N.H.] The commission found that the most effective method of notifying customers of the availability of a consumer information pamphlet would be through the use of a bill stuffer rather than through a message printed on bill forms and ordered utilities to distribute at least three times a year a bill stuffer that outlined the purpose of the pamphlet and where it could be obtained free of charge. p. 719.

APPEARANCES: Public Service Company of New Hampshire by Debbie-Ann Sklar; Concord Electric Company by George Blood, Jr., assistant vice-president; Northern Utilities, Inc., and Exeter and Hampton Electric Company by Margaret Nelson; Concord Natural Gas Corporation and Gas Service, Inc., by Connie Flanigan; New Hampshire Electric Cooperative, Inc., by Maurice Muzzey, director of budgets and finance; Volunteers Organized in Community Education (VOICE) by Alan Linder and Dixie Henry; Community Action Program (CAP) by Gerald Eaton; staff by Sharon Spickler, general counsel, and Dean Mattice, director of consumer assistance.

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BY THE COMMISSION:

I. PROCEDURAL HISTORY

The Public Utility Regulatory Policy Act of 1978 (PURPA) set forth a number of areas for state commissions to consider in regard to electric utility ratemaking and consumer issues. One of these subsections was a provision in Section 113 and 115 of that Act providing for certain information to consumers. Nearly two years ago, the Commission issued a Report and Order in Docket No. DE 80-174, entitled Information to Consumers (65 NH PUC 517). At that time, the Commission issued a rulemaking which set forth various information to be provided to residential electric and gas consumers. While the Commission in that report found a need for a pamphlet to provide information about consumers' rights and responsibilities, it did not adopt final rules providing for such a pamphlet. The Commission felt that additional time was required to prepare a uniform interpretation of the rules and to receive comments from all interested parties.

In January of 1981, the Commission received comments relative to the Commission's

PURPA Staff's draft "Information to Consumers" pamphlet. Upon review of these suggestions, a revised draft pamphlet was prepared and a second rulemaking was noticed in March 1982. A preliminary hearing on the proposed rule was held on March 11, 1982.

At the March hearing the proposed new rule, Sections 303.03(g) and 503.03(g), was submitted. Additionally, a definitional Section 101(m) and a draft pamphlet were submitted. Based upon comments received, a further revised version of Sections 303.03(g), 503.03(g) and 101 (m), and the pamphlet were prepared by Staff. A final hearing was held on July 22, 1982.

II. *THE PROPOSED RULE*

Information to Consumers

New § 303.03(g)

Each electric utility shall make available upon request, and shall display prominently in all business offices a copy of the pamphlet "Information to Consumers". The utility shall distribute the pamphlet to Community Action Agencies and New Hampshire Legal Assistance.

New § 503.03(g)

Each gas utility shall make available upon request, and shall display prominently in all business offices a copy of the pamphlet "Information to Consumers". The utility shall distribute the pamphlet to the various Community Action Agencies and New Hampshire Legal Assistance.

Add 101(m)

"*Information to Consumers*", means a pamphlet prepared by the New Hampshire Public Utilities Commission to serve as a summary of the various Commission rules governing gas and electric consumer rights and obligations. The pamphlet shall be made available in the manner set forth in §§ 303.03(g) and 503.03(g) of these rules.

III. *COMMENTS*

The parties' comments covered the following areas: purpose, distribution, legal effect, printing, allocation of costs, committee concept, notice, revisions and procedural concerns.

A. Purpose

The utilities believe the purpose of the rules is to make the public aware of

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the pamphlet and the manner in which copies are available. CAP and VOICE believe every customer should receive a copy of their rights and responsibilities. VOICE mentioned serious legal questions would be raised under RSA 378:10 if the pamphlet is made available to some consumers and not others.

B. Distribution

CAP and VOICE: support distribution to every residential electric customer assuming all gas customers are also electric customers. The utilities feel that total saturation is not cost effective, and that no arbitrary figure should be contained in the rule. It was felt that the 10% of residential customers proposed by Staff was too rigid and the need could be greater or less. The general

feeling of the utilities was that the Committee should have the responsibility to decide on the number, based on each company's experiences in their informational activities.

C. Legal Effect

CAP and VOICE argue that although the pamphlet is informational in nature, that *if* there is a conflict between what is printed and an actual Commission rule, the consumer should be treated as if in compliance with such rules and be given a reasonable period of time to bring themselves into compliance. The utilities agreed that the actual rules should prevail in the event of a conflict between what was printed in the pamphlet and the rules.

D. Printing

CAP supports printing by the State (e.g., state prison) as a more cost effective method and to convey neutrality of source. Utilities support giving the Committee responsibility to select final format and printer.

E. Costs

Staff had proposed a 50/50 split between gas and electric utilities. CAP and the gas utilities believe a 50/50 split is inequitable based on the major difference of total number of customers in each sector. They advocate basing the cost on a per-unit basis times the number of pamphlets required for each utility to meet whatever saturation level is chose. Per-unit cost estimates range from 5¢ to 50¢ per copy with a reasonable average of 25¢ per pamphlet excluding mailing costs. The electric and VOICE had no comment on the proposed 50/50 split.

F. Committee Concept

Utilities support the idea of a committee, but feel that in addition to determining the format and printer, the scope of the committee should be expanded to include: determination of final context, number to be printed, distribution system, and comment on any proposed revisions in the future.

G. Notice

Most utilities (excepting Northern Utilities) claim they do not have the existing capability to print a message concerning the pamphlet on each bill. They support one notice a year preferably through a bill stuffer. VOICE supports a notice on each bill after the pamphlet is printed, in addition to a stuffer three times a year explaining what the pamphlet is about and where it may be obtained. CAP questioned whether the costs incurred with bill notices and fulfilling individual requests may add up close to what it would cost to do one mass mailing.

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H. Revisions

All parties want an opportunity to comment on proposed revisions and some believe the Commission should not approve the first printing of the pamphlet until pending dockets concerning winter termination and customer deposits are formalized.

I. Procedural Concerns

CAP raises a procedural concern relative to the amendment to the Administrative Procedures

Act requiring that all rulemaking procedures include fiscal impact statements if the rule is adopted after July 1.

IV. DISCUSSION AND FINDINGS

This docket was opened to provide all parties the opportunity to participate and comment on the Commission prepared "Information to Consumers" brochure and the rule to implement its distribution. The Commission believes that this purpose has been met. The extensive review and preparation process has included review and comment on three drafts of the pamphlet and proposed rule. Comments by parties have been incorporated at each stage, the language has been considerably simplified, and vague points have been clarified.

While it is unrealistic to assume that the final outcome of such a project will ever reconcile the particular interests and needs of all parties, the Commission believes that the extensive work that has gone into this project has resulted in the preparation of a very fine pamphlet on Consumers' Rights and Responsibilities. It is clearly in the public interest to make this brochure available to residential consumers without further delay. While the Commission appreciates the parties' desire to incorporate any changes made concerning winter termination rules and customer deposits in a first printing, the Commission believes that further delay in printing is not desirable. The two rulemaking dockets referred to are general investigatory proceedings with no specific rule change yet proposed. Should the Commission propose a rule change, the procedural requirements may require roughly three months before a new rule could be adopted. The Commission will accept the fourth draft of the rule and pamphlet as final.

Pamphlet

The fourth draft of the pamphlet incorporates many additional helpful suggestions. Comments on the third draft focused on: (1) inaccurate statement of the rules in the draft; (2) difference in electric and gas rules; (3) too technical language; and (4) clarifying what the utilities were required to provide versus what they provided voluntarily. The final copy reflects current Commission rules, clarifies specific points receiving comments from two or more parties and simplifies the language based on VOICE's and CAP's comments.

The following specific changes were made:

- (1) the rule on bad check penalties was included;
- (2) the Notice vs. No Notice for disconnection was clarified; and
- (3) differences between gas and electric meter test rules were generally distinguished and the phrase "the requirements for electric and gas meter tests are different and you should ask your company about what they are allowed to change" was added.

- (4) The title was changed to "Consumers' Rights and Responsibilities".

Clarifications were made on deposit requirements and the provision of prior

consumption information to a customer if they had not resided at the residence for twelve (12) months.

Rules: 101 (m), § 303.03(g), § 503.03(g)

The purpose of the rules and the pamphlet is to increase the awareness of residential consumer rights and responsibilities. The publication of the pamphlet, coupled with promotion of its availability, will in and of itself serve to increase communication and promote an accurate understanding of these rights and responsibilities.

[1] The Commission believes that distribution to every customer is neither cost effective nor necessary at this time. The 10% of total residential customers (or 41,101) is a good minimum base to set. Once the initial 41,000 copies are made available, there will be a better idea regarding the demand for such a publication. While the Commission believes a minimum level should be set in the rule, the Committee (discussed below) should have the flexibility to go beyond this number should the need so indicate.

The pamphlet was originally proposed to be informational in nature and not a legally binding document. The Commission believes it should remain an informational source. In an effort to avoid conflicts resulting from major rule changes, amendment notices should be inserted in the remaining undistributed pamphlets until another printing is undertaken, and major rule changes should be given as much publicity as possible. The Commission also notes that the experience of the PUC Consumer Assistance Division indicates that most utilities are willing to cooperate with customer problems. It will be a policy of the Consumer Assistance Division to encourage accommodation with consumers in the event of a misunderstanding arising from any conflict in the pamphlet and the actual rules.

Staff pursued the suggestion of having the pamphlet printed at the state prison and found that this method of printing was very uncertain as to timing and could possibly delay publication and distribution. The Commission believes that selection of an outside printer by the Committee will best accommodate the printing job without time constraints.

[2] Staff has proposed that the cost of printing be split 50/50 between gas and electric utilities. The Commission agrees with CAP and the gas utilities that a 50/50 split is inequitable since the number of residential electric customers is so much greater than the number of gas customers. The Commission believes that the fairest and simplest method administratively of cost allocation is that used by the Commission in levying the utility assessment tax. Consequently, the Commission will adopt an allocation of the cost of printing and distribution whereby each utility shall contribute the same fraction of the cost of printing as that utility's gross revenues is to the total gross revenues for all electric and gas utilities.

The Commission will adopt the proposal to form a Committee to select an appropriate format and printer. Since this is a consumer publication, the Commission believes that the Committee should include consumer and staff representation along with representatives chosen by the utilities. The Committee shall submit the format and costs of printing for Commission review and approval. The Commission also believes that the Committee can provide a valuable function in making recommendations to the Commission regarding

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future revisions and reprints. Accordingly, the rule will provide that the Commission staff

review the rules every year and submit proposed revisions to the Committee. A revised draft shall be submitted to the Commission for approval before reprinting.

[3] The Commission believes that the most effective method of notifying customers of the pamphlet is through a simple bill stuffer. While the Commission believes that the utilities have the capability of printing a brief message on their bill forms, such a notice would not appear to be ample. The Commission will accept the recommendation of VOICE that a simple bill stuffer outlining the purpose of the pamphlet and where it may be obtained free of charge be sent at least three times a year.

After reviewing the amendment to the Administrative Procedures Act, the Commission does not believe that a new notice is required in this proceeding. There will be no direct fiscal impact on the State or any political subdivisions resulting from the adoption of the "Consumers' Rights and Responsibilities" rules. The filing of the rule will include a statement to this effect.

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 attached final rules are hereby adopted; and it is

FURTHER ORDERED, that Staff set a meeting date within two (2) weeks of this Order to form a Committee as provided for in rules § 303.03(g) and § 503.03(g); and it is

FURTHER ORDERED, that the Committee present its recommendation concerning selected format and printing method to the Commission for final approval within one (1) month of this Order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1982.

Final Rulemaking

§ 503.03(g) Each gas utility shall make available and display prominently in all business offices of the company copies of the pamphlet "Consumers' Rights and Responsibilities".

(1) The number of pamphlets to be printed shall be determined by the Commission, but shall not be less than 10% of all residential consumers of the gas and electric utilities combined. The cost of printing and distributing shall be the responsibility of all the gas and electric utilities in the State. Each utility's contribution to the fund for printing shall be determined in the same manner in which the Utility Assessment Tax is levied. Each utility shall contribute the same fraction of the cost of printing as that utility's gross revenues is to the total gross revenues of all gas and electric utilities.

(2) The electric and gas utilities shall form a committee to: select an appropriate format and printer, and make recommendations regarding fixture revisions of said pamphlet to the Commission. This committee will also include representatives of Commission staff, the community Action Program and New Hampshire Legal Assistance. The committee shall submit format and costs for Commission review and approval. The commission staff shall review the Commission rules every 12 months and along with the committee recommendations submit a revised draft as deemed necessary; such

revision shall be submitted for Commission approval before reprinting.

(3) Notice that the pamphlet "Consumers' Right and Responsibilities" is available free of charge upon request from the company shall appear a minimum of three times each year with all residential bills rendered after the printing of said pamphlet. Nothing in these rules prevents a utility from independently incurring additional costs to distribute copies or providing notice of its availability more frequently; such additional costs for printing and distribution shall be deemed an appropriate expense of doing business.

Final Rulemaking

§ 303.03(g) Each electric utility shall make available and display prominently in all business offices of the company copies of the pamphlet "Consumers' Rights and Responsibilities".

(1) The number of pamphlets to be printed shall be determined by the Commission, but shall not be less than 10% of all residential consumers of that gas and electric utilities combined. The cost of printing and distributing shall be the responsibility of all the electric and gas utilities in the State. Each utility's contribution to the fund for printing shall be determined in the same manner in which the Utility Assessment Tax is levied. Each utility shall contribute the same fraction of the cost of printing as that utility's gross revenues is to the total gross revenues for all electric and gas utilities.

(2) The electric and gas utilities shall form a committee to: select an appropriate format and printer, and make recommendations regarding future revisions of said pamphlet to the Commission. This committee will also include representatives of Commission staff, the Community Action Program and New Hampshire Legal Assistance. The committee shall submit the format and costs for Commission review and approval. The Commission staff shall review the Commission rules every 12 months and along with the committee recommendations submit a revised draft as deemed necessary; such revision shall be submitted for Commission approval before reprinting.

(3) Notice that the pamphlet "Consumers' Rights and Responsibilities" is available free of charge upon request from the company shall appear a minimum of three times each year with all residential bills rendered after the printing of said pamphlet. Nothing in these rules prevents a utility from independently incurring additional costs to distribute copies or providing notice of its availability more frequently; such additional costs for printing and distribution shall be deemed an appropriate expense of doing business.

Final Rulemaking

101(m) "Consumers' Rights and Responsibilities" means a pamphlet prepared by the New Hampshire Public Utilities Commission to serve as a summary of the various Commission rules governing residential gas and electric consumers' rights and responsibilities. Since the pamphlet shall be submitted for Commission approval before printing, there is a rebuttal presumption that the pamphlet is an accurate summary and interpretation of such Commission rules, however, where the pamphlet and rules are inconsistent, the Commission rules are controlling.

CONSUMERS RIGHTS AND RESPONSIBILITIES PREPARED BY: THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION OCTOBER, 1982

Consumer Rights and Responsibilities

I. INTRODUCTION

Consumer Rights and Responsibilities has been prepared by the New Hampshire Public Utilities Commission (PUC) to serve as a summary of the various Commission rules governing gas and electric consumer rights and responsibilities. This pamphlet is intended to assist you, the consumer, in understanding your rights. It is also anticipated that this summary will provide the utility companies with the answers to the most commonly asked questions. Since this pamphlet is the PUC's interpretation of its own rules, it will be presumed valid except when shown to be in conflict with the Commission's Rules and Orders. The Commission continually reviews the effects of its rules on both customers and utilities and, therefore, rule changes may be made to better serve both parties. Efforts will be made to notify customers of any major rule changes not reflected in this pamphlet. If such a conflict arises, the Commission Rules and Orders will always prevail. Although this pamphlet covers a number of topics, it is important to remember that many questions and problems commonly confronting the consumer may be easily resolved by a call to the utility.

II. YOUR RIGHTS AND RESPONSIBILITIES

A. Billing and Information About Rates

Upon request your utility company is required to help you select the best rate available to you. The utility will, upon request, explain to you how they read meters and how they use that information to compute your bill. Additionally, your utility is required to include a copy of the rate schedules under which you are billed on its bill form, or a note that such schedules will be provided upon request.

When you have a question about your bill you should contact the utility company immediately. Many problems can be resolved in this manner. If you have any problem, complaint or concern that you do not feel has been handled adequately by your utility, the PUC Consumer Assistant is available to help you. The toll-free number of the PUC Consumer Assistant is 1-800-852-3793. The Consumer Assistant can be reached Monday through Friday from 8:00 a.m. - 4:30 p.m., except on holidays. All notices of termination must include the Consumer Assistant's number.

In addition to supplying you with a copy of the rates that apply to you, once and thereafter upon request, the utility is also required each year to supply you with a complete listing of all the rate schedules applicable to the major classes of customers. This includes a description of the rates paid by commercial users, industrial users, etc.

When a utility applies to the Commission for a general rate increase request, it must notify you directly of the proposed rates within thirty (30) days (or sixty (60) using bi-monthly billing) with the next bill sent to you.

The above mentioned information will be explained to you in a foreign language by a company employee, where appropriate, and upon request.

B. Metering Equipment

The metering equipment the utility uses to calculate your bill indicates the

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number of kilowatt hours (KWH) of electricity or the number of cubic feet (cf) or hundred cubic feet (ccf) of gas registered as consumed.

1. *Metering Testing.* Most meters tested are found to be accurate. A sudden increase in your bills is most likely caused by some other factor. Compare your consumption for the present bill with your consumption from the month before; also compare the present bill with one from the last year at the same time. Your utility can provide, upon request, information concerning your usage for the prior twelve months.* Note that consumption is the amount of electricity (KWH) or gas (CCF) you have used, not the price. If your consumption is about the same, the rates (price) may have increased. Reasons for the increase in your consumption may be because of the weather, the number of people in your household, a new appliance or one that is malfunctioning. If you are concerned about the amount of electricity or gas that you are using, you may want to ask if your utility has a home energy audit program or is otherwise able to help you find ways to conserve or reduce consumption.

Utilities are required to test their meters according to a schedule specified by the Commission. If you suspect your meter is not recording accurately, you should ask your utility to check it. The utility must act within fifteen (15) days of the date you make the request.

An electric utility is required to obtain a fifteen dollar (\$15.00) deposit before performing any test. A gas utility is required to obtain as much as a thirty dollar (\$30.00) deposit before performing the test. The requirements for electric and gas meter tests are different and you should ask your company about what they are allowed to charge for a meter test.

If an electric meter is found to be in error by more than 3% your deposit will be refunded. If your meter has been registering too much electricity, the utility may owe you money. If it has not been registering enough electricity, you may owe the utility more money. Refunds or surcharges due to fast or slow meters are allowed under specific Commission rules, but only if the meter is tested and found to be more than 3% in error. For gas meters, the same conditions apply, however the acceptable error will be no more than 270. The test of an electric meter must be made with the meter at its existing location (your home). Gas meter tests must be done at the company service departments. You or your representative may be present when the test is made, and you may also request that a representative of the Commission be present. A report is required of all meter tests and you must be provided with a copy.

2. *Access and Tampering.* If a customer unreasonably refuses access to his or her premises for the necessary inspection of utility property, the utility may terminate service after proper notice. Utilities are also permitted to estimate bills when allowed by the Commission, under specific conditions, for example during vacation and seasonal periods. If it is inconvenient for you to provide access to your utility meter on a monthly basis or if you prefer to have meter read

every month and not receive an estimated bill, you may read your own meter and supply your utility with the necessary

information. All you have to do is contact your utility, and ask them for meter reading cards which you will have to fill out and return to the utility by a certain date every month. Your utility will explain to you how to read a meter and any other information you need.

Tampering with metering equipment or other equipment owned by the utility is grounds for termination *without notice* and is a criminal offense. Also, tampering with or the destruction of utility property may be a civil offense and is a criminal offense even when there is no actual theft of utility service.

C. Your Bill

Billing for utility service must occur at regular intervals. Each utility is required to keep accurate account of all charges billed to each customer and must maintain records showing information from which each bill may be readily computed. When you receive your bill, it should contain the following information from which you may compute your bill:

- (1) The beginning and ending meter readings;
- (2) The number of KWH's or cubic feet of gas registered as consumed;
- (3) The date of the last meter reading;
- (4) The approximate date of the next meter reading;
- (5) Any multiplier used to calculate your bill;**
- (6) Late charges, if any;
- (7) If the bill is based upon an estimate of consumption, that should be stated; and
- (8) Any special charges or recoupments, such as fuel adjustment or purchase power adjustment charges.

The utility is required to keep records for two (2) years of information, from which each bill may be readily computed. It is required to provide you, once a year, a schedule of how your bill is determined. It is also required to provide you a record of your actual consumption and an accurate list of all charges during the past twelve (12) months if you ask for it.

D. Deposits.

1. *When Deposits are Required.* Your utility is allowed to require cash deposits from you before providing service in the following situations. For existing service a deposit may be required:

- (1) If you are billed monthly and have received four (4) disconnect notices during the previous twelve (12) months due to non-payment of your bill;
- (2) If you are billed every two (2) months and you have received three (3) disconnect notices during the past 12 years for non-payment of your bill;
- (3) Any time you have been disconnected for non-payment;

(4) Any time you have been disconnected for interfering, diverting or tampering with utility meters or other equipment.

For New Service, a Cash deposit may be required:

(1) If you are requesting new residential service and within the past thirty (30) days you still had an unpaid and undisputed balance owed to a gas or electric utility which was generated within the past six (6) years;

(2) If at any time during the past (2) years a utility has obtained a court judgement against you on a delinquent account;

(3) If any other similar type of utility has disconnected service to you because

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you diverted service or otherwise tampered with a meter within the last six (6) years; and

(4) Residential customers who can not prove their intention to remain at the same address for 12 consecutive months may be required to place a deposit; however, if they have not been delinquent in paying their bill with a similar type utility within the previous six months, no deposit may be required.

A utility may require a cash deposit or guarantee in these and other special situations which are subject to conditions and terms approved by the N.H. Public Utilities Commission. A utility may not require a deposit or other guarantee based upon income, residential location, race, color, creed, sex, marital status, age over 18, or national origin.

2. Handling of Deposits. When the rules require the posting of a cash deposit, then that deposit is subject to certain conditions. No deposit shall be less than \$10.00 nor more than the bill for two (2) high use billing periods. However, the highest use period is not used in calculating the amount of the deposit. If you are a new customer, an estimate will have to be used.

All deposits held by the utility for six (6) months or more earn interest at the rate of 8% annually.

Deposits, plus any interest due and minus any amount due and owed to the utility, must be refunded to you within 30 days after service is discontinued or when the residential customer has paid the utility bills on a timely basis for a period of 12 consecutive months. At such time you may request to have the deposit plus interest credited toward your bill. If your account has been discontinued, interest ceases to be accumulated as of the date of termination.

A utility must provide each customer making a cash deposit a receipt containing as a minimum, the customers name, the place, the date and amount of payment. Utilities are also required to keep records of all deposits.

3. Substitutes for Cash Deposits. If you cannot provide a cash deposit, the utility must agree to accept the irrevocable written guarantee of a responsible third party that states that they will agree to be held liable for your account. The guarantee must be in writing and must state all of its terms, including the maximum amount guaranteed. It also must state that the party issuing the

guarantee will not be held liable for sums in excess of the guaranteed amount unless agreed to in a separate written guarantee. For residential customers, when all bills have been paid on time for 12 consecutive months, credit will be established for you. The person guaranteeing your account will then be released from any liability.

If you have a dispute with the utility concerning a deposit you may ask the PUC for help in setting it. It is important to note that once such a dispute has been referred to the PUC, service will not be terminated pending the Commission's action.

E. Discontinuation of Service and Termination

1. *Customer Initiated.* If you are planning to move, you should give the utility sufficient notice of the date you want to discontinue your service. This will insure you will not be responsible for any charges on that account after the expiration of the notice period. You must also provide access to your premises to allow the utility to disconnect your service.

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2. Company Termination

a. *Notice Required.* The utility is required to give notice of its intent to discontinue service if the reason for that disconnection is that you have failed to pay a bill which has been outstanding for more than 30 days, and is \$50.00 or more, unless that bill has in whole or part been due for 60 days or more, and the utility has made a proper demand for that payment. The utility must also give notice of its intent to disconnect when you have failed to pay within a reasonable time any deposit; or you unreasonably refuse access to your premises for a necessary inspection of utility property. If you fail to meet the terms of a payment agreement entered into because of a disconnect notice, the company is allowed to immediately act upon the disconnect notice without having to provide another 14 days notice.

If the utility intends to disconnect your service, according to the rules of the N.H. Public Utilities Commission, it must send written notice to you of its intent to disconnect, postmarked at least 14 days before the proposed disconnect date. (If you are a tenant and your landlord pays the utility bill, see page 729 at 67 NH PUC). All notices to residential customers must be accompanied by the NHPUC statement "Important Notice - Your Rights" which explains to you how you may appeal your termination if you feel it is unreasonable. The notice should also state the toll-free number of the PUC Consumer Assistant (1-800-852-3793).

b. *No Notice Required.* A utility may stop service to customers without notice if the customer has tampered with utility equipment resulting in unauthorized or fraudulent electricity or gas. Additionally, the utility may disconnect service without notice if there is a clear and present danger to life, health, physical property or utility service to others. If a customer has clearly abandoned the premises, the utility will also disconnect service.

c. *Arrearage.* A utility may not terminate service or send a notice of termination if your arrearage is less than \$50.00, unless any part of that arrearage has been outstanding for more than 60 days. All bills are due before the next billing cycle. After 30 days, if they have not been paid, then they are considered to be in arrears. If you find that you fall behind on your utility bills in the winter and have to struggle during the summer months to pay it off, you might want

to consider getting on a budget billing plan. Call your utility and ask if they can develop a plan for you.

Budget billing allows you to pay the same amount for your utility service each month all through the year. In the summer you will pay for more service than you are using and so will build up a credit balance which will balance out in the winter months when you are paying less for service than you are using. Usually any differences in what you have paid and what you have used are adjusted at least once each year.

If you have an unpaid bill for merchandise or appliances you bought from your utility, the utility may not disconnect your service for non-payment of this bill. The utility may only disconnect your service for reasons relating to your basic electric or gas services. If you are billed monthly and do not receive a regular utility bill, it is *your* responsibility to contact the company and find out why you did not receive a bill. Otherwise, you

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may be charged late charges for nonpayment.

d. *Medical Emergencies.* If the utility has been advised within the preceding 30 days by a registered physician that a medical emergency exists at your premises or would result from the termination of service, then the utility may not disconnect your service. This notification by the doctor may initially be made orally. However, that notification shall only remain in effect for 7 days, unless the utility receives a subsequent written notice of the medical emergency from the doctor. To guarantee continued protection, this written notice should be renewed monthly for as long as the medical emergency exists. As with all temporary relief under this section, medical emergencies do not relieve you of the obligation to pay your utility bills, and you must negotiate a repayment schedule with the utility.

e. *Pre-Termination Conferences and Dispute Resolving.* You may request a conference with the utility prior to the scheduled date of termination. If you call one or two days prior to the proposed termination date, then the conference shall be scheduled within 3 business days of the request. You may decide whether the conference is to be conducted in person, in writing, or by telephone. Service will not be terminated between the time of request for a conference and the time of the conference. Note that if you request the conference on the day service is to be disconnected, or if you fail to attend a conference which you requested, without contacting the utility, the utility may go on with its scheduled disconnect.

The utility will continue service for 5 days after their conference with you, or the date you receive the utility's final decision, or the proposed date of termination specified in the disconnect notice, whichever is later. The utility is required to make a written report of any conference and its outcome and furnish you with a copy. If you are dissatisfied with the results of a conference, you have the right to appeal the decision of the utility to the PUC Consumer Assistant. The utility must inform you of the right to appeal its decision and provide you with the form necessary to request a conference with a PUC staff member. When you appeal, the utility must send a copy of their written report to the Commission.

When you have requested a conference with a PUC staff member, the utility must continue your service until the staff member determines whether the termination is justified.

f. *Special Payment Arrangements.* If you cannot pay an arrearage, the utility will continue to serve you if you agree to each of the four following conditions:

- (1) Pay a reasonable portion of the arrearage; and
- (2) Agree to pay the balance of the arrearage in reasonable installments; and
- (3) Request a conference in accordance with these regulations; and
- (4) Agree to pay all current bills as well as all "future current"*** bills within 30 days of the postmarked date until the arrearage is eliminated.

Before you contact the utility to arrange a payment agreement, you should know your monthly income and expenses and know how much you can

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afford to pay. The utility must consider many things in deciding if your payment offer is reasonable. The utility must consider your ability to pay, the size of the bill, the estimated size of future bills, your payment history, how long the bill had been owed, the reason why the bill is overdue and whether the reasons will continue to affect your ability to make payments. Depending upon the circumstances, the utility may condition service on a payment arrangement at less than monthly intervals until the arrearage is made-up. Instead of discontinuing service or requiring you to pay a deposit when you are re-connected, the utility may require you to make installment payments more than once a month.

All payment agreements should be in writing with copies going to both you and the utility.

If you and the utility cannot come to an agreement on a payment plan, you may request a conference with a staffmember of the PUC.

F. *When you Have Been Disconnected.*

A utility may disconnect residential service between the hours of 8:00 a.m. - 3:00 p.m. Monday through Thursday. Your service may not be disconnected on any day before a holiday or when a utility's business offices are closed to the public, unless special arrangements are made with you or the PUC. Before terminating service, the utility employee performing the disconnection must notify an adult at your home. If there is no adult at your home, the employee shall leave a sealed note which contains information as to how you may be reconnected. If the employee arrives at your home to disconnect service, and you make a full payment to prevent disconnection, then the employee must either accept the payment, give you a receipt and leave the service intact, or, without disconnecting, the employee must direct you to the nearest business office of the utility to pay the bill. Remember that the employee should know the full amount owed the utility, but is not required to make change for you or negotiate a payment agreement with you. Utilities are required to follow these procedures no more than twice in any 12 month period on any account.

1. *Getting Service Reconnected.* If service has been disconnected, the utility will restore service promptly upon your request when the cause of the termination has been corrected. They may charge you for reconnecting your service. The utility will attempt to restore service during the business hours of the day you make the request. If you request that service be reconnected at

other than regular business hours, the utility shall, in good faith, attempt to make the re-connection. However, the utility is not required to reconnect at other than business hours unless a medical emergency exists or the Commission orders it to do so. The utility is allowed to charge a higher reconnection fee if they reconnect at other than normal business hours according to provisions on their tariff. *No reconnection fee may be charged if service was terminated in violation of Commission rules.*

2. *Assistance Programs.* Utility companies are required to maintain a list of at least three (3) social service agencies or organizations which may be able to provide assistance with energy payments. Utility company personnel are generally familiar with the eligibility requirements of the agencies and will refer you to one of them if you are having trouble paying your bills. If a

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social service agency agrees to pay your current bills, it will notify the company. The company will then allow three (3) business days for administration by the agency. Your service will continue during this period and service will not be shut off unless the social service agency notifies the utility that assistance cannot be provided. Once the utility has been notified that the social service agency will be responsible for your current bills, the company shall consider the agency as responsible for payment until your assistance has been exhausted. When you are represented by a social service agency in any dispute with your utility, all communication will be sent to the social service agency and copies sent to you.

Termination notices are not to be sent to you if your bill is being paid by a fuel assistance program, provided that your assistance has not been exhausted. Utilities participating in Energy Crisis Assistance Program (ECAP) or Home Energy Assistance Program (HEAP) or any similar program, shall give you receipts for vouchers received as payment towards your utility bill.

3. *Special Winter Termination Protection.* During the winter period, December 1 through March 31, special Winter Rules apply. These winter rules over-ride conflicting regular rules. During the winter period, an overdue bill must be \$175.00 or more before the utility can terminate service to your primary residence; the \$175.00 arrearage is limited to the overdue amount on bills for service between December 1 and April 1. This increase over the \$50.00 limit which is in effect during the rest of the year gives extra protection to consumers from disconnection during the winter months. You must keep in mind that you will not be allowed to use electricity or gas without paying for it. *You must eventually pay for all your bills.*

Any payment agreement entered into prior to Winter Period will not be subject to the Winter Period Rules. You will not be considered to be in violation of a payment agreement if you fail to pay a current bill, except in accordance with the Winter Period Rules. This means that if you have entered into a payment agreement to pay back bills, and the situation arises where you are not able to make the installment payment as well as pay the current bill, you should make the installment payment first. If you break your installment payment agreement, you will not be covered by the winter rules. Whenever you are going to miss a payment, you should contact your utility immediately to make arrangements with them for paying at a later date.

As an extra protection, under the Winter Rules, the utility is required to contact an adult living at your home either in person or by telephone at least two (2) days before the scheduled

termination. If this contact cannot be made, the utility must receive the express written authorization of a Public Utilities Commission staff member before the disconnection can take place.

During the Winter Period, the utility may not terminate service to a residential customer of 70 years of age or older during the winter months without the written permission of the New Hampshire Public Utilities Commission. If you are 70 years or older, you should be sure to notify your utility of your age so the disconnect will not take place during the winter period.

If you build up arrearages during the Winter Period, you may pay them back in a maximum of six equal monthly installments. The last payment is due on or

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before September 30. Remember that these installments will be in addition to your current bills.

4. *Protection Against Threats of Termination.* You may not be sent a termination notice if you are not subject to termination on the date the notice is sent out. This means that the utility may not send you a termination notice when it is not allowed by these rules to terminate you. If no grounds exist for termination under the Commission rules, the utility may not threaten you with such termination.

G. Special Protection for Tenants with Master Metered Utilities.

Master metered buildings or master metered mobile home parks are set up so that the utility usage of all tenants/residents is registered through a single meter. The electric/gas bill is generally paid by the landlord and passed on through the rent.

Before a utility can disconnect service to a master metered residential building or mobile home park, it must provide notice to the tenants. This notice, if mailed, must be postmarked 14 days prior to the date of scheduled disconnection. If notice is made personally (by telephone, visit or posted to the door) then there must be ten (10) days notice.

If you are a tenant in such a situation, then you may request a conference with the utility prior to the termination date. If you are not satisfied with the results of the conference, you may request a conference with the Consumer Assistant of the New Hampshire Public Utilities Commission. The utility must continue your service until the Commission decides whether the disconnection is justified under the Commission rules.

You may elect to pay for the utility's services directly, without going through your landlord. Where the wiring and metering arrangements allow, the utility will provide you with direct service. The utility is not allowed to require as a condition for service that you pay any or all of the bill owed the utility by the landlord.

H. Power of the Commission to Suspend Terminations.

If the Commission sees fit, it reserves the right to impose a blanket ban on all terminations if, in its opinion, terminations would result in imminent peril to the public health, safety or welfare. Such conditions would most likely be the result of severe weather conditions. The Commission will notify the appropriate utilities by telephone of such a ban.

I. Penalty for Bad Checks.

The utility may impose a charge for a check written for payment of utility service if it is returned by the bank unpaid. The charge may be \$5.00 or 5% of the face value of the check, whichever is greater.

J. Consult your Utility.

If you have a question about any of the above rules and guidelines, contact your utility *first*. They may be in a better position to assist you than the Commission's Consumer Assistant and therefore, may be able to resolve the problem faster. You can find the utility telephone number and address on your utility bill.

Remember, you have the right to appeal to the PUC Consumer Assistant if you are not happy with the results of your contact with the utility. The toll free number of the PUC Consumer Assistant is 1-800-852-3793.

K. Your Comments.

The New Hampshire Public Utilities Commission welcomes your comments

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and suggestions about this pamphlet and your rights and responsibilities with utility companies. The Commission encourages you to forward these comments and suggestions to the PUC, 8 Old Suncook Road, Concord, New Hampshire, 03301.

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NH.PUC*10/20/82*[79410]*67 NH PUC 730*Gas Service, Inc.

[Go to End of 79410]

Re Gas Service, Inc.

Additional petitioner: Manchester Gas Company

Intervenor: Energy North, Inc.

DF 82-140, Order No. 15,936

67 NH PUC 730

New Hampshire Public Utilities Commission

October 20, 1982

PETITION of two natural gas companies for authority to establish a holding company; granted.

1. CONSOLIDATION, MERGER AND SALE, § 6 — Jurisdiction of commission — Extent of authority — Pre- and postreorganization powers.

[N.H.] Pursuant to the authority granted by state statutes over public utilities and their affiliates, the commission found that it: (1) had full authority over the proposal of two natural gas utilities to establish a holding company; (2) had the authority to take the steps necessary to protect the public good throughout the examination and approval process; (3) had the authority to insure the protection of the public interest after the creation of the holding company; and (4) had the affirmative duty to insure that the proposed holding company would result in tangible benefits to the consumers served by the two existing utility companies. p. 732.

2. CONSOLIDATION, MERGER AND SALE, § 19 — Grounds for approval or disapproval — Public benefit or detriment — Actual savings to ratepayers.

[N.H.] In evaluating whether a proposed consolidation was in the public interest, the commission found that it should build upon previously established criteria, emphasizing the importance of continual monitoring to insure that proposed savings become actual savings and that they were passed on to ratepayers; continual monitoring would fulfill the commission role in insuring actual rather than estimated savings without holding up what appeared to be an efficient coupling of business enterprises by demanding exact qualification of savings. p. 733.

3. CONSOLIDATION, MERGER AND SALE, § 23 — Grounds for approval or disapproval — Financial benefit — Greater access to capital.

[N.H.] Where no market existed for the common stock of one of the two utilities proposing the establishment of a holding company and the transactions involving the common stock of the second company were few and no actual market for raising additional equity capital existed, the commission found that consolidation of the two companies into a holding company would allow greater accessibility to common equity which in turn would allow for the necessary capital or reduce the use of preferred stock and debt options, and that

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greater freedom of choice should lead to thicker equity ratios which in turn would lead to a financially stronger utility and less risky utility in terms of investment and rate of return. p. 734.

4. CONSOLIDATION, MERGER AND SALE, § 23 — Grounds for approval or disapproval — Financial benefit — Greater access to capital.

[N.H.] The commission determined that a proposed consolidation of two gas companies into a holding company was in the public interest where the consolidation would provide: (1) savings as to stock closing and issuance costs; (2) a greater level of opportunity to obtain the best terms for equity or debt financing; (3) better access to equity markets and thus greater flexibility especially during periods of high interest rates; and (4) greater movement of shares and a real market for those shares. p. 734.

5. CONSOLIDATION, MERGER AND SALE, § 23 — Economy and efficiency — Public benefit — Unification of gas supply and inventory.

[N.H.] The commission, in approving the consolidation of two gas companies into a holding company, found that a unified gas supply system with the supply options of the two utilities was more economic than the present system and that the unification would minimize aberrations to

all customers, providing greater reliability and allowing for greater economies to occur. p. 736.

6. CONSOLIDATION, MERGER AND SALE, § 24 — Grounds for approval or disapproval — Elimination of competition — Proximity of service territories.

[N.H.] The commission found that, where the expansion of two gas utilities that proposed to consolidate into a holding company had caused the two service territories to approach the same customers, the close proximity provided a further substantiation for approval of the consolidation since a combined approach to the service of new customers instead of a competing approach was more in line with traditional utility economics. p. 737.

APPEARANCES: Charles H. Toll, Jr., and Thomas C. Platt, III, for the petitioners.

BY THE COMMISSION:

I. *PROCEDURAL HISTORY*

Gas Service, Inc. (hereinafter referred to as "Gas Service"), a gas utility serving 19,671 customers in the cities of Laconia and Nashua, New Hampshire and Manchester Gas Company (hereinafter referred to as "Manchester"), a utility serving 15,766 customers in the City of Manchester, have filed a petition with this Commission on May 11, 1982 for approval of the formation of a holding company and the exchange of common stock (the "Reorganization") in accordance with an Agreement and Plan of Exchange (the "Plan"). No other entities or persons sought party status in this proceeding.

Gas Service and Manchester are independent, regulated gas utilities subject to the jurisdiction of this Commission and operating entirely within the State of New Hampshire. Pursuant to statutory provisions and Commission rules and regulations, these two utilities file reports and financial data with the Commission on a regular basis. The testimony offered in this proceeding establishes that EnergyNorth is a New Hampshire corporation formed for the purpose of becoming a holding company and acquiring the common stock of Gas Service and Manchester. This newly-formed corporation does not have any assets and has conducted no business other than transactions incidental to the consummation of the Reorganization.

The Commission issued orders of notice on May 24, 1982 for a public hearing to be held at the office of the Commission on July 13, 1982 at 10:00 A.M. The parties published said orders in local newspapers of general circulation as evidenced by affidavits filed with the Commission. On July 2, 1982, the

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parties submitted prefiled testimony and exhibits in support of their petition. Pursuant to continuous Commission inquiry, numerous additional documents and responses were filed.

II. *THE REORGANIZATION*

The proposed Reorganization contemplates a statutory exchange of common stock of Gas Service and Manchester for capital stock of Energy-North pursuant to New Hampshire Revised Statutes Annotated, Chapter 293-A. Gas Service and Manchester would become wholly-owned

subsidiaries of EnergyNorth. Gas Service common stockholders would receive two shares of EnergyNorth capital stock for each Gas Service share. Manchester common stockholders would receive one share of EnergyNorth capital stock for each share of Manchester common stock, including those 4071 Manchester shares issued pursuant to this Commission's Order No. 15,733 dated June 29, 1982 in our Docket DF 82-124 (67 NH PUC 430). The preferred stock of Gas Service and Manchester is to remain outstanding in each subsidiary after the Reorganization.

III. REGULATORY AUTHORITY AND APPROVALS

[1] Consummation of the Reorganization is subject to a number of regulatory approvals. The two gas utilities suggest that there is no statutory requirement that this Commission approve consummation of the Reorganization. However, the petition was submitted to the Commission because the two utilities do admit that absent state regulatory approval the proposal could not proceed forward.

EnergyNorth must obtain 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 stock of Gas Service and Manchester. The two gas utilities also seek an exemption under PUHCA Rule 2 from the registration requirements of the Act because given their proposed operations, the two utilities are of the belief that the proposed holding company system will be predominately intrastate in character.

In addition to appearing before the SEC, these two utilities are seeking an Internal Revenue Service (IRS) ruling that no gain or loss will be recognized by the stockholders of both companies. Both of these proceedings before the aforementioned federal agencies are as of yet uncompleted.

Another step that was necessary to be undertaken by the two utilities was approval by their two respective sets of stockholders. The Commission has been informed by letter that the approval has been tendered by both sets of stockholders.

The Commission pursuant to RSA 366 is given wide and encompassing powers over relationships, arrangements and contracts between utilities and their affiliates. RSA 366:9 provides the Commission with significant and all encompassing powers to obtain all the necessary information to evaluate the impact, control, relationship, and interaction of an affiliate upon a utility and more importantly its customers. RSA 366:7 allows the Commission to disallow any unreasonable expense or compensation paid an affiliate by a utility. RSA 366:5 provides that "the Commission shall have the full power and authority to investigate any such contract, arrangement, purchase or sale and if the Commission after notice and hearing shall find any such contract, arrangement,

purchase or sale to be unjust or unreasonable the Commission may make such reasonable order relating thereto as the public good requires." An establishment of an affiliate with control and influence over the operations of the utility is clearly an act within our full power and authority under RSA 366:5. RSA 366:3 requires that the two utilities present the proposed relationship or arrangement before us. RSA 366:4 insures that if they fail to present the arrangement of utility-affiliate to us there is no value to the relationship either before the

Commission or before the Courts. The Commission finds that on the basis of the provisions of RSA 366, the Commission has full authority over the entire arrangement between EnergyNorth and Manchester and Gas Service.

The provisions of RSA 374:30 requires that only upon a finding of the public good can a utility transfer or lease its franchise, works or system, or any part of such franchise, works or system, exercised or located in this state, or contract for the operation of its works and system located in this state. Since the officers and directors of the new entity, EnergyNorth will run and operate both of these utilities, RSA 374:30 provides the Commission with authority as well. The transfer of the entire stock of both companies is in essence a transfer of the entire assets of both utilities which includes the works, the systems and the franchises of both utilities.

Every utility must, pursuant to RSA 374:1, provide adequate and safe service. The Commission pursuant to RSA 374:3 has the general supervisory power to take such measures as are necessary to insure that each utility complies with its RSA 374:1 statutory responsibility. Again, the Commission finds that with the passing of control of the two utilities, the Commission has authority to pass upon the reasonableness of this transaction pursuant to its general supervisory powers of RSA 374:3.

The Commission's responsibilities also include the establishment of reasonable rates pursuant to RSA 378:7. Any practices by a utility that might affect the reasonableness of rates, which transactions with affiliates are historically primary areas of regulatory concern, leads to the Commission also having authority pursuant to the various provisions of RSA 378 and the Commission so finds.

Based upon the foregoing analysis, the Commission finds that the contention by the two gas utilities, Manchester and Gas Service, must be rejected. The Commission finds that we do have authority over this proposal to establish a holding company. Furthermore, the Commission finds that it has the authority to take the necessary steps to protect the public good throughout the examination, and approval process and further to insure protection of that public interest after the creation of the holding company. Finally, the Commission finds that pursuant to the aforementioned statutes the Commission has an affirmative duty to insure that the proposed holding company will result in tangible benefits to the consumers served by the two existing utility companies.

IV. PUBLIC INTEREST STANDARD

[2] The gas utilities offer various reasons as to why the Commission should approve the proposed establishment of a holding company thereby joining the utilities at least as to common stock ownership. To properly evaluate a proposed consolidation or merger, the Commission has adopted certain criteria. Re Merrimack County Teleph. (1977) 62 NH PUC 250, the Commission found

that the proposed merger was in the public interest because the larger consolidated company would be more likely to achieve the necessary capital for improvements to the system. 62 NH PUC at p. 254. The Commission also found that the public and shareholders would benefit from sharing of personnel, greater flexibility and efficiency in the work force, elimination of

duplication in the areas of accounting, insurance, engineering, auditing, inventory control, billing, paperwork and planning. These were found to be beneficial as was the greater likelihood that more advanced and specialized equipment could be purchased and thereby increase the quality of service.

In *Re Northern Utilities Inc.* (1979) 64 NH PUC 230, the Commission approved a merger between two gas utilities. In that decision the public interest was found consumers would receive greater amounts of pipeline natural gas thereby reducing the then present level of reliance on higher priced supplemental gas. All things being equal such a situation would reduce rates. The public interest finding was also supported by the evidence that demonstrated that additional supply would be available to the consumers presently being served. RSA 374:1 considerations make adequacy of supply improvements an aspect that can be found in the public interest. Evidence also found to support the public good was improvements through centralization of activities and the avoidance of duplication in accounting departments, auditing, engineering, financial and rate case services. Planning, employee relations and data processing services were all found to be lower in cost and thus a depressant to rates and in the public good. Finally, the inability of the existing company to sell common stock but the new ability of the larger merged utility to sell common equity was found to be of particular benefit to ratepayers and stockholders alike. The Commission noted that it was "naive and inefficient to enter the 1980's with its only source of capital being debt." 64 NH PUC at p. 232. The Commission went on to find that the ability to have its common stock traded in an open market provided greater liquidity and greater potential for market growth, was in the public interest.

The Commission will build upon the foundation that was established in Merrimack County and Northern. However, our experience from those cases underscores the importance of continual monitoring by the Commission to insure that the proposed savings becomes the actual savings and that these savings are indeed passed on to consumers. A regulatory authority cannot allow the public interest banner to slide after the conclusion of a merger case. Rather, Commission auditors must continue and even increase the scrutiny of transactions between affiliated utilities. However, it is also incorrect for a Commission to hold up what appears to be an efficient coupling of business enterprises by demanding exact quantification of the savings. The Commission's role is to see to it that there are actual rather than estimated savings and that the consumers are the beneficiaries on any efficiencies. Fulfilling these obligations often will and has been the result of a *continuous* watchful regulatory eye.

V. FINANCIAL FLEXIBILITY AND MARKET ACCESSIBILITY

[3, 4] The testimony of Robert Giordano, Manchester Gas, and William Goedecke, Smith Barney, Harris Upham & Co., Incorporated, focused on the advantages to be obtained by both consum

ers and stockholders as well as the utilities themselves from increased financial flexibility and accessibility to the capital markets. Testimony was given that EnergyNorth would apply for listing of its common, stock on the NASDAQ exchange.

At the present time there is no established market for the common stock of Gas Service. Nor

are quotations published. The effect of this situation is to severely limit Gas Service's access to the financial markets. Debt often is the only option that is available which during times of high interest rates has in the past become unobtainable or undesirable.

The financial market presently accessible to Manchester Gas is slightly broader. The common stock of Manchester Gas is more frequently traded in the over the counter market than is Gas Service's.

Yet the prices bid and asked for Manchester Gas common stock are quotations between dealers and do not include mark-ups, mark-downs or commissions and most importantly do not necessarily represent actual transactions. In fact, the transactions involving Manchester Gas common stock have been relatively few and there exists no actual market for raising additional equity capital.

The impact of this lack of financial flexibility and market accessibility is aggravated by the limitations placed in various other indentures and preferred stock offerings. Many of these limitations date back decades but none the less they have acted as a financial depressant to the growth of the utilities.

The innovation of this consolidation into a holding company may well be the next best avenue to the merger. The NASDAQ exchange offers market stability, market accessibility and for the first time a national market. This greater accessibility to common equity will allow for the necessary capital to restrict or reduce the use of the preferred stock and debt options. This greater freedom of choice should lead to thicker equity ratios which in turn leads to a financially stronger utility and thereby a less risky utility in terms of investment and in terms of rate of return.

The savings associated with this aspect of the petition are real. There will be savings as to closing and issuance costs. There will exist a greater level of opportunity to obtain the best terms whether it be equity or debt rather than having to make a decision on the least troublesome basis. The access to the equity markets will provide greater flexibility especially during times of high interest rates. The NASDAQ exchange will allow for greater movement of shares and will create a market for those shares that is real and exists daily. These factors were found to be in the public interest in our prior decisions and again we agree that this is a true measurement of the public good.

While the quantity of savings to the consumer is impossible to predict because no one can accurately forecast the amount of capital that will be needed to be raised, there is no question that both Manchester and Gas Service are expanding into the same communities that exist between their respective franchise headquarters. The Commission can insure the savings to consumers by continually monitoring the capital structure and the cost rates in rate cases and then conducting professional inquiry into all terms of all proposed financings.

The Commission anticipates that this will be the most significant savings from the proposed establishment of the affiliated company, EnergyNorth. The Com

mission noted that this greater likelihood of financial flexibility and accessibility was a

primary reason for the successful approval in Northern.

The savings that will occur will result in reducing the costs of financing, and through greater flexibility provide the assurance that the financing issued truly is in the public interest pursuant to RSA 369. Based upon the greater level of financial flexibility and market accessibility the Commission finds the requirement of the public interest satisfied.

VI. GAS SUPPLY AND INVENTORY

[5] The testimony in the area of gas supply and inventory was primarily given by Mr. Donald Inglis of Gas Service. He testified that in the future, date unspecified, there will be an integration of gas supply and supplemental gas facilities. Customers at this time will benefit from a more diverse supply of gas from pipeline, underground storage and supplemental sources. Testimony indicated that the proposed holding company will ultimately approach the natural gas supplier, Tennessee Gas Pipeline Company, and arrange a combined pipeline gas contract which will aid in alleviating supply problems in the summer.

In the areas of supplemental gas and underground storage, the two utilities also testify that there will ultimately be major improvements. A change in the method of daily volume takings permitted by the combined contract with Tennessee Gas Pipeline would, when relatively small amounts of supplemental gas are needed, allow the subsidiaries' most efficient and economical production facility to be turned on first. Combined operations should lead to savings in the underground storage of gas as well by again responding to a larger market and through a greater diversity of supply resources. Savings were also testified to as arising from the meshing of the transportation systems where Gas Service is more truck oriented and Manchester has greater accessibility to rail transportation.

There is no question that a unified gas supply system serving 40,000 customers with the supply options of the two utilities is more economic than the present system whereby the individual utility only serves its customers with its resources. A blend of supply minimizes aberrations to all customers, provides greater reliability and allows for greater economies to occur. This has been found to occur in both the electrical and gas utility business where as a rule much larger companies exist than either of these two utilities. The problem for the Commission, is the refusal of the two utilities to set a date by which this consolidation of the gas supply systems will occur.

The Commission is acutely aware of the major increases that the Congress and the President have decided are in the public interest. Deregulation is a marvelous concept unless you are a residential or business gas customer who depends on gas for heat. Every attempt must be made to reduce expenses so as to provide some offset to the gigantic increases that the Congress and the President believe are necessary. This Commission must state that there has arisen a concern in this record that the holding company could, if not properly regulated, lead to merely the establishment of another level of management without the corresponding benefits that heretofore have been mentioned. To alleviate this concern and to truly provide for the public interest, the Commission will require the following from the gas utilities: first, when all state and

federal regulatory and tax opinions have been received, the two utilities together with

EnergyNorth are to petition Tennessee Gas Pipeline and FERC if necessary requesting a consolidated pipeline gas contract. Second, the integration of the remainder of the gas supply facilities such as supplemental and underground storage are, to the extent possible, to be pooled together and used to satisfy the two systems' gas customers needs by November 1, 1983. Third, the Cost of Gas Adjustment hearings for the time period November 1983 through April 1984 and thereafter are to be made on a joint filing basis. Based on such combination of both systems and the companies' representation that they expect to take the action indicated in the three foregoing areas as evidenced by their letter dated October 19, 1982 (a copy of which is made a part of the record) the public good can be found and is so found by the Commission.

VII. *PROXIMITY AND FRANCHISE AREA DISPUTES*

[6] The two utilities are presently in close proximity of one another. Gas Service has as one of its bases of operation, Nashua which is less than (20) twenty miles from Manchester's base of operation, Manchester. Gas Service has been expanding North and Manchester has been expanding South with the result that the distance between the two systems is continuously shrinking and in some areas the two companies are beginning to approach the same customers. The Commission finds that the close proximity provides further substantiation for approval of this petition. A combined approach to the service of new customers instead of a haphazard and competing approach is more in line with traditional utility economics. The Commission finds that the proximity of the two utilities will through this petition become a positive aspect in the spreading of gas service to homes between Nashua and Manchester. Furthermore, the Commission finds that the new franchised territory for these two utilities should include at a minimum all portions of every community between Manchester and Nashua. The Companies are hereby directed to propose and file with this Commission within six months after their Reorganization a co-ordinated policy for hooking up new customers and recommendations with respect to allocation of presently non-franchised areas.

VIII. *EXPENSE SAVINGS*

There was filed with the Commission an exhibit demonstrating some of the merits and costs of the proposed establishment of a holding company. In some instances these savings were estimated and in some instances the savings and the costs were actual. There are estimates provided that the savings will initially amount to a few hundred thousand dollars which are then offset by additional costs with an estimated overall savings of over \$130,000 annually. The savings are listed as coming from a variety of areas including the costs of insurance, accounting, billing and tax services. All of these appear likely to occur and with our general supervisory power we will insure that they do occur and thus we find in the public interest.

In the other estimates, there is discussion about the ability to obtain greater levels of sophisticated computer systems and the savings of not having to hire two computer managers. The Commission would expect that these savings would occur but also will expect that as these two utilities proceed through the years there are efforts in the ebbs and flows of

hiring and attrition to combine wherever possible.

The Commission believes that every attempt should be made to assimilate the two forces and

their equipment into a unified team. The savings on service related calls alone would justify such a procedure. The Commission will monitor this aspect and will expect improvements through consolidation especially in equipment.

The Commission raised an area that it believes further savings can be achieved in, namely proceedings before the Commission. Rate case expenses can mount up in a very quick fashion when attorneys, economists and engineers are being hired for presentations. Obviously there will be some savings in this area from joint stock petitions under RSA 369. However, the Commission believes that the rate area cannot be ignored. Both utilities were recently before the Commission for rate relief. The Commission finds that the public interest requires that, subsequent to the presently contemplated step increases, the next time rate relief is needed the two utilities file and approach the case together. This will allow the Commission to more closely monitor the inter company transactions between the holding company and the two utilities as well as any transactions between the two utilities. Furthermore, one set of attorneys will be a significant savings as will one set of transcripts and hearings, rate of return expert and accountants if necessary.

The Commission also finds that, to the extent practicable, the two utilities should approach the Commission for joint debt issuances. The experiences with previous debt issues compels consolidation at some point.

The Commission is extremely concerned that by approving this consolidation we are not merely approving another level of corporate bureaucracy. The Commission doesn't want to spend time in rate proceedings reviewing endless transactions between affiliated companies that attempt to shield expenses from our review that if expensed by the utility would not be recognized as a legitimate expense for passing on to consumers. If it is not a reasonable expense for a utility to expend and book above the line, then the fact that the affiliate pays the expense and then bills the utility does not change the fact that consumers should not pay anyone's unreasonable expenses.

The Commission has identified another area of potential cost savings, namely, the area of directors' fees and expenses, particularly now that both EnergyNorth and the two utilities will have their own set of directors, with some of the directors from both utilities sitting on the EnergyNorth board. The Commission also heard testimony that ultimately the board of directors of the utilities will be employees of the two companies and that the controlling policy making body will be the EnergyNorth board of directors. The Commission, in the belief that the public interest requires that some of these long term projections be accelerated to promote efficiencies, will place the companies involved on notice that for ratemaking purposes only reasonable directors' fees and expenses will be recognized.

The Commission places the companies on notice that it will closely scrutinize any and all transactions and billings between any or all of the three companies. Furthermore, the Commission also places the companies on notice that the rate making standards and policies set forth in the most recent decisions involving the rates of Gas Service and Manchester

Gas will be applied with equal force and effect to any policies, transactions and expenses

between the holding company and its affiliates as well as to those between the utilities.

The Commission does find that the proposed savings by the Companies and the ones implemented by the Commission will result in the public interest being served.

IX. DIVERSIFICATION

The provisions of RSA 366 clearly provide the Commission with the authority to insure that any diversification is not done with utility money nor subsidized by utility ratepayers. However, to assist us in our diligence, Gas Service, Manchester and EnergyNorth will be required to file three copies of any contractual relationship, arrangement, agreement either oral or written, any billing between any or all of them, within 10 days of its formulation including any that have been established as of the date of this order. The three copies are to go directly to the finance director, the director of engineering and the chief economist of the Commission.

X. COSTS OF REORGANIZATION

The request made of the Commission is to amortize the costs of Reorganization in the amount of \$340,000 over five years. The Commission however finds no compelling reason to depart from its standard set forth in Northern and therefore will require that reasonable Reorganization costs are to be spread over (10) ten years. The list of Reorganization expenses in reasonable detail are to be submitted to our finance staff for review within 60 days after the effective date of the Reorganization.

XI. POOLING OF INTERESTS ACCOUNTING

Gas Service and Manchester will require no accounting changes, the Reorganization will leave the assets, liabilities and equity of each company unchanged. However as time goes forward the Commission will expect that proceedings for revised basic rates be brought jointly. The Commission approves the Pooling of Interests accounting method while reserving our right to review and exclude any additions to rate base or expenses found to be inappropriate or unreasonable.

XII. MERGER GOAL

An eventual merger of Gas Service and Manchester would further simplify the conduct of their business, provide further financial savings benefiting consumers, make the Commission's regulatory task much easier to perform and must be a goal of the companies participating in the holding company arrangement we are approving now, to be accomplished if and when this becomes feasible because of a decline in interest or preferred stock dividend rates or otherwise. In the meantime, we will expect the companies to use their best efforts in future financing to leave a merger as a viable unrestricted option.

XIII. COMMISSION AUTHORITY

Nothing in this Report and Order in any way acts as a waiver of our authority. Furthermore, nothing in this Report and Order allows any reduction in our authority to regulate Gas Service and Manchester.

XIV. STOCK EXCHANGE

We conclude that the Reorganization as discussed in this report will result in better gas efficiency and service and is therefore consistent with the public good. The Commission will

therefore approve the formation of EnergyNorth

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and the exchange of its Common Stock for Gas Service and Manchester Common Stock in accordance with the discussion in this Report.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the combination of Gas Service, Inc. and Manchester Gas Company into a holding company system by the exchange of their common stock for common stock of EnergyNorth, Inc., upon the terms and conditions provided in the petition dated May 11, 1982, is consistent with the public good; and it is

FURTHER ORDERED, that the formation of EnergyNorth, Inc. as a holding company and the exchange of its common stock for common stock of Gas Service, Inc. and Manchester Gas Company in accordance with the terms and conditions of said petition are hereby approved; and it is

FURTHER ORDERED, that for EnergyNorth, Inc.'s accounting purposes, the pooling of interests method is hereby approved; and it is

FURTHER ORDERED, that EnergyNorth, Inc. file copies of its annual reports with the Commission; and it is

FURTHER ORDERED, that copies of all service agreements between petitioners in this case be filed with this Commission; and it is

FURTHER ORDERED, reasonable cost effecting the combination shall be amortized over the period of ten years commencing when the step increases in the basic rates of Gas Service, Inc. and Manchester Gas Company provided for in Report and Fifth Supplemental Order No. 15,532 dated March 11, 1982 in DR 80-179 (67 NH PUC 193, 47 PUR4th 262) and Report and Fourth Supplemental Order No. 15,740 dated July 1, 1982 (67 NH PUC 438), as modified by Fifth Supplemental Order No. 15,758 dated July 13, 1982 (67 NH PUC 485), in DR 81-234, respectively, are made.

By order of the Public Utilities Commission of New Hampshire this 20th day of October, 1982.

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NH.PUC*10/20/82*[79411]*67 NH PUC 740*Granite State Electric Company

[Go to End of 79411]

Re Granite State Electric Company

DR 82-289, Order No. 15,937

67 NH PUC 740

New Hampshire Public Utilities Commission

October 20, 1982

ORDER approving an electric company's conservation oriented outdoor lighting tariff.

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BY THE COMMISSION:

ORDER

WHEREAS, Granite State Electric Co. filed on October 6, 1982 revisions to the tariff pages applicable to its outdoor lighting customers which intended to further encourage conservation by those customers; and

WHEREAS, said changes are responsive to the concerns of the Commission as expressed in Order No. 15,452 in Docket No. DE 81-86 (67 NH PUC 117) and improve the options and opportunities for customers to effect cost reductions; it is

ORDERED, that 3rd Revised Pages 47 and 48, 1st Revised Pages 49 and 50 and Original Page 50-A are hereby approved for effect on November 15, 1982; and it is

FURTHER ORDERED, that Granite State Electric Company is to be congratulated on its initiative in making this tariff filing; and it is

FURTHER ORDERED, that NHPUC Rule 1603 Tariff Filing Requirements will be considered satisfied by Granite State upon a one-time publication of the tariff changes in accordance with said requirements.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of October, 1982.

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NH.PUC*10/22/82*[79412]*67 NH PUC 741*Conversion of Schiller Stations

[Go to End of 79412]

Re Conversion of Schiller Stations

Intervenors: Public Service Company of New Hampshire, Community Action Program, New Hampshire Air Resources Agency, and Office of Consumer Advocate

DE 79-141, Ninth Supplemental Order No. 15,941

67 NH PUC 741

New Hampshire Public Utilities Commission

October 22, 1982

ORDER on the commission's own motion directing oil to coal conversion.

APPEARANCES: Pierre Cameron, James T. Rodier, Todd Wicker, Stephen Hall, Nancy Wilbur, and Warren Harvey for Public Service Company of New Hampshire; Lisa Braiterman, Kenneth Traum, and George Gantz, for the public utilities commission staff, Gerald Eaton for the Community Action Program; F. Joseph Gentili for the Office of the Consumer Advocate; Dennis Lunderville and Tom Noel of the New Hampshire Air Resources Agency.

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BY THE COMMISSION:

REPORT

The New Hampshire Public Utilities Commission initiated this docket pursuant to its own motion to examine the question of whether or not to convert three stations from oil to coal at the Schiller plant site. After numerous public hearings and the receipt of extensive evidence, the Commission ordered the three stations to be converted from oil to coal because of the tremendous savings that could be achieved due to the differences between oil and coal prices.

As the coal conversion process began there emerged certain financial, environmental, regional and equipment problems that needed to be addressed for the successful conversion. In 1982, the Commission in an attempt to provide a method to resolve these disputes set up a mediation process to be chaired by the New England Environmental Mediation Center. The Mediation process was begun on March 1, 1982 at a settlement conference ordered by the Commission. At the mediation meeting held in March, it was agreed that there would be an attempt by all parties to settle any differences over the conversion process through meetings. Fourteen meetings were conducted in which numerous problems involving environmental considerations, financial capability, rate treatment, and others were discussed.

The culmination of this mediation process was a presentation by the various parties before the Commission which has been marked as Exhibit M. Exhibit M is the settled and binding agreement between the Staff, Public Service Company, the Community Action Program, and the Consumer Advocate. Based upon our review of the agreement, Exhibit M, the Commission approves the conditions, terms, and rate treatments set forth in Exhibit M as just and reasonable and in the public good.

The Commission offers its praise as to the highly professional agreement tendered by the parties and wishes to commend the efforts of those who worked so hard to demonstrate that the process does indeed work. The Commission praises each and every person that is listed in the appearance section of this decision.

Our Order will be issued accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report which is hereby incorporated and made a part of this order, it is hereby

ORDERED, that the settled agreement of the parties as set forth in Exhibit M is found to be

just, reasonable and in the public good, and it is

FURTHER ORDERED that in future hearings the Commission will follow and uphold the agreement, Exhibit M, as to all of its aspects.

By Order of the Commission this twenty-second day of October, 1982.

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NH.PUC*10/27/82*[79413]*67 NH PUC 743*Public Service Company of New Hampshire

[Go to End of 79413]

Re Public Service Company of New Hampshire

DR 82-297, Order No. 15,950

67 NH PUC 743

New Hampshire Public Utilities Commission

October 27, 1982

ORDER approving special contract providing for the sale of firm and backup nonfirm service.

BY THE COMMISSION:

ORDER

WHEREAS, on October 8, 1982, Public Service Company of N.H. filed Special Contract No. NHPUC-42 for electrical service to James River Berlin/Gorham Inc. and requested an effective date of October 27, 1982; and

WHEREAS, the proposed Contract supersedes Special Contract No. NHPUC-14 with Brown Company and establishes arrangements for the sale of firm electrical service under the rate TR, the sale of non-firm replacement electric service as back-up to James River's on-site generation and the purchase of any excess energy from James River's on-site generation; and

WHEREAS, the proposed contract is consistent with the agreements and principles adopted by this Commission in DR 79-187, Phase II; provides benefits to James River, PSNH, and other retail customers of the utility; and is just and consistent with the public interest; it is

ORDERED, that Special Contract No. NHPUC-42 is approved for effect October 27, 1982; and it is

FURTHER ORDERED, that PSNH is congratulated for the innovative and forward-looking approach reflected in this contract.

By Order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1982.

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Re Energy Cost Adjustment

DR 82-146, Third Supplemental Order No. 15,951

67 NH PUC 743

New Hampshire Public Utilities Commission

October 27, 1982

ORDER directing electric utility to reduce its currently approved electric cost recovery mechanism.

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BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in DR 79-187, Phase II, Order No. 15,486, on February 10, 1982 (67 NH PUC 157), accepted a stipulation recommendation of the fuel adjustment issue in the docket; and

WHEREAS, Section IV, part B stated, "The parties recommend that the Commission continue to provide an opportunity for any party to apply, at some future time, for interim changes as a result of substantial changes in energy costs that result in hardship to the Company or its customers"; and

WHEREAS, the Commission has utilized a 10% over or under collection of estimated total costs subject to adjustment as a barometer; and

WHEREAS, Public Service Company estimated the New Hampshire retail net energy cost for the ECRM period, July 1, 1982 through December 31, 1982; and the New Hampshire retail estimated total costs subject to adjustment for the same period as \$86,249,100 and \$80,681,143, respectively; and

WHEREAS, the Company on September 21, 1982, submitted the required monthly information with the Commission which included as Exhibit 4, the calculation of the ending balance of over-recovery as of August 31, 1982 of \$8,903,827, of which \$3,138,827 was the reported over-recovery from rate-payers in the first two months of the ECRM period; and

WHEREAS, the Company on October 21, 1982, submitted the required monthly information with the Commission which included as Exhibit 4, the calculation of the ending balance of over-recovery as of September 30, 1982 of \$9,691,742, of which \$5,367,992 was; the reported over-recovery of the ECRM in the first 3 months of the period; and

WHEREAS, this \$5,367,992 is in excess of 10% of the estimated total costs subject to

adjustment on a New Hampshire retail level for the remainder of the ECRM period (Nov.-Dec. 1982), in fact in excess of 15%; and

WHEREAS, the Commission feels the ECRM rate now in existence will result in a large overcollection by PSNH through December 31, 1982; and

WHEREAS, the Commission feels compelled by the public good to act accordingly; and

WHEREAS, Public Service Company estimates of New Hampshire retail sales on a monthly basis for the first three months of this ECRM, as shown in Exhibit 3 in Section D of its May 20, 1982 ECRM filing, have been consistently high; it is

ORDERED, that over the period of November 1, 1982 through December 31, 1982, Public Service Company will reduce its currently approved ECRM rate by \$5,367,992. This will be done by reducing the rate per 100 KWH by \$0.694 (\$5,367,992 / 773,273 MWH¹⁽⁷⁹⁾). For the average residential customer who uses 500 KWH per month, this will mean a \$6.94 savings over the next two months; and it is

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FURTHER ORDERED, that Public Service Company shall file the appropriate tariff sheets.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1982.

FOOTNOTE

¹\$773,373 MWH is PSNH's actual MWH sold to Total Ultimate Users in Nov. & Dec. 1985, as shown on page 31, line 26, of its monthly report.

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NH.PUC*10/27/82*[79415]*67 NH PUC 745*Peak-shaving Fuel Storage

[Go to End of 79415]

Re Peak-shaving Fuel Storage

DRM 81-296, Third Supplemental Order No. 15,956

67 NH PUC 745

New Hampshire Public Utilities Commission

October 27, 1982

REVISION of a commission rule on peak-sharing fuel storage.

SERVICE, § 152 — Applications and contracts — Delivery capability — Fuel supply and service provisions.

[N.H.] In assessing a transportation company's guaranteed delivery capability, reliance on either fuel supply purchase contracts or dedicated service contracts is sufficient.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

WHEREAS, on September 20, 1982, a hearing in the above docket was held at the Commission's offices in accordance with its Second Supplemental Order No. 15,867 dated September 2, 1982; and

WHEREAS, the hearing was conducted to consider a proposed amendment to a Rulemaking in PUC 506.03, Peak Shaving Fuel Storage, such amendment having been proposed by Gas Service Inc., Concord Natural Gas Corporation, Manchester Gas Company, and Northern Utilities; and

WHEREAS, the Companies propose to amend the last sentence of paragraph (a) of Rule 506.03 as follows:

"Where a gas company owns or leases tank trucks or has a fuel supply purchase contract which includes guaranteed daily delivery capability, 70% of this delivery capability from a dependable bulk fuel supply point over a five day period may be counted as on-site storage.";

and

WHEREAS, subsequent to that hearing, a meeting was held at the concurrence of all parties, at which representatives of three major LP Gas Transport Company's provided evidence demonstrating their competence in providing dedicated transportation service to utility companies; and

WHEREAS, Staff now indicates its satisfaction as to the capability of these transportation companies to provide a level of transportation service which equals that capability provided by the utility itself; and

WHEREAS, Staff has proposed a revision to the amendment which provides for the assurance that "dedicated service contracts" as well as fuel supply purchase contracts, will constitute the two

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alternatives for providing guaranteed daily delivery capability; and

WHEREAS, all parties in the proceeding have agreed to the revision; and

WHEREAS, upon further investigation, this Commission finds that the allowance of dedicated service contracts or fuel supply purchase contracts will provide a reasonable contribution toward the computation of on-site storage, and is reasonable and in the public interest; it is

ORDERED, that the last sentence of paragraph (a) of Rule 506.03 is hereby revised and made a part of the Commission's Rules and Regulations for Gas Utilities as follows:

"Where a gas Company owns or leases tank trucks or has a fuel supply purchase contract, or a dedicated service contract, either of which includes guaranteed daily delivery capability, 70% of this delivery capability, from a dependable bulk fuel supply point over a five day period may be counted as on-site storage".

By Order of the Public Utilities Commission of New Hampshire this Twenty-seventh day of October, 1982.

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NH.PUC*10/28/82*[79416]*67 NH PUC 746*Winter Termination Policy for Electric and Gas Utilities

[Go to End of 79416]

Re Winter Termination Policy for Electric and Gas Utilities

DRM 81-374, Order No. 15,952

67 NH PUC 746

New Hampshire Public Utilities Commission

October 28, 1982

INVESTIGATION and reevaluation of the commission's winter termination rules order opening docket to consider rule changes.

BY THE COMMISSION:

I. *Procedural History*

The Commission first adopted rules concerning terminations of service by gas and electric utilities during the winter months on January 7, 1980. Order No. 13,982 (65 NH PUC 4) established temporary rules to be effective for the period through April 1, 1980. Subsequently, in Docket DE 80-154 the Commission incorporated the winter termination rules into the permanent Commission rules as § 303.08 and § 503.09.

On the recommendation of Staff, the Commission noticed a rulemaking in December 1981 to re-evaluate the winter termination rules for electric and gas utilities to determine whether the rules should be terminated, amended or modified. A hearing was held on January 11, 1982 at which time several parties expressed the need for more time to present evidence. Requests were also made to the Commission to hold hearings

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around the State to receive public comment. The Commission agreed with these requests and subsequently held the following public hearings: May 4, Nashua; May 12, Littleton; May 20, London-derry; May 26, Rochester; June 2, Claremont; June 8, Berlin; end dune 17, Portsmouth.

The Commission has received written comments from the following utilities and consumer organizations: Public Service Company of New Hampshire; Exeter & Hampton Electric

Company; Concord Electric Company; Northern Utilities, Inc.; Manchester Gas Company; Community Action Program (CAP); Volunteers Organized in Community Education (VOICE); and New Hampshire People's Alliance (NHPA). In addition, the Commission received comments from numerous individuals at the public hearings.

II. *Comments*

The utility companies generally indicated that the other Commission rules concerning terminations (§ 303.05 a-j and l-p and § 503.09 a-j and l-p) provided sufficient protection to residential customers in combination with budget payment plans. The utilities generally were willing to have the Commission require a budget plan in the rules. The utilities believe that the present termination rules (1) may encourage accumulating debt, (2) have resulted in increased receivables and bad debts, and (3) discourage communication with customers and implementation of special payment plans.

PSNH emphasized the need for early communication with customers having payment difficulty and felt that collection activity through a termination notice was often essential to instigating communication.

Exeter and Hampton Electric felt that the winter termination rules created a particular problem in their case because of winter rental customers. If termination rules are to be continued, Exeter and Hampton favors limiting protection to heating and high use customers.

Manchester Gas Company also felt that the rule should apply only to heating customers and that a \$40 minimum payment should be required.

Northern Utilities recommended changing the \$175 arrearage rule to \$50.

Consumer groups and advocates supported strengthening the present rules. Generally these groups supported (1) increasing the arrearage amount before a termination notice could be sent, (2) extending the winter period to 6 months, (3) providing that service to handicapped customers and families with young children only be terminated upon written approval of the Commission, and (4) lowering the age requirement for Commission approval for termination from 70 to 60.

The NHPA also proposed a 30 day written notice requirement for termination in the winter period and a prohibition against any shut-off when the temperature is less than 50° .

CAP, which administers fuel assistance programs, felt that the \$175 arrearage amount was not adequate for electric heating customers. It was suggested that a higher amount for space heating customers was appropriate, or that a scale related to usage might be adopted.

III. *Discussion*

The Commission believes that on balance the winter termination rules have provided an important protection to New Hampshire residential consumers. while the rules may have resulted in

increased receivable and bad debts as the utilities claim, it is difficult to measure this effect. The time period during which the rules have been in effect has been one of economic recession when receivables and bad debts would increase in any event, as in fact they have for

non-residential customers. The Commission also believes that all companies presently offer budget plans. While the Commission fully supports the budget plans and encourages the utilities to be more aggressive in making customers aware of these plans, the Commission does not believe that budget plans alleviate the need for winter termination rules.

The Commission believes the rules have served an important function in alleviating fears of shut-offs which could threaten life or health. And for this reason, the Commission also believes that this time of recession and decreasing levels of public assistance is not the time to lessen present protections.

Nevertheless, the Commission must note that it is not in the customers interest to allow huge arrearages to accumulate to the extent that they can not be paid off in the non-winter period. This point is also raised by CAP. To the extent that customers need financial help, it is important that this help be sought before very large arrearages have accumulated.

Our termination rules (part (j)) require that each utility company maintain a list of at least three (3) social service agencies or organizations in their franchise areas that may be able to provide assistance and that the companies shall be generally knowledgeable in their eligibility requirements and shall refer customers to such agencies. The rules also provide standards for utilities to follow when customers are served by a social agency. In addition, our Consumer Assistance Division is available to assist in facilitating payment arrangements directly with the utility or through a social service agency.

While being aware of the need to avoid the accumulation of unreasonable balances, the Commission thinks that CAP makes a valid point in suggesting that two customer categories be established. A space heating customer does not receive much protection from the \$175 arrearage limit, and the Commission will propose a new rule to raise the arrearage for space heating customers to \$300.

The Commission also believes that the age requirement in section (k) (4) should be lowered from 70 to 65. The Commission realizes that termination notices may be especially upsetting to elderly people, that senior citizens comprise a very high proportion of the State's poor, and that usage by senior citizens is low because of small family size. The Commission also notes that the utilities have not objected to this proposal.

Consequently, the Commission will propose that this rule be changed accordingly.

A new docket (Docket No. DRM 82-304) has been opened to consider these proposed changes, a copy of which is attached to this Report.

ORDER

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

ORDERED, that Docket DRM 82-304 is opened to consider the proposed changes set forth herein.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1982.

PROPOSED AMENDED RULES

PUC 303.08 (k)(2)(4)

and

PUC 503.09 (k)(2)(4)

(2) For the duration of the winter period, an accumulated arrearage of \$175 or less, or non-heating customers, or \$300 or less for heating customers, all of which first appears as an arrearage on bills rendered during the winter period shall not subject a residential customer to termination of service in his/her primary residence.

(4) No residential customer, whether heating or non-heating, age 65 or older shall be terminated or subject to termination except in accordance with the winter period rules.

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NH.PUC*11/01/82*[79417]*67 NH PUC 749*Exeter and Hampton Electric Company

[Go to End of 79417]

Re Exeter and Hampton Electric Company

DRM 82-282, Order No. 15,955

67 NH PUC 749

New Hampshire Public Utilities Commission

November 1, 1982

ORDER denying petition for a rule-making proceeding, regarding the return of customer deposits.

BY THE COMMISSION:

ORDER

WHEREAS, the Exeter & Hampton Electric Company has filed a petition for the Commission to open a rulemaking procedure to amend the present NHPUC Rules 303.04 (b)(3) and 303.04 (c)(3) to provide that deposits held by electric companies for non-residential customers not be returned after 36 months; and

WHEREAS, the Company alleges the amendment is necessary in the present economic times because the utilities are inadequately protected against the adverse consequences of business failures; and

WHEREAS, the Commission has read the petition and the supporting written testimony and has deliberated thereon; it is hereby

ORDERED, that the petition for rule-making procedure filed by Exeter & Hampton Electric Company is denied for the following reasons:

1. The petition is based on speculation that there will be a rise in business failures and not actual data.
2. The Commission has not been made aware of any difficulties that the present rule creates by any other utilities under its jurisdiction.
3. As to the scenario presented wherein a commercial customer declares bankruptcy then re-establishes a business under a new name, submits his deposit, then subsequently after the three year period declares bankruptcy causing a bad debt write off, the Commission finds

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that without actual data that potential situation is too remote and not sufficient at this time to require a rule change.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1982.

LOVE, commissioner, concurs: While I concur with the decision of my other two Commissioners, I wish to provide some additional insight for my rejection of this rule. To begin with the rule is overly broad. If adopted the rule would apply to everyone and not those primarily of concern to Exeter-Hampton. Possibly consideration could be given to a higher interest rate on certain occasions where the company is concerned. The Company might be limited to no more than five of these at any one time. There is a fine line that is being walked here by the company as to financing at a relatively inexpensive rate (8%) and protection against an increasing problem of bankruptcies. The attempt by Exeter-Hampton to address the problem is a rightful attempt to improve the system. However, I believe there must be some trigger mechanism or test that must be applied so as to hold a deposit beyond 36 months. Also I would suggest that the Commission often hears from consumers as to their requests for exemptions from certain rules which the Commission attempts to evaluate and sometimes grants. It would appear reasonable reasonable that the Exeter-Hampton Electric Company or any other utility could also approach the Commission for exemptions from rules that require deposits returned where they believe an inequity is about to occur.

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NH.PUC*11/01/82*[79418]*67 NH PUC 750*Keene Gas Corporation

[Go to End of 79418]

Re Keene Gas Corporation

Intervenor: Community Action Program

DR 82-277, Order No. 15,959

67 NH PUC 750

New Hampshire Public Utilities Commission

November 1, 1982

APPLICATION by a gas company for a reduction in its winter therm rate; granted.

RATES, § 379 — Gas — Therm rates — Factors.

[N.H.] Due to a gas company's zero growth factor and reduced lost, unaccounted for, and company use gas, the commission allowed a reduction in the winter therm rate.

APPEARANCES: Kenneth W. Wood, vice president, Keene Gas Corporation; Gerald Eaton for the Community Action Program (CAP).

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BY THE COMMISSION:

REPORT

On September 30, 1982, Keene Gas Co. filed its winter period 1982-83 cost of gas adjustment for effect November 1, 1982. The request was for a rate of \$0.2251/therm which is a reduction from the rate of \$0.3520/therm for the 1981-82 winter period.

A duly noticed public hearing was held at the Commission's office in Concord on October 19, 1982.

During the course of the hearing, 6 exhibits were submitted by the company and by Mr. Traum of the Commission staff.

Through cross-examination of Mr. Wood, it was learned that the utility is estimating a 0% sales growth over the winter period 1981 — 82; an 11.18% factor for lost, unaccounted for, and company use; and \$0.646367/therm for propane delivered to Keene by truck from its supplier, Warren Petroleum.

The Commission accepts the 0% growth factor, as well as the propane cost estimate. As far as the 11.18% estimate is concerned, the Commission recognizes and appreciates the steps taken by the utility to reduce this rate over the last few years by addition of a calorimeter, the phase out of non-temperature compensated meters, improvements in leak surveying, etc.; and feels these improvements will continue to bring positive results by reducing the lost and unaccounted for and company use percentage.

Exhibit 5 in this docket calculated the weighted average lost and unaccounted for and company use percentage at 5.1761% for the 5 gas utilities in N.H. having a 6 month CGA. Even recognizing that Keene is the only 100% propane company in the group, the Commission feels the 11.18% should be reduced, but not to the average of 5.1761%. As an in-between figure the Commission will use 10.0% as the projected lost and unaccounted for and company use figure.

Accordingly, their tariff as filed will be rejected with a new tariff page to be filed setting a CGA for the winter period of 1982-83 of \$0.2156/therm. This equates to approximately a \$1.50/month reduction to the average 150/therm month user on Keene's system for the upcoming

winter period from the utility's requested rates, and a \$20.46/month reduction compared to last winter period's cost of gas adjustment. The major reasons for this reduction are the reduced lost and unaccounted for and company use projection as compared to approximately 20% projected for the last winter period and an overcollection in the last winter period which herein is used to reduce the current CGA. The offset is an increase in the cost of propane.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that 3rd Revised Page 26 of tariff, NHPUC NO. 1-Gas is rejected; and it is FURTHER ORDERED, that Keene Gas Corporation file a revised page 26 reflecting a winter period 1982-83, CGA of \$0.2156/therm.

By order of the Public Utilities Commission of New Hampshire on this first day of November, 1982.

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NH.PUC*11/02/82*[79419]*67 NH PUC 752*Gas Service, Inc.

[Go to End of 79419]

Re Gas Service, Inc.

Intervenor: Community Action Program

DR 82-276, Supplemental Order No. 15,957

67 NH PUC 752

New Hampshire Public Utilities Commission

November 2, 1982

PETITION by a gas company for an increased cost of gas adjustment; rejected as filed but revised tariffs ordered.

1. RATES, § 303 — Variable rates based on cost — Fuel clauses — Reconciliation.

[N.H.] When filing a cost of gas adjustment, a company should reconcile the filing with any previous period so that prior overcollections would be credited to the new period. p. 753.

2. REVENUES, § 16 — Uncollected revenues — From interruptible sales — Bankrupt customer.

[N.H.] Seasonal or interruptible sales revenues need not be adjusted because of a customer who declares bankruptcy where the collectibility of the account is still an open question. p. 753.

3. EXPENSES, § 39 — Commodity or supply cost — Propane fuel — Comparative shopping.

[N.H.] Where a company had not investigated the possibility of purchasing propane fuel from various suppliers, the commission disallowed the costs that had been submitted since they reflected the highest prices of the summer and could have been reduced with a little more market effort. p. 754.

4. RATES, § 303 — Variable rates based on cost — Fuel clauses — Projected wholesale rate increases.

[N.H.] The commission rejected increases for a cost of gas adjustment based on projections of purchases and a supplier's wholesale rate increase request, parts of which had already been rejected by the Federal Energy Regulatory Commission. p. 754.

5. EXPENSES, § 39 — Commodity or supply cost — Special fuels — Burden to ratepayers.

[N.H.] Excessive costs of specialized fuels should not be borne by all ratepayers but only by those actually benefiting from them. p. 756.

6. ACCOUNTING, § 32 — Purchase price — Fuel — Excessive cost — Below-the-line treatment.

[N.H.] When less expensive propane is available and useable but more expensive liquefied natural gas is used instead, the commission may properly order the cost differential to be booked below the line. p. 756.

APPEARANCES: Charles H. Toll for Gas Service, Inc.; Gerald Eaton for Community Action Program (CAP).

BY THE COMMISSION:

REPORT

Gas Service, Inc. (herein referred to as "The Company" or "Gas Service") on October 1, 1982, originally filed a cost of gas adjustment (CGA) of \$.0839 per therm for the winter period of 1982-83. This was based on an overall cost of gas of \$.5116. As a result of two projected

Page 752

changes in Tennessee Gas Pipeline tariff filings, and a number of other price and estimate changes, the Company revised its filing to increase the CGA request to a rate of \$.0916 per therm based on an *overall* cost of gas of \$.5193. This filing can be equitably compared with a winter 1981-82 *overall* cost of gas of \$.5147; and a summer 1982 *overall* cost of gas of \$.5899/therm.

The Company has undergone extensive examination by both the PUC staff and intervenor in this proceeding. In addition to lengthy cross examination of the Company witnesses, at a duly noticed public hearing at the Commission offices on October 19, 1982, the Commission finance staff audited the filing prior to the hearing. As a result of the hearing examination and audit, the following items were brought to issue.

Prior Period Reconciliations

[1] In the filed CGA the Company did not include a reconciliation of the prior period CGA. Traditionally any adjustments to the estimated winter/summer period CGA are not reconciled until the next corresponding winter/summer period. In DR 81-285, the Commission digressed from this procedure. As background, for the winter 1981-82 CGA, this Commission flowed the summer 1981 CGA over-collection into the cost of gas. In the next CGA filing (DR 82-102) the Company perpetuated the method of reconciling the CGA estimate in the next succeeding CGA by including the large winter period 1981-82 under-collection in the summer 1982 CGA.

The absence of any prior period reconciliation with this filing is the Company's attempt to return to the traditional method of reconciling the CGA. We find this inappropriate. If it was the Company's sincere desire to return to the traditional method, it should have been part of their summer 1982 filing. In that filing it was apparently not in the Company's best interest, whereas during this filing (with the Company displaying an over-collection in the summer 1982 period, DR 82-276, Ex. 11) it would be in the Company's best interest to return to traditional methods, since only 8% interest is accrued on over or under-collections.

Exhibit 11, Part B of this docket had been orally updated by the Company's witness to display an over-collection of approximately \$230,000.00 as of September, 1982. This date is the most recent date that near actual figures have been offered by the Company. We will not recognize the October estimate because the Company's estimates of over/under-collections:

- 1) are not as dependable as desired;
- 2) and frequently under estimate any refund due customers (see Dr 82-102, Ex. GS 16, Attachment C compared to DR 82-276, Ex. 11 B).

Therefore, we will mandate the over-collection of \$230,000 plus interest, to be applied to this CGA, in that this is the most recent near actual accounting figure available.

Johns-Manville

[2] As part of this filing, the Company included the marginal revenue from interruptible or seasonal sales in accordance with a Commission Order No. 15,533 (67 NH PUC 207). Deducted from this margin, however, was \$8,874 as lost revenue from a customer who declared bankruptcy. The Company has stated the opinion that this amount decreases the margin because they may not be able to collect it.

We now disallow this adjustment plus interest on two grounds:

Page 753

- 1) the Company is still uncertain as to the collectibility of this account; and
- 2) any write-off of this account would be written-off against accounts receivable, the offset being an expense account.

This expense account was included at a reasonable level, in the Company's last rate case as a part of cost of service. Therefore, inclusion of this write-off in the CGA would effectively double count that which is already included in the Company's basic rates.

The intervenor in his memorandum supports this approach.

Propane Procurement

[3] The Company in their filing included a purchase of propane for storage at a cost of 59.674¢ per gallon (Ex. 9, Attachment K). This propane was to be bought during September and October, 1982. Staff pointed out that this appeared to be the highest cost of propane all summer and asked why the Company would wait for September and October to purchase this product. The Company's main rationale was that the production plant that they were to buy this propane from was out of service during the lower priced summer months. (T 10/19/82, p. 93-98).

On the surface this could be a satisfactory explanation, however, further cross examination by staff and this Commission revealed that little effort was made by the Company to redeem this lesser cost product for their rate payers. This is not an act of prudence. Given a competitive environment where this cost could not be passed freely on by the Company, surely, the Company would at least have attempted to salvage some form of consideration for this inconvenience. It is not this Commission's intention that the CGA be a "catch-all" where unrestrained costs flow-through under the guise of cost of gas. Due to this, we will not allow the excess September cost to be passed through the cost of gas, but will accept the 15¢ per gallon lower figure stated as an earlier summer cost of propane by the Company witness. We will also exclude the interest applicable. This equals a decrease in propane cost in the winter period of \$74,250.00 which also decreases the calculated inventory finance charge by roughly \$2,200.00. The actual differential in propane cost above the \$.44674/gallon put into storage will be a below the line cost.

Tennessee Gas Pipeline Increases and Refunds

[4] In Exhibit 9, the Company updated its initial filing in several areas. One of those areas related to Tennessee Gas Pipeline's projection of their January 1, 1982 CGA increase from 30¢ to 42¢ per DT. In dollars this estimate acted to increase the CGA request by \$188,616.

The Commission has a conceptual problem accepting this adjustment as the amount is not "known and measurable", after January 1, 1983, at any level. Therefore, we will exclude the \$188,616.00 plus interest, from the filed CGA, and will continue to use the 30¢ per DT figure for lack of a better one, until a known figure is provided.

In addition to this, and for the same reasons, the Commission looks unfavorably on the estimated increase in TGP rates of February 1, 1983. Again, in dollars this represents a \$257,868.00 increase in demand charges, a \$67,511.00 increase in commodity charges, and a \$11,880.00 increase in TGP transportation charges.

We will exclude the sum of these estimates (totaling \$337,259.00) principally because it is subject to further

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refinement by TGP as well as FERC, and is being contested by various parties including intervenors representing Gas Service.

The Company's filing includes an increase in the cost of natural gas from Tennessee Gas Pipeline effective February 1, 1983. Tennessee has filed for a wholesale rate increase with the Federal Energy Regulatory Commission (FERC) to be effective February 1, 1983, in Docket No.

RP 82-125-000. FERC has rejected certain portions of that filing and has ordered Tennessee to file revised tariff pages on or before February 1, 1983. This commission will exclude the February 1, 1983 Tennessee rate increase until such time as the actual revised tariffs have been filed and placed into effect by FERC. In addition, the Commission has become aware of the possibility of refunds to be made to Tennessee interstate customers as a result of the settlement of a three-year investigation by FERC into the alleged diversion of natural gas from the interstate to the intrastate market. FERC has approved a stipulation and consent agreement which will result in the refund of \$58.5 million from Tennessee, Sun, ARCO, and Mobil. The settlement agreement is subject to judicial review before it becomes final. The Commission will expect the Company to follow the developments on the refund issue and file that information at the same time that the February 1, 1983 Tennessee rate increase is known and measurable. Any refunds which are applicable to this winter period will be used to calculate the cost of gas adjustment rate for the remainder of the winter period.

The Tennessee rate filing includes items which FERC finds may be unjust, unreasonable, and unduly discriminating. Therefore, the filing has been suspended and set for hearings. The New Hampshire gas companies have intervened in that case as part of a New England customer group. The Commission will expect the New Hampshire companies to pursue all of the areas in the Tennessee filing which are considered unreasonable. Some of those areas are, but are not limited to: 1) a 19.5% return on common equity; 2) A 1% attrition factor; 3) facilities not in service on or before December 31, 1982; 4) advance payments; and 5) transportation cost rate adjustments. The Commission is further concerned that many of the aforementioned items are put into effect subject to refund and those refunds are not made to ratepayers for several years.

Future CGA Hearings

This Commission hereby notifies all New Hampshire gas companies presently utilizing the seasonal CGA, that, subject to the Commission's call on or about December 1, 1982, the Commission may require updated CGA filings. These filings will include 6 month estimated CGA data from January 1, 1983 — June, 1983. This is an effort by the Commission to tie the New Hampshire Jurisdictional CGA with the natural gas suppliers purchase gas adjustments (PGA) at the Federal Energy Regulatory Commission level.

It is the Commission's opinion that by considering this "timing change" in CGA filings, we will dampen most inaccuracies of the estimated changes in the supplier's PGA. This consideration is most definitely in the best interest of consumer and Company alike. In the current filing, the Commission will still allow a six month estimated CGA, less Tennessee Gas Pipeline's estimated rate increase and second estimate on their PGA. Any estimated rate increases eliminated

from this filing may be further considered in the proposed December 1, 1982 filing. This will allow both the natural gas supplier and the companies to generate estimates of greater accuracy, or perhaps present actual known and measurable rate increases, as well as provide all parties more time to analyze the filing.

Propane Tank Farms

[5] The Commission has concerns involving the cost of gas passed onto tank-farm customers. It appears inappropriate for the Company to require all customers to pay the cost of gas when a handful of customers who are using strictly high cost propane gas have always paid, effectively, the lower cost of natural gas. We do not fault the tank-farm customers themselves for this. Their application for gas as fuel was made in good faith. It presumably was their belief that the Company could provide the product at a reasonable cost.

It now becomes apparent that the Company cannot deliver natural gas to a majority of these customers. This would indicate that in our next filing the Commission will take measures to assure any excessive costs are not unequitably borne by all of the Company's rate payers, due to earlier management decisions we have done with Northern Utilities Gas Roots Program in DR 82-105.

Interest on Adjustments

We will decrease interest for the foregoing adjustments at 8% compounded monthly in the following manner:

- 1) The \$230,000 over-collection for 6 months is \$9,338;
- 2) The \$76,450 decrease in propane costs for 6 months is \$3,103;
- 3) The \$188,616 exclusion of the estimated PGA for 4 months is \$5,093;
- 4) The \$337,259 exclusion of the estimated TGP rate increase for 3 months is \$6,745.00
- 5) The \$8,874 disallowance of the Johns-Manville account for 6 months is \$360.00

The total decrease in interest on adjustments is \$24,639.00. Any uncertainties in the interest adjustments will be adjusted in future period CGA. This is implicit in the nature of the CGA calculations.

Use of LNG vs. LPG

[6] CAP, in a motion dated 10/26/82, expressed a concern with the Company's decision to use higher priced LNG during the months of November, 1982; March, 1982; and April, 1983. CAP states that during those months, the lesser priced propane is not being used at all. The motion goes on to reiterate the Company's explanation of the need for LNG use to "sweeten" a mix of propane air and natural gas over a 25/75 ratio. If propane is not used in the mix, then LNG is not needed to "sweeten".

CAP petitions to have the less expensive propane replace the costly LNG in the Company's forecast. It appears this is an economically sound request, except that the Company also routinely uses some LNG every month in the summer due to "boil-off".

Due to a paucity of information on this subject in the record, the Commission will deny CAP's motion with regards to reducing the CGA estimate, but come the time for reconciliation, if at any time the Company utilized higher priced LNG when propane was available and useable, the Company can expect to see the cost differential ordered to be booked below the line.

CAP also raises issue concerning the sale of gas to Concord Natural Gas Co. at London, New Hampshire. Staff auditors have reviewed these concerns and feel that, until the final contract is filed with this Commission for approval, the basic accounting which includes these sales adequately disposes of the concern. We will, however, require the Companies to file this contract for review as soon as possible.

Cost of Gas Adjustment

Using Company Exhibit 9 of DR 82-276, we have recalculated the cost of gas adjustment to be \$.0595/therm. For comparative purposes only, if the base unit cost of gas is added to the recalculated CGA the *overall* cost of gas is equal to \$.4872/therm. As discussed in the beginning of this report the comparable *overall* cost of gas in the 1981-82 winter period was \$.5147/therm which is reduced by \$.0275/therm in this decision. Perhaps most importantly, however, this decision decreases the summer 1982 *overall* cost of gas (\$.5899/therm) by \$.1027/therm. Utilizing an average customer usage of 150 therms per months this equates to an immediate overall reduction in rate payers cost of \$15.41 per month or \$92.46 over the 6 month winter period.

The reduction from last winter period's CGA would equal \$4.13 per month or \$24.78 over the winter period for those same rate payers. Given this same scenario, a reduction in the overall cost of gas of \$.5193/therm requested by the Company in this filing is equal to \$.0321 /therm. Lowering the proposed rates by \$4.82 per month or \$28.92 for the winter period.

Finally, as can easily be discerned, the Commission is reviewing the cost of gas and all its components with much greater depth then it ever has before. The main reason for this is the recently escalating cost of gas which bears certain similarities to oil prices during the 1970's. The cause of this escalating cost is well known and has been spoken to numerous times in previous CGA dockets. We will not elaborate further on this subject. We will, however, emphasize our campaign to step up the reviewing process and add CGA filing required data.

The following is a list of date we will require to be filed on a monthly basis:

- 1) a monthly reconciliation of the cost of gas, by month and period — winter and summer. This should track any under or over-collection on the Company's books.
- 2) a list by month of product receipts -volume and cost for:
 - a) LPG — State source
 - b) LNG — State source
 - c) Storage natural gas — State source & file contracts
- 3) monthly inventory sheets for the above showing activity and how the used cost per unit was developed.
- 4) contracts for any off system sales or purchases negotiated during the month will be filed with the Commission.
- 5) other contracts, memo's or letters that effect this cost of gas by exchanging, eliminating, or other undisclosed manners during the months will be filed with 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 Gas Service Inc., Tariff page NHPUC No. 6 — Gas, 1st Revised Page 1, Superseding Original Page 1, and Page 1, 10/14/82, Superseding

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Original Page 1, be and hereby are rejected; and it is

FURTHER ORDERED, that Gas Service Inc. file revised tariff pages to reflect a Cost of Gas Adjustment of .0595 per therm, effective November 1, 1982.

By Order of the Public Utilities Commission of New Hampshire this second day of November, 1982.

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NH.PUC*11/02/82*[79420]*67 NH PUC 758*Manchester Gas Company

[Go to End of 79420]

Re Manchester Gas Company

Intervenor: Community Action Program

DR 82-274, Supplemental Order No. 15, 15,958

67 NH PUC 758

New Hampshire Public Utilities Commission

November 2, 1982

APPLICATION by a gas company to increase its cost of gas adjustment; rejected as filed and revised tariffs ordered.

1. RATES, § 303 — Variable rates based on cost — Fuel clause — Proposed wholesale rate increase.

[N.H.] A proposed increase for a cost of gas adjustment, based on a wholesale supplier's increased rates filed before the Federal Energy Regulatory Commission, was reduced where the wholesaler's filing was being contested and had not yet been put into effect. p. 759.

2. RATES, § 303 — Variable rates based on cost — fuel clauses — Interest as a factor.

[N.H.] The commission ordered that an adjustment be made to a company's cost of gas to reflect interest that had been ordered calculated but had never been paid. p. 760.

APPEARANCES: James C. Hood for the company; Gerald M. Eaton for Community Action Program.

BY THE COMMISSION:

REPORT

Manchester Gas Company (hereinafter referred to as either Manchester or "the Company") filed a cost of gas adjustment (CGA) of \$.0476 per therm for the time period of November 1, 1982 through April 30, 1983. On October 15, 1982 by letter the Company requested that the request be increased to \$.0523 per therm. The reason for the change is the net of an increase by Tennessee Gas Pipeline in their estimated PGA rate to become effective January 1, 1983, from \$.30 to \$.42 per D.T.; offset by three adjustments which the Commission staff first pointed out during its audit. These adjustments are as follows. The first was a decrease in the beginning balance of the undercollection by \$3,281 due to inaccuracies in the Company's previous

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winter period interest calculation. Second is an increase in the overcollection by \$3,380, for underground storage injection which was charged to last winters CGA and should have been charged to inventory.

The third was for a correction for the starting period of the interest calculation on the liquid propane adjustment. We will accept the three above adjustments. We will discuss the Tennessee increase later in this report.

A public hearing was held on this request at the Commission office in Concord on October 19, 1982.

Tennessee Gas Pipeline Rates

[1] The first item to be addressed is the Company's estimated increases in the cost of gas adjustment due to estimates by Tennessee Gas Pipeline in their PGA rate from 30¢ to 42¢ /DT followed by an additional increase as of February 1, 1983. The first increase is Tennessee's best estimate, since their actual filing will not be made until November 30, 1982. It is interesting to note that Tennessee's best estimate to the Company by letter dated September 22, 1982 (Exhibit No. 15) was 30¢ . This increase was changed by letter dated October 11, 1982 (Exhibit 16) to 42¢ . The estimate therefore changed 12¢ in a matter of 12 days. As this increase is based on an estimate and it is not known and measurable, we will use Tennessee's original estimate of 30¢ per DT figure, for lack of a better one, until a known figure is provided. Tennessee's PGA filing is due at FERC by November 30, 1983.

The concern the Commission has on projected TGP rate increases is the increase filed with the FERC on basic rates. An estimated level of rates is proposed to go into effect on February 1, 1983. This estimate increased Manchester's Cost of Gas by \$37,423.00 in commodity charges and \$121,049 in demand charges while reducing transportation demand charges by \$7,438. The Commission's concerns are that the increase is subject to further adjustment by the TGP, as well as the FERC, and is being contested by various parties including intervenors representing Manchester.

Since the Company's filing includes an increase in the cost of natural gas from Tennessee Gas Pipeline effective February 1, 1983, and Tennessee has filed for a wholesale rate increase with the Federal Energy Regulatory Commission (FERC) to be effective February 1, 1983 in Docket No. RP 82-125-000. FERC has rejected certain positions of that filing and has ordered Tennessee to file revised tariff pages on or before February 1, 1983. This Commission will exclude the February 1, 1983 Tennessee rate increase until such time as the actual revised tariffs have been filed and placed into effect by FERC. In addition, the Commission has become aware of the possibility of refunds to be made to Tennessee interstate customers as a result of the settlement of a three-year investigation by FERC into the alleged diversion of natural gas from the interstate to the intrastate market. FERC has approved a stipulation and consent agreement which will result in the refund of \$58.5 million from Tennessee, Sun, ARCO, and Mobil. The settlement agreement is subject to judicial review before it becomes final. The Commission will expect the Company to follow the developments on the refund issue and file that information at the same time that the February 1, 1983 Tennessee rate increase is known and measurable. Any refunds which are applicable to this winter period will be used

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to calculate the cost of gas adjustment rate for the remainder of the winter period.

The Tennessee rate filing includes items which FERC finds may be unjust, unreasonable, and unduly discriminatory. Therefore, the filing has been suspended and set for hearing. The New Hampshire gas companies have interviewed in that case as part of a New England customer group. The Commission will expect the New Hampshire companies to pursue all of the areas in the Tennessee filing which are considered unreasonable. Some of those areas are, but are not limited to;

- 1) a 19.5% return on common equity;
- 2) a 1% attrition factor;
- 3) facilities not in service on or before December 31, 1982;
- 4) advance payments; and,
- 5) transportation cost rate adjustments.

The Commission is further concerned that many of the aforementioned items are put into effect subject to refund and those refunds are not made to ratepayers for several years.

Interest on Propane

[2] Staff submitted Exhibit 18 which calculated the interest on propane purchased in December of 1978 and March 1981 and which was never paid for. This interest was ordered to be calculated in Report & Order No. 15,611 in Docket DR 82-104 (67 NH PUC 298) as well as in Second Supplemental Order No. 15,686 (67 NH PUG 367). Again, in a letter dated October 7, 1982 from staff to Mr. Skrzysowski, the Company was requested to supply the interest calculation. As stated in Exhibit 16, the Company states that no interest is due and therefore no calculation of interest was provided. We will accept staff's interest calculation and will reduce the cost of gas by \$18,654. We also would remind the Company that when this Commission orders

an adjustment to be made we expect that it will be made, and if the Company disagrees with an order the avenue of appeal of that order is available to them. As the summer cost of gas order is now approximately six months old and the Company has not appealed that order, we assume that they agreed with our original discussion.

Propane Cost Estimates

The Company in arriving at their estimate of propane costs averaged the weighted cost of propane in inventory as of August 31, 1982 and the weighted estimates cost of purchases during the period of November 82 through April 83 the cost of propane in inventory as of August 31, 1982 includes propane purchases at a cost per gallon of \$.4427. In calculating the average cost of propane for the winter period the Company arrived at a cost of \$.5769 per gallon. The correct figures should have been \$.5712. The Company has agreed with this finding but requested that this cost not be changed as it is only an estimate. Since all of these figures are estimates, we will make this change and lower the total anticipated cost of gas by \$15,707 ($.5712 \cdot .913 \times 2,493,086 = \$1,559,674 - 1,575,381$)

Next Hearing

This Commission hereby notifies all New Hampshire Gas companies presently utilizing the seasonal CGA that, subject to the Commission's call, on or about December 1, 1981 the Commission may require updated CGA filings. These filings will include six month estimated CGA data from January 1, 1983 to June, 1983. This is a Commission effort to tie the New Hampshire Jurisdictional CGA with the Natural Gas Suppliers

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Purchase Gas Adjustment (PGA) filing at the Federal Energy Regulatory Commission level.

It is the Commission opinion that by considering this "timing change" in CGA filings, we will dampen most inaccuracies of the estimated changes in the suppliers PGA. This consideration is most definitely in the best interest of the consumer and the Company alike. In the current filing the Commission will still allow a six month estimated CGA, less Tennessee Gas Pipeline's Estimated Rate Increase and Second Estimate on their PGA. Any estimated rate increases eliminated from this filing may be further considered in the proposed December 1982 filing. This will allow both the natural gas supplier and the companies to generate estimates of greater accuracy, or even better, present actual known and measurable rate increase.

We find that the cost of gas for Manchester for the next winter period to be .0358 per therm. The Company in its revised filing filed for a rate of .0523 for the winter period 1982-1983. Both are lower than Manchester's summer period 1982, cost of gas rate of \$.1005. The rate being approved by the Commission will reduce the average consumers bill, using 150 therms/month this winter period by \$2.48/month versus the Company's request, and by \$9.71 per month from the Company's summer 1982 rate.

We will also require over and above the monthly reconciliation that the Company now provides to the Commission on a monthly basis, a complete reconciliation of the cost of gas on a monthly basis including a detailed analysis of types of fuels used, cost per therm of fuels used, and total cost of fuel. We will also require that the Company submit a monthly report, by date, of

all propane, LNG and supplemental fuels received and the cost of these receipts.

Our order will issue accordingly.

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

MANCHESTER GAS COMPANY

Purchased:

Demand -
Period
11/1/82 - 4/30/83

Commodity -
Period
11/1/82 - 12/31/82
1/1/83 - 1/31/83
2/1/83 - 3/30/83

Storage Gas:
Commodity -
Period
11/1/82 - 4/30/83

Fixed -

Consolidated Gas Supply Storage

11/1/82 - 4/30/83
11/1/82 - 4/30/83
11/1/82 - 1/31/83
2/1/83 - 4/30/83

Penn-York Energy Storage
11/1/82 - 4/30/83
11/1/82 - 1/31/83
2/1/83 - 4/30/83

Produced Gas:

Propane - Commodity
- Storage Demand
Liquefied Natural Gas

ADD: Prior Period Overcollection
Tennessee Refunds
Interest
Interest on Propane

Projected Firm Gas Sales (Therms)

Total Anticipated Costs _____
Unit Cost of Gas Sold = Projected Firm Gas Sales

Deduct Base Unit Cost of Gas Sold

SUPPLEMENTAL ORDER

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

ORDERED, that 2nd and 3rd Revised Page 26 of Tariff NHPUC # 13 — Gas of Manchester Gas Company be, and hereby is rejected; and it is

FURTHER ORDERED, that Manchester Gas Company file 4th Revised Page 26 of Tariff NHPUC #13 — Gas reflecting \$.0358 per therm effective November 1, 1982.

By order of the Public Utilities Commission of New Hampshire this second day of November, 1982.

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NH.PUC*11/03/82*[79421]*67 NH PUC 762*Concord Electric Company

[Go to End of 79421]

Re Concord Electric Company

DR 81-97, Fifth Supplemental Order No. 15,960

67 NH PUC 762

New Hampshire Public Utilities Commission

November 3, 1982

PETITION for a step increase in electric rates; granted as modified.

EXPENSES, § 49 — Employee pensions and welfare — Pension funding — Past obligations.

[N.H.] An electric company's proposed pension fund expense was decreased where the company's proposal would have had increased current pension amounts paying for past service obligations, because the commission found it more equitable to spread the funding over a longer period of time than to ask present ratepayers to bear the burden of funding past pension costs.

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BY THE COMMISSION:

REPORT

On September 22, 1982, Concord Electric Company filed a petition for an increase in rates in the amount of \$277,927. The filing for a second step increase results from the settlement agreement entered into by the Company, Staff, and intervenors in Docket Number DR 81-97 and accepted by the Commission in its Report and Order issued on October 6, 1981 (66 NH PUC 389).

The revenue increase approved on October 6, 1981 included no provision for attrition and entitled the Company to institute a second step increase one year from the date of the

Commission's Order fixing the level of permanent rates. The agreement for a step increase provided the Company with the opportunity to raise its permanent rates to cover actual cost increases in payroll and related payroll taxes, pension expense, property taxes, and the utility assessment. In addition, the Commission issued its Fourth Supplemental Order No. 15,466 approving Concord Electric's request to adopt a full normalization method of accounting in order to take advantage of the benefits of the Accelerated Cost Recovery System (ACRS) under Section 201 of the Economic Recovery Tax Act (ERTA). As the transitional rule for normalization requires that the effects of normalization must be included in the cost of service when established under a test year that included post-1980 property, this Commission provided for consideration of the costs effects in the step increase.

The Commission staff has audited all aspects of the step increase filing and has resolved all of the expense items, with the exception of pension costs. The Company has asked that pension costs be allowed to remain at the same level as found in the original rate increase. Pension costs for 1981 were revised to \$210,811 and the rate increase reflected costs of \$254,077 based on the actuarial valuation prepared by the Company's insurer. The Company paid \$254,077 into its pension fund because it was felt that they were obliged to pay the higher amount that was allowed in the rate case. Concord Electric further felt that by paying the higher amount they would be able to complete funding of the past service obligation sooner and has requested that the pension expense be left at the higher level in order to complete funding of past service sooner. The Company also feels that inclusion of the previously allowed amount would enable them to maintain stability in that element of their operating costs. The 1982 actuarial valuation shows a funding requirement of \$224,535. As the actuarial valuation includes a program to fund past service over a period of time, the Commission will include the \$224,535 in this step increase, or a decrease of \$29,542. Spreading the funding for past service over a longer period is more equitable than asking present ratepayers to fund the pension costs for past service.

The Company's original request for a \$52,593 increase for federal income tax normalization has been revised after discussions between the finance staff and the Company to \$4,656. Normalization of the tax benefits for ACRS result in an increase of \$40,849 in deferred taxes, however, the Company was allowed \$38,335 for deferred taxes applicable to the percent repair allowance in its original increase. The Commission will accept the \$4,656 agreed to by staff and the Company. Concord Electric's request

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for an increase of \$74,258 was based on its estimate of the local property tax increase for 1982. As the property tax rates are now known and measurable and are very close to the Company's estimate, the Commission will allow the expense increase amount requested for that item. The payroll and related payroll tax increase request was based on annualization of the salary and wage expense level in effect on July 1, 1982. Those items have been audited by staff and have been found to be accurate. Therefore, the Commission will accept the requested increase of \$138,297.

A summary of the amounts approved for this step increase is as follows:

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

| | |
|---------------------------|------------|
| Payroll | \$ 131,534 |
| Payroll taxes | 6,762 |
| Pension expense | (29,542) |
| Local property taxes | 74,258 |
| Public Utility Assessment | 8,485 |
| FIT Normalization | 4,656 |
| | <hr/> |
| Total | \$ 196,153 |

An increase of \$196,153, is allowed for this step increase. As has been stated in the past, the granting of this increase should ameliorate the effects of attrition upon the last found rate of return of the Company.

The Commission notes that the increase is approximately 0.8% of annual revenues and has been proposed to be applied to the specific rates and charges of the tariff in accordance with the rate structure corrections provided for in Settlement Agreement No. 2 in Docket No. DR 81-97. The Company and Commission staff have conferred at length on the rate design for the step increase and staff reports that the tariff filed November 1, 1982 by the Company conforms with the requirements of the previous agreement. In particular, each class has received an increase in base rates, excluding fuel, of approximately 2.03 percent which applies solely to the "local facilities" charges for each class. The customer charges and energy charges remain unchanged. This practice, being consistent with the earlier agreements which were accepted by the Commission and consistent with the types of costs allowed in the step increase, is approved by the Commission. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

On the basis of the foregoing Report, which is made a part hereof; it is hereby

ORDERED, that a step increase of \$196,153 or 0.8 percent of annual revenues is approved for the Company as of November 1, 1981; and it is

FURTHER ORDERED, that the proposed tariff pages filed for effect November 1, 1982, are hereby approved.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1982.

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NH.PUC*11/03/82*[79422]*67 NH PUC 765*Fuel Adjustment Clause

[Go to End of 79422]

Re Fuel Adjustment Clause

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

DR 82-266, Order No. 15,961

67 NH PUC 765

New Hampshire Public Utilities Commission

November 3, 1982

ORDER denying automatic hearings on fuel adjustment clauses filed monthly.

RATES, § 303 — Variable rates based on cost — Fuel clauses — Automatic hearings.

[N.H.] The commission will not automatically schedule fuel adjustment clause hearings for those utilities filing monthly unless specifically requested to do so, but will permit the clauses themselves to govern applicable surcharges.

BY THE COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1982, 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 for those utilities which file monthly unless requested or needed by one of those utilities; and the Commission would 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 or needed to have a hearing scheduled; and

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

ORDERED, that 4th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 — Electricity, is denied due to a transposition error in the Report and Order No. 15,910 (DR 82-243) issued October 6, 1982 (67 NH PUC 686); and it is

FURTHER ORDERED, that Concord Electric Company file a revised tariff page 19A, providing for a final surcharge of \$0.465 per 100 KWH for the month of November, 1982; and it is

FURTHER ORDERED, that 4th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, is denied due to a transposition error in the Report and Order No.

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15,910 (DR 82-243) issued October 6, 1982; and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company file a revised tariff page 19A providing for a fuel surcharge of \$0.435 per 100 KWH for the month of November, 1982; and it is

FURTHER ORDERED, that 2nd Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of 14.5 cents, \$0.145 per 100 KWH for the month of October, 1982 be, and hereby is, permitted to remain in effect for November, 1982; and it is

FURTHER ORDERED, that 2nd Revised Page 30 of Granite State Electric Company, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the month of October, 1982, of \$0.62 per 100 KWH be, and hereby is, permitted to remain in effect for November, 1982; and it is

FURTHER ORDERED, that 20th Revised Page 15 of the New Hampshire Electric Cooperative, Inc. tariff, NHPUC No. 10 — Electricity, providing for fuel surcharge of \$2.10 per 100 KWH for the month of November, 1982, be, and hereby is, permitted to become effective November 1, 1982 and lasting until such time as the Commission approves a new tariff; and it is

FURTHER ORDERED, that 22nd Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$2.45 per 100 KWH for the month of November, 1982, be, and hereby is, permitted to, become effective November 1, 1982; and it is

FURTHER ORDERED, that 106th Revised Page 6 of Littleton Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$1.61 per 100 KWH for the month of November, 1982, be, and hereby is, permitted to become effective November 1, 1982; and it is

FURTHER ORDERED, that 74th Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of (\$0.11) per 100 KWH for the month of November, 1982, be, and hereby is, permitted to become effective November 1, 1982; and it is

FURTHER ORDERED, that 70th Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of (\$0.41) per 100 KWH for the month of November, 1982, be, and hereby is, permitted to become effective November 1, 1982 and lasting until such time as the Commission approves a new tariff.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1982.

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NH.PUC*11/05/82*[79423]*67 NH PUC 767*New England Power Company

[Go to End of 79423]

Re New England Power Company

DF 82-271, Supplemental Order No. 15,966

67 NH PUC 767

New Hampshire Public Utilities Commission

November 5, 1982

AUTHORIZATION for the issuance of refunding bonds.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by Order Nos. 14,020 (65 NH PUC 57), 14,128 (65 NH PUC 125), and 15,898 (67 NH PUC 644) New England Power Company (the Company) was authorized to issue and sell one or more series not exceeding \$90 million principal amount of General and Refunding Mortgage Bonds (the Refunding Bonds), to mature in not more than 30 years from date as of which the Refunding Bonds are issued, to conform to the terms of Pollution Control Bonds to be issued simultaneously therewith by the Massachusetts Industrial Finance Agency (MIFA) under the Indenture dated March 15, 1980, and pursuant to the Loan Agreement between the Company and MIFA: it is

ORDERED, that the Company is authorized to issue the Refunding Bonds at an interest rate not in excess of 147/8% per annum and to issue and pledge First Mortgage Bonds at the same rate of interest as the Refunding Bonds, and it is

FURTHER ORDERED, that in all other respects our Orders, 14,020, 14,128, and 15,898 of January 29, 1980, March 13, 1980, and September 24, 1982 respectively, shall remain in full force and effect.

By order of the Public Utilities Commission of New Hampshire this fifth day of November, 1982.

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NH.PUC*11/08/82*[79424]*67 NH PUC 767*Concord Natural Gas Corporation

[Go to End of 79424]

Re Concord Natural Gas Corporation

Intervenor: Community Action Program

DR 82-278, Supplemental Order No. 15,980

67 NH PUC 767

New Hampshire Public Utilities Commission

November 8, 1982

PETITION for an increase in a cost of gas adjustment; rejected as filed but granted as modified.

1. RATES, § 152 — Reasonableness — Future prospects — Estimates of wholesale rate increases.

[N.H.] Rate increase requests based on a wholesale supplier's estimates of its on future increases are not wholly reliable, even if the wholesaler's estimates have been formally filed, since it is always uncertain that the Federal Energy Regulators Commission will approve wholesale rates exactly as filed. p. 768.

2. EXPENSES, § 17 — Reasonableness — Costs resulting from mismanagement — Fuel supply costs.

[N.H.] Consumers should not bear costs imprudently incurred by a company's management; therefore, where a gas company failed to fill its propane tanks at the low summer fuel rate but waited until the prices rose again in the fall, that cost differential in fuel prices will be disallowed. p. 769.

3. PAYMENT, § 23 — Incorrect billing — Company error — Recovery of undercollection.

[N.H.] Undercollections of revenues due to company error in billing may be recovered through the cost of gas adjustment over a period of time similar to the length of time during which the billing errors occurred. p. 770.

APPEARANCES: David Marshall for Concord Natural Gas Corporation and Gerald Eaton for Community Action Program.

BY THE COMMISSION:

REPORT

Concord Natural Gas Corporation (hereinafter referred to as either Concord or the "Company") filed a cost of gas adjustment (CCA) of .4064 per therm for the time period November 1, 1982 through April 30, 1983.

At the time of the duly noticed public hearing at the Commission offices, Concord, on October 20, 1982, the Company increased this request to \$0.4141 per therm due to an increase by Tennessee Gas Pipeline in their estimated increase of their PPCA to be effective January 1, 1983, from 30¢ to 42¢ per therm.

The staff has completed an audit of the Company's 1981-82 Winter's cost of gas adjustment and has raised several concerns which will be addressed in this report and order. Other items addressed are a result of the Commission's hearing process.

[1] The first item in terms of importance is the Company's increase in the cost of gas adjustment due to estimates by Tennessee Gas Pipeline in their PGA rate from 30¢ to 42¢ . This increase is Tennessee's best estimate, since their actual filing will not be made until November 30, 1982. It is interesting to note that Tennessee's "best estimate" to the Company by letter dated

September 22, 1982 (Exhibit 29, Attachment E) was 30¢ . This increase was changed by letter dated October 11, 1982 (Exhibit 30, Revised Attachment E) to 42¢ . The estimates therefore changed 12¢ in a matter of 12 days. As this increase is based on an estimate and is not known and measurable after January 1, 1983, we will accept Tennessee's original estimate of 30¢ . The Commission finds that Concord Natural Gas has not carried its burden as to any increase by Tennessee Gas Pipeline.

In addition to this, and for the same reasons, the Commission looks unfavorably on the estimated increase in TGP rates as of February 1, 1983. We will exclude these two estimates (totalling \$188,272), principally because it is subject to further refinement by TGP, as well as the FERC, and is being contested

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by various parties, including intervenors representing Gas Service.

The Company's filing includes an increase in, the cost of natural gas from Tennessee Gas Pipeline, effective February 1, 1983. Tennessee has filed for a wholesale rate increase with the Federal Energy regulatory Commission (FERC), to be effective February 1, 1983, in Docket No. RP82-125-000. FERC has rejected certain portions of that filing and has ordered Tennessee to file revised tariff pages on or before February 1, 1983. This Commission will exclude the February 1, 1983 Tennessee rate increase until such time as the actual revised tariffs have been filed and placed into effect by FERC. In addition, the Commission has become aware of the possibility of refunds to be made to Tennessee interstate customers as the result of a settlement of a three-year investigation by FERC into the alleged diversion of natural gas from the interstate to the intrastate market. FERC has approved a stipulation and consent agreement which will result in the refund of \$58.5 million from Tennessee, Sun, ARCO and Mobil. The settlement agreement is subject to judicial review before it becomes final. The Commission will expect the Company to follow the developments on the refunds issue and file that information at the same time that the February 1, 1983 Tennessee rate increase is known and measurable. Any refunds which are applicable to this Winter period will be used to calculate the cost of gas adjustment rate for the remainder of the Winter period.

The Tennessee rate filing includes items which FERC finds may be unduly discriminatory, therefore the filing has been suspended and set for hearing. The New Hampshire gas companies have intervened in that case as part of a New England customer group. The Commission will expect the New Hampshire companies to pursue all of the areas in the Tennessee filing which are considered unreasonable. Some of those areas are, but are not limited to, 1) 19.5% return on common equity, 2) a 1% attrition factor, 3) facilities not in service on or before December 31, 1982, 4) advance payments, and 5) transportation cost rate adjustments. The Commission is further concerned that many of the aforementioned items are put into effect subject to refund, and those refunds are not made to ratepayers for several years.

Cost of Propane

[2] The Commission learned through Exhibit No. 32 that the cost of propane reached a low point as of May 5, 1982 of .365178¢ per gallon, and then increased during the summer. The Company did not take advantage of this low price to fill its tanks for this winter period. The

reason given by the Company was that they did not know what the cost of propane would be at the end of the summer, and that the cost of propane usually falls during the summer. The Company also stated that to fill its tanks they would incur carrying costs, thus ignoring cost savings to the ratepayers. The Company submitted Exhibit 37, which was a list of price changes in propane since 1972. This exhibit shows that in that period of time the cost of propane fell in only two summer periods. It is also interesting to note that the May 5, 1982 price per gallon was the lowest since August 24, 1979. The Company started to fill its tanks in September of 1982 at a price per gallon of .573079 cents. We find that reasonable management should have anticipated an increase in price, especially since Exhibit 37 was provided by the Company. We

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will therefore calculate the CCA as though management had acted in a prudent manner and filled its tanks to 8570 capacity in June of 1982, and to 10070 in October. We will also use staff's assumption as to the number of gallons of propane to be used in this winter period to compute a cost per gallon of propane for the winter period of \$.5377. The difference between the actual cost of propane and the cost as projected by staff is due to the Company's choosing not to purchase any propane when the cost was low. Due to the Company's election, this difference will be treated as a below-the-line expense, as this Commission will never allow the consumer to incur costs due to management inefficiencies. The CGA is meant to improve the Company's cash flow, but not to the obvious detriment of ratepayers.

Billing Errors

[3] Staff during cross-examination brought out that Concord had made two adjustments for billing errors. The first was to Concord Litho, which reduced the CGA undercollection by \$10,392.87 and covered a period of time from March 1981 to February 1982. We will allow this adjustment by the Company. The other adjustment is for Wendy's Hamburgers, and increased the CGA under-collection by \$5,751.61. This adjustment dates from February 1979 until April of 1982, which is a period of 39 months and arises due to Company error. We will allow the Company to charge the amount back through the cost of gas adjustment over a 39-month period, similar to the length-of-error period. \$885.00 is to be allowed in this winter's CGA (\$5,751.61 \times 6).

Purchases in Loudon

Concerning the sale of gas to Concord Natural Gas Corp. at Loudon, N. H. by Gas Service, Inc., staff auditors have reviewed these concerns and feel that until the final contract is filed with the Commission for approval, the basic accounting which includes these sales adequately disposes of these concerns. We will, however, require the companies to file this contract for review as soon as possible.

LNG

The Commission is concerned with the point brought up by CAP, in that Concord should be using less LNG product, which is more expensive, than its possible alternative, propane. At this point we do not have sufficient data on the record to make a change, but will not prevent CAP or our staff, or any other party, from delving deeper into this issue and putting their findings on future records upon which we can and will act if warranted.

Future CGA Hearings

This Commission hereby notifies all New Hampshire gas companies presently utilizing the seasonal CGA that, subject to the Commission's call on or about December 1, 1982, the Commission may require updated CGA filings. These filings will include a 6-month estimated CGA data from January 1, 1983 — June, 1983. This is a Commission effort to tie the New Hampshire Jurisdictional CGA with the Natural Gas Suppliers Purchase Gas Adjustment (PGA) filing at the Federal Energy Regulatory Commission level.

It is the Commission opinion that by considering this "timing change" in CGA filings we will dampen most inaccuracies of the estimated changes in the suppliers' PGA. This consideration is most definitely in the best interest of consumer and company alike. In the current filing the Commission will still

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allow a 6-month estimated CGA, less Tennessee Gas Pipeline's estimated rate increase and second estimate on their PCA. Any estimated rate increases eliminated from this filing may be further considered in the proposed December 1, 1982 filing. This will allow both the natural gas supplier and the companies to generate estimates of greater accuracy, or perhaps present actual known and measurable rate increases, as well as providing all parties more time to analyze the filing.

COST OF GAS ADJUSTMENT

Using Company Exhibit 29 we have recalculated the cost of gas adjustment to be \$0.3868/therm. For comparative purposes only, if the base unit cost of gas is added to the recalculated CGA the *overall* cost of gas is equal to \$0.5837/ therm. As discussed in the beginning of this Report the comparable cost of gas as requested was \$.4141/therm, which was reduced by \$.0273/therm in this decision. Utilizing an average customer usage of 150 therms per month this equates to an overall reduction versus the Company's request to pay the rate-payers of a cost of \$4.10 per month or \$24.57 over the winter period.

Finally, as can easily discerned, the Commission is reviewing the cost of gas and all its components with much greater depth than it ever has before. The main reason for this is the recently escalating cost of gas which bears certain similarities to oil prices during the 1970's. The cause of this escalating cost is well known and has been spoken to numerous times in previous CGA dockets. We will not elaborate further on this subject. We will however, emphasize our campaign to step up the reviewing process and add CGA filing required data.

The following is a list of data we will require filed on a monthly basis:

- (1) a monthly reconciliation of the cost of gas, and type by month and period — winter and summer. This should track any under or over-collection on the company's books;
- (2) a list by month of product receipts - volume and cost for:
 - (a) LPG - State source
 - (b) LNG - State source

(c) Storage natural gas - State Source & file contracts;

(3) monthly inventory sheets for the above showing activity and how the used cost per unit was developed;

(4) contracts for any off system sales or purchases negotiated during the month will be filed with the Commission; and

(5) other contracts, memo's or letters that effect this cost of gas by exchanging, eliminating, or other undisclosed manners during the months will be filed with the Commission.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that 29th and 30th Revised Page 21 of Tariff, NHPUC No. 13 — Gas of Concord Natural Gas Corporation be, and hereby is, rejected; and it is

FURTHER ORDERED, that Concord

Natural Gas Corporation file 31st Revised Page 21 of Tariff NHPUC No. 13 — Gas reflecting \$.3868 per therm effective November 1, 1982.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 1982.

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NH.PUC*11/08/82*[79425]*67 NH PUC 772*Fuel Adjustment Clause

[Go to End of 79425]

Re Fuel Adjustment Clause

Intervenors: Concord Electric Company and Exeter and Hampton Electric Company

DR 82-266, Supplemental Order No. 15,982

67 NH PUC 772

New Hampshire Public Utilities Commission

November 8, 1982

ORDER permitting an electric company's fuel surcharge to become effective.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Order No. 15,961 dated November 3, 1982, (67 NH PUC 765), ordered Concord Electric Company to file a revised tariff page 19A to its tariff, NHPUC No. 8 -Electricity, providing for a fuel surcharge of \$0.465 per 100 KWH for the month of November, 1982; and

WHEREAS, the Company filed 5th Revised Page 19A in accordance with the Commission Order; it is

ORDERED, that 5th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 - Electricity, providing for a fuel surcharge of \$0.465 per 100 KWH for the month of November, 1982, be, and hereby is, permitted to become effective November 1, 1982; and

WHEREAS, the Commission Order No. 15,961 dated November 3, 1982, ordered Exeter & Hampton Electric Company to file a revised tariff page 19A to its tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge of \$0.435 per 100 KWH for the month of November, 1982; and

WHEREAS, the Company filed 5th Revised Page 19A in accordance with the Commission Order, it is

ORDERED, that 5th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. is - Electricity, providing for a fuel surcharge of \$0.435 per 100 KWH for the month of November, 1982, be, and hereby is, permitted to become effective November 1, 1982.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 1982.

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NH.PUC*11/08/82*[79426]*67 NH PUC 773*Northern Utilities, Inc.

[Go to End of 79426]

Re Northern Utilities, Inc.

Intervenor: Community Action Program

DR 82-275, Supplemental Order No. 15,983

67 NH PUC 773

New Hampshire Public Utilities Commission

November 8, 1982

ORDER rejecting a cost of gas adjustment as filed and ordering revised tariffs filed.

1. RATES, § 303 — Variable rates based on cost — Fuel clauses — In line with comparable companies.

[N.H.] The commission expressed concern about a gas company's cost of gas surcharge that was well below cost of gas adjustments for comparable companies, although the commission recognized that differences may be explained by the ongoing process of natural gas deregulation. p. 774.

2. RATES, § 152 — Reasonableness — Future prospects — Estimates of wholesale rate

increases.

[N.H.] Projected increases in wholesale rates and filings before the Federal Energy Regulatory Commission may be considered when setting a cost of gas adjustment for a gas company, but they are not dispositive because they are not known and certain. p. 774.

3. REVENUES, § 16 — Uncollected revenues — Excessive undercollections — Future recovery period.

[N.H.] A gas company's excessive undercollection of revenues in its winter period is an abnormal event, even if it is due to problems in company forecasting, and in order to smooth out the impact, the undercollection may be spread out into the following year's summer period. p. 776.

4. RATES, § 384 — Gas — Classes of service — Gas roots versus other customers — Cost of gas adjustment.

[N.H.] In comparing the rights of a gas company's gas roots customers and its other consumers, the commission found it should continue to disallow gas roots program costs in the cost of gas adjustment, but in light of new information that gas roots customers are serviced by independent propane dealers, the commission found it could no longer hold the company's gas roots costs to be the result of imprudent management. p. 777.

APPEARANCES: Eaton W. Tarbell, Jr., for Northern Utilities, Inc.; and Gerald Eaton for the Community Action Program.

By the COMMISSION:

REPORT

Northern Utilities, Inc. (hereinafter referred to as "Northern" or "the Company") on October 1, 1982 filed with this Commission a cost of gas adjustment (CGA) seeking a surcharge of \$0.4460 per therm. This filing was subsequently revised by two additional company filings, Exhibit 22 and 23, to \$0.4283 (Option A) and \$0.4268 (Option B) per therm. On October 19, 1982, during the hearing process, the Company submitted its fourth filing in 19 days (Exhibit 25). This time tile proposal was \$0.4350 per therm.

Multiple filings are extremely difficult for any regulatory body to properly evaluate in a time frame as short as that accorded the CGA. Northern Utilities, like any utility, by statute has the burden of proof. The Commission has had its

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auditing staff working overtime attempting to evaluate the numerous components that enter into the CGA. Even with that superior effort, there remains many questions that unanswered must be resolved against the Company until or unless more substantive and persuasive proof is provided.

[1] The Commission since 1980 has been conducting these audits of the CGA. While these audits have led to greater levels of accuracy, the Commission remains concerned that there be an

acceleration in the amount of information provided this Commission, especially where as here there is multiple filings within a short time frame. The Commission will require sworn, prefiled testimony to accompany any and all future cost of gas adjustment filings, including requests for rehearings. This prefiled testimony is to include discussion of *all* estimates made and set forth any agreements, contracts or understandings between Northern Utilities and any of its subsidiaries.

The following is a list of data we will require on a monthly basis from this point forward:

- (1) a monthly reconciliation of the cost, by month and period — winter and summer. This should track any under or over-collection on the Company's books;
- (2) a list by month of product receipts — volume and cost for:
 - (a) LPG — State source
 - (b) LNG — State source
 - (c) Storage natural gas — State source & file contracts;
- (3) monthly inventory sheets for the above showing activity and how the used cost per unit was developed;
- (4) contracts for any off-system sales or purchases negotiated during the month will be filed with the Commission; and
- (5) other contracts, memos or letters that effect this cost of gas by exchange, eliminating, or other undisclosed matter during the months will be filed with the commission.

This surcharge can be compared to a summer 1982 period surcharge of \$.3150 per therm. The Commission is concerned that the cost of gas in Northern Utilities' basic rates is below that found reasonable for Gas Service and Manchester Gas Company. Northern Utilities is instructed to place a filing before us as to folding in a level of the CCA so that their basic rates reflect the same cost level of gas costs as does the present rate for Manchester Gas and Gas Service.

The latest CGA filing of the four Exhibits (Exhibit 25) of \$0.4350/therm will be used as a starting point, as it is a more proper reflection of the Commission's Orders in DR 82-105, which remain in force. However, it should be recognized that the Commission is about to undertake a review of previous orders as to the proper treatment and relationship for tank farm customers to the system.

The Commission recognizes that a large level of the requested increase relates to the ongoing process of natural gas deregulation. This situation is beyond the control of either Northern or this Commission. However, it is we, not the policy makers in Washington, that must explain what is occurring to those in Northern's service territory.

[2] The requested increase in the cost of gas adjustment has as one of its causes projected increases by Tennessee Gas Pipeline (TGP). These projections are for early 1983, but which have not been approved by the FERC.

In this proceeding, Northern has two almost identical letters that relate to

differing projections as to TGP's increase. Both letters are identical but for the price and both contain statements that it is their best estimate at this time. The result of the change from 30¢ to 42¢ per DT is an increase of the CGA by \$128,858.

The adjustment to 42¢ per DT is rejected. This is the adjustment that is not known and measurable. Nor does two conflicting pieces of paper establish a convincing case. Northern is found not to have carried its burden of proof as to this item. Therefore, the Commission will reflect this adjustment and will use the 30¢ per DT figure until a known figure is provided.

A second concern the Commission has on projected TGP rate increases is the increase filed with the FERC on basic rates. An estimated level of rates is proposed to go into effect on February 1, 1983. This estimate increased Northern's Cost of Gas by \$45,416 in commodity charges and \$134,242 in demand charges and \$23,664 for TGP transportation charges. The Commission's concerns are that the increase is subject to further adjustment by the TGP, as well as the FERC, and is being contested by various parties including intervenors representing Northern.

The Company's filing includes an increase in the cost of natural gas from Tennessee Gas Pipeline effective February 1, 1983. Tennessee has filed for a wholesale rate increase with the Federal Energy Regulatory Commission (FERC) to be effective February 1, 1983, in Docket No. RP 28-125-000. FERC has rejected certain positions of that filing and has ordered Tennessee to file revised tariff pages on or before February 1, 1983. This Commission will exclude the February 1, 1983 Tennessee rate increase until such time as the actual revised tariffs have been filed and placed into effect by the FERC. In addition, the Commission has become aware of the possibility of refunds to be made to Tennessee interstate customers as a result of the settlement of a three-year investigation by FERC into the alleged diversion of natural gas from the interstate to the intrastate market. FERC has approved a stipulation and consent agreement which will result in the refund of \$58.5 million from Tennessee, Sun, ARCO and Mobil. The settlement agreement is subject to judicial review before it becomes final. The Commission will expect the Company to follow the developments on the refund issue and file that information as soon as possible.

The Tennessee rate filing includes items which FERC finds may be unjust, unreasonable, and unduly discriminatory. Therefore, the filing has been suspended and set for hearing. The New Hampshire gas companies have intervened in that case as part of a New England customer group. The Commission will expect the New Hampshire companies to pursue all of the areas in the Tennessee filing which are considered unreasonable. Some of these areas are, but are not limited to: (1) a 19.5% return on common equity; (2) a 1% attrition factor; (3) facilities not in service on or before December 1, 1982; (4) advance payments; and (5) transportation cost rate adjustments. The Commission is further concerned that many of the aforementioned items are put into effect subject to refund and those refunds are not made to ratepayers for several years.

The Commission will thereby reduce the CGA by the \$203,322 associated with these adjustments. This Commission hereby notifies all New Hampshire gas companies presently utilizing the seasonal

CGA that, subject to the Commission's call on or about December 1, 1982, the Commission may require updated CGA filings. These filings will include six (6) month estimated CGA data from January 1, 1983 - June, 1983. This is an effort by the Commission to tie the New Hampshire jurisdictional CGA with the marginal gas suppliers purchase gas adjustment (PGA) filing to the Federal Energy Regulatory Commission level.

It is the Commission's opinion that by considering this "timing change" in CGA filings we will dampen most inaccuracies of the estimated changes in the suppliers PGA. This consideration is most definitely in the best interest of consumer and company alike. In the current filing, the Commission will still allow a six-month estimated CGA, less Tennessee Gas Pipeline's estimated rate increase and second estimate on their PGA. Any estimated rate increases eliminated from this filing may be further considered in the proposed December 1, 1982 filing. This will allow both the natural gas supplier and the companies to generate estimates of greater accuracy or perhaps present actual known and measurable rate increases, as well as provide all parties more time to analyze the filings.

[3] The next issue involves the \$1,395,510 under-collection of the 1981-1982 winter period that the Company has included in this filing. During the hearing, the Company attorney proposed the possibility of deferring part of this under-collection into the summer 1983 period. The Company witness rejected this because it would mean summer customers would be forced to bear the burden of winter period costs. However, the Commission is also aware that the Company witness testified to problems with management forecasting. In fact, Northern has had problems forecasting. The extent of the problem that is attributable to management versus Commission forecasting errors is unclear from the record. Furthermore, an abnormal event such as this type of undercollection has traditionally been spread over a time period sufficient in length to smooth out the impact. The Commission will accept this amortization process.

For purposes of this order, the Commission will allow rates to reflect \$697,755 of the under-collection. The remainder will be the subject of hearings beginning in December of 1982. In particular, these hearings will focus on the following issues: (1) how much of the under-collection is attributable to Northern forecasting error; (2) whether propane purchases and other supplemental gas purchases were in fact incurred prudently or were they the result of improper planning; (3) whether the expenses associated with the purchases of gas from or through affiliated companies to Northern were incurred prudently and with this Commission's approval or absent such approval; (4) whether Northern has ever received or did receive during the prior winter period the level of natural gas that was discussed as a primary reason for the merger of Northern Gas into Bay State; (5) whether there is in fact a more reasonable amortization period other than six months for whatever costs remain a legitimate cause of the undercollection not as of yet recognized in rates.

The Commission, pending this review, will exclude \$697,755 plus interest from being recovered as part of the undercollection. The Commission does allow any refunds received between November 1, 1982 and April 30, 1983 to be used as an offset to this level that remains

uncollected. The remainder will receive a thorough review and if reasonableness requires an

adjustment will be made as of January 1, 1983.

[4] Another issue that is in need of a greater level of review is the relationship of Northern Utilities, its gas roots or tank farm customers and the rights of other consumers.

The Commission has been attempting to resolve the issues associated with gas roots customers over numerous proceedings. In fact, Commission involvement can be traced back to 1976 on page 5 of Report and Order No. 12,678 (62 NH PUC 78).

The Commission has in Report and Order No. 15,901 (67 NH PUC 645) stated that Northern's request to have the additional costs of the "gas roots" program allowed in the cost of gas adjustment is rejected.

This proceeding revealed new pieces of information as facts never known by the Commission. For example, it was never put forth that these customers were individually serviced by independent propane dealers who owned these customers' tanks. It was never revealed by the Company that rent for these tanks were charged in the CGA. It was never revealed by the Company that these customers included commercial, small industrial, and employees who are eligible for discounts.

The Commission finds that at least temporarily it must continue for this CGA the findings of past orders and exclude one half of the Company's calculation of excess gas roots cost or \$78,507 for the undercollection of the last winter period. We will likewise use an interest figure of \$6,570.

The Commission makes these adjustments based on a failure by Northern to carry its burden of proof. We do, however, strike any finding of imprudence from our prior orders as to this subject. The Company is to submit to the Commission a statement as to the level of costs disallowed by this Order as well as Others associated with the gas roots program denied by prior orders. This level of rates will be the subject of an additional proceeding to determine whether they are reasonable expenses and thus should be surcharged or whether the expenditures are unreasonable or imprudent and thus written off below the line. The issues in this proceeding besides rates will include whether or not to disconnect and if so when, whether or not to connect these customers to Northern's main gas lines and if so, when and a determination of what is in the best interest of these gas roots customers Northern and Northern's other or non-gas roots customers.

This new proceeding, will incorporate any information provided in any other proceeding before the Commission but the Commission will approach the case with the viewpoint that there has been no determination to date as to the reasonableness or unreasonableness of these costs nor any preconceived concept as to what is a proper recourse.

The calculation of interest compounded monthly on the remaining adjustments are:

- (1) \$128,858 for elimination of the PGA estimate at four (4) months is \$3,479;
- (2) \$134,242, \$23,664 and \$45,416 for elimination of the TGP rate increase at three (3) months is \$4,066; and
- (3) \$697,755 for the decrease in the prior period under-collection at 6 months is \$28,330.

The total decrease in interest is \$35,875. Any uncertainties in the calculation

of this interest will be corrected in the next CGA filing.

COMMUNITY ACTION PROGRAM

CAP has voiced concern that LNG costs for Northern Utilities, Inc. may be excessive. We cannot agree at this time. Staff questioned the Company witness on this issue and it was revealed that none of the facilities used by Bay State Gas Company (Bay State) to store LNG were ever allocated into Northern's rate base. Therefore, as long as Bay State is not charging Northern more than its other customers we cannot agree that the price is excessive.

COST OF GAS ADJUSTMENT

Using Exhibit 25 of this filing and applying the foregoing adjustments we have developed a revised CGA surcharge of \$.3672/therm. This compared to the filed CGA surcharge of \$.4350/therm or a \$.0678 per therm reduction. On a per customer basis, where the average customer is assumed to use 150 therm/ month, this reduction amounts to \$10.17 less per month for the winter 1982-83 period.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Northern Utilities, Inc., Tariff Page NHPUC No. 6 - Gas Thirty-First Revised Page 22A, Superseding Thirtieth Revised Page 22A, Thirty-Second Revised Page 22A, Superseding Thirty-First Revised Page 22A; and Thirty-Third Revised Page 22A, Superseding Thirty-Second Revised Page 22A, be, and hereby are rejected; and it is

FURTHER ORDERED, that Northern Utilities, Inc. file Revised Tariff Pages to reflect a Cost of Gas Adjustment of \$.3672 per therm, effective November 1, 1982.

By order of the Public Utilities Commission of New Hampshire this eighth day of November 1, 1982.

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NH.PUC*11/08/82*[79427]*67 NH PUC 778*Town of Conway

[Go to End of 79427]

Re Town of Conway

Intervenor: Maine Central Railroad Company

DX 82-211, Order No. 15,984

67 NH PUC 778

New Hampshire Public Utilities Commission

November 8, 1982

PETITION for authority to take land and establish a public crossing; granted.

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CROSSINGS, § 75 — Private crossings — Public use — Conversion to public crossing.

[N.H.] Where a private railroad crossing had for all intents and purposes been treated as a public crossing, the commission authorized a town to make it a public crossing, and because of obstructed views, to install stop signs at the crossing.

 APPEARANCES: Peter G. Hastings for the town of Conway; Steven Shook for the Maine Central Railroad Company.

By the COMMISSION:

REPORT

By petition filed July 26, 1982, the Town of Conway seeks authority to lay out and construct a public crossing at grade across the tracks of the Maine Central Railroad at the location of a private crossing which connects Depot Street with A Street in the village of North Conway. Hearing thereon was held at Concord on September 16, 1982, at which no one appeared in opposition to the granting of the petition.

The tracks of the Maine Central Railroad run north and south at the location of the intersection. The main line track of the Mountain Division is near the westerly side of the right-of-way. Two spur tracks are located easterly; one a public delivery track No. 6, and the second, track No. 10, leads to a petroleum tank farm. It is approximately 70 feet from the center line of the main line track to the center line of spur track No. 10.

The former station at North Conway was located west of the main line track and was accessible via Depot Street which was originally a dead end street leading to the station.

"A" Street is located easterly of the railroad right-of-way. Some years ago a private crossing was constructed to connect Depot Street with "A" street to permit access to the tank farm, and other industries which have located east of the railroad right-of-way. In more recent years 12 dwellings have been constructed in the area and access to a Head Start School is via the private crossing.

The crossing was improved in 1975, and paved with asphalt, and crossing signs were installed as if it were a public crossing. For all practical purposes the crossing has been used and maintained as a public crossing, but is technically a private one because authority has not been obtained to make a taking of land which is necessary for it to be classified as public.

Both Depot and "A" Streets run generally east and west, but the center line of "A" Street is approximately 85 feet north of the projected center line of Depot Street; there is a slight curve to the north near the east end of Depot Street and the connection crosses the tracks at an angle of approximately 15 degrees. The approach to the crossing from the west is tangent for a distance of

120 feet and from the east of tangent extends for 350 feet or more.

The Diamond International Company owns the land on the west side of the railroad, both north and south of Depot Street. Its property is fenced which interferes to some extent with the view of trains approaching from both directions when crossing from west to east. The tank farm is located east of the railroad and north of "A" Street, and its property is also fenced. South of "A" Street and east of the railroad is a storage barn. Thus the views of those approaching from the east are obstructed by these installations. The approach from the

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west is generally level while that from the east is an ascending grade from meadow land east of the railroad. The grades are not of sufficient intensity to interfere with motor vehicle travel.

The testimony presented by Railroad Officials indicates that the crossing is located at engineering station 2747 + 56, or mile post 59.35. The crossing at the main line track is 24 feet in width, at track 6 it is 33 feet in width and at track 10 it is 32 feet wide. The right-of-way for "A" Street is 50 feet in width. All three crossings have mud rails to protect the running rails to insure a smooth crossing. A crossbuck sign is located at the right-hand side of each approach, and advance warning discs are also located on the approaches of both Depot and "A" Streets.

The railroad south of the crossing is constructed on a 2° 30' curve to the east and the track is on an ascending grade of 0.33% for Northbound trains. Train operations consist of a freight in each direction, RY2 westbound usually between 5 and 6 p.m. and YR1 daily eastbound usually between 10 and 11 a.m. The average train contains 3 locomotives and 30-40 cars on the main line at speeds not to exceed 25 miles per hour. Switching movements on the spur tracks are estimated at 2 to 3 cars per month. These operations would be conducted at very low speeds, and flagged by a member of the crew. There are 4 public crossings north of "A" Street which are protected by automatic flashing lights installed through a cooperative agreement between the Town, Railroad and Federal Aid Funds. It is estimated that the cost of installing such protection at "A" Street would be approximately \$35,000.

Representatives of both the Town and the Railroad feel that signals are not necessary. It is pointed out that there has never been an accident while the crossing has been used as a private one, and there is no objection to requesting the installation of stop signs at each approach to the crossing. It is estimated that from 50 to 100 cars use the crossing daily, but no traffic count has been obtained.

Upon consideration of all the facts the Commission is of the opinion that its consent should be given to enable the Town of Conway to lay out and construct a public crossing as requested. The Commission is further of the opinion that due to limited visibility of the approach of trains the crossing as proposed is a particularly dangerous crossing within the meaning of RSA 365:49 and must therefore be protected by the installation of stop signs to be placed not less than 15 feet and not more than 25 feet from the nearest rail of each approach. Our Order will issue accordingly.

ORDER

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

ORDERED, that the Town of Conway, be, and hereby is, authorized to lay out and construct a public crossing at grade over the tracks of the Maine Central Railroad Company at engineering station 2747 + 56 (Mile Post 59.35) in accordance with plans on file at the office of this Commission marked DX 82-211; and it is

FURTHER ORDERED, that all expense incident to the said lay out and construction shall be borne by the Town of Conway; and it is

FURTHER ORDERED, that the said Town of Conway shall install and maintain stop signs at the right-hand side of each approach to the crossing authorized

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herein to be not less than 15 nor more than 25 feet from the nearest rail; and it is

FURTHER ORDERED, that the usual public crossing whistle signal shall be given by trains when approaching within 50 rods of said crossing.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 1982.

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NH.PUC*11/10/82*[79428]*67 NH PUC 781*New Hampshire Electric Cooperative, Inc.

[Go to End of 79428]

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Community Action Program, Waterville Valley Co., Inc., Loon Mountain, Attitash Lift Corporation, Mt. Cranmore Ski Mobile, Loon Village Homeowners Association, Cooperative Members for Responsible Investment, and Office of Consumer Advocate.

DR 81-340, Second Supplemental Order No. 15,985

67 NH PUC 781

New Hampshire Public Utilities Commission

November 10, 1982

APPROVAL amended stipulations and agreements on rate increases for an electric cooperative.

1. RATES, § 288 — Kinds and forms; — Minimum billing — Possibility of discrimination.

[N.H.] The commission objected to a minimum billing provision for fear it would discriminate against or adversely affect certain customers. p. 783.

2. RATES, § 272 — Kinds and forms — Seasonal — Impact on customers.

[N.H.] Although not opposed to winter and summer seasonal billing per se, the commission found the timing of a proposed seasonal differential to be inappropriate because it could cause

such a dramatic difference in winter rates that customers would not be able to absorb it. p. 783.

APPEARANCES: Mayland H. Morse for New Hampshire Electric Cooperative, Inc.; Gerald Eaton for Community Action Program; Joseph Gentili, Consumer Advocate; Edward A. Haffer, and James E. Higgins for Waterville Valley Co., Inc., Loon Mountain, Attitash Lift Corporation, Herbert Schneider, d/b/a Mt. Cranmore Ski Mobile. Limited appearances by Cary McCool and Lynn R. Chong, Cooperative Members for Responsible Invest meet, and Charles Diehl, Loon Village Homeowners Association.

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By the COMMISSION:

REPORT

On November 9, 1981, the New Hampshire Electric Cooperative, Inc. filed its proposed tariff, NHPUC No. 11 and a motion for temporary rates. On December 8, 1981 the Commission issued Order No. 15,356 (66 NH PUC 558) suspending the proposed tariff, and a hearing on temporary rates was held December 10, 1981. On December 30, 1981, the Commission issued Order No. 15,384 (66 NH PUC 578) which approved a temporary rate increase of \$632,975 on an annual basis to be effective on all bills rendered on or after January 4, 1982. The temporary rates contributed an increase of approximately 2.25 percent and was allocated as an across-the-board increase per KWH to all classes.

On May 26, 1982, the Commission issued a second Order of Notice setting a hearing on July 6, 1982 for consideration of permanent rates. At that hearing Ms. Chong and Mr. Diehl made limited statements. In addition, the Cooperative submitted additional testimony and documents reflecting an updating of the test year to December 31, 1981, and orally presented a motion to convene a settlement conference with the full parties to attempt resolution of the case. Hearing no objection the motion was approved and the case went to conference, and the hearing adjourned subject to the call of the Commission.

On October 6, 1982, the Company filed a document with the Commission entitled "Stipulated Recommendation of the Parties Regarding Resolution of Issues as Proposed in the Above Docket" signed by the New Hampshire Electric Cooperative, Inc., Waterville Valley Co., Inc., et. al., Community Action Program and Commission Staff. That document set forth an agreement on all outstanding issues in the case including the final revenue level, allocation of revenues to class, and rate design. The basic elements of the Agreement filed were as follows:

— rate base of \$42,294,791 based on a 13-month average test year ending December 31, 1981 including a working capital allowance of \$4,438,291.

— allowance of a times interest earned ratio (TIER) of 2.0.

— complete roll-in of fuel and purchased power charges into basic rates for a period of one year, at which time new estimates and a reconciliation are to be made (subject to a reopener provision on the basis of "material change in fuel costs or purchased power costs").

- an increase in test year revenues of \$1,731,203 or approximately 5.8 per-cent.
- allowance for one year amortization of recoupment and rate case expenses.
- allowance for three year amortization of deferred fuel costs.
- allocation of revenues increase generally "across-the-board" as specified in the agreement.
- rate design provision calling for mandatory seasonal rates incorporating a summer/winter seasonal differential.
- imposition of an additional minimum bill charge in addition to the customer charge for small usage customers.
- provision for review of rates after a one year period of experience with the new rate design provisions.

A hearing was subsequently held on October 18, 1982 for consideration of the proposed settlement. On the basis of the agreement, the hearing and subsequent consideration of the proposal by the Commission, the Commission determined that the agreement could not be

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accepted "as is". The Commission therefore issued Second Supplemental Order No. 15,985 which rejected the agreement on the basis that the winter/summer differential and minimum bill provision were unacceptable, and which instructed the parties to attempt further resolution of these issues.

In brief, the Commission's objection to these provisions of the rate design are as follows:

[1] 1. With respect to the minimum bill provision, the Commission notes that Docket DE 82-58 was established to consider the generic issues of Customer Charges vs. Minimum Bill and that any substantial change in policy, such as that represented by the proposed agreement, should be based on that investigation and should not be made prior to its conclusion. In general, the Commission finds at this time and without prejudice to any issue in Docket No. DE 82-58 that the proposed minimum bill/customer charge provision may discriminate against certain groups of customers, may severely impact certain groups of customers and may not be equitable and consistent with the rate design objectives of this Commission. Given that the record in Docket No. DE 82-58 is for the express purpose of addressing such concerns and that the existing record in this docket cannot support the required positive finding, the Commission must reject the minimum bill proposal.

[2] 2. With respect to the winter/ summer differential, the Commission is concerned primarily with the billing impacts involved. In particular, the rate increase was proposed for effect November 1, as well as the recoupment, rate case expense, and deferred fuel cost amortization provision. To add, on top of these increases for this coming winter, a dramatic winter rate differential of some 2 cents per KWH would be extremely difficult for many customers to absorb without hardship. Although the Coop. does offer Budget Plans to their customers, the timing of the proposed increase would offer no opportunity for customers to begin the Budget Plan in advance of the dramatically higher winter bills they would receive. The Commission is not unalterably opposed to seasonal rates but finds the timing in this proposal to

be unacceptable.

With respect to the other provisions of the agreement, the Commission makes the following findings:

1. The calculation of rate base, return, and expenses are acceptable and consistent with the past practices of the Commission.
2. The roll-in of the fuel and purchased power charges for an annual period is consistent with the objectives of the Commission in maintaining stable and comprehensible rates and in minimizing regulatory burdens and costs to the extent practicable. In addition, the elimination of the lagging Fuel Adjustment Clause brings the Cooperative in line with fuel cost recovery of other utilities and should serve to improve the Cooperative's financial circumstances.
3. The allowance for recoupment, rate case amortization and deferred fuel cost amortization are consistent with requirements of law and past practices of the Commission.
4. The allocation of the revenue increase equally across-the board to all classes is acceptable.

The parties, subsequent to the Commission's denial of the agreement, did report to the Commission that agreement could be reached, and an executed Amendment to the agreement was filed with the Commission on November 10, 1982. The amendment stipulated to the

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elimination of the minimum bill and seasonal rate provisions for the time being in favor of the class-by-class increases in the cents per kilowatt in rates, and to the establishment of a Phase 2 proceeding for the resolution of the rate design issues in this case.

The amendment answers the Commission's concerns regarding rate design, maintains the parties'a satisfactory agreements in all other matters in this case and suggest a very reasonable approach to considering the delicate matters of rate design in a subsequent Phase 2 proceeding. For these reasons the Commission finds the agreements, as amended, to be just and reasonable, and will approve them.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

WHEREAS, on October 18, 1982, the parties to the above proceeding appeared before this Commission and presented Stipulated Recommendations regarding resolution of issues for the consideration of the Commission, such recommendations including findings on revenue requirements and an agreed-upon rate increase as well as rate design provisions implementing mandatory seasonal rates for all customers and imposing minimum charges substantially in excess of the existing customer charge; and

WHEREAS, the Commission has considered the Stipulated Recommendations and is cognizant of the desire of all parties for a rapid conclusion of this matter, and

WHEREAS, the Commission finds the recommendations regarding revenues and the level of rate increase to be just and reasonable, but finds the rate design provisions implementing mandatory seasonal rates and imposing a higher minimum charge to be unacceptable and

inequitable to consumers; it is

ORDERED, that the Stipulated Recommendations of the Parties as presented above are hereby rejected; and it is

FURTHER ORDERED, that the parties confer at the earliest possible time to determine if a new agreement on the rate design matters referred to above, or a partial agreement covering all other matters can be reached and submitted to the Commission.

By order of the Public Utilities Commission of New Hampshire this tenth day of November, 1982.

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NH.PUC*11/10/82*[79429]*67 NH PUC 784*New Hampshire Electric Cooperative, Inc.

[Go to End of 79429]

Re New Hampshire Electric Cooperative, Inc.

DR 81-340, Third Supplemental Order No. 15,986

67 NH PUC 784

New Hampshire Public Utilities Commission

November 10, 1982

ORDER approving stipulations and recommendations of the parties.

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BY THE COMMISSION:

SUPPLEMENTAL ORDER

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

ORDERED, that the Stipulated Recommendations of the Parties as Amended are accepted; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative, Inc., file a new Tariff No. 11 in compliance with those Recommendations as accepted by this Order for effect November 15, 1982; and it is

FURTHER ORDERED, that Docket 81-340 Phase II is established for the further investigation and resolution of the rate design issues raised in Docket DR 81-340.

By Order of the Public Utilities Commission of New Hampshire this tenth day of November, 1982.

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NH.PUC*11/12/82*[79430]*67 NH PUC 785*Hillsboro Water Company, Inc.

[Go to End of 79430]

Re Hillsboro Water Company, Inc.

Intervenor: Emerald Lake Property Owners Association

DR 81-319, Supplemental Order No. 15,987

67 NH PUC 785

New Hampshire Public Utilities Commission

November 12, 1982.

PETITION by a water company for increases in its rates and charges: granted as modified.

1. RETURN, § 26.2 — Cost of debt — Advance from owners — Failure to retire debts.

[N.H.] The commission refused to change a water company's debt cost from 4 per cent to 14 per cent where the debt in question had been an "advance" from the management/owners, had been recorded at its full amount for six years without any payments made while the owners received "management fees," and no accumulated depreciation had been used to replace fixed assets or retire debt. p. 787.

2. RETURN, § 26.4 — Cost of common equity — Special problems for small water companies.

[N.H.] Due to unique problems in calculating the cost of common equity for small water companies, the commission expressed its desire to merge some of the smaller companies into larger concerns. p. 788.

3. EXPENSES, § 144 — Water — Electricity costs — Factors.

[N.H.] A water company's electricity cost adjustment was decreased from 25 per cent to 10 per cent because of little proof of customer growth, the company's rate classification, and stabilization of oil prices. p. 788.

4. EXPENSES, § 76 — Management fees — For officers/owners — Proportionate to work.

[N.H.] Management fees for a small water company's officers/owners were decreased where they were found to be disproportionate to the work involved. p. 789.

5. EXPENSES, § 63 — Legal expenses — For unpaid bills — Commission rules on unpaid bills.

[N.H.] Legal expenses for consultations on handling unpaid bills were disallowed as the commission felt its rules on unpaid bills were

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quite clear and needed no outside interpretation. p. 790.

6. EXPENSES, § 93 — Rentals — From management/owners — Actual use versus future needs.

[N.H.] The commission allowed rental fees paid by a water company to a land association

owned by the water company owners, but only for those lots actually used by the water company, with the unused lots being considered only for future capacity. p. 791.

7. EXPENSES, § 145 — Water — Cost of wells — Imprudent management.

[N.H.] The commission expressed dissatisfaction with a small water company's management and took issue with the management's assessment of fixed capital items, especially in light of the fact that two of the company's six wells were not operational at all. p. 791.

8. ACCOUNTING, § 19 — Methods — Particular items — Contributions by patrons.

[N.H.] A water company was ordered to reclassify its capital surplus account to a contributions in aid of construction account since the surplus was the result of amounts from job work on installing mains and curb cocks. p. 792.

9. VALUATION, § 296 — Working capital — Factors affecting allowance — Expenses.

[N.H.] Working capital allowances were adjusted to reflect expenses actually allowed in this docket. p. 793.

10. RATES, § 595 — Water — Flat rates — Metering.

[N.H.] Flat rates rather than fixture rates were approved for a small water company where they would simplify the billing process and thereby reduce the company's cost of service, yet the company was ordered to meter all customers, including seasonal ones. p. 794.

APPEARANCES: Daniel A. Laufer for Hillsboro Water Company, Inc.; Robert E. Howard, III, for Emerald Lake Property Owners Association.

BY THE COMMISSION:

REPORT

On October 15, 1981, Hillsboro Water Company, Inc. (Hillsboro or the Company) filed certain revisions to its tariff providing for an increase in revenues of \$32,640 or 120%, which were suspended by Order No. 15,242, dated October 26, 1981 (66 NH PUC 439).

On March 4, 1982, an Order of Notice was issued setting a public hearing for April 5, 1982. On March 29, 1982, the Emerald Lake Property Owners Association (ELPOA), filed a request to adjourn the hearing so scheduled, and other relief. The Commission granted this request by Disposition of a Motion, dated April 2, 1982.

On June 3, 1982, a further Order of Notice was issued setting a public hearing for July 26, 1982, at the Commission offices in Concord, New Hampshire.

Public hearings were held on July 21, 1982 and on October 20, 1982, and an informal meeting of all parties was held on August 16, 1982.

GENERAL

Hillsboro has filed numerous requests for differing rate levels in these proceedings. There is, and will remain, great difficulty in attempting to evaluate changing positions by the applicant. The Commission's responsibility is to set forth the positions of all parties on all issues and then

proceed to evaluate and rule on these positions. In light of the variety of positions taken by the applicant, the Commission will use the positions offered in the applicant's brief.

Our analysis of the proposed filing has revealed an error in calculations which, if not corrected, would result in consumers paying twice for a cost incurred but once. The Company in its

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brief sets forth debt cost as an "above-the-line" expense and part of the Company's cost of service. In addition, the calculation of the overall rate of return to be applied to rate base also includes the cost of debt effectively adding the cost of the debt twice. This treatment is contrary to our rules, regulations and prior decisions. The Commission will adjust the filing to reflect single recognition through our determination of a cost of debt and consequently through a finding of a just and reasonable rate of return.

COST OF CAPITAL

[1] One of the main issues in this case is a debt issue of \$100,000. From the record, the Commission finds that the debt was more in the nature of an advance to the utility by its two owners than a formal debt instrument.

In this filing, there is a request that the reported debt cost be changed from 4% to 14%. There was no evidence given to substantiate the financial instrument. The existence of the instrument is stated to have been approved by the Commission when the Commission approved the franchise in 1976, *Re Hillsboro Water Co., Inc.* (1976) 61 NH PUC 16.

The Commission has reviewed Report and Order No. 12,131. The Order contains a very limited discussion of Hillsboro Water and nothing relates to the instrument specifically. We will, however, assume that the Commission did give some approval to the existing capitalization. However, there is nothing in that order that specifically determines the \$100,000 as debt or equity.

The Company seeks to increase the cost rate of this financial instrument from 4% to 14%.

Interestingly, this "so-called" debt has been recorded on the Company's books at a \$100,000 level since 1976. The amount has never decreased. The Company states that this is because of lack of funds. Yet, the record also shows that:

- 1) the two owners received over \$71,000 in "management fees" since 1976;
- 2) the Company never added plant during that period;
- 3) the Company reported over \$22,000 of depreciation during that period; and
- 4) total capitalization in 1976 was \$202,193, which this Report later finds \$106,000 to be Contributions In Aid of Construction (CIAC).

The depreciation accumulated during the period should have been used to replace fixed assets or retire debt. Neither was done; therefore, the income applicable to this expense (net of any losses) must still be recognized as being held by the Company. The Commission does not accept that there has been no cash to pay this loan/advance.

Secondly, the Company management in this period has deemed it more important to pay themselves a variable "management fee", which reached an amount of \$22,000 during one year, than to repay this demand loan. In addition to this, they also feel the interest on this loan is more important to receive than the principal. It appears here that the management/owners had no real desire to repay the loan in this period. This bears a close similarity to making these payments in lieu of paying dividends, as pointed out in the intervenors' brief.

Finally, in the *Petitioner's Post Hearing Brief*, the Company offers to convert this debt to equity. Our analysis, together with the record, appear to indicate that

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this debt is actually equity. It appears that the approval of this conversion is in the best interest of ratepayers and Company. However, we will point out that in the future any further issuance of securities is to be petitioned through a separate docket under RSA 369:4.

COST OF COMMON EQUITY

[2] Although little was discussed regarding return requirements for common equity, Staff through cross-examination of the Company witness was able to determine that a 14% return was requested. The Company witness did not offer any substantial support for this cost.

We find a request of this nature, with such little support, as failure to sustain the burden of proof.

The difficulty experienced by the Commission in handling proceedings involving small water companies is clearly shown in these proceedings. Despite competent legal counsel on both sides, there is never any significant or persuasive evidence as to return on common equity. Measuring a small firm like this versus other utilities is professionally difficult. We, therefore, are left to estimate what is generally reasonable, but the analysis is significantly below that used in other proceedings. The true solution to this problem is to prevent further additions to the small water utility class and merge some of these companies into larger concerns. Only in this fashion can cost be spread over a larger customer base and duplication of expenses be alleviated.

It is our opinion that currently this cost rate is within a reasonable range for small water utilities in New Hampshire. We will point out that this range is extremely volatile and is presently on a downward trend. What we find reasonable today most likely will not be at some future point in time.

CAPITAL STRUCTURE

The Company now has been awarded a 14% return on common equity. The Commission has already converted the owners advance to equity; therefore, the development of a capital structure is moot and the overall return on rate base becomes 14%.

We will note that with the approval of the conversion of debt to equity the Company must now record the equity as such on their books as capital surplus. Further, no interest is to be accrued on this converted debt during 1982.

ATTRITION

The Supreme Court requires that a test period be reasonable into the foreseeable future. Attrition adjustments have historically assisted in this process. The Commission will allow .1% in this proceeding a year from the date of this order.

EXPENSES

The Company has requested a number of pro-forma adjustments to test year expenses. The following is a discussion and evaluation of those proposals.

Electricity Expenditures

[3] During the hearing process the Company updated its filing by submitting the 1981 N.H.P.U.C. annual report as an exhibit (Exhibit 4). From this the Company took the 1981 expenditures for electricity, which is found on page 202 line 6, and requested a pro-forma adjustment of 25%. A comparison between the first half of 1982 and 1981 was offered. The Commission relying upon its expertise and knowledge of PSNH electricity rates must reject this pro-forma.

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Furthermore the Commission finds that while Hillsboro has proven that some adjustment should be made, they have not carried their burden of proof as to quantifying this adjustment.

The Commission is aware that oil prices were higher in 1981 than 1982 and that PSNH has also received certain levels of basic rate increase during the time period of 1981 through 1982. The Commission is also aware that different levels of increase have been awarded to PSNH based on customer classification, i.e. commercial, residential, industrial etc. The Commission based on the scant level of proof as to growth in customers, PSNH rate classification of Hillsboro, oil price stabilization at a lower level and improvements in the capital markets, finds that a 10% adjustment is appropriate. The Commission will allow for a second step increase for any increases in electricity costs for Hillsboro over this 1981 level plus 10% at a point in time a year from the date of this order.

Accounting Fees

The Company witness, Banquer, has stated that accounting fees will be \$600 per year. (October 20, 1982 transcript at 33). Mr. Angelini, the Company accountant has stated that his fees are \$500 - 600, and in the test year were about \$500.00. In the Company brief a justification was made for an increase in fees from \$500 - \$600. The Company stated that the \$500 estimated fee "did not include the additional work of conforming and maintaining the Company's accounting practices to PUC standards" (DE 81-319, Petitioner's Post Hearing Brief, pg. 4).

The Commission will allow a \$600.00 accounting fee. The Commission will expect and require that Hillsboro Water Company adhere to the Commission rules, regulations, accounting practices and orders. Lack of familiarity with these critical regulatory tools will not be sanctioned.

Capitalization of Pumps

The Company has stated that during the test year maintenance expenses included a \$4,100 amount which, in fact, were applicable to the replacement of pumps. The witness's have testified

that this should be removed from expenses and capitalized. As noted elsewhere in this report the Commission will allow this adjustment and accept maintenance expenditures at a level of \$4,144.00.

Management Fees

[4] As part of this filing the Company is requesting management fees at \$12,000.00. Exhibit 4, page 3, shows these fees being split 50/50 among the Company president and treasurer, clerk, or \$6,000.00 each.

Although no accurate accounting was offered the Company witness, Banquer, did give a number of activities performed by management for these fees. Among them is billing, maintenance, and customer relations. These are necessary tasks, however, with this filing the amount of work needed for billing customers will be greatly reduced, due to flat rates. Additionally maintenance has been in part handled by a third person. The Company is found not to have met its burden.

The Company has not demonstrated that there is a need for two men to perform these tasks or that the cost level was reasonable compensation. This is a small water company. There is a very small customer base to spread costs over and the company cannot conduct its operations in any other fashion than with this factor as a guide. The Commission

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has called into question these expenses and finds that they are not supported by the factual circumstances of this case. The Commission finds that the cost equivalent of one manager is appropriate for a company this size. *Re Mountain Springs Water Co.* (1981) 66 N.H. 487, 494. As the intervenor has pointed out they are the sole owners of the Company's stock. The Commission in this rate filing has afforded them a reasonable rate of return on their investment. Additional earnings can be obtained through sound business practice. The Commission disallows \$1,000.

Rate Case Expense

The New Hampshire Supreme Court has in its decision in *Hampton Water Works Co. v New Hampshire* (1941) 91 NH 278, 39 PUR NS 15, 19 A2d 435, required the Commission to recognize rate case expenses as a legitimate operating expense unless there is some unreasonableness shown. There has been no questioning of the level of expenses submitted in this proceeding and the Commission will therefore allow the submission of \$7,080 to be recovered as a surcharge over a two year period commencing October 1, 1982 and ending October 1, 1984.

Depreciation

This Commission has historically found that it is unreasonable for consumers to pay for depreciation on plant paid for by those same customers as contributions in aid of construction. *Re Locke Lake Water Co.* (1981) 66 NH PUC 7, and *Re Pittsfield Aqueduct Co., Inc.* (1981) 66 NH PUC 13. The depreciable plant remaining after adjusting for the aforementioned is a deduction and thus becomes at 12/31/81:

[Equation below may extend beyond size of screen or contain distortions.]
 $\$197,893 - \$115,400 = \$82,493$

and with fixed capital adjustments as detailed elsewhere in this Report:

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

| | | |
|------------------------------|----------|-------|
| Account 2308.1 | (\$2697) | |
| 2308.2 | (\$6458) | |
| 2316 | (26) | |
| | 1(80) | |
| Total | (\$9181) | _____ |
| $\$8,493 - 9,181 = \$73,312$ | | |

Hillsboro, in its "Post Hearing Brief", has used 27% as an average annual depreciation allocation. We will accept this, and applied to depreciable plant of \$73,312, produces annual depreciation expense at \$1,466.

Legal Expense

[5] Hillsboro is requesting an annual allowance of \$200 for continuing legal advice on matters such as unpaid bills, proper response to customer demands and PUC requests.

The filed tariff of all water utilities under the jurisdiction of this Commission, and the Rules and Regulations Prescribing Standards for Water Utilities, detail the procedure to be followed and conditions of any action that may be taken regarding unpaid bills and further, these documents detail the rights of the customer and the utility. When interpretation of these documents is desired, we believe that contact should first be made with the Commission staff. If requests are made of the utility, by this Commission that it cannot resolve, then legal advice should be sought.

We do not believe that this expense is necessary nor justifiable as a continuing expense to the rate payers. It is disallowed.

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Rent

[6] The Company proposes in this case that a rental fee of \$3,000 annually, be paid to Hillsboro Land Associates for the use of certain land on which the water company has pumps and other equipment. Hillsboro Land Associates is a partnership owned by the owners of the water company. Responses to staff data requests and testimony given at public hearings disclose that the rental fee would also cover, or relate to the holding of some 17 other lots owned by Hillsboro Land Associates. It is suggested that these 17 lots " ... constitute the sole area suitable for development of new wells should the need arise." This Commission strongly supports the continued search for new capacity when reasonably necessary. Testimony was given by Mr. Banquer (Hillsboro Water Company) that there are now 271 active customer services. Since no

records exist as to the actual demands on this system, we will use the maximum demand used by the State of New Hampshire in preliminary demand calculations, which is 400 gallons per day for each residence/customer. Records at our office show State approval for this system, with its present plant, to serve 300 customers. This indicates that it may be several years before additional capacity is needed. It is our conclusion that when new capacity is needed and developed, that the water company should own the land or a perpetual easement on that necessary for the water source and its protection.

The intervenors brief suggests that since the rental fee sought was to support the use or holding of 19 lots, and only two are actually used by the water company, that 2/19 of \$3,000 should be allowed. We will accept this and the annual rental amount of \$316. However, within one month from the date of this order, the water company shall furnish the Commission a plan showing the location of these two lots, and the lot location of its other wells, and the location of the easements purchased for \$2500 as shown in Acct. #2307 on the record of fixed capital.

We now determine the test year expenses as proformed to be:

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

| | |
|--|-----------|
| Fuel Expense (Electricity) | 4,430.00 |
| & Proforma @ 10% | 443.00 |
| Repairs & Maintenance | 4,144.00 |
| Management Fees | 11,000.00 |
| Office Supplies | 351.00 |
| Insurance | 50.00 |
| Commission Assessment & State Filing Fees | 163.00 |
| Accounting Fees | 600.00 |
| Rent | 316.00 |
| Depreciation | 1,466.00 |

| | |
|-------|-----------|
| Total | 22,963.00 |
| TE | |

Rate Base

The Company has attempted to calculate rate base in a number of different ways. The last method of determining rate base is the most confusing, amplified by counsel's attempt to present it orally during the hearing process. Although his brief somewhat clarifies the position the Company wishes to take, we still have reservations. It is our opinion that it is best for all parties concerned if we develop our own rate base utilizing the docket record and taking administrative notice of the Commission records.

Fixed Capital Adjustments

[7] Hillsboro has employed outside professional help in the preparation and presentation of this case. Even with this help it was not until the final hearing held on October 20, 1982 that the Company's treasurer revealed through staff cross examination that two of its six wells cannot be used because "... there are houses too close to the well site ..." (T. 50). It was further revealed (T. 57 & 58)

that the pump from one of these two wells was used to replace a defective pump in an active well. Testimony (T 8) has shown that \$4,100 was spent for two pumps in 1981, to replace two additional existing pumps. None of these transactions have been reflected in the annual reports made and certified to this Commission. We find this to be a poor reflection on the management of this Company and in the presentation of this case. Hillsboro has furnished certain unsubstantiated cost data regarding the original cost of a number of its pumps. The value in this Account (2316) is,

as of 12/31/81 at \$12,338. This is also the value declared in Exhibit 8 in DE 74-58 for six pumps. For purposes of this Report and Order, we will accept the values as stated in a letter to the Commission dated October 25, 1982, from Attorney Laufer. The use of these figures results in the remaining two pumps valued at an average cost of \$4106 each. We are requiring in this Report and Order that Hillsboro submit to the Commission by December 31, 1982, a certified cost breakdown of the \$12,338 in this account as shown in its annual report of 12/31/81.

We will accept the following as the value of the below listed fixed capital accounts which have been adjusted to reflect the fact that two wells are not in service and the retirement of certain pumping equipment. We have taken an average cost for wells and well houses since no factual data has been presented. It is obvious also, that the retired and unused equipment has been depreciated for some time, as an expense to the ratepayers.

| /f2ACCOUNT | BALANCE/f1 |
|---------------------------------------|------------|
| 2308.1 Wells | 12/31/81 |
| <hr/> | |
| \$8090 = $\frac{\$1348 \times 4}{6}$ | \$5,393 |
| 2308.2 Well Houses | |
| <hr/> | |
| \$19375 = $\frac{\$3229 \times 4}{6}$ | \$12,916 |
| 2316 Pumps | |
| <hr/> | |
| \$12,338 - 4126 | 8,212 |
| 1981 Additions | 4,100 |
| | <hr/> |
| \$12,312 | |

To this total we will add the remaining depreciable plant of \$158,090.00. Added to the prior adjusted plant yields a total of \$188,712.00.

Additionally, adding land and organizational costs \$4,300 results in a total plant of \$193,012.00.

Contributions in Aid of Construction (CIAC)

[8] In this case, water company testimony asserts that 274 customers have been connected to the water system, each having been charged the \$600 initial connection charge. The Company now states that it installed the service connection from the main to the customers house at an average cost of \$300. Since the tariff states that the customer owns the service from the curb cock, or valve, to the house, some portion of the \$300 represents job work. The \$33,208 in Account No. 2359 for 200 services, produces an average cost of the service connection from the main to and including the curb cock of \$166. The remaining \$134 per customer would be job work, as the cost of installing the service from the curb cock to the house. It is our opinion that the total contributions in aid of construction then becomes:

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

274 customers @ \$300 (mains) \$82,200

200 customers @ \$166 (service) 33,200
 \$115,401

The dollar amount in Account 2356 Mains, and 2359 Services has remained unchanged since the original filing of fixed capital accounts in DE 74-58, when the water company was serving 200 customers. The remaining 74 customers, added since 1973, paid the same \$600 initial connection charge, however, as we have shown \$166 of that amount for the company's investment from the main to the curb cock, remained with the water company owners. Therefore, any accounting adjustment to reflect these assets would wash against contributions for rate making purposes.

The only accounting adjustment needed is to reclassify the capital surplus account #270 on Exhibit #4, pg. 101 to Contribution Aid to Construction account #265. All parties agree that there has always been contribution in aid yet the Company's balance sheet has never reflected it. Therefore, this adjustment is necessary. Exhibit #2 plainly shows that this surplus is in fact contributions in aid.

Depreciation Reserve

The Company reports the depreciation reserve at \$50,248. We will adjust this for the Commission's adjustment in rate base as follows:

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

| | | |
|--------|--|---------|
| Acct. | | |
| 2308.1 | Wells \$2,696 ÷ 50 years × 11 years of depreciation | \$593 |
| 2308.2 | Wells Houses 6,458 ÷ 50 years × 11 years of depreciation | 1,421 |
| 2316 | Pumps 4,126 ÷ 20 years × 11 years of depreciation | 2,269 |
| | <hr/> | |
| | Total decrease in depreciation reserve | \$4,283 |

The remaining \$8,999 (\$ 13,282 - \$4,283) will be posted to account #141 property abandoned and amortized over 10 years. For this we will increase amortization expense by \$900.00.

The new depreciation reserve will be \$50,248 less \$4,283 or \$45,965.

Working Capital

[9] The Company has requested working capital of \$2,837.00. This was calculated by staff prior to the closing of this docket. However, staff could not know the level of expenses allowed in this filing prior to the issuance of this report. We, therefore, will recompute the working capital using the 45 day method. This will take into consideration, the fact that the Company bills 3 months in arrears and 3 months in advance with bills becoming payable 30 days after mailing.

The working capital expenses (those which require a cash outlay) approved in this report total \$21,497.00. This allows for a working capital requirement of \$2687.00 (21,497 ÷ 12 months × 1.5 months). We will include this amount in rate base.

The calculation of rate base is as follows:

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

Fixed assets as of 12/31/81

| | |
|------------------------|----------------------|
| (No additions in year) | \$193,012 |
| Less: | Depreciation |
| | Sub Total |
| Less: | Contributions in aid |
| Add: | Working Capital |
| | TOTAL |
| | RATE BASE |

Rates

[10] Hillsboro has proposed to replace its existing fixture rate with a flat rate for all general service. We will accept this, as we are not convinced that the fixture rate produces any more equitable billing than other unmetered rate schedules. We also recognize that a flat rate or charge will simplify the billing process for the Company and the customers, which has been reflected in reducing the Company's cost of service.

Meters

As with all water companies coming before this Commission for a revision of its rate structure, we are now ordering that Hillsboro meter its customers, and in this case that such metering will be completed by December 31, 1983.

It has been argued that the metering of seasonal homes many of which have no basement and are left unheated through much of the colder months, is difficult in New Hampshire. In our opinion, the freezing of a water meter and subsequent damage should not occur, with reasonable care as is exercised with the customers plumbing.

It is also a requirement under our Rules and Regulations Prescribing Standards for Water Utilities, that a meter be installed to determine production at each source of supply. This requirement shall be complied with by July 1, 1983. The expense of all metering will be allowed into rate base after installation and submittal of cost data.

Tariff

1. Section 11 b & c. Disconnection for Non-Payment and Deposits: shall be revised to comply with Rules & Regulations of this Commission.

2. Section 14. Initial Service Connection Charge: shall be retained at \$600 and as a "contribution in aid of construction."

3. Section 15. Service Connection and Disconnection Charge: the provision of a charge of \$50 for violation of Section 12c is accepted.

Initial Connection Charge

This charge is employed by Hillsboro and several other water utilities in New Hampshire. It is a means by which a utility may recover some of the dollars invested in fixed capital, or plant.

However, in accordance with the New Hampshire System of Accounts, such dollars, once collected, are deducted from rate base and, of course, no return is allowed. The System of Accounts defines the dollars collected by such a charge as "Contributions in Aid of Construction" as does Hillsboro's tariff.

It is proposed to increase this charge to \$800, however, the Company has made no study and presented no testimony to support the increase. We will not approve the increase and the charge then remains at \$600.

Revenue Requirements

The calculation of this Company's revenue requirement is:

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

| | | |
|--------------------------------|-----------|----------|
| Rate Base | \$34,334 | |
| X rate of return | 14% | |
| | | _____ |
| Required net operating income | 4,807 | |
| Adjusted net operating income: | | |
| Revenue 12/31/81 | | 27,071 |
| Expenses | | (23,863) |
| Income Taxes | | (958) |
| Income | 2,450 | |
| | | _____ |
| Required Revenue | (2,357) | |
| Tax Effect / (di 76.37% | \$ 3,086) | |
| | | _____ |
| | | _____ |

With the adjustments made to this filing, we have determined that the permanent rates before this proceeding were deficient by \$3,086.00. This order will require the Company to refund the bonded rates of \$59,840 and bill the reduced level of rates, which reflect an annual revenue of \$30,157.

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Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that 1st Revised Pages 7, 8, 9 & 10, of Tariff NHPUC No. 1 - Water, Hillsboro Water Company, Inc. which were suspended by Order No. 15,242, be, and hereby are rejected; and it is

FURTHER ORDERED, that Hillsboro Water Company, Inc., shall file new tariff pages designated as 2nd Revised Pages 7, 8, 9 & 10, issued in lieu of 1st Revised Pages 7, 8, 9 & 10, and shall bear the effective date of October 1, 1982; and it is

FURTHER ORDERED, that the revised tariff pages shall reflect the revenue directed in this Report and shall bear the further designation, "Authorized by NHPUC Order No. 15,987 in case DR 81-319, dated November 12, 1982".

By order of the Public Utilities Commission of New Hampshire this twelfth day of

November, 1982.

FOOTNOTE

¹ See page 11, \$12,338 - 12,312 = \$26.

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NH.PUC*11/15/82*[79431]*67 NH PUC 795*Gas Service, Inc.

[Go to End of 79431]

Re Gas Service, Inc.

DF 82-254, Order No. 15,988

67 NH PUC 795

New Hampshire Public Utilities Commission

November 15, 1982

PROPOSAL for the establishment of a fuel inventory trust for a gas company; adopted

SECURITY ISSUES, § 111 — Financing methods — Trusts — Fuel inventory.

[N.H.] A fuel inventory trust financing arrangement for a gas company was approved whereby the company would sell fuel to the trust to be held for resale to the company on demand, the commission finding that the agreement would benefit the company by assuring adequate fuel supplies and would benefit customers by removing fuel inventory from rate base thus reducing their basic rates.

APPEARANCES: James E. Morris for the petitioner.

BY THE COMMISSION:

REPORT

During proceedings before this Commission seeking an increase in its rates, Gas Service, Inc., ("Gas Service" or the "company") described a proposed plan by which Gas Service could finance its fuel inventory in a manner that would provide flexible financing to the company at savings to its customers. After considering the company's presentation (including its theoretical computation of customer savings under the proposed plan), cross-examination by Mr. Traum

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of the P.U.C. staff, and input from the Consumer Advocate, in our Fifth Supplemental Order No. 15,532 (DR 80-179) (67 NH PUC 193), we: 1) granted preliminary approval for the

proposed fuel inventory trust financing, 2) reduced the company's rate base by \$197,505 in anticipation of the effectuation of such financing, and 3) permitted temporary flow-through of financing costs under the fuel inventory trust financing plan through the cost of gas adjustment ("CGA"). On August 27, 1982 Gas Service provided us with complete documentation of the plan. Our staff subsequently submitted data requests to which Gas Service duly responded. On October 27, 1982 we held a consolidated hearing on the plan and an almost identical plan of Manchester Gas Company. At the hearing Gas Service submitted revised documents in substantially final form. For the reasons set forth herein, we approve the fuel inventory trust financing arrangement, and in accordance with our prior decision, approve the treatment of fuel purchased under the arrangement, with the cost of such fuel to be included in the computation of the company's CGA. The company has asked that the Commission approve of balance sheet treatment of fuel purchased under the agreement. The finance staff has reviewed the accounting implications of the requested treatment and has recommended that off balance sheet treatment be denied. Off balance sheet treatment is contrary to generally accepted accounting principles. The company does retain an economic interest in the inventory and does have a purchase commitment in accordance with the trust agreement. In addition, the company will continue to carry insurance on the inventory. The costs of fuel should be included in the materials and supplies account, with an offsetting credit to miscellaneous current liabilities. A clarifying note should also be included in the financial statements which clearly defines the nature and amount included in the aforementioned accounts.

BACKGROUND

A. The Parties.

Gas Service is a regulated gas utility company subject to the jurisdiction of this Commission and operating entirely within the State of New Hampshire. It files reports and financial data with the Commission on a regular basis. The Bank of New Hampshire, National Association ("Bank of New Hampshire"), is a federally chartered banking institution with offices throughout the southern part of New Hampshire with principal offices in Manchester, New Hampshire. The Bank of New England, N.A. ("Bank of New England"), is a federally chartered banking institution with principal offices located in Boston.

B. Procedure.

On March 11, 1982, the Commission issued its Fifth Supplemental Order No. 15,532, granting preliminary approval to Gas Service's proposal to enter into fuel inventory trust financing arrangement, and reducing the company's rate base by the amount of its test year fuel inventory in anticipation of the consummation of the financing. On August 27, 1982, Gas Service submitted copies of the legal documents associated with the financing proposal, together with supplemental information regarding estimated costs. The company is presently before this Commission seeking final approval for the fuel inventory trust financing plan. Additionally, in our Second Supplemental Order No. 15,390, dated December 31, 1982 (66 NH PUC 586), in DF 80-150, we ordered that Gas Service's short

term debt maximum level, presently set at \$4,000,000, be reduced to \$2,500,000 upon

implementation of the fuel inventory trust financing plan. For reasons set forth hereafter, Gas Service is also requesting that its short term debt maximum level be maintained at \$4,000,000.

C. Description of the Fuel Inventory Trust Financing

By means of a Trust Agreement with the Bank of New Hampshire, Gas Service will establish a Fuel Inventory Trust, with the Bank of New Hampshire acting as Trustee of the Trust. The Trust will be a single purpose trust, that purpose being the purchase of fuel from Gas Service to be held for subsequent resale to Gas Service on demand. Gas Service and the Trust will thereupon enter into a Purchase Agreement under which Gas Service is authorized to sell fuel to the Trust at such times and in such quantities as Gas Service desires, and the Trust is obliged to purchase any and all such proffered fuel. The price of the fuel sold to the Trust under the Purchase Agreement is computed by Gas Service and is 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. The Trust's purchase of the fuel from Gas Service is financed under a revolving Credit Agreement between the Trust and the Bank of New England. Under the terms of the Credit Agreement, the Bank of New England will make loans to the Trust up to an aggregate principal amount of \$3,000,000 in connection with fuel inventory purchases. The loans will be evidenced by a Note and the Bank will have a security interest in the financed fuel. Fuel that is purchased by the Trust under its Purchase Agreement with Gas Service will be stored by the Trust in storage facilities operated by Honeoye Storage Corporation in New York, Penn-York Energy Corporation in New York and Pennsylvania and Warren Petroleum Company in New York and in Gas Service's own storage facilities in New Hampshire. As part of the fuel inventory trust arrangement, the Trust and Gas Service will also enter into an Agency Agreement whereby the Trust appoints Gas Service as its exclusive agent for handling all matters regarding the fuel during the period of the Trust's ownership of the fuel and its storage in these storage facilities. Under the Purchase Agreement between the Trust and Gas Service, Gas Service has the right to repurchase, on demand, any and all fuel it has previously sold to the Trust, at a price determined by the original selling price from Gas Service to the Trust, plus finance charges incurred by the Trust under its Credit Agreement with the Bank of New England, plus a Trust management fee. Thus, the unit cost of gas paid to the Trust by Gas Service would include the aforementioned carrying costs, and the amounts paid would be recorded as cost of gas.

ADVANTAGES OF FUEL INVENTORY TRUST FINANCING

According to testimony of Gas Service's Treasurer at the hearing on this matter held October 27, 1982, in order to assure that adequate fuel supplies are available to customers during the peak winter-use season, Gas Service has had to maintain increasingly expanding inventories of natural gas, propane, and LNG which it purchases during low-use months and keeps in storage for future demand. The purchase price and carrying costs for fuel acquired for such

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future needs would ordinarily show as inventory on Gas Service's balance sheet and be included in the company's rate base. Under the Trust financing arrangement, the company has an economic interest in the stored fuel. The company will be billed by the Trust whenever the

company uses the fuel, and the fuel costs will be recoverable under the CGA mechanism. Because the company will book the fuel costs and the resulting purchase commitment on the balance sheet as an offset, rate base will be reduced and will result in a reduction in basic rates to customers. The evidence indicates that significant savings in the amount paid by Gas Service's customers can be expected at the present time. Recording of the fuel purchases as a commitment will avoid possible inclusion of fuel inventory in the company's rate base in future rate proceedings.

In addition, because the financing is assured to be available for the purchase of fuel up to a credit limit of \$3,000,000, Gas Service will be in a better position to buy fuel when it becomes available and will be better able to take advantage of price fluctuations in the fuel marketplace. In the absence of the Trust financing arrangement, fuel purchased for inventory would have to be financed until used, subject to varying interest rates. Moreover, such purchases would have to be financed within the limits of the company's short term debt allowance, against which the company's requirements for maintenance, other working capital expenditures, and improvements must be charged. In times of high fuel inventory storage, therefore, the amount of debt available to finance expenditures is reduced. By recording fuel inventory on the balance sheet and the purchase commitment as a miscellaneous current liability the fuel inventory trust arrangement will afford the company increased financial flexibility to meet these other requirements, without hindering its ability to have adequate supplies of fuel available that it can tap to meet customer requirements. This will also enable the company to have more flexibility in the timing of future permanent financings.

EFFECT ON SHORT-TERM DEBT LEVELS

Since the fuel inventory trust provides a vehicle for financing fuel purchases that otherwise would have to be financed by short term borrowing, and hence less short term debt need be kept available for financing fuel purchases, we had earlier ordered that the amount of Gas Service's allowable short term debt level be reduced, from \$4,000,000 to \$2,500,000, upon implementation of its fuel inventory trust proposal. (See Second Supplemental Order No. 15,390 dated December 31, 1981 in DF 80-150.) During this proceeding Gas Service has presented testimony that the number of its customers and the amount of its revenues receivable are steadily increasing. The financial flexibility afforded by fuel inventory trust financing will be negated if there is a substantial reduction in the short term debt maximum level, to which Gas Service may resort for financing maintenance, other working capital expenditures and improvements to better serve the needs of its growing number of customers. Thus the needs of the public will be better met if Gas Service's short term debt maximum continues at its present level in accordance with RSA 369:7.

FINDINGS

The Commission has reviewed the various, and lengthy, documents under which the fuel inventory trust financing

arrangement would be established, including the Trust Agreement between Gas Service and the Bank of New Hampshire, the Purchase Agreement between Gas Service and the Trust, the

Agency Agreement between Gas Service and the Trust, and the Credit Agreement between the Trust and the Bank of New England. We are cognizant of the fact that similar arrangements have been implemented in other jurisdictions. We are satisfied that fuel inventory trust financing by Gas Service, under the terms and conditions detailed in the documents submitted to us, will not adversely affect the operations of Gas Service, will not expose Gas Service to increased liability, will decrease the company's basic rates (which has already been done) and will in all probability afford the customers of Gas Service net savings. Therefore, the Commission approves the establishment of the fuel inventory trust financing plan, with the cost of such fuel to be recoverable under the CGA mechanism. Moreover, we find that the public good would be served by continuing Gas Service's short term debt maximum level at \$4,000,000 in connection with this financing plan for the period specified in RSA 369:7. Gas Service proposed that the initial legal and set-up cost be amortized over a five year period and included in future CGA filings. The Staff, while agreeing with a five year amortization period, has recommended and we direct that the cost concerned be recognized in Gas Service's operating expenses for basic rate making purposes, one-fifth of the cost in each of the next five years, with 20% of such cost allowed in the step increase to be allowed next January.

Our Order will issue accordingly.

ORDER

WHEREAS, in our Fifth Supplemental Order No. 15,532 in DR 80-179 (67 NH PUC 193), this Commission gave preliminary approval of the fuel inventory trust financing plan (the "plan") of Gas Service, Inc., (the "company") and allowed temporary flow-through of financing costs through the cost of gas adjustment ("CGA") procedure until approval of implementation of the plan; and

WHEREAS, as stated in the Report accompanying said order the company's rate base was reduced by \$197,505 and the above-mentioned GCA adjustment allowed in expectation of the submission and approval of the plan; and

WHEREAS, the company has filed with this Commission the documents embodying the plan and required to be executed and delivered to implement the plan, such documents being in or substantially in the form in which they are to be executed and delivered; and

WHEREAS, these documents have been carefully scrutinized by and are acceptable to this Commission, which is satisfied that the operation of the plan will result in savings to the company's gas customers; and

WHEREAS, in Second Supplemental Order No. 15,390 in DF 80-150 (66 NH PUC 586), this Commission directed that the company's short term debt maximum be reduced from \$4,000,000 to \$2,500,000 upon implementation of fuel inventory financing; and

WHEREAS, the company's expanding customer base and capital expansion and improvement program warrant that its short term debt maximum be maintained at \$4,000,000 notwithstanding the implementation of fuel inventory financing; it is hereby

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ORDERED, that the company's fuel inventory trust financing plan is hereby approved and

allowed to be implemented forthwith; and it is

FURTHER ORDERED, that the flow-through to the company's customers of the financing costs associated with the plan through the CGA procedure, commencing with the 1982-83 CGA winter period, is approved; and it is

FURTHER ORDERED, that upon implementation of the plan as long as it is in effect the fuel inventory and the liability with respect to that inventory shall be reflected on the company's balance sheet and include a footnote explanation; and it is

FURTHER ORDERED, that the legal and other expense of developing, setting-up and instituting the plan shall be amortized over a five year period commencing next January, with 20% of such expense being allowed in the step increase to be allowed as of January, 1983 pursuant to the aforesaid Report and Fifth Supplemental Order No. 15,532 and like a percentage to be included in the company's operating expenses in each of the next ensuing four years; and it is

FURTHER ORDERED, that the company's short term debt maximum shall remain at \$4,000,000 and Second Supplemental Order No. 15,390 in DF 80-150 is modified accordingly.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1982.

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NH.PUC*11/15/82*[79432]*67 NH PUC 800*Bretton Woods Telephone Company

[Go to End of 79432]

Re Bretton Woods Telephone Company

DR 81-356, Supplemental Order No. 15,989

67 NH PUC 800

New Hampshire Public Utilities Commission

November 15, 1982

APPROVAL of stipulations on a telephone company's revenue and return levels.

1. RATES, § 34 — Jurisdiction of state commissions — Power to fix minimum rate — Break-even rates — Prevention of rate shock.

[N.H.] Where a telephone company had not had a rate increase in thirty years, the commission realized that rate relief would have to be substantial and could be difficult for customers to absorb, and the commission attempted to cushion the shock by allowing only such an increase as would provide a break-even point for the company. p. 801.

2. EXPENSES, § 140 — Telephone — Depreciation on office equipment — Inside versus outside wiring.

[N.H.] The commission decreased a telephone company's depreciation rate for central office equipment to bring it in line with the industry norm, and it ordered the company to expense inside wiring costs and capitalize outside wiring costs. p. 802.

APPEARANCES: Margaret H. Nelson for Bretton Woods.

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BY THE COMMISSION:

REPORT

On November 13, 1981, the Company filed with the Commission its proposed Tariff NHPUC No. 2 to be effective December 13, 1981 providing for various changes in the terms and conditions of service specified in the Company's Tariff NHPUC No. 1. Tariff No. 2 provides for a rate increase calculated to yield an annual increase in base revenues of \$24,966. On November 23, 1982, by its Order No. 15,310 (66 NH PUC 522), the Commission suspended Tariff No. 2 for investigation. Data requests were transmitted to the Company by Staff and duly answered by the Company. Three settlement conferences were held at the offices of the Commission on July 27, August 10, and August 12, 1982, between representatives of the Company and the Staff. An Agreement dated October 25, 1982 is the product of these conferences and has been developed with reference to the entire record of these proceedings.

Pursuant to an Order of Notice dated July 23, 1982, the Commission held a hearing on August 10, 1982 which was continued until August 12, 1982 to permit the Company and the Staff to continue their settlement conference. On August 12, 1982 the Commission reopened the hearing and heard testimony by William Shanahan, Vice President of Bretton Woods Telephone Company regarding the terms of this Agreement.

[1] The Settlement allows for a revenue increase of \$22,177 as opposed to the original request of \$24,966. Taking notice of official PUC records it is noted that the increase granted by this Report and Order is the first increase the Bretton Woods Telephone Company has had in over 30 years. This long hiatus in rate increases eventually resulted in a negative return on equity of approximately 78% for 1981. There can be little question in such circumstances that rate relief is necessary. It is also admirable in large part that the Company has been able to provide service for such a long period at a nominal price to its ratepayers. However, the same hiatus has now created the need for a substantial leap in rates that offers little opportunity for adjustment or budgeting by the affected ratepayers. The spectre of negative returns on investment also raises a serious question as to whether adequate equipment has been purchased on a sufficiently regular basis to insure quality service is being provided. In other words, is the Applicant now asking for 1982 rates while providing 1952 service? The settlement indicates to the Commission that this concern may also have been considered by the parties to the Settlement when they agreed to an increase in rates that would permit only a break-even return on common equity. Such an approach eases the impact on ratepayers of achieving a more standard return on equity and permits a gradual phase-in of a full return.

Applicant filed its case consistent with normal practice by setting forth a rate base. Revenue relief calculated by a return on rate base approach relies on a special regulatory system of accounting for plant and equipment. Applicant on the other hand has not demonstrated extensive experience with those accounts. Apparently the parties also reached that conclusion as they agreed to circumvent the need to determine a rate base by developing a methodology that allowed for only a break-even return based on a proformed test year ending December 31, 1982. This methodology

also simplifies the controversial issue of cost of money by eliminating the need to determine the cost of common equity.

Next, Applicant and Staff arrived at an operating income for use in developing a revenue deficiency, by stipulating to proforma revenues of \$46,363 and adjusted operating expenses of \$68,540. The difference is a deficiency of \$22,177. No allowance for income tax is necessary on this break-even approach. It would provide little, if any, additional perspective to discuss each item of expense and its increase since the last rate case in as much as the last rate case is so out of date as to provide no meaningful comparison. It will be noted that stipulated revenues were proformed based on an annual growth in toll revenues of 1470 while adjusted operating expenses were proformed on an 8% increase.

[2] The Company's depreciation rate for central office equipment was found to be out of line with industry norms. The rate used in their annual report was 14%. This was reduced to 7% by negotiation. Depreciation of the embedded cost of equipment referred to as "Station Connections" was eliminated. This was in part due to a fire which destroyed a large portion of this equipment and partly because the remaining equipment was fully depreciated.

However, as to accounting procedures for new station connections, Federal Communications Commission Docket No. 79-105 requires a change. Companies are required to split the cost of station connections between inside wire and outside wire. Once an acceptable method of allocation is adopted, they are to then expense costs attributable to inside wire and capitalize costs attributable to outside wire. When Bretton Woods has developed an allocation method they are to submit it to the Finance Department for approval and will thereafter utilize that procedure in accounting for station connections. As the Commission has decreed previously with other independent telephone companies the capitalized portion will be depreciated at a rate of 5%.

Substantial revisions in rate design are incorporated in the tariffs filed by Applicant. Staff Engineering has reviewed these tariffs in detail prior to agreeing to accept them as part of the settlement. That extensive review led Staff to conclude the revised tariff was virtually identical to those recently approved by this Commission for other independent telephone companies and to that extent provides a desirable consistency in rate design between companies. It also indicates conformance to principles of rate design which the Commission has previously found to be just and reasonable. Although the revised rates are a vast improvement, some clarification may be necessary sometime in the future since Applicant's large scale adoption of rate designs used by larger telephone companies may not always work as well for a smaller company with somewhat different equipment and operations. Rather than try to anticipate these problems, the

Commission believes it to be more reasonable to simply direct the Applicant to be receptive to problems of this type realizing the Commission expects revised tariffs to be filed immediately when and if those problems occur.

It is always difficult to implement increases in rates of the magnitude seen here. Private Residential Service has gone from \$1.50/month to \$7.00. Even so, of the 13 telephone companies in the State, only one, Dixville Telephone Company has a lower rate, which is \$5.50/month. Again, even though the

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Business rate has jumped from \$2.00 to \$14.00 per month only three companies offer a lower comparable rate while two have rates in excess of \$30.00 per month.

Based on the foregoing discussion, the Commission finds the Settlement Agreement proposed by the parties to this matter will, based on the record as a whole, produce just and reasonable rates and shall therefore 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 Applicant, consistent with said Report, file tariffs providing for increased revenues in the amount of \$22,177; and it is

FURTHER ORDERED, that said tariffs reflect the revised rate structure adopted in this filing.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1982.

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NH.PUC*11/15/82*[79433]*67 NH PUC 803*Policy Water Systems, Inc.

[Go to End of 79433]

Re Policy Water Systems, Inc.

DR 81-229, Sixth Supplemental Order No. 15,991

67 NH PUC 803

New Hampshire Public Utilities Commission

November 15, 1982

ORDER approving rate case expenses filed in compliance with a previous order.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in 5th Supplemental Order No. 15,904, dated September 27, 1982, ordered Policy Water Systems, Inc. to "file its list of rate case expenses for our consideration"; and

WHEREAS, the Company has complied with such; and

WHEREAS, the Commission stated "that those rate case expenses found to be reasonable would be allowed as an adjustment to rates over a 12 month time frame; and

WHEREAS, after consideration of the Company's filing; it is

ORDERED, that Policy Water Systems, Inc. will be allowed to collect \$6,654.46 of rate case expenses over a 12 month period on a per customer basis as a surcharge to customer's bills; and it is

FURTHER ORDERED, that at the end of the 12 month period the Company supply the Commission an analysis of the collections.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1982.

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NH.PUC*11/15/82*[79434]*67 NH PUC 804*New England Telephone and Telegraph Company

[Go to End of 79434]

Re New England Telephone and Telegraph Company

DE 82-313, Supplemental Order No. 15,992

67 NH PUC 804

New Hampshire Public Utilities Commission

November 15, 1982

INVESTIGATION into a telephone company's quality of service.

SERVICE, § 123 — Duty to serve — Adequate service — Quality of service — Telephone.

[N.H.] In response to several customer complaints, the commission said it was interested in improving service, and as an initial step, it ordered a telephone company to check its lines and equipment and conduct a survey of its customers.

BY THE COMMISSION:

REPORT

The Commission initiated this docket pursuant to two complaints received from customers in the Pike-North Haverhill area. The Commission has been quite active in improving service in

many parts of the state. In fact, many of our effects have focused on the North Country, where the Commission has provided increased toll free service to Lisbon-Woodsville that will within a month provide customers of those communities a substantially improved calling area. In our hearings conducted around the State, it was clear that this was a major source of concern in the North Country.

Equally important was the necessity to provide a low use -low cost telephone option so that those on limited incomes could have an avenue to save money. As a consequence of this concern the Commission ordered New England Telephone Company to provide low use -measured service (about \$5.00 a month) to customers in Littleton. Customers in Groveton will have the benefit of this service in early 1983.

The Commission does receive a certain level of service related customer complaints. However, prior to this docket, the complaints have not come from these communities. The Commission having just completed an analysis of the Enfield exchange has found that prior to conducting any full blown and expensive hearing process it is extremely important that the exact problems be identified so that corrective measures can be undertaken. Sometimes there are service problems associated with one establishment, one neighborhood, one street or an entire community. To provide answers to what is exactly the problem (in particular the 989 exchange) the Commission needs more analysis to provide the proper remedies. New England Telephone must conduct the following types of analysis before any consideration can be given to a hearing; First, New England Telephone is to conduct an inspection of

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all equipment, cables, lines in and around these three communities that provide service in particular to Mr. Page of Pages Model A Garage. Second, that the results of that inspection plus any corrective action taken by New England Telephone are to be provided to the Commission no later than December 9, 1982. Third, that the New England Telephone Company conduct a survey of all of the customers in the 989 exchange as to whether or not they are having telephone service problems and if so what type of problems. This survey is to be conducted during a variety of times and should encompass within reason all of the customers with telephones in this exchange. The results of this survey are to be broken down between residential and business classes and the results are to be filed with the Commission no later than December 16, 1982.

The Commission's prior order establishing a public hearing for December 2, 1982 is hereby vacated and the Commission will await the results of the aforementioned steps before deciding upon what other action is necessary. New England Telephone is placed on notice that if in fact their survey reveals a telephone service related problem(s), the filing on December 16, 1982 should contain New England Telephone's plan for immediately correcting the problem(s).

Our Order is issued accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report which is incorporated and made a part of this order, it is hereby

ORDERED that Commission Order # 15,963 is vacated; and it is

FURTHER ORDERED, that the procedures, surveys and reports required in the attached Report are to be undertaken and provided to the Commission on the dates specified by the New England Telephone Company.

By Order of the Commission this fifteenth day of November, 1982.

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NH.PUC*11/15/82*[79435]*67 NH PUC 805*Energy Cost Adjustment

[Go to End of 79435]

Re Energy Cost Adjustment

Intervenors: Public Service Company of New Hampshire and Community Action Program

DR 82-146, Fourth Supplemental Order No. 15,993

67 NH PUC 805

New Hampshire Public Utilities Commission

November 15, 1982

ORDER granting a motion for rehearing and suspending a prior order.

APPEARANCES: Martin L. Gross for Public Service Company of New Hampshire (PSNH);
Gerald Eaton for Community Action Program (CAP).

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BY THE COMMISSION:

REPORT

The Commission will grant the PSNH motion for rehearing filed November 1, 1982 as to Commission Report and Order No. 15,951 (67 NH PUC 743). The Commission will suspend the effectiveness of that order as to bills rendered on or after December 1, 1982. The rehearing will begin on November 23, 1982 at 8:45 A.M. Any testimony for our consideration is to be filed on or before 12:00 noon on November 22, 1982.

The Commission will also vacate and withdraw any decision in this docket by any portion of the Commission since the filing of the motion for rehearing. The issues to be discussed and evaluated will consist of those filed by PSNH in its motion for rehearing, the Staff's response in a memo dated November 1, 1982, the technical statement as to PSNH's interpretation and application of 10% trigger for ECRM, whether there should be a modification of Report and Order No. 15,732 (67 NH PUC 441) to clarify the wording set forth in section 4 of page 21 of the aforementioned Report and Order, report of the over/under collection situation as of October 31, 1982 and previous decisions or allowances of second or third step increases for PSNH such as January 1, 1981 and April 1, 1982, and previous approvals of special contracts.

To facilitate the Commission's disposition of the issues in this proceeding, the Commission

would ask whether PSNH will stipulate to the following:

1. Exhibit 11- Exhibit 8 in DR 82-146 is a PSNH provided docket that states that the ending balance as of January 31, 1982 was an overcollection by PSNH from its customers of \$1,075,531.
2. Exhibit 12-Exhibit 8 in DR 82-146 is a PSNH provided document that states that the ending balance as of February 28, 1982 was an overcollection by PSNH from its customers of \$2,914,691.
3. Exhibit 13-Exhibit 4 in DR 82-146 is a PSNH provided document that states that the ending balance as of March 31, 1982 was an overcollection by PSNH from its customers of \$3,556,330.
4. Exhibit 14-Exhibit 4 in DR 82-146 is a PSNH provided document that states that the ending balance as of April 30, 1982 was an overcollection by PSNH from its customers of \$7,373,204
5. Exhibit 27-Exhibit 24 in DR 82-146 is a PSNH provided document that states that the ending balance as of May 31, 1982 was an overcollection by PSNH from its customers of \$8,289,792
6. Exhibit 4 of a document dated July 19, 1982 is a PSNH provided document that states that the ending balance as of June 30, 1982 was an overcollection by PSNH from its customers of \$8,647,500.
7. Exhibit 4 of a document dated August 19, 1982 is a PSNH provided document that states that the ending balance as of July 31, 1982 was an overcollection by PSNH from its customers of \$7,065,342.
8. Exhibit 4 of a document dated September 21, 1982 is a PSNH provided document that states that the ending balance as of August 31, 1982 was an overcollection by PSNH from its customers of \$8,903,827.
9. Exhibit 4 of a document dated October 21, 1982 is a PSNH provided document that states that the ending balance as of September 30, 1982 was an overcollection by PSNH from its customers of \$9,691,742.
10. That the Third Supplemental Order No. 15,951 (67 NH PUC 743) issued by the Commission stated that the

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existing rates would be reduced by \$5,367,992 over the two months November and December of 1982.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED that the Public Service Company of New Hampshire Motion for Rehearing is granted; and it is

FURTHER ORDERED, that hearings will be held on November 23, 1982 at 8:45 a.m. at the Commission offices in Concord, New Hampshire; and it is

FURTHER ORDERED, that any testimony for our consideration will be filed with this Commission no later than 12:00 noon on November 22, 1982.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1982.

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NH.PUC*11/16/82*[79436]*67 NH PUC 807*Manchester Water Works

[Go to End of 79436]

Re Manchester Water Works

Intervenor: Four-Town Water Study Committee

DR 81-388, Third Supplemental Order No. 15,994

67 NH PUC 807

New Hampshire Public Utilities Commission

November 16, 1982

MOTION for rehearing on a water rate case; granted in part and denied in part.

1. VALUATION, § 250 — Property included or excluded — Contributions in aid of construction — Depreciation reduction.

[N.H.] Reducing contributions in aid of construction by a portion of the depreciation reserve may be correct theoretically, but where past rates were determined without considering that amount, current rates should also disregard it or it would amount to retroactive rate making. p. 809.

2. DEPRECIATION, § 7 — Right to allowance — Factors — Contributions in aid of construction.

[N.H.] In order to avoid the pitfalls in depreciation allowances, when a company first books fixed asset additions, contributions in aid of construction should be deducted so that depreciation is taken only on the company's investment. p. 809.

3. DEPRECIATION, § 7 — Right to allowance — Factors — Contributed capital.

[N.H.] Depreciation expense on contributed capital cannot be allowed as an expense chargeable to ratepayers. p. 810.

4. EXPENSES, § 57 — Financing costs — Interest — City credit rating.

[N.H.] A water company was denied the 2 per cent savings from use of a city's credit rating where the company did not incur any higher interest rate related to out-of-town service and

where the city credit rating included a 3 per cent investment risk factor above the highest municipal borrowing rates, thus allowing double recognition. p. 811.

5. RATES, § 247 — Schedules and formalities — Legality pending commission action — Recoupment of lost revenues.

[N.H.] Shortfalls in revenues resulting from the differential between temporary and final rates

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may be recouped but without interest. p. 811.

6. RATES, § 302 — Variable rates based on cost — Automatic adjustments — Electricity costs.

[N.H.] In an effort to offset attrition, the commission prescribed an automatic adjustment to allow a water company 90 per cent of all electricity cost increases it incurs. p. 812.

APPEARANCES: Charles A. DeGrandpre, Robert A. Wells, and Alice C. Briggs for the petitioner; Armand Dugas for the Four-Town Water Study Committee.

BY THE COMMISSION:

REPORT

The Commission on June 11, 1982, issued Report and Order No. 15,702 (67 NH PUC 387) granting Manchester Water Works ("MWW") a rate increase of \$67,547 on an annual basis as opposed to the \$110,000 requested.

In addition, the Commission ordered: (1) that since temporary rates were authorized in this docket, the Water Works would file documents laying out the development of the revenue shortfall due to the time lapse resulting from the effective date of that temporary rate to the date of this order, which was to be charged on a flat rate per cubic foot over a six-month period; (2) that the Manchester Water Works would file a report as to the costs that would be incurred in connecting their present system with that of the Bedford Water Works within one month of the date of the order; (3) that the Water Works, together with the Town of Londonderry, should file a report within three months of the date of this order as to the portion of their existing franchise area in Londonderry that they commit to serve within the next two years; (4) that the rate design implemented by the Commission in its report would be followed by the Manchester Water Works; (5) that a portion of the increase was to be levied upon Manchester Water Works' Grasmere customers, and (6) that the second step increase would be allowed if the conditions were met as set forth in the Report and after an examination by Staff of any documents filed as of January 1, 1983.

On June 29, 1982, MWW filed a motion for rehearing which was granted by the Commission's Third Supplemental Order No. 15,757.

A duly noticed public hearing was scheduled and held at the Commission's office in Concord on August 11, 1982.

Prior to the hearing, on August 2, 1982, Mr. Lessels and Mr. Traum of the PUC Staff filed testimony and a memorandum which eventually became exhibits in the August 11, 1982 hearing.

In addition, Mr. Dugas, Chairman of the Four-Town Water Study Committee, filed a memorandum on the rehearing on August 6, 1982.

MWW responded with a twenty-one page memorandum plus exhibits on August 10, 1982.

In all, the August 11, 1982 hearing saw MWW sponsor testimony by Mr. Elwell, PUC Staff testimony sponsored by Mr. Lessels and Mr. Traum, and a statement by Jack Webster of the Londonderry Water and Sewer Commission, as well as numerous exhibits and substantial cross-examination.

The rehearing focused on the areas of: (1) CIAC, and depreciation and the desired 2% return for use of the City's credit rating and their effect on the amount of the rate increase; (2) Bedford Water Works; (3) the rate differential between In and Out-of-Town customers;

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(4) rate design; (5) cost of electricity; (6) temporary rates; and (7) public fire protection charge.

I. AMOUNT OF THE RATE INCREASE

A. During the course of the previous proceedings, MWW developed rate base figures based on estimated amounts of fixed assets, depreciation, and CIAC allocated to Out-of-Town Customers.

The Commission was dissatisfied with use of estimated figures, especially for CIAC, and MWW went back in its accounting records and developed the "actual" CIAC figure for Out-of-Town customers of \$1,881,500 for 1981 on average; the Commission utilized this figure in conjunction with the only other ones provided it by MWW, which was based on % allocations for fixed plant and cumulative depreciation.

MWW disagreed with the Commission's adoption of a formula which mixed "actual out-of-town CIAC" with net plant time an allocation factor, yet in MWW's Schedule 4 of its August 10, 1982 Rehearing Memorandum developed a rate base by using "actual" allocations as suggested by PUC Staff Member, Traum, in his memorandum filed August 2, 1982, but generally only from 1978 to December 31, 1981. For pre-1978, the figures were generally based on a 10.83% allocation. This puts MWW in the same position it complained the Commission had mistakenly put itself in of mixing actuals with allocations.

[1, 2] One additional problem with the MWW approach is its reduction of CIAC by a portion of the depreciation reserve as a type of amortization. In theory, this is correct, but where rates and rates of return were determined in the past without this \$490,866 (1981 average of \$33,569 and \$648,162) adjustment to Out-of-Town rate base, the Commission feels allowance of it in developing current rates would be akin to retroactive ratemaking. In the past, MWW was allowed to take depreciation on this \$490,866, so increasing the rate base to Out-of-Town customers by this amount now would enable and even legitimize MWW collecting the amount three times-once through CIAC, secondly in the past depreciation practices, and again by return

on rate base. Through rates as of December 31, 1981, MWW had been provided the opportunity to collect \$1,428,232 in depreciation from Out-of-Town customers, not \$780,070 (\$1,428,232 — 648,162).

Another reason the MWW approach is invalid in this case is clearly evident when one realizes MWW was crediting Out-of-Town customers with a net depreciation of \$1,007,196 (\$1,340,765 - 333,569) as of 12/31/80 and only \$780,070 (\$1,428,232 — 648,162) as of 12/31/81; while for the total system the 1982 PUC report only showed \$48,266 in retirements of fixed assets.

This concept is retroactively invalid. In spite of this, the Commission recognizes and appreciates the amount of work done by the Water Works in going back in its Continuing Property Records to 1979 and subdividing the accounts, and feels that in the future MWW will avoid major pitfalls by continuing this allocation with one further modification. As suggested by Mr. Traum, MWW when first booking fixed asset additions should initially deduct CIAC, so that depreciation is only taken on MWW's investment and there is no question about customers being forced to pay for the same asset twice, or any possibility that the new additions and related CIAC could result in a negative rate base. In addition, the problems of retirement or

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amortization of CIAC would not even exist. This methodology follows that required by electric utilities before the Federal Energy Regulatory Commission as well as this Commission.

This last paragraph solves the CIAC problem on new additions, but not what figures to use for rate base in this proceeding. MWW's rehearing memorandum and testimony support a rate base of \$1,708,620 while previous Commission finding was \$1,138,889.

MWW's revised figures from Schedule 4, of the Rehearing Memorandum, are summarized below:

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

| | | <i>Beginning</i> | | |
|-------------|--------------|------------------|-----------------|---------------------|
| | | <i>1981</i> | <i>End 1981</i> | <i>Average 1981</i> |
| Out-of-Town | Fixed Assets | \$3,941,981 | \$5,534,861 | \$4,738,421 |
| Less: | CIAC | -1,542,158 | -2,999,362 | -2,270,760 |
| Less: | Depreciation | -1,340,765 | -1,428,232 | -1,384,499 |
| Plus: | Depreciation | + 333,569 | + 648,162 | + 490,866 |
| | | ----- | ----- | ----- |
| | Reserve Adj. | | | |
| | Test Year | \$1,392,627 | \$1,755,429 | \$1,574,028 |
| | Average | | | |

This average of \$1,574,028, the Commission feels, is not accurate historically, as the previously discussed depreciation reserve average of \$490,866 should be removed, resulting in an accepted figure of \$1,083,162.

This accepted figure, \$71,947 for Inventory, \$55,563 for Working Capital and \$7,083 for Other Items (all uncontested figures) are added to derive a rate base of \$1,217,755.

B. Expenses

The Commission accepted an expense level of \$387,481, which included \$50,845 for

depreciation.

[3] Depreciation was the only portion of the expense finding which was a major item in the rehearing. The Commission has previously stated that depreciation expense on contributed capital will be eliminated from expenses chargeable to consumers in the usual case. *Re Hudson Water Co.* (1979) 64 NH PUC 357. The Supreme Court has clearly upheld the principle that a utility cannot earn a return on capital supplied by consumers. *Legislative Utility Consumers' Council v Granite State Electric Co.* (1979) 119 NH 359, 402 A2d 644; *Windam Estates Asso. v New Hampshire* (1977) 117 NH 419, 422, 374 A2d 645, 647. It is equally clear that a depreciation expense is designed to compensate the original investment. Where that investment is made by the ratepayer, there is no rational support for allowing a utility a depreciation recovery. *Re Hudson Water Co.* (1981) 66 NH PUC 303, 311.

In conclusion, the original finding of this Commission disallowing depreciation on CIAC remains in force.

The Company's fall back request was that the "actual" figures for Out-of-Town CIAC, Out-of-Town net plant, and Out-of-Town depreciation as developed in their Schedule 4, be plugged into a formula corresponding to that previously utilized by the Commission.

Since this Commission has not accepted MWW's "actual" figures, the \$70,079 requested is denied. Instead, the Commission will use the figures developed previously in this report which derived a rate base of \$1,217,755. And the Commission will change the application of the figures to conform with the approach suggested by Mr. Traum of the PUC

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Staff and explained earlier in this Report.

In its Motion for Rehearing, Manchester in 2.11 states that " ... denial of depreciation on plant constructed with CIAC is unjust and unreasonable. When plant purchased with CIAC is retired, Manchester Water Works pays the entire cost of replacement". This is unsupported when it is obvious that the customers are also financing the replacement when Manchester recovers the original CIAC dollars through a depreciation allocation.

The accepted depreciation figure is thus \$57,558 calculated as follows:

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

| | | |
|---|---|---|
| (1) Average 1981 Fixed Assets (Out-of-Town) | (2) Depreciation % Rate calculated in WWW's 1981 Annual Report to the PUC | (3) ÷ (1) × (2) Allowable Depreciation \$57,558 |
| Less CIAC (Out-of-Town) \$2,467,661 | 1981 Annual Report to the PUC \$786,352.54=2.3325% | 33,713,073 |

In summation, the Commission will allow an adjusted expense level of \$387,481 — 50,845 + 57,558, or \$394, 194.

C. 2% Savings From Use of City's Credit Rating

[4] MWW requested the Commission to reconsider that aspect of the decision which denied the 27% savings from use of the City's Credit Rating.

No new substantial evidence was submitted by MWW to dispute the two reasons originally stated by the Commission in pages 9 and 10 of the June 11, 1982 Report to alter that aspect of the decision. The decision stated, "First, the Water Works did not incur higher interest rates due to the incremental principal related to the out-of-town customers. Second, that since the request for a return on municipal equity includes a 3% investment risk factor above the most recent and highest municipal borrowing rates, the inclusion here would in effect provide double recognition."

In summation, as far as the revenue aspect of this decision goes, the adjusted revenue requirements is \$520,841 calculated as follows:

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

| | <i>6/11/82 Decision Adjusted</i> | |
|--|----------------------------------|------------|
| Return on Investment (Rate Base × 10.4%) | \$ 118,444 | \$ 126,647 |
| Expenses | 387,481 | 394,194 |
| Total Revenue Requirement | \$ 505,925 | \$ 520,841 |
| Present Revenues | 438,266 | 438,266 |
| Rate Increase | \$ 67,659 | \$ 82,575 |

II. TEMPORARY RATES

[5] Manchester Water Works on pages 12 and 13 of its Motion for Rehearing requested a different methodology for surcharging the shortfall from the date of temporary rates to the rates authorized in Order No. 15,702 (67 NH PUC 387). The Commission will accept the methodology but will reject any allowance for 10.4 % or any interest to be added in.

Use of any interest charge in this respect is unprecedented before this Commission, and is denied. Pursuant to RSA 378:27 and 378:29, the Company is entitled to recoupment but not interest.

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Manchester Water Works is entitled by statute to the level of rates set in this Report and Order back to the time that temporary rates were set.

III. ELECTRICITY PRICES

[6] The Commission will allow 90% of any increases that Manchester Water Works incur in terms of electricity costs between that recognized in this decision and the PSNH rate level that exists as of January 1, 1983. This allowance is without condition and is designed to offset attrition. The 90% factor is not designed to disallow the remaining 10%. Rather, the Commission in providing this automatic adjustment does not wish to open the door to a cavalier attitude about electricity usage. Manchester Water Works continues to have the ability, as does any utility, to file when they believe such a filing is necessary.

IV. *BEDFORD WATER WORKS*

The Commission does not find it reasonable to approach a resolution of the problems associated with Bedford Water Works in this docket. Neither the requisite notice nor all of the necessary parties are present in this docket. The Commission would appreciate any information Manchester Water Works might have as to the costs of connecting the two systems. The records relied upon by staff have been shown to be inaccurate. Any investigation into this matter will be through another docket.

V. *MISCELLANEOUS CHARGES*

The Report and Order No. 15,702, made no mention of the changes proposed by Manchester to its Miscellaneous Charges. These charges were excluded due to an omission which the Commission now rectifies by approving the charges as filed. It should be noted however, that the dollars collected by the "Application Fee" and the cost of service connection and meter installation charge which are part of the "Connection Charge" would be accounted for as Contributions In Aid of Construction against the service and meter capital accounts.

VI. *METER RATE DESIGN*

Staff presented testimony in support of the Commission decision that all consumption above the minimum allowance shall be at the same or flat unit cost. Staff points out that the allocations made to derive the declining block rate schedule used by Manchester is the product of estimated demands and that no evidence was submitted to show that the unit cost should not be the same to all individual customers. The Commission finds merit in the staff contention. The studies relied upon by the Company need to be updated. The Commission accepts as reasonable the testimony of Water Engineer Robert Lessels.

VII. *PUBLIC FIRE PROTECTION*

No new evidence was submitted as to these issues and the Commission will continue its decision as to this area.

VIII. *SECOND STEP INCREASE*

The Commission will allow the second step increase as noted in our prior order. However, the Commission removes all conditions except as to the 90% as to electricity costs. The Commission does place the Manchester Water Works on notice that any attempt to discriminate against out-of-City customers will lead to the discontinuation of this adjustment mechanism.

Our order will issue accordingly.

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SUPPLEMENTAL ORDER

Upon consideration of the foregoing report which is hereby incorporated and made a part of this Order, it is hereby:

ORDERED, that Manchester Water Works' motion for rehearing is granted in part and denied in part as set forth in the Report; and it is

FURTHER ORDERED, that Manchester Water Works file revised tariffs to implement this

new permanent rate level and tariffs implementing a surcharge for the difference between temporary and permanent rates, and it is

FURTHER ORDERED, that Manchester Water Works Docket DR 81-388 is closed.

By Order of the Public Utilities Commission this sixteenth day of November, 1982.

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NH.PUC*11/17/82*[79437]*67 NH PUC 813*New England Telephone and Telegraph Company

[Go to End of 79437]

Re New England Telephone and Telegraph Company

DC 81-393, Order No. 15,995

67 NH PUC 813

New Hampshire Public Utilities Commission

November 17, 1982

INVESTIGATION into a telephone company's quality of service.

SERVICE, § 450 — Telephone — Interruption and complaints — Efforts to improve quality of service.

[N.H.] Although problems with a telephone company's lines and dial tones persisted, the commission found that where the company had made a good faith effort to resolve the problems through expenditures on a massive repair and upgrading program, the company need not be penalized.

BY THE COMMISSION:

REPORT

On December 16, 1981, a petition of 25 names was submitted to this Commission requesting "an intensive investigation in the matter of poor service, attitude, and inconvenience in Enfield, Canaan and Lebanon, N.H., Grafton County, by New England Telephone inclusive but not limited to Rates, Installation, Repair, Information and Continuity of Service." The petition was forwarded by E. Stephen Plumley, a local resident, businessman, and telephone customer.

On January 6, 1982, a letter was forwarded by this Commission to Mr. Plumley notifying him of a hearing on January 19, 1982 at 1:00 p.m. at the Concord offices of the Commission. The Commission requested that since it did not have the addresses of those who signed the petition, that Mr. Plumley notify the interested parties of the hearing.

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On January 19, 1982, the scheduled hearing was held and was attended by seven concerned customers, as well as Company personnel. The complaints that were voiced at the hearing revealed that customers were concerned about two primary issues: Firstly, the quality of service issue itself: and secondly, a request to increase the toll-free calling area of local customers. The Commission announced that it would limit its proceeding to the issue of the referenced petition and would, thereby, concern itself in this hearing with the quality of service issue. It agreed to record the comments of those who were concerned about the extended service area and announced it would address that matter in a separate proceeding.

Peter G. Russell, Administrative Assistant, Enfield Board of Selectmen, submitted a letter dated January 19, 1982 which supported his testimony at the hearing as to specific difficulties in using town office telephones. Rev. John MacDougall and Mr. Plumley testified to similar difficulties. Specific problems included: Busy signals during dialing, noisy crackling lines, lines going dead after numbers have been dialed, other parties answering calls on party line, and incorrectly dialed numbers. They testified that the Company had been responsive to their frequent complaints, but that the problems continued despite the Company's efforts. Company representatives testified that a thorough examination of the system had resulted in the identification of defective switches which had been replaced. They noted that circuit overloading was an identified problem, and they announced plans to add 200 more lines and 200 more terminals during the summer of 1982. Two more "automatic number identification trunks" were also to be added to reduce the number of times that operators are required to assist in completing local calls.

As a result of the customers' testimony, the Company was instructed to continue its investigation into service problems. The Commission announced that a further hearing would be held after the Company had installed its new equipment in order to analyze its success, and to determine whether further Commission action was necessary.

On February 23, 1982, the Company submitted a letter to the Commission itemizing the service problems discussed at the meeting and outlining their proposed and completed resolutions.

On May 6, 1982, the Commission directed the Company to schedule a public hearing in the Town of Enfield on June 9, 1982 at 7:30 p.m. at a location convenient to the public. It directed a two time public notice in a newspaper having general circulation in the community served, and requested that a representative number of the originally concerned parties also be notified. Confirmation of the reservations of the Enfield Town Hall was received at the Commission's offices on May 18, 1982. An affidavit of the public notice was forwarded to the Commission on June 2, 1982. The June 9 hearing was held as scheduled, and was attended by approximately 30 local residents and 3 Company representatives. The Company announced that approximately \$42,000 had been invested in replacement cable to date, and that \$7,000 had been expended in the Town of Enfield. He advised that approximately \$ 165,000 would be invested in each of those towns by the end of the year.

Continued customer complaints included:

1. Wrong numbers continue to be dialed because customers fail to dial "1" before desired numbers.
2. Weekend service response is inadequate.
3. Noisy lines
4. Incoming calls fail to reach parties.
5. No dial tone

Customers continued to compliment the Company for their responsiveness, and demonstrated a feeling that service had improved since the Company had begun its improvement program. They continued to express dissatisfaction, however, with their overall quality of service.

COMMISSION ANALYSIS

Adequate time has now passed to judge whether the Company has maintained its commitment. Our review of company actions to date reveals that the following work has been completed:

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

| <i>PROJECT</i> | <i>LOCATION</i> | <i>COMPLETION</i> | <i>COST</i> |
|---|-------------------------|-------------------|-------------|
| Eliminate dual pole line & unsightly plant | 91/17-91/26 Rte 4A | 12/81 | \$6,000 |
| Bury Cable which was on top of ground | Rte. 43 Moose Mt. Rd | 3/82 | \$1,000 |
| Relocate Cable to eliminate substandard separations | 41/75 - 413/9 | 8/82 | \$2,000 |
| Replace Buried Cable | Moose Mt. Rd | 8/82 | \$6,000 |
| New Feeder Cable | Rte. 902 | 9/82 | \$50,000 |
| | Rte. 4-A | | |
| | | TOTAL | \$65,000 |

The Company has also committed itself to the following work schedule:

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

| <i>PROJECT</i> | <i>LOCATION</i> | <i>COMPLETION</i> | <i>COST</i> |
|--|-----------------|-------------------|-------------|
| Rebuild Pole line for joint use and relocate cable | 9020/1-9020/19 | 1/211/30/82 | \$ 8,000 |
| Rebuild Pole Line for joint use, and replace cable | George Hill Rd. | 12/82 | \$ 14,000 |
| Replace wire with cable and rebuild pole line | Palmer Road | 2/83 | \$ 29,000 |
| Reinforcement cable | High Street | 3/83 | \$ 5,000 |
| Reinforcement cable | North Street | 3/83 | \$ 1,000 |
| Reinforcement cable | Jones Hill Rd | 3/83 | \$ 12,000 |

| | | | |
|---------------------|-------------------|------|------------------|
| Reinforcement cable | Old South Rd | 3/83 | \$ 15,000 |
| Reinforcement cable | Goose Pond Rd | 3/83 | \$ 21,000 |
| Reinforcement cable | Spectacle Pond Rd | 3/83 | \$ 2,000 |
| | TOTAL | | <u>\$107,000</u> |

The Company has also completed an upgrade of the Enfield Central Office. That project which began July 19, 1982, was completed on October 24, 1982, and

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will be in service by November 30, 1982. It included the following:

1. Added one line group
2. Added 200 connectors
3. Added two ANI trunks for Stromberg Carlson CAMA trunks
4. Added 1 trunk for intercept (trunk finder)
5. Upgraded regular connectors from 8 to 9 switches
6. Mid train
 - a. Added 20 incoming selectors
 - b. Added 5 fifth level selectors
 - c. Added 5 seventh level selectors
 - d. Added 5 incoming selectors for toll completions

The total cost for the modifications to, the Enfield Central Office was \$43,850.00

The Company has provided the Commission with a schedule of projects in the Canaan exchange as follows:

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

| <i>PROJECT</i> | <i>LOCATION</i> | <i>COMPLETION</i> | <i>COST</i> |
|---|---------------------|-------------------|-------------|
| Replace 2 CRW with cable | Orange Rd. | 3/82 | \$8,000 |
| Replace wire with cable | Off Rte. 118 | 3/82 | \$8,000 |
| Replace wire with cable | Fernwood Farm Rd | 3/82 | \$8,000 |
| Replace wire with cable | Hinchley Hill Rd. | 9/81 | \$6,000 |
| Loads 25PR Group which had missing load. | Off High Parker St. | 2/82 | \$2,000 |
| Replace wet buried CA with aerial | Jerusalem Rd. | 12/81 | \$2,000 |
| Replace wet buried CA with aerial | Stevens Road | 4/82 | \$3,000 |
| Replace wire with cable | Liberty Road | 4/82 | \$5,000 |
| Growth Cable and Replace several sect. false wire | Kilton Pond Rd. | 9/82 | \$10,000 |
| Replace 5 CRW with cable | Riddle Hill Rd. | 9/82 | \$5,000 |
| Replace wire with cable | Razor Hill Rd. | 9/82 | \$8,000 |
| Replace wire with cable | E. Grafton Rd. | 9/82 | \$8,000 |
| Replace wire and buried cable | Prescott Street | 9/82 | \$45,000 |
| Replace wire with cable | Cannan Street | 12/82 | \$39,000 |
| Replace buried cable | Orange Road | 6/83 | \$53,000 |

| | |
|-------|-----------|
| TOTAL | \$210,000 |
|-------|-----------|

Finally, the Company began modifications to its Canaan central office on March 1, 1982 which were completed on June 6, 1982:

1. Added one line group with 13 switches
2. Added 200 connectors
3. Added trunk capacity
 - a. 1 from Enfield to Canaan
 - b. 2 from Canaan to Enfield
 - c. 3 Rumney 2 way dial locals
 - d. 2 CAMA ANI
 - e. 1 TSPS

The total cost for the central office modifications equal \$42,800.00

CONCLUSION

We find that the Company has maintained its commitment to address the problems enumerated in this docket. It is impossible to tell whether every problem has been solved, because the projects listed in our analysis have not all yet been completed, but we find that the Company has made a concerted effort to

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address them. We note that of the total \$382,000 committed by the Company, \$199,000 remains unfinished, and we expect that continued problems which may exist at the present time may be alleviated by this continuing program. The Commission will direct the Company to continue to keep the Commission informed as to its progress through monthly progress reports filed with our Engineering Department. This process is to continue until the final work is completed. A final inspection will be made by the Commission's Engineering department.

The Commission is confident that customers who continue to experience problems will bring them promptly to the attention of the Company and we will require that any unresolved by the Company are to be forwarded to the Commission.

The Commission will close this case based upon the good faith progress demonstrated to date. Our Order will issue accordingly.

ORDER

Upon Consideration of the foregoing report which is made a part of the order, it is hereby; ORDERED, that this case is closed.

By Order of the Public Utilities Commission this seventeenth day of November, 1982.

NH.PUC*11/18/82*[79438]*67 NH PUC 817*Town of Jaffrey

[Go to End of 79438]

Re Town of Jaffrey

DX 82-265, Order No. 15,996

67 NH PUC 817

New Hampshire Public Utilities Commission

November 18, 1982

AUTHORIZATION for a town to pave over an unused railroad crossing.

BY THE COMMISSION:

ORDER

WHEREAS, the town of Jaffrey, New Hampshire has requested, by letter dated October 26, 1982, for permission to pave over the Boston & Maine Railroad tracks at Hillcrest Road also known as Cemetery Crossing identified as AAR-DOT 05 3523 B; and

WHEREAS, the Boston & Maine Railroad has not operated over this line for several months to serve D.D. Bean, the only customer north of Hillcrest Road; and

WHEREAS, the D.D. Bean siding has been paved over where it crosses U.S. Route 202 thereby making it not possible at this time to service the company; it is

ORDERED, that the Town of Jaffrey be and hereby is authorized to pave over Hillcrest Road Crossing also known as Cemetery Crossing; and it is

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FURTHER ORDERED, that if subsequent service is required to the D.D. Bean factory, the town of Jaffrey shall remove all fill and paving materials to render the track useable for trains.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1982.

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NH.PUC*11/18/82*[79439]*67 NH PUC 818*New England Telephone and Telegraph Company

[Go to End of 79439]

Re New England Telephone and Telegraph Company

DE 82-280, Order No. 15,997

67 NH PUC 818

New Hampshire Public Utilities Commission

November 18, 1982

PETITION for authority to place submarine telephone plant under state-owned waters; granted.

APPEARANCES: Robert A. Lamothe, engineering manager, for the petitioner.

BY THE COMMISSION:

REPORT

On October 4, 1982, New England Telephone and Telegraph Company (the Company) filed with this Commission a petition seeking authority to install and maintain submarine telephone plant under State-owned waters of Mendums Pond in Barrington, New Hampshire. On October 8, 1982, an Order of Notice was issued by the Commission setting the matter for hearing on November 10, 1982 at 10 a.m. Public notice was directed, and individual notices were sent to Linda Richelson (the Company); John Bridges, Division of Safety Services; George Gilman, DRED; and the Office of the Attorney General. An affidavit was delivered to the Commission on November 1, 1982 attesting to the publication of notice of the matter in the Union Leader on October 20, 1982.

Robert A. Lamothe, Engineering Manager for the Company, described the crossing at the duly-noticed public hearing convened on November 10, 1982 at 10 a.m., indicating the crossing comprised one two-pair submarine cable running between two cabins owned by the University of New Hampshire. These pairs would be run underground from Cabin A fifty-five feet to the shore, thence submarine for a distance of 1,200 feet. At the opposite shore the cable would be buried for a distance of 110 feet to Cabin B. All construction will meet standards set by the National Electrical Safety Code. Mr. Lamothe also presented approvals by the Wetlands Board and the Water Supply and Pollution Control Commission.

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No objections were received by the Commission, nor was any intervenor present at the hearing.

The Commission finds the petition for license to cross under Mendums Pond to be 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 authority is granted New England Telephone and Telegraph Company to install and maintain submarine telephone plant under the public waters of Mendums Pond in Barrington, New Hampshire; said crossing to extend from the southeast corner of said pond, southwesterly to a second point on said mainland.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1982.

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NH.PUC*11/19/82*[79440]*67 NH PUC 819*Granite State Electric Company

[Go to End of 79440]

Re Granite State Electric Company

DE 82-21, Fourth Supplemental Order No. 15,999

67 NH PUC 819

New Hampshire Public Utilities Commission

November 19, 1982

ORDER establishing qualifying facility rates for the purchase of power from small power producers.

1. COGENERATION, § 27 — Rates — Avoided costs — Capacity costs.

[N.H.] A utility's capacity costs should be excluded when the company has excess capacity because rates established according to avoided costs should leave the company in the same position it would have been in had it not purchased cogenerated power. p. 820.

2. EVIDENCE, § 25 — Particular kinds — Documentary evidence — Confidentiality.

[N.H.] If a utility is concerned about confidentiality of documents requested by the commission it may ask for confidentiality, but it cannot simply withhold the information as a means of keeping the data confidential. p. 821.

3. COGENERATION, § 25 — Rates — Avoided costs — Encouraging small power production.

[N.H.] The commission held that qualifying facility rates should be set based upon full avoided costs in order to encourage optimal development of small power plants and to guard against underpricing of alternative power. p. 822.

4. COGENERATION, § 31 — Rates — Methods of computation — Marginal costs.

[N.H.] In establishing qualifying facility rates, the commission ruled (1) the rates should be based on simulated marginal costs for a period of months into the future using a 50-megawatt increment/decrement to reflect avoided costs; (2) time-of-day rates should be implemented at the option of the qualifying facility; and (3) reconciliation of actual costs should occur at the end of six months. p. 823.

APPEARANCES: Michael Flynn for Granite State Electric Company; Timothy Taylor for Baltic Mills. Limited Appearance:

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William Nostrand for Energy Ingenuity.

BY THE COMMISSION:

I. PROCEDURAL HISTORY

On June 18, 1980 the Public Utilities Commission issued its decision in Docket No. DE 79-208 establishing a rate for the purchase of electricity produced by certain small power producers and co-generators. The Commission had initiated this docket pursuant to the passage of State and Federal legislation requiring an electric utility to purchase the entire output of

electric power produced by a limited electrical energy producer at a rate set by the Public Utilities Commission. The New Hampshire statute, the Limited Electrical Energy Producers Act (LEEPA), RSA Chapter 362-A (Supp. 1979) did not set standards for the determination of that rate. However, the Federal Statute, the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. No. 95-617, 92 Stat. 3117 (1978) required the Federal Energy Regulatory Commission (FERC) to prescribe rules for the implementation of the Act. PURPA § 210 contains the regulations implementing the Act, effective March 20, 1980.

The Commission in its decision chose to follow the FERC concept of full avoided costs. As defined in 18 C.F.R. § 292.101(b)(6) (1980), full avoided costs were defined to include both the fixed and running costs of an electric utility system. FERC further classified costs as energy and capacity costs. Energy costs are defined as the variable costs associated with the production of electric energy, and represent fuel costs and some operating and maintenance expenses. Capacity costs consist primarily of the capital costs of utility plants.

Using this methodology, the PUC determined an avoided cost figure for energy and capacity of 8.2 cents per kilowatt-hour, and an avoided cost figure for energy only of 7.7 cents. As the Commission found that New England Electric Power Company (NEP), the full requirements supplier of Granite State Electric Company (GSE), had excess capacity, it determine that a capacity component should not be included in the rate for Granite State, and the GSE rate was set, accordingly, at 7.7 cents per KWH.

GSE filed a motion for rehearing on July 14, 1980 arguing that the PUC's use of data for Public Service Company of New Hampshire's Newington Station was not appropriate for setting an avoided cost rate for GSE, and that GSE's avoided costs were the avoided costs of its generating utility, NEP. GSE also argued that the Commission could not establish a minimum rate for the lifetime of a qualifying facility. The Commission denied the motion for rehearing and the case was appealed to the Supreme Court. On September 16, 1981 the Supreme Court reversed the PUC decision on these two grounds and remanded the case to the PUC.

This docket is the Commission's response to the Court's remand. Five sessions of hearings were held on February 22, April 20, May 28, June 2 and June 3. Testimony was submitted by Mr. News-ham of New England Power Service Company for Granite State Electric; Mr. Taylor, an owner of a small hydro electric facility; Mrs. Braiterman and Dr. Voll for Commission Staff; and Mr. Nostrand, a potential developer of a small power production facility.

[1] The Commission was presented with several procedural issues in this case. In terms of the appropriate scope

of the proceedings, the Commission ruled that since GSE had previously argued that its avoided cost should be NEP's avoided cost, GSE could not in this proceeding submit testimony recommending a different methodology, i.e., the use of GSE's wholesale tariff. The scope was limited to the proper methodology for calculating NEP's avoided costs. The Commission also ruled in Report and Order No. 15,604 that it would not allow testimony in this docket concerning capacity costs. Accordingly, GSE moved to strike parts of Staff testimony which was agreed to by Staff. The Company further contended that inclusions in the Staff technical appendix (Exhibit

13-A) relating to NEP purchases from the Canal and New Brunswick plants represented capacity costs and should be excluded. Mrs. Braiterman maintained that these costs were in essence energy costs and should be included. The Commission allowed the testimony pending a full consideration of the evidence.

The Commission has found this issue to be a very difficult one. The theoretical basis for excluding capacity costs when a utility has excess capacity rests upon the understanding that a rate set according to avoided costs must leave the utility in the same financial position it would have been had it not purchased QF power. To the extent that purchases of QF power by GSE reduce the level of purchases GSE makes from NEP, NEP's fixed costs would have to be allocated over a smaller number of units of output, unless as Staff correctly points out, NEP can sell power to other utilities thereby eliminating "excess" capacity. Thus, in an integrated system such as NEPOOL, the excess capacity situation of a particular utility system may not be relevant. However, for the purposes of this docket, the Commission has ruled that the finding of excess capacity for NEP will not be reconsidered.

Whether the charges in question for purchases from Canal and New Brunswick are capacity charges and whether these charges are avoidable has not been made clear in this record. The Commission agrees with Staff's contention that these purchases are different from fossil-fueled plants owned by the utility. The Commission also agrees that the price paid for such purchases varies and that demand charges need not represent "capacity" costs. However, Staff has not demonstrated in this instance that the demand charges do not represent "capacity" costs. Consequently, the Commission believes that the record does not support inclusion of these charges.

However, the Commission is concerned that purchased power contracts, particularly for more expensive fuels, could be used to discourage small power development. Both Staff and FERC have noted the possibility that contractual provisions of various kinds could hinder the development of small power facilities. For this reason, the Commission believes that it may be appropriate to consider this issue as well as the entire excess capacity issue in a future docket.

[2] Another procedural issue concerns the confidentiality of NEES company contracts with small power producers. The Commission, which includes its staff, has the statutory right to require records, contracts, data and books from any utility under our Jurisdiction. Granite State failed to follow the requests of our staff. If they had concerns about confidentiality, the correct approach was to provide the documents and ask for confidentiality. Withholding information requested by our staff was a violation of N.H. statutes and needlessly prolonged

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the case. The Commission will honor the confidentiality of the contracts except those that are available from other Commissions or other sources.

II. A FULL AVOIDED COST RATE

[3] The Commission ruled in DE 79-208 that the QF rate should be set at full avoided cost as defined by the FERC rules. This standard was not an issue in the appeal, and GSE in its brief in this case indicates that it is not challenging this determination.

However, Staff takes the position that due to uncertainty caused by litigation over the FERC rules, it is important for the Commission to make specific findings that the full avoided cost standard is consistent with the statutory criteria of Section 210 of PURPA which delegates such ratemaking authority to state commissions. Earlier this year, the Court of Appeals for the District of Columbia ruled that FERC did not substantiate the rule *requiring* rates to be at full avoided costs. This ruling was stayed pending appeal, leaving the FERC rule mandating full avoided costs in effect. To alleviate any uncertainty which this situation might create, the Commission agrees that it should make its own findings relative to the full avoided cost standard. The Commission also notes that while CSE does not contest the standard for this case, it does contest the Staff's justification for a full avoided cost rate.

Staff presented both theoretical evidence and evidence from contract and survey data to support the full avoided cost standard. Staff's theoretical position is that the inherent monopsony nature of the market requires that rates be set at full avoided costs to insure the optimal development of small power facilities. Unless the price is regulated in a manner to reflect true incremental costs, the exercise of the monopsony market will underprice alternative power resulting in a loss to society as fewer projects come on line than is economically optimal. (Exhibit 13, p. 12)

Dr. Voll's testimony demonstrates the effect of price on the number of small power producers coming on line. (Exhibit 15, p. 6) In Exhibit 16, Dr. Voll presents a chart showing the effects in New Hampshire. Mr. Taylor and Mr. Nostrand, two developers of alternative energy facilities, also provided testimony to the effect that the increased price due to passage of PURPA and LEEPA provided the incentive for initial development or expansion of their facilities. (Tr. June 2, 1982, pp. 11, 13, 19-21)

GSE notes that there are two basic assumptions behind the Staff's economic analysis: (1) that the supply curve for QF power is positively sloped; and (2) that a monopsony market exists. The Company agrees with the first assumption, but contends that a monopsony does not exist because there is potentially more than one buyer. The main argument which the Company relies upon is that the possibility of wheeling makes competition for QF power possible. However, the record has not shown that wheeling is a viable option in New Hampshire.

The Company stated that its policy was to wheel power to another utility if the other utility requested it. However, in practice the testimony indicates that wheeling was not presented as a viable option to potential developers. Mr. Nostrand indicated that his project was ten miles from PSNH territory, but that he had been told that there was no interconnection and the high cost of interconnection equipment was prohibitive. (Tr. 6/2/82, p. 9) Mr. Taylor also found wheeling contrary to Company policy; and Baltic Mills was also informed

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that there was no interconnection with PSNH. Furthermore, Central Vermont Public Service was not interested in buying power outside their area and PSNH was interested only with a price concession. (Tr. 6/2/82, pp. 23-25)

Mr. Taylor also offered other evidence which demonstrates GSE's market power. Requirements for up-front cash payments for interconnection costs and charges for transformers

were illustrations of this. (Tr. 6/2/82, p. 29, p. 39)

Based upon the evidence in this record, the Commission finds the Staff evidence convincing as to the need for establishing rates based on full avoided costs. In this docket, a rate which equals the full avoided energy costs of New England Power is just and reasonable and is consistent with the statutory criteria of Section 210 of PURPA which delegates such rate-making authority to state commissions.

III. ESTABLISHING A QF RATE

[4] Both Staff and the Company concur in the use of a formula determined rate based on the NEES production cost simulation model as a starting point. Both parties agree that the QF rate should be an estimate for a period of months into the future. Since NEP's model calculates total cost, not marginal cost, an adjustment must be made to simulate marginal cost. NEP's method to accomplish this adjustment is to calculate a ratio of average to incremental cost that results in redispatching the system with first an increment and then a decrement of 100 MW. While Staff accepts this general method, Staff proposes a 50 MW increment/decrement, as this would more accurately reflect avoided costs.

The Company objects to this adjustment, as well as several other Staff suggestions, on the grounds that the benefit of more accurate figures is not worth the administrative cost. The Company contends that this change and others would necessitate making separate computer runs solely for Granite State. However, the Commission believes that separate runs will be required in any event, unless all factors for GSE are the same as set by the Rhode Island and Massachusetts Commissions for the NEES affiliates under their jurisdiction. The main administrative saving is in using the same basic model, and the difficulty and cost of making this and other Staff proposed adjustments has not been demonstrated by the Company. Therefore, the Commission finds the substitution of the 50 MW increment/decrement reasonable. The Commission will also accept Staff's proposal of weighing the incremental costs in the on and off peak periods by the amounts of energy in the periods rather than the number of hours in the periods.

Other adjustments proposed by Staff use the best available data from NEES to implement the methodology and data required by the FERC rules. The Commission finds these adjustments reasonable. Specifically, the Commission finds that the marginal adjustment for line losses is consistent with the calculation of avoided energy cost on an incremental rather than on an average basis. Testimony of Mr. Taylor indicated that with the Baltic Mills facility and other hydroelectric producers the net effect on the GSE system was actually positive and a net gain to the power company. (Tr. 6/2/82, p. 22, 23) Thus, purchases from these producers reduces the Company's line losses. The Commission agrees that the methodology used to calculate an

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avoided cost rate should properly include an adjustment for variations in line losses due to purchases from small power producers, and that Staff methodology is appropriate.

The FERC rules also indicate that some operating and maintenance expenses are variable costs associated with the production of electric energy. (Section 292. 304 (c), 45 *Federal Register* 12,216, Feb. 25, 1980) Staff recommends that two specific variable O&M costs be included in the QF rate: Pru-Lease charges and fuel handling costs. (Exh. 13-A, p. 10) The

Company contends that these O&M costs are not avoided by QF purchases. Mrs. Braiterman explains that these items are properly included in average cost, which is the starting point in use of the model. Since the model cannot calculate the exact marginal unit, the increment/decrement technique is used to simulate it. To separate certain items from average cost before calculating the ratio of average to incremental cost would result in combining different methodologies (Tr. 6/2/82, p. 112, 113) and in underestimating avoided costs. The Commission finds the Staff argument as to methodology to be persuasive and will accept these adjustments for O&M expenses.

The Company requests that the Commission mandate time-of-day rates for qualifying facilities over 30 KW. The Staff believes that time-of-day rates should be implemented at the option of the QF. Staff contends that the greater metering expenses which represent an up-front interconnection expense can best be evaluated by the QF. Staff's position is consistent with the intent of FERC, in that time of delivery rates should be chosen at the option of the QF. (Section 292. 304(b)(5) and (d), 45 *Federal Register* 12,224, Feb. 25, 1980) The Commission does not see adequate justification to mandate time-of-day rates at this time.

Finally, the Commission is required to determine the length of the period for which rates should be set. GSE proposes that the adjustment be made at the same time as the fuel adjustment filing. This filing is presently done quarterly, but the Commission is considering a Staff recommended change to six months in DE 82-68. Staff proposes a 6-month adjustment at the time of the fuel filing. The Commission believes the six-month period with a reconciliation at the end of the period is reasonable. The longer period reduces administrative expense and provides greater stability in the rates. Testimony indicates that frequent rate variations are a significant problem to small power producers. (Tr. 6/2/82, P. 9)

Our order establishing a formula to determine a QF rate for Granite State Electric Company is based on the foregoing policy determinations.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing Report which is made a part hereof; it is hereby

ORDERED, that the Staff prepare an appropriate tariff filing form to set a rate for the purchase of electricity by Granite State Electric Company from certain small power producers and co-generators; and it is

FURTHER ORDERED, that Granite State Electric Company file a tariff in compliance with this order upon receipt of tariff filing information from Staff.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1982.

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NH.PUC*11/19/82*[79441]*67 NH PUC 825*Purchases for Nongenerating Utilities

[Go to End of 79441]

Re Purchases for Nongenerating Utilities

Intervenors: Granite State Electric Company, Exeter and Hampton Electric Company, Concord Electric Company, Connecticut Valley Electric Company, Inc., New Hampshire Electric Cooperative, Inc., Energy Law Institute, and Community Action Program et al.

DR 81-133, Supplemental Order No. 16,000

67 NH PUC 825

New Hampshire Public Utilities Commission

November 19, 1982

ORDER establishing full avoided costs as the proper basis for qualifying facility rates.

1. COGENERATION, § 25 — Rates — Full avoided costs — Incentive.

[N.H.] In establishing appropriate buy-back rates for nongenerating utilities, full avoided costs are a proper basis because they would encourage small power production and cogeneration, and would not discriminate against qualifying facilities that require nearly avoided costs. p. 829.

2. COGENERATION, § 30 — Rates — Methods of computation — Avoided costs versus wholesale rates.

[N.H.] In establishing avoided costs of nongenerating utilities and the rates paid qualifying facilities, using the supplier's full avoided cost as a basis is preferable to using wholesale rates because avoided costs simulate market competition whereas wholesale rates merely reflect average costs which are usually below marginal costs; but in order to make whole the purchasing companies, an instantaneous adjustment to wholesale rates would also be necessary, perhaps through an automatic adjustment clause. p. 834.

3. COGENERATION, § 25 — Rates — Full avoided costs — Wholesale rates — Wheeling option as a factor.

[N.H.] Distinctions should be made between affiliated and independent utilities just as they are made between generating and nongenerating utilities, so that nonaffiliated, nongenerating utilities shall pay the full avoided costs of their suppliers when they elect not to wheel power, while small power producers shall receive payment based on wholesale rates when they choose to sell power rather than have it wheeled to a generating supplier free of charge. p. 836.

4. COGENERATION, § 14 — Operating practices — Wheeling — Mutual consent.

[N.H.] Wheeling options offered by nongenerating utilities, whereby qualifying facility power would be wheeled to suppliers free of charge, are equitable and economically efficient but may only be done by mutual agreement between the small power producer and the transmitting utility. p. 837.

APPPEARANCES: Michael Flynn, Granite State Electric Company; Warren Nighswander,

Exeter and Hampton Electric Company; Joseph Ransmeier, Concord Electric Company; Charles Whitehair, Connecticut Valley Electric Company; John Pillsbury, Mayland H. Morse, Jr., and Thomas W. Morse, New Hampshire Electric Cooperative; David Wersan, Energy Law Institute; Howard Moffett, CPM. Limited appearances: David Deziel, Belknap-Merrimack Community Action Program; William Burns;

Warren Taylor, Baltic Mills; William Nostrand; Jack Van Horn, Enertech.

BY THE COMMISSION:

REPORT

I. Procedural History

In June of 1980 the Commission issued a Report and Order in DE 79-208 which established a rate to be paid small power producers within the State (Order No. 14,280 [1980] 65 NH (PUC 291). Both state and federal laws required a rate for small power producers be established.¹⁽⁸¹⁾ The rate, 7.7¢ /KWH for energy and 8.2¢ /KWH for energy and capacity, was derived from data as to the cost of Public Service Company's (PSNH) Newington Station. Newington is an oil-fired facility which the Commission deemed representative of utility plants which operate and provide energy on the increment. Not all parties were satisfied with the Commission's methodology for setting such rates; nongenerating utilities were one such group.

The New Hampshire Electric Cooperative (Co-op) filed a motion for rehearing in which it articulated its concern about the requirement to purchase from small power producers at a price based upon PSNH's incremental cost; the Coop maintained that its avoided costs were in fact the costs at which it purchases power (i.e. the wholesale tariff established by the FERC). The Co-op offered to "wheel" energy and capacity at no charge to the small power producer to the Public Service Company so that the generating utility may make the purchase instead. This approach was acceptable to the Commission at that time because PSNH retained the obligation to purchase such electricity at its avoided cost under the FERC rules promulgated pursuant to Section 210 (18 C.F.R. § 292.303(d)) when a qualifying facility and a local franchise agree to wheel the QF's power (1980) 65 NH PUC 415, 424. In its motion for rehearing the Coop also raised the issue as to the appropriate method of recovery of the costs paid to small power producers; this was not resolved by the Commission.

Subsequently, the Commission initiated this docket regarding the special issues arising from establishing appropriate buyback rates for non-generating utilities. One issue was the rate which the non-generator would be required to pay when the small power production facility does not agree to wheel to the supplying utility; i.e. whether it is the wholesale cost or the supplier's avoided costs since that is being displaced by the qualifying facility. Additionally, while this case was pending a significant provision of the FERC rules was called into question by litigation. The Circuit Court of Appeals for D.C. ruled that the FERC rule requiring states to establish payment at full avoided costs was not adequately justified. Since this ruling, if upheld, would affect New Hampshire's small power producers and alternative resource development, revised notice was sent to the parties to submit testimony on this point. Three days of hearings were held

and eleven exhibits were submitted by the Staff and other parties on these matters. The question of the appropriate rate from one non-generating company, the Granite State Electric Company, was the subject of a separate docket, DE 82-21.

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II. *Statutory Authority*

PURPA and LEEPA are two statutory delegations of authority to set rates for the sale of power by small producers and cogenerators to utilities, regardless of whether the purchasing utility generates its electric load.

A. LEEPA

The Limited Electrical Energy Producers Act (LEEPA), RSA 362-A provides that the Commission establish rates for the purchase of electricity from certain small power producers.²⁽⁸²⁾ The purpose of LEEPA is to encourage small scale and diversified sources of electricity, RSA 362-A:1, LEEPA, as compared to similar federal legislation, PURPA, does not contain any specific standards for establishing rates for these alternative facilities.

IN DE 79-208, this Commission generally adopted the avoided costs standard of federal law, i.e., the FERC rules promulgated pursuant to PURPA. However, we reserved the authority under LEEPA to consider rates for small power producers in excess of avoided costs where shown to be appropriate. (1980) 65 NH PUC 291, 293.

B. PURPA

The federal statute and the FERC rules promulgated pursuant to PURPA are the touchstone for a method which established the buyback rates to be paid small power producers by a non generating utility. To the extent that a method provides for a buyback rate which is insufficient by these federal standards, it would not survive judicial scrutiny, because the legal doctrine of pre-emption renders invalid any state action which conflicts with a federal regulatory scheme, once the federal government's has lawful jurisdiction in an area. In the area of wholesale rate setting, the federal regulatory scheme has long been found to pre-empt state efforts. The establishment of rates for small power producers in an aspect of the federal government's jurisdiction over wholesale rates. However, the Federal Energy Regulatory Commission (FERC) has, apparently, limited its authority to the establishment of certain minimum criteria for such rate setting to be met by the states and delegated the authority to set rates for small power producers to state PUCs. See 45 Fed. Reg. 12221 (February 25, 1980). As already recognized, LEEPA does not constrain this Commission by specific criteria for setting small power producer rates, therefore, by law our minimum standards are the federal standards, PURPA § 210, 18 CFR Part 292.

III. *PURPA Criteria for Setting Rates to be Paid Qualifying Small Power Producers Selling to Non-generating Utilities*

Our task is to determine the appropriate buyback rate for nongenerating utilities purchasing from small electric producers. The first step in our analysis is to look at the state and federal statutory mandates. Both delegate the responsibility to encourage these technologies, but only the federal scheme sets forth the specific criteria to guide us.

The FERC rules are comparably detailed; they establish the "avoided cost"³⁽⁸³⁾ standard as the minimum when setting rates to be paid to "new capacity"⁴⁽⁸⁴⁾ small power producers. This criterion has

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been challenged and struck a serious blow. In *American Electric Power Service Corp. v Federal Energy Regulatory Commission* (1982) — US App DC — , 45 PUR4th 364, 675 72d 1226, the D.C. Circuit Court of Appeals opined that the record was insufficient to substantiate the FERC rule requiring "full" avoided cost rates as consistent with the statutory standard. The FERC appealed the Circuit Court decision and on October 12, 1982, the Supreme Court agreed to review the FERC rules. Regardless of the appeal, the efficacy of full avoided costs rates was the subject of inquiry by the Commission in this docket. The testimony of staff specifically addressed the avoided costs issue (Exh. 10). The necessity of an independent state policy on this matter is without dispute. As Concord Electric's testimony states, the "construction of qualifying facilities is ongoing ... and the parties involved in New Hampshire should not be required to remain in limbo without benefit of guidance from the Commission while Courts ponder the issues." (Exh. 9, p. 2)

A. Full Avoided Costs

In light of the AEP case, the first issue to be resolved is whether the full avoided cost standard is consistent with the statutory criteria of PURPA and LEEPA.

Section 210 of PURPA mandates that buy back rates:

"1. Shall be just and reasonable to the consumers of the electric utility and in the public interest.

"2. Shall not discriminate against qualifying cogenerators and small power producers.

"3. Shall not exceed the incremental cost to the electric utility of alternative energy." 16 USC § 824-3(b)(1976 ed. Supp. IV).

The D.C. Circuit questioned whether the rulemaking record before the FERC justified the adoption of the full avoided cost rule as consistent with the above statutory goals. (*American Electric Power*, supra, 45 PUR4th at p. 374). The Court was concerned that a rate should reflect some sharing of the saving due to purchases from qualifying facilities which have costs less than the incremental cost of the generating utility. The "sharing of the savings" concept was perceived to be in the interest of the consumers. However, the court did state that if utilities are monopsonists with respect to cogenerators, then the FERC may be justified in its adoption of the full avoided costs standard. (*American Electric Power*, supra 45 PUR4th at p. 374). Additionally, the Court suggested in dicta that a range of 80% — 100% of avoided costs should be selected in order to provide for the interests of an electric utility's consumers. (*Id.*, 45 PUR4th at p. 372).

In this docket, Mrs. Braiterman's testimony on behalf of the Economics staff details the detrimental economic effects of the monopsony market in which small power producers interface with electric utilities (Exh. 10). Economic theory postulates that while there may be short run

gains to consumers by establishing a price less than full avoided cost, in the long run such a pricing policy would result in a loss to society. This is because a number of alternative producers which have costs at or near avoided cost would not have the incentive to develop i.e., the requisite price to come on line (Exh. 10, pp 12-14). The essence of Mrs. Braiterman's testimony is that consumers do not benefit when less than the optimal amount of alternative sources of generation are developed; loss of these producers is a "deadweight" loss to society. An

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optimal number of alternative generators will produce electricity only where price equals avoided cost (Tr 4/22/82. pp. 36-38).

[1] We find that full avoided costs is the appropriate minimum standard for encouraging small power product and cogeneration in New Hampshire. This standard is just and reasonable to the electric utility's consumers because it equates to the cost of the utility that the consumer would have to pay regardless of the existence of a small power producer. Furthermore, many sales by small power producers to the electric utility are pursuant to contract at a price less than long-run avoided costs; these contracts redound to the benefit of the utility's customers. A rate less than full avoided cost, would, in our view, discriminate against qualifying facilities because it would preclude the existence of facilities which require avoided cost rates or nearly avoided costs. Such facilities would generate at less than avoided cost rule, while utility-built plants meeting or exceeding present avoided costs are developed.

The intent of PURPA and LEEPA is to encourage such non-utility facilities. The Circuit Court opinion does not preclude this Commission from determining that full avoided costs is consistent with PURPA, anymore than the opinion prohibited such a finding by the FERC.

B. Avoided Costs of a Nongenerator: Wholesale Tariff v. Generator's Cost

Assuming full avoided costs, the question now before us is what are the avoided costs of a non-generator. The FERC rules provide no definitive answer.

First, the FERC rules define avoided casts as the "incremental cost to an electric utility of energy or capacity or both which, but for the purchase from the qualifying facility or facilities, such utility would generate for itself or purchase from another source."⁵⁽⁸⁵⁾ 18 CFR § 292,101 (b)(6).

The FERC also requires certain data be made available from which avoided costs may be ascertained. Under this section a small non-generating utility such as those participating in this docket is required to submit, upon request, both the avoided cost data of its supplier and the rates at which it currently purchases electricity. 18 CFR § 292.302(c)(ii) The pertinent section states:

"With regard to an electric utility, which is legally obligated to obtain all its requirements for electric energy and capacity from another utility, provide the data of its supplying utility *and* the rates at which it currently purchases energy and capacity." *Id.* (emphasis added)

The significance of this section regarding data, is that the rule governing the setting of rates for purchases requires that the data described in Section § 292.302 be used as a starting point for the setting of rates. 18 CFR § 292.304 (e)(1) see also 45 *Federal Register* 12226 (February 25, 1980)⁶⁽⁸⁶⁾ The fact that the FERC rules provide that state commissions shall consider both the

data of the supplier of an all-requirements utility and the rates at which that utility purchases

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chases from the supplier, means that the Commission is not limited to a methodology which bases a PURPA rate for an all-requirements utility on the wholesale tariff, as the utilities have argued. Obviously, state commissions are afforded the discretion to determine the efficacy of either approach: wholesale rate or supplier's avoided cost. The Rhode Island Commission is one regulatory authority which has exercised this discretion by adjudging that the wholesale supplier's avoided costs are the incremental cost avoided by the retailer. *Re Cogeneration and Small Power Production* (RI 1982) 42 PUR4th 609.

Our general task is determine which method for establishing rates for nongenerators; i.e. wholesale tariff or supplier's cost is appropriate for utilities in New Hampshire. Furthermore, the record in this proceeding indicates that it may not be appropriate to establish the same methodology for all non-generators; therefore, we must determine if there is a rational basis for such a distinction among non-generating utilities.

IV. *Positions of the Parties*

A. *Appropriate Method for Establishing Costs for Non-generating Utilities*

1. Non-generating Utilities

Peter Stulgis, testifying for Concord Electric Company and Exeter and Hampton Electric Company argued that a distinction should be made between generating and non-generating electric utilities in calculating the appropriate price at which utilities purchase power from qualifying facilities. His argument was based, by extension, on a section in the FERC preamble to the rules for the implementation of Section 210 of PURPA:

" ... the purchasing utility must be in the same financial position it would have been in had it not purchased the qualifying facility's output: (FERC Order No. 69, 18 CFR 292.303(d)."

He asserted that the costs avoided by the non-generating utilities were not the marginal costs of generation but the average costs represented by the wholesale tariff. This cost was 4.18¢ /KWH (5.256¢/KWH with the demand charge) for Exeter and Hampton, and 4.20¢ /KWH and 5.27¢ /KWH for Concord Electric. If the non-generating utilities were required to pay the avoided costs of the generation rather than their own wholesale rate; purchases of power from small power producers would result in higher rates for their retail customers. In essence their customers would be subsidizing the customers of Public Service since PSNH would avoid the costs of the marginal generation.

Stulgis, and Douglas Macdonald testifying for Concord Electric, noted that companies had agreed to wheel power to the Public Service Company of New Hampshire (their generating wholesale supplier) at no charge as long as the interconnection costs and all capital costs are met by the small power producer. Further, they had also agreed to accept the net billing concept for the small residential power producers. These two measures were sufficient to encourage the replacement of oil. Wheeling the power allows the transaction to bypass the non-generating utility entirely and permits the power to be sold directly to the wholesale supplier who is the ultimate beneficiary of the QFs generation, i.e. the entity whose generating is being avoided.

Concord Electric was particularly concerned because of the magnitude of the projects which would be generating within its franchise territory; 21% of its requirements could be supplied from the

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five projects proposed on the Merrimack and Contoocook Rivers resulting in a potential increase in base rates of 14% if purchased at marginal rather than average (i.e. wholesale) rates. For Concord Electric, the proportion of power from QFs would be greater than the 10% of annual sales which utilities are required to purchase under LEEPA. Macdonald stated that Concord Electric would "feel obliged" to "pull the plug on" QF purchases when 10% of its annual sales had been reached ... if a cost were imposed upon us greater than our true avoided costs" (i.e. the wholesale rate).

John Pillsbury, testifying on behalf of the New Hampshire Electric Cooperative, concurred with the testimony of Stulgis and Macdonald. He too, supported the use of the wholesale tariff as the appropriate rate for the non-generating utilities. He asked that the Commission adopt a uniform methodology for the non-generators rather than a uniform rate. The rate itself would vary monthly both across utilities and dispatch points within each utility. The Co-op, however, has also agreed to wheel QF power at no charge and allow very small producers to run their meters backwards. The effect of the combination of a lower purchase rate and wheeling at no charge would be that all QF power would be purchased by PSNH whose ratepayers are the ultimate recipients of the benefits of QF generation in any case.

Charles A. Whitehair, on behalf of Connecticut Valley Electric Company Inc., agreed with the position expressed by the other utility witnesses and submitted Central Vermont Public Service Company tariff R-84 "applicable to total requirements of electric service to the Company's affiliate, Connecticut Valley Electric Company, Inc." on which he believed the price paid for QF power should be based. Unlike the other utilities, however, CVEC, would only wheel QF power to Central Vermont PSC (its wholesale supplier), and had not decided on the wheeling charge.

2. Intervenors

Small power developers Warren Taylor and William Nostrand argued that the existing 7.7¢ was the minimum rate which would encourage the development of alternate energy sources, especially given the high interest rates and the uncertainty surrounding the rate. David Deziel, of the Community Action Program's micro-hydro-project, testified that the higher standard state-wide rate shortens the payback period and simplifies CAP's statewide development effort. Adoption of the wholesale rate for non-generating utilities would subject major sections of the state to lower rates and discourage development of indigenous power which displaces oil and retains monies within the local economy. He maintained that the use of the marginal cost of the generator best reflects reality because the lower generating costs are ultimately reflected in the overall wholesale rates.

Richard Bosworth, vice president for engineering for CPM, testified that CPM, relying on the 7.7¢ /KWH rate, has spend \$37,433 for metering and interconnection equipment and the repair of its equipment. A lower rate would discourage CPM from developing its site in Bath, N.H. He

agreed that as long as wheeling is at no charge it makes no difference to the developer whether the purchase is made by the non-generating utility or its wholesale supplier.

Edmund Coffin of Enertech, a manufacturer of residential windmills, advocated a separate rate for very small facilities designed primarily to generate

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a portion of the electrical requirements of a household.

William Burns stated that the Commission is constitutionally prohibited from setting a rate payable in anything which is not redeemable in gold or silver.

3. Staff

Judith Elliott, PUC Coordinator of Alternate Energy Development, testified that adoption of the wholesale rate as the price paid QFs by the non-generating utilities is shortsighted because it does not accurately reflect the costs they avoid. Specifically, this methodology fails to account for the fall in wholesale rates resulting from the decreased average generating costs of the supplying utility. Average generating costs fall because purchases from QF's replace expensive generation on the margin. Secondly, she pointed out that both PURPA and LEEPA intend to encourage the development of small power producers to replace oil and that an effective reduction of the rate would provide a disincentive. She stated that wheeling provides only a partial solution since neither the utility nor the QF is required to wheel.

She recommended the following rates:

1. Non-generating utilities supplied by PSNH-7.7 — 8.2¢ /KWH.

2. Granite State Electric Company — a rate based on the avoided cost rate set by the Vermont Public Service Board (7.86¢ /KWH overall, 6.6¢ /KWH off-peak, 9.06¢ /KWH on-peak) or the existing 7.7¢/KWH New Hampshire rate without the capacity credit. The latter was recommended in the interests of statewide standardization given the closeness of the N.H. and Vermont rates.

Martin Ringo of the Energy Law Institute provided analysis on behalf of Commission staff on the relationship of wholesale rate-making to buyback rate-making under PURPA and LEEPA. He stated that the use of either the generator's marginal cost or the non-generator's wholesale rates were correct under the legislation but that the two methodologies have very different implications in practice. In the preamble to the rules, FERC had looked partially behind the wholesale tariff combining the generator's marginal cost needs with its demand charge and further mixing this with the energy charge of the wholesale tariff.

Ringo presented six numerical case studies to demonstrate the effects of different pricing (wholesale vs. marginal costs of the generator) and different adjustments to the wholesale tariff. The cases all used the example of a generating wholesale supplier, two non-generating utilities and a QF interconnected with one of the non-generating utilities. The beneficiaries of the pricing arrangements are as follows:

1. base case (no QF power purchased).
2. wholesale rate: generator gains, purchasing non-generator neutral.

3. marginal rate, no wholesale rate adjustment: generator gains, purchasing non-generator loses.
4. wholesale rate, general wholesale rate adjustment: generator neutral all non-generators gain.
5. marginal costs, general wholesale rate adjustment: generator neutral, purchasing non-generator loses, other non-generator gains.
6. marginal cost, wholesale rate adjustment between generator and purchasing non-generator: all neutral.

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Ringo points out that Case Six is the only case in which the effect on all the utilities is neutral and is, therefore, the preferred result in terms of economic efficiency. If rate-making is accurate, the marginal costs pass back and forth through the wholesale tariff and the non-generating utility will be able to avoid all of the costs avoided by the generating utility.

Ringo admitted, however, that there were problems in timing since until the wholesale tariff is adjusted the non-generator's avoided costs are defined by the existing wholesale tariff. Indeed, the only way the non-generator can be absolutely whole is for the adjustment in the wholesale tariff to be instantaneous. The concern of the non-generating utility, in terms of the cases, is, if they pay the marginal costs, how long it takes to move from Case 3 to Case 6. However, if the Commission merely adopts the wholesale rate as the price to be paid QFs, the situation may move inefficiently from Case 2 to Case 4, but will never reach Case 6. The FERC will never have the occasion to adjust the wholesale tariff in the direction of economic efficiency because the original pricing signals are incorrect.

Staff Economist Lisa Braiterman discussed the economic implications of a monopsony market, a market in which the purchases of one buyer directly influences market pricing. She explained that in a monopsony market both the quantity purchased and the price at which it is purchased are less than in a competitive market. The result is an economic loss to society ("deadweight loss"). Full avoided cost simulates a competitive price and minimizes the deadweight loss. She then noted that the addition of electrical production from small power producers represents a rightward shift in the utility's marginal cost (supply) function, with more power available at every price level. The result is an overall reduction in price and an increase of the consumer surplus.

Braiterman concurred with Ringo and Elliott that while the wholesale rate was the non-generator's full avoided cost in the short run, in the long run through adjustments in the wholesale tariff its avoided cost is the marginal cost of the generator. Further, payment of the wholesale rate benefits someone other than the small power producer and is contrary to the intent of LEEPA and PURPA. The best economic solution is that non-generators pay full avoided costs and petition the FERC to change the supplier's wholesale rate.

Braiterman recognized, however, the problem of regulatory lag and suggested that an equally efficient alternative would be to have all power wheeled directly to and purchased by the generating utility. She agreed with John Pillsbury of NHEC that a charge for wheeling would be

inappropriate because the wheeling utility received benefits from avoiding transmission losses. She recommended that if the small power producer or cogenerator refuses the wheeling option, the rate paid should be based on the wholesale rates at which the non-generating utility purchases from its supplier. A method could be established to calculate the average rate at the appropriate delivery point on a case by case basis.

B. Basis for a distinction among non-generators

The question before the Commission is whether a distinction should be made between non-generating utilities which are wholly-owned subsidiaries of their supplier (Granite State Electric and Connecticut

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Valley Electric Company) and non-generating utilities which are independent of their supplier.

Charles Whitehair of CVEC testified that CVEC wished to be treated as a non-generator with a rate based on the wholesale tariff between CVEC and its parent, Central Vermont PSC. He expressed concern over the impact of purchases by CVEC on the parent company and its ability to remain financially whole. Finally he stated that he believed that both the New Hampshire and Vermont PURPA rates exceeded Central Vermont PSC's avoided costs and that in addition the Vermont rate applied only to Vermont small power producers.

Michael Flynn of Granite State Electric Company argued that since GSE is affiliated with New England Power its SPP rate should be based on the avoided costs of its supplier/affiliate. However, consideration of Granite State Electric's avoided cost was moved to a separate docket (DE 82-21).

Douglas Macdonald of Concord Electric testified that major differences between affiliated and independent non-generators include the ability of the independent utility to deal at arms length with its supplier and change suppliers if it can locate a less expensive source of power, and the need for an affiliated company to seek permission from its parent before it could agree to wheel QF power.

Richard Bosworth of CPM noted that although CVEC may be non-generating, it is a wholly owned subsidiary of a generating utility (Central Vermont P.S.C.). Therefore, he asserted that the issue of whether or not a non-generating utility would be unfairly penalized by having to pay avoided costs of the generating supplier is irrelevant in the case of CPM and Central Vermont.

Lisa Braiterman of the Economics Staff agreed with Bosworth that the case of CVEC (and GSE) is different from that of other non-generators. If QF power is wheeled and CVEC purchased the QF power at Central Vermont's avoided costs, the net effect of the discrepancies between the costs and rates of CVEC and CVPS is nil because of the parent/subsidiary relationship. In economic terms, the entity incurring costs by the purchase of QF power is the same as the entity avoiding costs (the consolidated company). She recommended that the Commission accept the rate set by the Vermont PSB after its own thorough and lengthy proceeding. She noted that the New Hampshire PUC could enter into a full scale investigation of CVPS's avoided costs, but said that it is doubtful that the result would be significantly different

from the Vermont rate.

V. Commission Analysis

A. Appropriate Method for Establishing Costs for Non-generating Utilities

[2] The dispute over the proper method for establishing the avoided costs of the non-generators and the rate they pay qualifying facilities for their power resolves itself into two opposing views. Staff, citing the intent of PURPA and LEEPA to encourage QFs and the Interest of economic efficiency, advocates payment of the (higher) marginal generating cost of the supplier. They are supported in this position by the intervenors who assert that a lower rate will discourage the development of alternate energy. The non-generating utilities, expressing their concern that payment of the generator's avoided costs would result in higher rates to their customers, advocated the adoption of their wholesale tariffs as the appropriate rate to be paid small power producers.

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The economic analysis supports the adoption of the generator's avoided cost as the appropriate rate. Payment of full avoided cost to small power producers minimizes the loss to society ("deadweight loss") which can occur in a monopsony market. Full avoided cost, equalling the price which would be set by the competitive market brings on line the optimal amount of power at an optimal price. The addition to the electrical generation from qualifying facilities increases the available capacity at every price level (i.e. implicitly implies the expansion of the marginal cost function of the purchasing utility). Ratepayers benefit from the increase in the consumer and producer surplus. This analysis is valid whether the power is purchased and the price paid by a generating or a non-generating utility. The full avoided cost of NHEC, Concord Electric and Exeter and Hampton is the full avoided cost of PSNH determined by the Commission from time to time.

Economic efficiency also demands, however, that the cost of QF power be matched to its benefits. Purchase of QF power ultimately benefits the generating utility which is able to avoid its most expensive generation on the margin. It is clear from the numerical examples that the only case in which costs and benefits are matched (i.e. the effect of QF purchased power on the utilities is neutral) is when the non-generator pays the generator's full avoided costs, and the benefits from that purchase flow from the generator to the purchasing non-generator through adjustments of the wholesale tariff. In all other case, some entity, the generator, the purchasing non-generator and/or other non-generating utilities receive a subsidy either from the small power producer (if he is paid the wholesale rate) or from the purchasing non-generating utility. It is worth noting, however, that the examples are skewed by the assumption that only one non-generating utility is a purchaser of QF power. To the extent that qualifying facilities are located across franchise territories in proportion to their respective sales and non-generating utilities purchase QF power in proportion to their total purchases and retail sales, the non-generating utilities mutually benefit each other by their QF purchases and the subsequent decline in the wholesale rates. The problem, of course, is the QF power is not distributed in proportion to service territory sales, and purchases at marginal costs followed by blanket changes in the wholesale rate would probably result in Concord Electric subsidizing the New Hampshire

Electric Co-operative and Exeter and Hampton.

The non-generating utilities are obviously more concerned with the possibility that their wholesale rate will not be adjusted at all, and that they will be required to subsidize their supplier (PSNH) than with the possibility they will unevenly subsidize each other. However, if one must assume that the wholesale rates do not change, then the generator will necessarily receive a subsidy either from the non-generating utility paying tire avoided cost rate, or the small power producer receiving only the wholesale (= average cost) rate. The non-generating utilities base their argument that the subsidy should not be paid by their customers and that therefore, the wholesale rate should be paid for QF power on the statement in PURPA that " ... the purchasing utility must be in the same financial position it would have been had it not purchased the qualifying

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facility's output."⁷⁽⁸⁷⁾ The reference, however, is to a section in the FERC preamble (rather than the rules themselves) in which FERC staff discusses wholesale tariff adjustments to account for the generator's drop in revenue from lowered demand charges and how this decrease should be offset by a charge on the qualifying facility passed through the non-generating utility purchasing the QF power. Thus, the phrase is both taken out of context and lacks the authority of the rules themselves which offer both wholesale rates and generator's avoided costs as legitimate approaches to the determination of a QF rate. In contrast, the subsidization of the generating utility by the small power producer is clearly contrary to the intent of both PURPA and LEEPA, whose joint purpose is to encourage the development of alternate sources of energy.

One need not assume, however, that the wholesale rates will not be adjusted. The FERC has stated that they will look to the PURPA 210 rates when making wholesales rates.⁸⁽⁸⁸⁾ The problem, rather, is one of timing. The utility witnesses assert, and staff concedes, that the non-generators cannot be made whole unless that wholesale tariff adjustment is instantaneous and that a proceeding before the FERC is certain to be characterized by some considerable delay. A possible solution to the problem of regulatory lag is for the non-generating utilities to petition the FERC for the effects of QF purchases to be included in the automatic adjustment clauses. The use of these clauses has been recently expanded by the Commission and upheld by the 5th U.S. Circuit Court of Appeals.⁹⁽⁸⁹⁾

An alternative to the payment of avoided costs and adjustment through the wholesale tariff is that the non-generating utility wheel all of the QF power in its franchise territory to its supplier. The wheeling option matches most directly the entity purchasing the QF power with the beneficiary of QF power production. The transaction bypasses the non-generating utility altogether and the generating utility simply pays the full cost it avoids when it does not produce the power with its own facilities. Wheeling, however, is an option where only FERC has authority and then only in limited circumstances. Under the present statutes the Commission cannot order a utility to wheel, nor can it mandate that a small power producer wheel his power. It can only establish a price structure which encourages use of this option and assure that it is the entity, whether utility or small power producer, that chooses the uneconomic option that is penalized for the choice. At the present time, all independent non-generators have agreed to

wheel at no charge, and no small power producer has yet objected to having his power wheeled.

B. A Rational Basis for a Distinction among Non-generating Utilities

[3] There is as much reason to distinguish between affiliated and independent non-generating utilities as there is to distinguish between generating and non-generating utilities. The affiliated utility does not deal at arms length with its supplier and cannot change supplier in favor of a less expensive source of power. Unlike the independent, an affiliate can wheel QF power only with the

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agreement of its supplier.¹⁰⁽⁹⁰⁾ In an economic sense there is no substantive difference between a consolidated company supplier and distributor (like CVEC and Central Vermont PSC) and a vertically integrated company involved in both generation and distribution (like PSNH). While there is a possibility that an independent non-generator would not remain whole because of regulatory lags in the adjustment of the wholesale tariff, the consolidated/integrated company remains whole because the entity which incurs costs (by purchasing QF power) is the same entity which avoids costs (by not producing power itself). Further, since in the case of a company with parent-subsiidiary/supplier-distributor structure it is immaterial which of the affiliates purchases the QF power, there is no reason to construct a pricing system to encourage wheeling.

Consideration of a price for Granite State Electric Company has been moved to DE 82-81. The appropriate price of the Connecticut Valley Electric Company is the avoided cost of its supplier Central Vermont PSC. There is sufficient testimony on the record in this docket and information at the Commission concerning the deliberations of the Vermont Public Service Board to accept the rates established by Vermont PSB General Order No. 65 June 18, 1981.¹¹⁽⁹¹⁾ Adoption of the PSNH avoided cost rate as a proxy on the grounds that the Vermont and PSNH rates are currently very close, is not appropriate because the two rates may diverge in the future.

VI. Findings

A. The Wholesale Rate is Not Adequate to Encourage Optimal Development of Small Power Production

The wholesale rate reflects the average costs of the generating utility and by its nature is below the marginal cost of generation. The wholesale rate neither reflects the real costs which are being avoided, nor is it sufficient to bring on line an optimal amount of QF power. Those two criteria, reflection of real costs and optimal production, required by economic efficiency are only met by a price equalling the marginal cost of generation.

B. Consumers are not Indifferent but rather Benefit from the Production of Qualifying Facilities

C. The Use of the Supplier's Avoided Cost Equal to the Marginal Cost of Bulk Power Supply can be Detrimental to Independent Non-generating Utilities

The ability of the independent companies to remain whole when purchasing QF power depends on timely and adequate adjustments in the wholesale tariff. To be absolutely whole, the

adjustment must be instantaneous. While the Federal Energy Regulatory Commission can include the effect of QF purchases in automatic adjustment clauses, the utilities will have to petition the FERC to do so. Absent such adjustments, the non-generating utilities will subsidize their generating supplier. To the extent that the wholesale rate is not changed to reflect the purchases of individual non-generating utilities, those utilities purchasing greater amounts of QF power will subsidize those utilities purchasing less.

[4] D. The Wheeling Option Offered by the Non-generating Utilities is Equitable and Economically Efficient and is an Option Afforded by the Federal Energy Regulatory Commission (§ 292.303(d))

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The offer of independent non-generating utilities to wheel QF power to their supplier at no charge, achieves the economic efficiency of the payment of marginal costs of generation and avoids the inequities of regulatory lag in the adjustment of the wholesale tariff. Wheeling, however, must be done by mutual agreement between the small power producer and the transmitting utility. The affiliated non-generating utility and its supplier (affiliate or parent) for rate-making purposes can be treated as a single corporate entity. As such, it is identical to an integrated company which both generates and distributes power. The appropriate rate for the affiliated non-generator is the avoided cost of its supplier. There is no need to construct pricing structures to encourage wheeling for affiliated companies in order to assure that the corporate entity remains whole.

E. The Rate Established by the Vermont Public Service Board is Equitable and There is Sufficient Evidence to Adopt Their Findings as an Appropriate Rate for Connecticut Valley Electric Company.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that non-generating non-affiliated utilities which elect to purchase power from qualifying small power producers rather than wheeling such power to their supplier at no charge, shall pay the full avoided cost of their supplier, PSNH, as determined from time to time by the Commission; and it is

FURTHER ORDERED, that qualifying small power producers who, have been offered the option of having their power wheeled to the generating supplier at no charge, elect to sell their power rather to the non-generating, non-affiliated utility, will receive a rate based on the wholesale rates at which the non-generating utility purchases from its supplier. Such rate will be based on the calculation of the average rate at the appropriate delivery point on a case by case basis; and it is

FURTHER ORDERED, that non-generating utilities which are affiliated with their supplier shall pay the full avoided cost of their supplier; and it is

FURTHER ORDERED, that the rate established by the Vermont Public Service Board in

General Order No. 65, June 15, 1982, shall be adopted as the appropriate rate to be paid qualifying small power producers in New Hampshire by the Connecticut Valley Electric Company and/or its parent company, Central Vermont Public Service Company.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1982.

FOOTNOTES

¹State law: The Limited Electrical Energy Producers Act (LEEPA RSA 362-A, (Supp. 1982-2), Federal Law: The Public Utility Regulatory Policies Act of 1978 (PURPA § 210) 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.

² Those generators under LEEPA are only a subset of those facilities qualifying under PURPA: qualifying facilities (QFs) under PURPA include cogenerators and the size criteria encompasses such facilities up to 80 MWs, LEEPA applies to facilities of 5MW or less.

³ "Avoided costs means the incremental cost to an electric utility of electric energy or capacity or both which, but for the purchase from the small qualifying facility ... such utility would generate for itself or purchase from another source.

⁴ "New capacity" means any qualifying facility which began construction after the enactment of PURPA (November 9, 1978) 18 CFR § 292.304(b)(1).

⁵ "Thus our holding should not be read as requiring FERC to establish a different standard ... but the Commission must justify and explain it fully, particularly in its balancing of the interests of cogenerators, the public interest and electric consumers of the electric utilit(ies)." American Electric Power, 45 PUR4th at p. 374, Oct. 18.

⁶ 18 CFR § 292.304(e) states: *Factors affecting rates for purchases*. In determining avoided costs, the following factors shall, to the extent practicable, be taken into account: (1) the data provided pursuant to § 292.302(c), (c) or (d) including state review of such data; ... "

⁷ FERC Order No. 69, 18 CFR 292.303(d).

⁸ 45 *Federal Register* Par p. 12219, Preamble No. 303.

⁹ Fifth U.S. Circuit Court of Appeals (81-4470), Oct. 4, 1982, (49 PUR4th 323). See Inside FERC Oct. 18, 1982, p. 9.

¹⁰ See Macdonald Transcript, III pp. 14-18.

¹¹ See Transcript, III — pp. 30, 34, 41-48, Exhibit 11.

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NH.PUC*11/19/82*[79442]*67 NH PUC 839*New England Telephone and Telegraph Company

[Go to End of 79442]

Re New England Telephone and Telegraph Company

DE 82-335, Order No. 16,008

67 NH PUC 839

New Hampshire Public Utilities Commission

November 19, 1982

APPROVAL of the transfer of ownership of customer premises equipment based upon federal orders following divestiture.

BY THE COMMISSION:

ORDER

WHEREAS, on October 20, 1982, New England Telephone and Telegraph Company filed with this Commission certain revisions to its Tariffs No. 70 and 73, said revisions prefacing various sections pertaining to provision of customer premises equipment; and

WHEREAS, effective January 1, 1983, new issues of said equipment beyond that in current inventories will be provided by other than the New England Telephone viz, American Bell, Inc., per order of the Federal Communications Commission; and

WHEREAS, certain assets estimated to be \$187,000 of New England Telephone Company will be transferred to said American Bell, Inc.; it is

ORDERED, that Original Preface Pages to Part III, Sections 2, 4-6, 8, 12, 14-18, 22-23, 25-26, 30-35, and 39-40, Tariff 70 as well as Part IV, Private Line and Tariff No. 73 be, and hereby are, approved for effect on November 19, 1982 as proposed; and it is

FURTHER ORDERED, that any transfer of assets is temporarily approved subject to audit by this Commission; and it is

FURTHER ORDERED, that New England Telephone provide to this Commission an inventory of its CPE effective January 1, 1983, said inventory to include both quantity and cost.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1982.

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NH.PUC*11/19/82*[79443]*67 NH PUC 839*Northern Utilities, Inc.

[Go to End of 79443]

Re Northern Utilities, Inc.

DF 82-332, Order No. 16,009

67 NH PUC 839

New Hampshire Public Utilities Commission

November 19, 1982

PETITION by a gas company to increase its short-term debt limitation; granted.

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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 8, 1982, filed with this Commission a petition to increase its short-term borrowing limitation from \$8,000,000 to \$8,500,000, to be subsequently adjusted by the Report and Order in DR 82-29 and to be redetermined as of December 31, 1982; and

WHEREAS, Northern Utilities, Inc. anticipates its short-term debt to approach \$8,500,000 prior to the implementation of the fuel inventors financing proposed under DR 82-229; and

WHEREAS, the Company currently has in excess of \$2,200,000 of fuel inventory being financed by its short-term debt which is governed by the \$8,000,000 limit set by the Commission under Order No. 15,476, and approval by this Commission of the fuel inventory financing will enable the Company to reduce the level of short-term bank debt by the aforementioned \$2,200,000 relative to fuel inventories; and

WHEREAS, as of September 30, 1982, the net fixed capital of the Company had \$7,050,000 of short-term notes payable; and

WHEREAS, temporary approval is in the public good; 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 \$8,500,000; and it is

FURTHER ORDERED, that the authority to renew these notes up to an aggregate amount of \$8,500,000 shall expire as of December 31, 1982, at which time the aggregate level will be redetermined; and it is

FURTHER ORDERED, that the notes shall bear interest at the most economical rates the Company can obtain; and it is

FURTHER ORDERED, that the Company will inform this Commission when the inventory financing agreement is consumated; 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 nineteenth day of November, 1982.

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NH.PUC*11/22/82*[79444]*67 NH PUC 841*Northern Utilities, Inc.

[Go to End of 79444]

Re Northern Utilities, Inc.

DR 82-229, Order No. 16,002

67 NH PUC 841

New Hampshire Public Utilities Commission

November 22, 1982

ORDER approving fuel inventory financing but disallowing off balance sheet treatment of the fuel inventory.

1. EXPENSES, § 39 — Commodity or supply cost — Fuel inventory trust — Advantages.

[N.H.] The commission authorized a gas company to finance fuel inventory by selling its fuel supplies to a holder to be retained for the company's future repurchase and to remove such fuel inventory from rate base, thus reducing the company's inventory and financing costs while maintaining ready access to supplies.

APPEARANCES: Martin L. Gross for the petitioner.

BY THE COMMISSION:

REPORT

By this unopposed petition filed August 12, 1982, Northern Utilities, Inc. (the "Company"), seeks a determination that a proposed fuel purchase agreement with BayNor Energy, Inc., a Massachusetts corporation, and ancillary agreements are reasonable within the meaning of RSA 366:5, along with other determinations and authorizations from the Commission which would enable the Company to establish a new method for financing its working capital requirements associated with its gas inventories, including natural gas in underground storage facilities, liquefied natural gas and LP air gas. The Company seeks authorization to remove the amount associated with its gas inventories from its rate base, to make an appropriate downward adjustment in its base rates, to add the financing costs and other costs of the new facility to the amounts to be recovered through the company's semi-annual cost of gas adjustment (CGA) and to reflect the transactions with BayNor off balance sheet, for financial reporting purposes.

The Company offered testimony and exhibits of two witnesses, James J. Flanagan, III, the Company's Assistant Treasurer, and David A. Deans, the Company's Assistant Controller. According to the Company's evidence, the Company's traditional method of financing amounts associated with fuel inventory has been through short term debt borrowings on unsecured lines of credit. The financing costs involved have been recovered through inclusion of amounts in rate

base to reflect a representative amount invested in fuel inventories through amounts allowed for supplemental fuel facilities and cash working capital. Recently, with the Commission's encouragement, the Company has been seeking ways to increase its access to new supplemental gas supplies as a means of reducing ultimate fuel costs to the customer.

The Company proposes to enter into a fuel purchase agreement with BayNor

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Energy, Inc. (BayNor) in which BayNor would acquire, at cost, the Company's right to receive title to fuel inventories. The transaction contemplates that BayNor will raise necessary funds to purchase these rights through the sale of its own commercial paper. The inventories will be held and stored at facilities available to Northern, with Northern acting as agent of BayNor in connection with the storage. When Northern needs gas from inventory to be sent out to customers, it will simply draw the necessary fuel requirements out of storage and will be invoiced by BayNor for the amounts withdrawn.

The price to be paid by Northern to BayNor will be the amount originally paid by BayNor, plus financing costs and the associated expenses incurred by BayNor in fulfilling its obligations to Northern. The resulting total financing costs to Northern will be lower than Northern's historic costs of financing fuel inventories through short term credit and return on rate base. The Company's Exhibit #2 provides a comparison, based on 1981 data. Although cross-examination revealed that the cost spread between the two methods has narrowed with declining interest rates, the spread is still appreciable. Lower financing costs result primarily from the fact that BayNor will be raising funds through issuance of commercial paper notes which carry the highest ratings placed on commercial paper by Standard & Poor's, Moody's and Fitch Investors Service.

Exhibit #2 also lists certain additional costs associated with use of BayNor facility. Northern's share of these costs will amount to 3/35ths of the total, reflecting the fact that Northern will have access to \$3 million of financing under the facility, while Northern's parent company, Bay State Gas Company, will have access to \$32 Million in financing under the same facility. Northern's access to the facility has been made possible by its relationship with Bay State.

Northern's witnesses stated that Northern would not be responsible for any of the associated costs stemming from Bay State's use of the facility.

With the approval of the proposal, Northern seeks to adjust its rate base to remove amounts associated with fuel inventories. According to Exhibit #4, the appropriate amount to be removed from rate base is \$105,500 (Exhibit #4, Schedule 2, page 1 of 3). An accompanying adjustment in Northern's cost of capital occurs through reduction in the amount of short term debt, which reduces the allowed rate of return from 11.48% to 11.47% (Exhibit #4, Schedule 3). These adjustments result in a total reduction of base rate revenues in the amount of \$18,130, after an offsetting increase due to increased income taxes (Exhibit #4, Schedule 1).

In place of return on rate base, Northern seeks to recover the financing and miscellaneous costs associated with the financing facility through its CGA. Based on 1982 data, if the facility had been in place during that period, recovery of facility costs through the CGA would have

added a total of \$15,357 to the amount of revenue collected through the CGA (Exhibit #3, Schedule 2). This comparison indicates the type of savings available through use of the facility, given comparable purchases of fuel inventory in a given period.

Under the terms of the proposed arrangement, one-half, or \$1.5 Million of Northern's share of facility credit may be used for general corporate purposes, other than fuel inventory. Access to

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these funds for general corporate purposes will further assist Northern in reducing its reliance on higher cost short term credit. During the hearing, the Commission stated its concern that Northern not find itself in a position where its use of the facility for general corporate purposes interfered with its access to funds for fuel inventory purposes. In response, Northern's witness stated categorically that the Company would refinance with conventional short term debt any amounts raised for non-fuel purposes through the facility, in the event such borrowings had to be displaced in order to finance increased fuel purchases. The Commission accepts that assurance as a condition of its findings. Similarly, the Commission also accepts as part of its findings in this matter the Company's assurance that no amounts associated with non-fuel financing will be included in any CGA pass-through and that clear audit trails of transactions with the facility will be maintained, in order to facilitate Commission staff audit of the Company's CGA accounts.

The result of the proposed transaction will afford Northern access to quantities of natural gas stored underground, which provides the most economical supplemental gas to assist in providing supply to the Company's heat sensitive load. At the same time financing of such increased quantities can be achieved without further pressure on the Company's short term credit limits.

The Company has requested authorization to take the financed fuel inventory off its balance sheet for financial reporting purposes. The effect of such accounting treatment would be to improve the Company's coverages, and its consequent financial flexibility. According to the Company's evidence, this accounting treatment has been accorded to Northern's parent company by the Massachusetts Department of Public Utilities in approving Bay States's petition in connection with the proposed facility.

According to the Company's testimony, the Main Public Utilities Commission has given indications of its readiness to approve the Company's participation in the facility, with consequent adjustments to rate base and CGA pass-through. Company witnesses stated that Main was awaiting approval from the regulator in Northern's state of incorporation.

Based on the foregoing, the Commission will approve the prayers of the petition. The proposed agreements are found to be reasonable. The Company will be authorized to collect the price it pays for fuel purchases pursuant to the fuel purchase agreement under its cost of gas adjustment clause, provided that the Company shall not pass any financing charges, interest costs or associated fees through the CGA until an appropriate adjustment is made to the existing base rates to reflect the savings arising from the fact that the Company will no longer be required to finance its gas inventory.

The Company has asked that the Commission approve off balance sheet treatment of fuel purchased under the agreement. The finance staff has reviewed the accounting implications of the requested treatment and has recommended that off balance sheet treatment be denied. Off

balance sheet treatment is contrary to generally accepted accounting principles. The Company does retain an economic interest in the inventory and does have a purchase commitment in accordance with the trust agreement. In addition, the Company will continue to carry insurance on the inventory. The costs of fuel should be included in the materials and supplies account, with an

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offsetting credit to miscellaneous current liabilities. A clarifying note should also be included in the financial statements which clearly defines the nature and amount included in the aforementioned accounts.

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 Northern Utilities, Inc. for approval of Fuel Purchase Agreement and ancillary agreements under RSA 366 is hereby granted; and it is

FURTHER ORDERED, that said Fuel Purchase Agreement and ancillary agreements are found to be reasonable; and it is

FURTHER ORDERED, that Northern is authorized and directed to make an appropriate adjustment to rate base to reflect removal of fuel inventories from rate base, to adjust its base rates accordingly and to submit an appropriate report of rate changes and appropriate tariff pages to reflect such changes, and it is

FURTHER ORDERED, that Northern may collect the price it pays for fuel purchases pursuant to the Fuel Purchase Agreement under its cost of gas adjustment at such time as appropriate adjustment has been made to existing base rates, as previously ordered; and it is

FURTHER ORDERED, that the cost of fuel inventory financed by BayNor and the associated facility costs used to finance such inventory shall be recorded on Northern's books and that the company shall record the costs as materials and supplies and the liability as a purchase commitment under miscellaneous current assets, with an appropriate footnote explaining the nature and financial consideration of the Fuel Purchase Agreement.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 1982.

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NH.PUC*11/22/82*[79445]*67 NH PUC 844*Manchester Gas Company

[Go to End of 79445]

Re Manchester Gas Company

DF 82-250, Order No. 16,003

67 NH PUC 844

New Hampshire Public Utilities Commission

November 22, 1982

PETITION for approval of off balance sheet treatment of fuel obtained through special fuel inventory financing; fuel inventory financing approved but off balance sheet treatment denied.

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1. EXPENSES, § 39 — Commodity or supply cost — Fuel inventory trust — Advantages.

[N.H.] A fuel inventory trust arrangement, whereby a gas company would sell its excess supplies in low-use months to a trust and would repurchase it as needed in high-use months, was approved because it would assure availability of supplies, would reduce gross operating expenses, would reduce fuel costs to customers, and would free up short-term debt to be used on other capital expenditures. p. 847.

2. SECURITY ISSUES, § 98 — Kinds and proportions — Short term debt levels — Effect of fuel inventory financing.

[N.H.] Although fuel inventory financing programs generally decrease a company's short-term debt level, where a company has increasing accounts receivable and has financed massive capital improvements, the commission found it would be proper to retain the company's current short-term debt level despite the implementation of a fuel inventory trust arrangement. p. 848.

 APPEARANCES: J. Christopher Mar shall for the petitioner.

BY THE COMMISSION:

REPORT

Through a Petition filed for Authority to Enter into Fuel Inventory Financing Arrangement (sometimes hereafter the "Arrangement") dated August 31, 1982 and filed the same date, Manchester Gas Company ("Manchester Gas") described and requested approval of an arrangement by which Manchester Gas would finance its fuel inventory (the "Fuel") in a manner that would provide both flexible financing for Manchester Gas and a savings for its customers. With its Petition, Manchester Gas provided a complete set of the documents which it proposes to enter into as part of the Arrangement. A hearing was held on October 27, 1982 at which time Manchester Gas submitted revised documents that are substantially in the same form in which they will be executed, subject to minor changes that may be made. The hearing held October 27, 1982 was consolidated, for all evidentiary purposes, with a hearing held on a similar request by Gas Service, Inc. for approval of a substantially identical fuel inventory financing arrangement. For the reasons set forth herein, we approve the Arrangement, and the inclusion by Manchester Gas of the cost of the Fuel purchased from the trust in its cost of gas adjustment ("CGA"), and a

retention of the existing \$3,000,000 short-term borrowing authorization.

Manchester Gas has asked that the Commission approve off balance sheet treatment of fuel purchased under the agreement. The finance staff has reviewed the accounting implications of the requested treatment and has recommended that off balance sheet treatment be denied. Off balance sheet treatment is contrary to generally accepted accounting principles. Manchester Gas does retain an economic interest in the inventory and does have a purchase commitment in accordance with the trust agreement. In addition, Manchester Gas will continue to carry insurance on the inventory. The costs of fuel should be included in the materials and supplies account, with an offsetting credit to miscellaneous current liabilities. A clarifying note should also be included in the financial statements which clearly defines the nature and amount included in the aforementioned accounts.

We further will order that the rate base of Manchester Gas, as established in DR 81-234, be reduced effective at the time of its December, 1982 step increase by \$999,157 and that all Fuel sold to the

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trust will be excluded from rate base in future rate filings so long as the Arrangement is in effect. We will further order that Manchester Gas refile its 1982-83 winter CGA to reflect the additional cost of \$.006 per therm for the inventory financing when the trust agreement is finalized.

BACKGROUND

A. The Parties.

Manchester Gas is a regulated gas utility company subject to the jurisdiction of the New Hampshire Public Utilities Commission and operating entirely within the State of New Hampshire. It files reports and financial data with the Commission on a regular basis. The Bank of New Hampshire, National Association, is a federally chartered banking institution with principal offices at 300 Franklin Street, Manchester, New Hampshire. The Bank of New England, National Association is a federally chartered banking institution with principal offices at 28 State Street, Boston, Massachusetts.

B. Procedure.

On August 31, 1982, Manchester Gas submitted a Petition for authority to enter into the Agreement and submitted copies of the legal documents associated with the Arrangement. On September 2, 1982, the staff submitted data requests and on September 24, 1982, Manchester Gas submitted responses to the data requests. Manchester Gas is before the Commission seeking final approval for the Arrangement. Secondly, in Order No. 15,562, Docket No. DF 82-13, dated January 26, 1982 (67 NH PUC 105), the Commission increased the short term borrowing authority of Manchester Gas from two million dollars to three million dollars. The Commission further ordered that the short term borrowing limit would revert to two million dollars when the inventory financing arrangement was approved. For reasons set forth hereafter, Manchester Gas is also requesting that its short term borrowing authority continue at the level of three million dollars. Third, Manchester Gas has filed and had approved a 1982-83 winter CGA filing which

does not include any adjustment for the fuel inventory financing (DR 82-274). Fourth, as a party to Settlement Agreement No. 1 dated March 24, 1982 in DR 82-234, Manchester Gas is required to file a step increase to take effect in December of 1982 in accordance with the Commission's Report and Fourth Supplemental Order No. 15,740 issued July 1, 1982 (67 NH PUC 438). The July 1, 1982 Report and Order required that inventory be adjusted to reflect the effect of any inventory financing Manchester Gas is able to obtain.

C. Description of the Arrangement.

By means of a trust agreement Manchester Gas will establish the Manchester Gas Fuel Inventory Trust (the "Trust"), with the Bank of New Hampshire, National Association acting as Trustee of the Trust. The Trust will be formed and will operate for the single purpose of purchasing Fuel from Manchester Gas and holding the Fuel for subsequent resale, on demand, to Manchester Gas. Manchester Gas and the Trust will enter into a Purchase Agreement under which Manchester Gas is authorized to sell Fuel to the Trust at such times and in such quantities as Manchester Gas desires, and the Trust is obligated to purchase any and all such proffered Fuel. The price of the Fuel sold to the Trust under the Purchase Agreement is computed by Manchester Gas and is equal to the price payable by Manchester Gas to its supplier for the Fuel being sold to the Trust,

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plus transportation charges, unloading charges and any other costs that would be properly chargeable by Manchester Gas for purposes of computing its CGA. The purchase of the Fuel from Manchester Gas by the Trust is financed under a revolving Credit Agreement to be entered into between the Trust and Bank of New England, National Association (the "Bank"). Under the terms of the Credit Agreement, the bank will make loans to the Trust up to an aggregate of Two Million Five Hundred Thousand Dollars. The loans will be evidenced by a Note and the Bank will have a security interest in the Fuel which is sold to the Trust. Fuel that is purchased by the Trust under its Purchase Agreement with Manchester Gas will be stored in storage facilities operated by Penn-York Energy Corporation in New York and Pennsylvania, Consolidated Gas Supply Corporation in Potter County, Pennsylvania, Lowell Gas Company, in Lowell, Massachusetts, and Manchester Gas at various places in New Hampshire. As part of the financing arrangement, the Trust and Manchester Gas will enter into an Agency Agreement whereby the Trust appoints Manchester Gas as its exclusive agent for handling all matters regarding the Fuel during the period of the Trust's ownership of the Fuel and its storage in the Storage Facilities. Under the Purchase Agreement between the Trust and Manchester Gas, Manchester Gas has the right to repurchase, on demand, any and all Fuel it has previously sold to the Trust, at a formula price determined by the original selling price from Manchester Gas to the Trust, plus finance charges incurred by the Trust under its Credit Agreement with the Bank, plus a trust management fee. Under the terms of the Purchase Agreement, Manchester Gas is also obligated to repurchase Fuel at the formula price to enable the Trustee to repay its obligations to the Bank.

ADVANTAGES OF FUEL INVENTORY FINANCING

[1] According to Manchester Gas officials (and also officials of Gas Service, the testimony of

both having been consolidated for evidentiary purposes), in order to assure that adequate fuel supplies are available to customers during the peak winter season, Manchester Gas has had to maintain increasingly expanding inventories of natural gas, propane, and LNG which it purchases during months of low use and keeps in storage for future demand. The purchase price for Fuel acquired for such future needs would ordinarily show as inventory on the balance sheet of Manchester Gas and be includable in its rate base. Under the Arrangement, Manchester Gas has contractual obligations to repurchase the Fuel from the Trust, but does not have title to the fuel. Manchester Gas will be billed by the Trust whenever Manchester Gas repurchases the Fuel, and the Fuel costs will be recoverable under the CGA. Because of reduced costs of financing inventories, and reduced need for gross operating revenues to pay both taxes and interest charges, the proposed financing arrangement will result in a reduction in fuel costs to customers.

In addition, because the financing is assured to be available for the purchase of fuel up to a credit limit of Two Million Five Hundred Thousand Dollars, Manchester Gas will be in a better position to buy Fuel when it becomes available and it will be better able to take maximum advantage of seasonal price fluctuations in the marketplace. In the absence of the Arrangement, Fuel purchased for inventory

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would have to be financed on an interim basis, subject to varying interest rates. Moreover, such purchases would have to be financed within the limits of the short term debt allowance of Manchester Gas, against which requirements for other capital expenditures, maintenance, and improvements must be charged. Therefore, in times of high inventory storage, the amount of debt available to finance such other capital expenditures is reduced. By booking fuel inventory on the balance sheet with an offsetting entry to miscellaneous current liabilities and approving the fuel inventory trust arrangement, the Commission will afford Manchester Gas increased financial flexibility to meet its other capital requirements, enhance its ability to have adequate supplies of fuel available, and save money for customers.

EFFECT ON SHORT-TERM DEBT LEVELS

[2] Since the fuel inventory trust provides a way to finance fuel purchases that would otherwise have to be financed by short-term borrowing, and hence less short-term debt need be kept available for financing fuel purchase, we had earlier ordered that the allowable short-term debt level of Manchester Gas be reduced from Three Million Dollars to Two Million Dollars upon implementation of its fuel inventory trust proposal. (67 NH PUC 105.) During this proceeding, Manchester Gas has presented testimony that the amount of accounts receivable it is required to carry is steadily increasing. Furthermore, Manchester Gas has financed over One Million Dollars of capital improvements from its short-term debt during the past twelve months. The financial flexibility afforded by fuel inventory financing will be negated if there is a substantial reduction in the short-term debt levels to which Manchester Gas may resort for financing capital expenditures resulting in a triggering of requirement for issuing additional long-term debt or common equity. If the authorized short-term debt level were decreased to Two Million Dollars, Manchester Gas would immediately have to file a request to increase it to Three Million Dollars. Thus, the needs of the public will be better met if the short-term debt of Manchester Gas continues at its present level.

FINDINGS

The Commission has reviewed the various documents under which the Arrangement would be established, including the Trust Agreement between Manchester Gas and the Bank of New Hampshire, the Purchase Agreement between Manchester Gas and the Trust, the Agency Agreement between Manchester Gas and the Trust, and the Credit Agreement between the Trust and the Bank of New England. We have also reviewed the theoretical computation prepared by Manchester Gas which shows the financial mechanics of the plan, resulting in a net savings for customers. We are cognizant of the fact that similar arrangements have been implemented in other jurisdictions. We are satisfied that the Arrangement by Manchester Gas under the terms and conditions detailed in the documents submitted to us, will not adversely affect the operations of Manchester Gas, will not unduly expose Manchester Gas to increased liability and will not increase the cost of fuel to the customers of Manchester Gas. Therefore, the Commission approves the establishment of the Arrangement with the cost of such Fuel to be recoverable under the cost of gas adjustment. Moreover, we find that the public good will be served by not

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reducing the maximum short-term debt level of Three Million Dollars should continue to be authorized. The Commission further finds that the rate base of Manchester Gas should be reduced by \$999,157 at the time of its step rate increase to be effective in December of 1982, provided that the Arrangement is in place or assured of being in place. The start-up costs shall be recouped through general revenues to be adjusted starting at the time of the December 1982 step increase. The 1982-83 winter CGA should be amended on implementation of the Arrangement to increase the winter CGA by \$.006 per therm. Our Order will issue accordingly.

ORDER

WHEREAS, Manchester Gas Company ("Manchester Gas") has filed with this Commission the documents embodying a fuel inventory financing arrangement (the "Arrangement"), which documents are required to be executed and delivered to implement the Arrangement, and the documents are substantially in the form in which they are to be executed and delivered; and

WHEREAS, these documents have been carefully scrutinized by, and are acceptable to, this Commission, which is satisfied that the operation of the Arrangement will result in savings to the customers of Manchester Gas; and

WHEREAS, Manchester Gas, as a party of Settlement No. 1 dated March 24, 1982, approved by the Commission's Report and Fourth Supplemental Order No. 15,740, is required to file a step increase effective December, 1982; and

WHEREAS, in Order No. 15,562 in DF 82-13 (67 NH PUC 105), this Commission directed that the short term maximum debt of Manchester Gas be reduced from \$3,000,000.00 to \$2,000,000.00 upon implementation of fuel inventory financing; and

WHEREAS, the expanding accounts receivable, increasing working capital requirements, and capital expansion and improvement programs of Manchester Gas warrant that its short term debt maximum be maintained at \$3,000,000.00 notwithstanding the implementation of fuel inventory financing; it is hereby

ORDERED, that the fuel inventory financing arrangement of Manchester Gas is hereby approved and allowed to be implemented forthwith; and it is

FURTHER ORDERED, that the flow-through by way of the CGA to Manchester Gas customers of the financing costs associated with the Arrangement commencing with the 1982-82 CGA winter period, is approved, and those financing costs will commence to accrue for CGA purposes only upon implementation of the Arrangement; and it is

FURTHER ORDERED, that upon implementation of the Arrangement and as long as it is in effect the fuel inventory and the liability of a purchase commitment with respect to that inventory and to the costs associated therewith shall be reflected on the balance sheet of Manchester Gas and further detailed by way of a footnote); and it is

FURTHER ORDERED, that the rate base of Manchester Gas shall be reduced by \$999,157.00 effective with the December, 1982 Step Adjustment of rates, provided the Arrangement is in effect or assured of being in effect; and it is

FURTHER ORDERED, that the legal and other expense of developing, setting-up and instituting the Arrangement shall be amortized over a five-year period commencing with the December 1982 step increase, with 20% of such expense being allowed as of December, 1982

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pursuant to the aforesaid Report and Fourth Supplemental Order No. 15,740 and the same percentage to be included in operating expenses in each of the next four years; and it is

FURTHER ORDERED, that Manchester Gas refile its 1982-83 Winter CGA to reflect the estimated cost for the inventory financing of \$.006 per therm; and it is

FURTHER ORDERED, that the Company's short term maximum debt shall remain at \$3,000,000.00 and Order No. 15,562 in DF 82-13 is modified accordingly.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 1982.

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NH.PUC*11/22/82*[79446]*67 NH PUC 850*Transportation Rules 700, 800, and 900

[Go to End of 79446]

Re Transportation Rules 700, 800, and 900

DRM 82-100, Second Supplemental Order No. 16,004

67 NH PUC 850

New Hampshire Public Utilities Commission

November 22, 1982

SUSPENSION of filing fee rules for intrastate transportation property tariffs pending further investigation into the discriminatory effect of the rules.

BY THE COMMISSION:
REPORT

By letters received from both the New England Motor Rate Bureau, Inc., Executive Park, Burlington, Massachusetts and the New Hampshire Motor Transport Association, Concord, New Hampshire dated August 11, 1982, requested the New Hampshire Public Utilities Commission Code of Administrative Transportation Rules 801.09, Paragraph (M), (should have been Paragraph N) requiring filing fees for all intrastate transportation property tariffs with this Commission on and after June 14, 1982, be "suspended" until a formal hearing before the New Hampshire Public Utilities Commission could be heard. The New England Motor Rate Bureau, Inc., further stated in said letter that the request for the hearing is due to the fact, they did not receive prior notification of the public hearing relative to this matter held on May 19, 1982.

The New Hampshire Public Utilities Commission granted the request and the hearing which was set for September 3, 1982, by Supplemental Order No. 15,868, dated September 2, 1982, was attended by Maureen B. Champa, Executive Vice-President of the New Hampshire Motor Transport Association representing both parties.

At the time this hearing was held the Transportation Rules 700, 800, and 900

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were adopted in their final form, it should be noted, however, printed copies were not available at the time of the hearing. Therefore, in both letters, 801.09 paragraph M was given the identity of tariff filing fees for property carriers.

The correct identification should have been Rule No. PUC 801.09, paragraph "N". The tariff filing fees section PUC 903.05 relative to Household Goods Carriage, was inadvertently left out by Legislative Services, and was replaced with, *PUC 903.05 Discounts Prohibited*.

Rule No. PUC 707.02, paragraph (f) relates to tariff filing fees for the carriage of passengers. This rule was not addressed in either letter. However, notice was made at the hearing that paragraph (f) should also be suspended pending further investigation by the Commission in conjunction with paragraph (N) of Rule PUC 801.09.

Upon consideration of the facts that were presented, the Commission is of the opinion that Rule PUC 801.09 paragraph (N) be suspended pending further investigation, and Rule PUC No. 707.02 paragraph (f) also be suspended pending further investigation. Such investigation shall allow the Commission to determine the precise details for tariff filing fees and the precise details pertaining to the administration of said filing fees.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Order No. 15,868 on September 2, 1982; and

WHEREAS, said order set for hearing, September 3, 1982; for the sole purpose of acting upon the request of the New Hampshire Motor Transport Association, and the New England

Motor Rate Bureau, Inc., to vacate Rule No. PUC 801.09, paragraph (N) (re: DRM 81-100, Order No. 15,657, May 21, 1982 [67 NH PUC 337]); and

WHEREAS, the Commission is aware of the discrimination in the event only Rule No. PUC 801.09, paragraph (N) is vacated; therefore, it is hereby

ORDERED, that Rule No. PUC 707.02 paragraph (f) be suspended, pending further investigation and also Rule No. PUC 801.09, paragraph (N) be suspended pending further investigation. Such investigation shall determine the precise details for tariff filing fees and the precise details pertaining to the administration of said filing fees.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 1982.

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NH.PUC*11/22/82*[79447]*67 NH PUC 852*Public Service Company of New Hampshire v Earl S. Carter

[Go to End of 79447]

Public Service Company of New Hampshire v Earl S. Carter

DE 82-256, Order No. 16,005

67 NH PUC 852

New Hampshire Public Utilities Commission

November 22, 1982

ORDER allowing an electric company to condemn and take a certain tract of privately held land.

1. EMINENT DOMAIN, § 8 — Right to appropriate property — Compensation — Based on best use.

[N.H.] Where land taken by a utility company, in order to construct a transmission line, has as its best use the growth and harvest of cord wood, the owner should be compensated by being given all the wood cut in the construction process plus damages for the decline in the property's value and an adjustment for interruption of the wood operation.

APPEARANCES: Eaton W. Tarbell, Jr., and Karen Amery, for PSNH; Earl S. Carter, pro se.

BY THE COMMISSION:

REPORT

A petition was filed on September 7, 1982 by Public Service Company of New Hampshire (hereinafter called "PSNH") for condemnation of one-half interest in a certain tract or strip of land owned by Earl S. Carter being part of the premises conveyed to Earl S. Carter by deed recorded in Book 2120 on page 187 in the Rockingham County Registry of Deeds Office.

On September 9, 1982 an Order of Notice was issued by the Commission setting a public

hearing on October 14, 1982 at Concord.

PSNH is in the process of acquiring rights of way for the Seabrook to Scobie Transmission Line. Mr. Carter owns a one-half undivided interest in a parcel of land consisting of 43 acres. The remaining interest in the land is owned by Margaret M. Hamel. PSNH has successfully negotiated with Hamel and has acquired her interest.

The Transmission line requires a taking for a right-of-way being approximately 1209.63 long and 170 feet wide across the Carter land.

The parties agree that a Certificate of Site and Facility was properly issued and this taking is necessary.

The Company produced three witnesses, William T. Wormell, land surveyor, David F. Colt, appraiser, and John E. Haywood, real estate manager. Earl S. Carter appeared on his own behalf.

Mr. Wormell testified as to the location of the property and its characteristics. He also described the location of the proposed taking.

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Mr. Colt testified that he appraised the subject property to have a value of \$19,350 before the taking and a value of \$17,200 after the taxing producing damages in the total sum of \$2,150 or \$1,075 for Mr. Carter's interest. He generally described the property as consisting of a 43 acre tract of generally low, level, wooded land with immature hard wood and brush. It has 1200 feet of frontage on a paved road. The land required for the right-of-way is one to three feet below the grade of the road. Most of the land is low except for a parcel on the south end which is considerably higher. There also is a portion of high land on the north end which lies behind the neighbors adjacent property. Mr. Colt generally classified the land as low, wet land. The highest and best use before the taking is for a single family residence use, however, the only portion of land that can be built upon is the high land to the south of the parcel being taken for right-of-way. The land actually within the right-of-way cannot be improved or used except for wood land.

In establishing value, Mr. Colt used the market data approach consisting of comparable sales (See Exhibit 3). He analyzed four sales and compared them with the property in question. His conclusion was that the value of the property before the taking was \$19,350 and the value after the taking is \$17,200 resulting in damage in the sum of \$2,150 with Mr. Carter's one-half undivided interest being \$1,075.

Mr. Carter testified that the 43 acre parcel could accommodate a residential use on the south side of the property and possibly one on the north side. He confirmed that the land actually being taken was low, wet land. He further testified that the land was used to grow and harvest cord wood. He estimated that there was 200 cords of wood available on each side of the right-of-way having a value of \$20 per cord or \$8000. He estimates his damages to be \$10,000 less the \$1,500 paid to Hamel or \$8,500.

The Company disputes any consideration of value for the wood and states that Mr. Carter can have all the wood cut on the property owned by him and taken in this proceeding. The Company argues that the law does not allow damage for the growing tree to be considered, but that the

land should be valued as wooded rural land. It is their position that there is substantial like property available and that the market value can be determined. They further suggest Mr. Colt's appraisal was performed in accordance with recognized real estate appraising practice.

Subsequent to the hearing a view of the property was taken in the presence of all parties of record.

The Commission having reviewed the evidence and testimony presented in this proceeding finds the method for determining value used by Mr. Colt was proper. The record does not support any severance damage, however, the Commission will allow an adjustment for the interruption of Mr. Carter's wood operation. In addition the Company shall be ordered to give Mr. Carter all wood cut in its right-of-way traversing the affected property.

Considering all of the testimony, exhibits and documents filed, the Commission finds damages in the sum of \$1,500 in favor of Mr. Carter for the taking of a right-of-way 1209.63 feet long and 170 feet wide.

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 hereby

ORDERED, that the premises set forth in the petition filed by Public Service Company of New Hampshire are necessary and the owner of said premises, Earl S. Carter, shall be paid for damages the sum of \$1,500.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 1982.

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NH.PUC*11/22/82*[79448]*67 NH PUC 854*Gas Utilities Service

[Go to End of 79448]

Re Gas Utilities Service

Intervenors: Northern Utilities, Inc., Concord Natural Gas Corporation, Manchester Gas Company, and Gas Service, Inc.

DR 80-29, Second Supplemental Order No. 16,010

67 NH PUC 854

New Hampshire Public Utilities Commission

November 22, 1982

INVESTIGATION into the criteria for interruptible gas sales and their prices.

1. Definitions — Interruptible sales — Sources.

[N.H.] Interruptible sales are sales of excess capacity at the option of the seller where the customer has no demand rights, and such sales may result from three sources of surplus supplies: (1) pipeline surplus offered to its customers for resale; (2) unintentional but prudent supply commitments exceeding actual demand; or (3) supply commitments intentionally exceeding demand as in take-or-pay contracts. p. 855.

2. RATES, § 380 — Gas — Interruptible sales — Conditions and benefits.

[N.H.] Interruptible sales provide benefits to all customers when two conditions are met: (1) the surplus available for sale is the innocent result of supply commitments or is offered by a pipeline; and (2) the surplus cannot be stored economically. p. 857.

3. RATES, § 380 — Gas — Interruptible sales — In peak-shaving periods.

[N.H.] It is questionable that interruptible sales are justified in peak-shaving periods since those periods use more expensive fuels and any excess in those times should be stored for firm customers, but if storage is prohibitively expensive at those times, interruptible sales may be allowed for economic reasons. p. 857.

4. RATES, § 380 — Gas — Special factors — Interruptible sales.

[N.H.] Maximized interruptible sales prices for gas have been reasonable due to market forces, as oil being used as an alternate fuel has set an approximate ceiling on which to base gas prices. p. 858.

5. GAS, § 10.1 — Natural gas fields — Underground storage — Surplus supplies.

[N.H.] Underground storage is not automatically the answer to excess supply situations because the storage facilities may already be full, supply fields may be far away from potential customers, considerable time is required to fill supply fields without causing damage, and a pipeline's ability to retransport the gas as needed may be limited. p. 858.

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6. RATES, § 380 — Gas — Interruptible sales — Contracts versus tariffs.

[N.H.] Interruptible sales should be governed by contracts rather than tariffs to allow flexibility in meeting market changes and weather conditions. p. 859.

7. RATES, § 380 — Gas — Interruptible sales — Based on market conditions.

[N.H.] It is important that interruptible sales not be subsidized at the expense of firm customers, and as long as interruptible sales prices are governed by the market and exceed cost, there is no such problem. p. 859.

APPEARANCES: Franklin Hollis and Eaton W. Tarbell, Jr., for Northern Utilities, Inc.; Cedric F. Dustin, Jr. and Ronald P. Bisson for Concord Natural Gas; Peter Guenther and James C.

Hood, for Manchester Gas Company; and Susan M. Leahy and David Marshall, for Gas Service, Inc.

BY THE COMMISSION:

REPORT

The New Hampshire Public Utilities Commission (PUC) sua sponte opened this docket by Order No. 14,060 dated February 14, 1980 (65 NH PUC 73). Partly as a result of the rapid deregulation of natural gas, two practices in the industry which were previously considered to have a limited impact on ratepayers must now be reviewed. The first encompasses the broad concept of interruptible sales. The other is simply the need to determine whether such service, if permitted, should be provided by contracts or tariffs. Said Order of Notice directed Northern Utilities, Concord Natural Gas, Manchester Gas Company and Gas Service to participate as parties.

The record in this case is composed of four (4) transcripts dated April 1, 1980, February 17, 1981, March 22, 1982, and October 4, 1982. Thirteen exhibits were entered into the record in addition to substantial discovery material and a 14 page report by Daniel D. Lanning of the Commission Staff.

It is noted that although the record in this case quite clearly demonstrates Concord Gas does not currently provide interruptible service, if it should do so in the future, this Report and Order will control those sales.

FUTURE

Early in 1982 some parties to this docket maintained that the issues relative to interruptible gas sales would soon become moot. Supposedly oil prices would decline or gas prices would comparatively rise to a point where gas could not compete, unless sold below cost. It was also a tenant of faith that gas could not be sold below cost. Perhaps the best reason for this conviction was simply a belief the Commission would under no circumstances approve such a sale. Today, that is not altogether correct.

Contrary to interruptible sales becoming a moot issue it has been postulated recently that interruptible sales could even grow to proportions that would have a dramatic effect on gas distribution. This startling claim is based on the proposition that should oil become significantly cheaper than gas, firm customers may want to switch tariffs and be willing to purchase gas only on an interruptible basis.

Despite uncertainties as to the future of interruptible sales, the Commission believes that some interruptible sales will continue to be made and that there is a need for regulatory guidelines.

BACKGROUND

[1] Interruptible sales can generally be viewed as a sale of gas to a customer

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that the utility does not have to provide. It is at the option of the utility, the customer has no right, as does a home heating customer for example, to demand service. In other words, the

service to the customer is or can be "interrupted" as opposed to the service rights of a "firm" customer which cannot be interrupted.

The reason the interruptible customer has virtually no rights, is because the sales are a product of excess capacity. By excess capacity it is meant the company has not made plans to have on hand any quantity of gas to sell to interruptibles but only for its firm customer. Therefore, whatever gas it does sell to interruptibles is very uncertain and may be terminated at any moment.

There are three sources of surplus gas from which a distribution company may be able to make interruptible sales. One occurs when the pipeline itself has a surplus and offers it to its customers for resale. A second occurs when legitimate supply commitments exceed actual demand. A third may be created by intentionally making purchase commitments in excess of legitimate needs. It is the third surplus, or more properly, its possibility, that creates the most concern. Of next highest concern is the "take or pay" concept often involved in surplus situation number two.

Probably the most dramatic impetus to interruptible sales is the "take or pay" clause. In short, a contract with a wholesale such a clause requires that a utility either take the product and pay for it as agreed or leave it and still pay. Obviously the only sensible thing to do in those circumstances is to take it. Anything then obtained for that gas is better than the total loss that would have occurred if it had been left in the pipe.

Although the record sheds little light on the rationale underlying "take or pay" provisions, the limited testimony available on the subject indicates it is the result of investors in non-distribution companies demanding some assurance sufficient sales are made to cover their investments. Not altogether convincing, or under tariffs approved by the FERC, it is nonetheless clear "take or pay" is a reality to be dealt with by both distribution companies and regulators at both state and national levels.

It may be helpful in grasping interruptible issues to conceptualize the step by step process designed to match supply with demand for a distribution system. Pipeline gas is certainly the primary source of supply and the first used in meeting demand. Once that volume limitation is approached, underground storage is usually brought on line if available. Finally LP and LNG are called upon, first from above the ground storage and then from off premise suppliers. All of these sources are prearranged when designing a plan to meet future needs. On the demand side, future needs are estimated on the basis of a so-called "design year". Although it may vary slightly from company to company, this is generally a theoretical year containing 10% more degree days for the November 1 through March 31 heating season than degree days experienced in an average or normal year. Up to 50% of peak day demand may be served by LP and LNG, of which the major source of supply by far is delivered by truck. Given the large volumes involved and the fact that purchases of gas must be arranged far in the future to meet a design year, it is inevitable that surplus gas will become available as a result of a normal or warm heating season.

MAJOR ISSUES

The primary issues are whether the price to interruptible customers is just and reasonable,

whether firm customers are in effect subsidizing interruptibles and whether gas distribution companies are intentionally creating surplus gas in order to generate profits. Secondary issues involve the potential contribution to firm service available through storing surplus gas and lastly whether or not interruptible customers are contributing an appropriate share of allocated costs.

These questions have been addressed in some depth in this record as set before the Commission and are summarized in the Report.

FINDINGS

[2] To briefly summarize, the Commission concludes that under proper circumstances interruptible sales provide significant benefits to all concerned. Proper circumstances encompass two conditions. First, that surplus gas be created as the inevitable and innocent result of design year purchase commitments differing from actual needs, or as a result of surplus offered by the pipeline company. Second, the surplus cannot be stored economically. In these circumstances only the propriety of the sales price is an issue.

Fortunately, the history of interruptible sales in this state appears to be characterized by these conditions. The main objective for the future is to insure a continuation of prior results by implementing a procedure which permits review of a company's plan as well as what actually occurs.

Where interruptible sales are made under proper conditions, the Commission finds it reasonable to assume for pricing purposes that it is pipeline gas being sold to interruptibles whereas the cost of "additional" gas may properly be attributed to the firm customers for whose needs it was purchased. Any other assumption would tend to prohibit all interruptible sales other than "take or pay" related inasmuch as other gas would be too expensive to sell to interruptible customers. However, since payment by firm customers for the peak shaving gas permits cheaper pipeline to be sold to interruptibles, it is just and reasonable that benefits attributable to those sales be allocated to the firm customers. For the same reason it is also desirable that the sale price of interruptible gas be maximized.

[3] One of the subparts to the subsidy issue is the propriety of selling to interruptibles during a period of peak shaving. Since peak shaving requires the use of expensive LNG or LP it is exactly at this juncture that one of the reasons for interrupting sales to interruptible customers becomes imperative. Prior approval of the Commission must be given where a company believes an interruptible sale during a peak shaving period is justified, and a failure to cease service to interruptibles during peak shaving will not be approved retroactively.

A somewhat more hidden but similar issue arises when it is asked whether even excess pipeline gas being sold to interruptibles should instead be stored for later use by firm customers during a peak shaving period. Where that can be done economically it should be or an indirect subsidy occurs when at some later date firm customers pay for peak shaving that would have been avoided. Actually the question then becomes one on the economics of storage, discussed *infra*. If excess pipeline gas offered to distribution companies cannot be economically stored, its sale at any price in *excess* of cost stands on its own as not

being a subsidy. Only its maximization is at issue.

[4] The Commission also finds, as explained below, the sales price of interruptible gas has been reasonable. It goes without saying, maximizing the sales price of interruptible gas will maximize the gross margin which is, of course, advantageous to the utility whether or not the gross margin is included above or below the line. Testimony shows the sales price has been maximized by market forces. This is a result of oil being an alternate fuel and its market price has thus set an approximate ceiling at which to price gas. A review of historical material provided to the Commission by the companies in response to staff discovery has been extremely helpful in answering the question of whether or not the gas distribution companies have been maximizing the price at which they sell "interruptible" gas. Gas Service in response to Staff Data Request Set No. 1, Question. No. 2 shows interruptible/seasonal sales for 1978 through 1981 were priced at slightly in excess of 90% of the price of competitive oil. Manchester Gas for the period October 1974 — September 1981 averaged 97.41%. Northern Utilities over approximately the same period as Manchester Gas averaged 94.2%. Concord, of course, has no interruptible sales. In addition, a late April 1982 survey of 6 out-of-state New England gas distribution utilities produced similar results. Based on these results it can be concluded that interruptible gas prices since 1975 have been maximized as measured by the market. In fact, Manchester Gas had recently adjusted its General Interruptible Rate to provide that interruptible service will be priced at 95% of the average posted price of #6 fuel oil, 2% — 2.5% sulphur, at Boston, converted to equivalent cost per therm.

So, in the end, the question of whether or not gas utilities are obtaining the best possible price for their product is generally answered, yes, and this will continue to be the case when it is a price comparable to that set by the market place for oil.

A fringe benefit derived from interruptible sales is to be found in their providing a basis upon which to obtain an increase in Annual Volume Limitations, assuming at some point in the future additional supply becomes available.

[5] While it may appear at first that underground storage is the answer to handling surplus gas, that is not the case. As the record indicates, a warm heating season can result in beginning the summer with underground storage full, leaving no alternative with take or pay gas but to sell it. Nor is storage the solution to assuring LP or LNG will not be needed in the winter because basically two constraints limit the viability of storage as a solution to peak demand. The first is the capacity to pipe volumes of gas in and out of storage and the second is the location of the storage field.

Since gas is stored in geological formations which are either depleted oil or gas fields or geologically similar formations, it takes considerable time to pump gas into a field if one is to avoid damage to the fields storage capacity. Storage supply is also limited because excess pipeline gas is normally available for only the period April 1 through October 31. Even extraction is limited, mainly as a function of the amount of equipment and number of wells employed. Those economics mean extraction normally accomplished over a period of 90 — 150 days, rarely less.

In addition, storage fields may have to be located considerable distances away,

perhaps even 1,000 miles. These distances enforce another limitation and that is the availability of pipeline capacity to carry the gas when needed. Since it is usually needed during peak shaving periods there may be no excess pipeline capacity. Testimony indicates construction of a separate pipeline to permit, say a 30 day take from storage, is simply not economical.

[6] The above discussions should make it reasonably clear that market forces are an important ingredient to effective interruptible sales. As is well known, the market can be very fickle requiring rapid adaptations to meet its changing demands. For this reason the Commission finds it is more appropriate that interruptible sales be provided by contracts thus permitting more flexibility than by tariffs.

[7] The question had been raised whether costs attributable to interruptible sales, other than the cost of the commodity, have been included in the price. Or put another way, are interruptible customers carrying their share of allocated costs. The Commission finds that as long as the salesprice is established as a result of market forces, the issue is moot. However, it is highly doubtful that short term fixed costs would change with interruptible sales and there are no extensive variable costs involved other than the commodity itself and specific customer related costs. So other than a take or pay situation where it is only necessary that the resale price exceed customer related costs, the gross margin needs to exceed customer related costs. Perhaps more accurately, it is necessary that price or gross margin, respectively, exceed non-commodity costs. The record does tend to indicate this is the case, however, each company with interruptible sales shall be directed to provide a relevant cost analysis in its next rate case.

To reiterate, the underlying concern is not so much the taking of interruptible sales, but doing so by a subsidy from firm customers. As discussed, this should not happen when the pipeline company offers a temporary surplus. In all other cases of interruptible sales, assuming a market price, it need only be determined if the surplus was created as a result of design conditions varying from actual. If so, the sale of the surplus to interruptibles is presumed to not be a subsidy.

It is the Commission's opinion that careful review of the planning process adopted by management to make their decisions on commodity commitments to pipeline companies can insure any abuse of discretion will not go unnoticed. To this end it will be necessary that each company set down in writing for the Commission the exact algorithm employed to forecast demand and arrange supply to match. Documentation will be required as to the rationale for each step in order for the Commission to reach a meaningful conclusion as to the integrity of the planning process.

In addition, to keep the Commission fully informed of the companies forecasts, by December 31, 1982, this year, and in the future years in conjunction with the companies' winter CGA filing, each company will, using its algorithm, submit a five year and one year forecast of gas supply and demand. This report shall be on a monthly basis setting forth annual and peak day requirements for the five and one year periods commencing with November 1 of that year, again with the exception of 1982 when the required date shall be December 31, 1982.

With respect to regulatory treatment of interruptible revenue, the Commission

will henceforth require the following:

1. The cost of the plant in connection with interruptible or non-tariff customers shall remain in rate base and the cost to maintain and operate same shall be a proper rate case expense subject to the tests of imprudence and mismanagement.

2. In addition, the revenues from this type of sale and related cost of gas shall be excluded from the rate case in determining firm customer basic rates. And the positive margin between each of these types of sales and the related cost of gas shall be a credit in the succeeding winter period of gas adjustment.

3. If the company at a time in the future, is forced into a take or pay situation and management based on its own judgment sells gas to interruptible or non-tariff seasonal customers at a rate below its cost, the company will not be precluded from filing with the Commission for approval to flow this loss as a credit through the CGA providing it sought prior approval. It will, of course, be subject to thorough scrutiny.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing Report which is made a part hereof; it is hereby:

ORDERED, that interruptible, seasonal or non-firm gas sales by either contract or tariff, at the company's option, may continue; and it is

FURTHER ORDERED, that interruptible sales made during periods of peak shaving may be made only with prior approval of this Commission; and it is

FURTHER ORDERED, that gas utility companies will be expected to continue to maximize the sale price of interruptible gas to reasonably track the price of competitive oil; and it is

FURTHER ORDERED, that with respect to regulatory treatment of interruptible revenue, the Commission will require the following:

1. The cost of the plant in connection with interruptible or non-tariff customers shall remain in rate base and the cost to maintain and operate the same shall be a proper rate case expense subject to the tests of imprudence and mismanagement.

2. In addition, the revenues from this type of sale and related cost of gas shall be excluded from the rate case in determining firm customer basic rates. And the positive margin between each of these types of sales and the related cost of gas shall be a credit in the succeeding winter period of gas adjustment.

3. If the company, at a time in the future, is forced into a take or pay situation, and management, based on its own judgement sells gas to interruptible or non-tariff seasonal customers at a rate below its cost, the company will not be precluded from filing with the Commission for approval to flow this loss as a credit through the CGA providing it sought prior approval. It will, of course, be subject to thorough scrutiny.

By Order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 1982.

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NH.PUC*11/24/82*[79449]*67 NH PUC 861*Hudson Water Company

[Go to End of 79449]

Re Hudson Water Company

DF 82-287, Order No. 16,012

67 NH PUC 861

New Hampshire Public Utilities Commission

November 24, 1982

PETITION by a water company for authority to issue additional common stock and to extend its short-term borrowing power; granted.

SECURITY ISSUES, § 95 — Kinds and proportions — Stocks and bonds — Purposes.

[N.H.] Although concerned that a water company was not in immediate need of additional debt financing, was negotiating interest rates above current market rates, and was duplicating its title searching and title insurance expenses, the commission authorized the company to issue new stock in order to refinance bonds coming due and to extend its franchise area, where the commission found the company to be complying with all filing rules in good faith.

APPEARANCES: J. Christopher Marshall and Alice C. Briggs for the petitioner.

BY THE COMMISSION:

REPORT

By this petition filed October 5, 1982, Hudson Water 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 and Windham under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369 to issue and sell for cash at par One Million Two Hundred Thousand Dollar (\$1,200,000) principal amount of First Mortgage Bonds, Series E, 14.75% due 1989, to issue short-term notes not in excess of One Million Four Hundred Thousand (\$1,400,000) as previously authorized by Order No. 15,563 of this Commission and to issue 1,000 shares of \$100 par value common stock for \$300 per share or \$300,000 in cash.

At the hearing on the petition, held in Concord on November 17, 1982, Robert W. Phelps, President of the Company, testified that the proceeds of these issues would be used to reduce short-term indebtedness due in 1982 and 1983 and to refinance the remaining Series A Bonds which are due in 1982. The Company proposes to place the bonds privately with Union Mutual Life Insurance Company. The common stock would be sold for \$300 per share to Consumers

Water Company, the only stockholder of the Company.

The following is the Balance Sheet of the Company, as of September 30, 1981, and September 30, 1982, pro formed to reflect these issues:

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

HUDSON WATER COMPANY
BALANCE SHEETS
September 30, 1981 and 1982; Pro Forma Effect
of Proposed Bond Issue

ASSETS
Property, Plant and Equipment
Less: Accumulated depreciation

CURRENT ASSETS
Cash
Accounts receivable
Refundable Federal Income Tax
Unbilled Revenue
Material and Supplies
Prepayments

DEFERRED DEBITS
Unamortized Debt Deferred
Unamortized Rate Case Expense
Other

TOTAL ASSETS

LIABILITIES & CAPITAL
Common Stock
Reinvested Earnings

FIRST MORTGAGE BONDS
Series A - 5 1/4%
Series B - 7%
Series C - 8 1/4%
Series D - 9 3/8%
Series E - 14 3/4%
Short-Term Debt

CURRENT LIABILITIES
Accounts Payable
Dividends Payable
Accrued Taxes
Accrued Interest
Other

Customer Advances
Contributions in Aid of Construction
Deferred Federal Income &

Investment Tax Credit

TOTAL LIABILITIES

In addition, the Company has petitioned to extend its short-term borrowing authority previously granted by this Commission by Order No. 15,563 in the amount of \$1,400,000. Mr. Phelps testified that it was more economical and practical to borrow short term until approximately \$1,000,000 can be converted to bonds. He further testified that additional short-term funds would be needed to finance the ongoing construction program.

The Commission has several concerns about this filing regarding the areas of title insurance, procedure for setting the interest rate, and the requested short-term debt borrowing authorization.

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(1) Titled insurance is a new item for this company and when combined with the corresponding legal costs, appears to the Commission to result in the Company having to pay two sets of lawyers for title researching and then again for the insurance.

Since Mr. Phelps testified that the lender was not requiring this insurance and that the necessary title searches had previously been conducted by an attorney, the Commission will require any costs incurred by Hudson for title insurance and/or the duplicative legal expenses, estimated in Exhibit 2-C to be \$7,000, to be booked below the line. The balance of the expenses of issuance should be filed in detail with this Commission for acceptance.

(2) In conjunction with this filing, and past financing filings, Hudson had negotiated a rate with a potential lender prior to seeking PUC approval. In the instant docket, the terms, including an interest rate of 14.75%, were negotiated in late August-early September, 1982. The rate was an acceptable one at that time, but rates have declined since making the rate through hind-sight appear high. Since the negotiations were conducted in good faith by both parties, with a reasonable result, the Commission feels bound to accept the results, but will require a different procedure for the future. This procedure, which corresponds to that required of such utilities as Public Service Company of New Hampshire, is for the utility to come to the Commission in a duly noticed public hearing for authority to finance within an interest rate range. If the Commission approves the request, the Company at the appropriate time may offer or negotiate the financing, and thus the Commission is notified of the negotiated rate in a very timely manner for final approval.

(3) The short-term debt authorization of \$1.4M, based on approval of the balance of this financing, is not necessary when viewed on the surface as the Company doesn't anticipate reaching that level for several years; however, closer scrutiny shows that the Company will not incur additional costs while maintaining the apparently higher than necessary authorization, and may in fact reduce future legal or regulatory costs as a result. In addition, the Company has stated a continued desire to expand its franchise area, which this Commission in numerous instances in the past has been supportive of, and the higher STD authorization would enable Hudson the franchise flexibility to move quickly if the opportunity presented itself.

Upon consideration of the evidence submitted, the Commission is satisfied that the proceeds

herein will be used for the purposes herein listed above. The Commission finds that the issuance of \$1,200,000 First Mortgage Bonds, Series E, 14 3/4%, maturing in 1989 and 1,000 shares of \$100 par value common stock is consistent with the public good. The authority to issue short term notes in an amount not to exceed \$1,400,000 will also be approved. Our Order authorizing the issue and sale of these securities will issue accordingly.

ORDER

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

ORDERED, that Hudson 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 E, 14.75% at par, such Bonds to be issued and sold in accordance with terms and conditions set

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forth in the petition and presented at the hearing; and it is

FURTHER ORDERED, that Hudson Water Company be, and hereby is, authorized to issue and sell for cash one thousand (1,000) shares of its \$100 par value common stock for Three Hundred Dollars (\$300) per share to Consumers Water Company, its only stockholder, such shares to be issued and sold in accordance with the terms and conditions set forth in the petition and presented at the hearing; and it is

FURTHER ORDERED, that Hudson 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 short-term notes or notes, payable less than twelve (12) months from the date hereof, in the aggregate principal amount not in excess of One Million Four Hundred Thousand Dollars (\$1,400,000); and it is

FURTHER ORDERED, that Hudson 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 one or more of the following purposes; to retire its outstanding short term indebtedness to refinance remaining Series A Bonds, 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, Hudson Water Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of such securities until the whole of such proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of November, 1982.

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NH.PUC*11/29/82*[79450]*67 NH PUC 864*Dunbarton Telephone Company

[Go to End of 79450]

Re Dunbarton Telephone Company

DR 82-337, Order No. 16,014

67 NH PUC 864

New Hampshire Public Utilities Commission

November 29, 1982

ACCEPTANCE of a telephone company's revised filings on the payment of interest on customer deposits.

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BY THE COMMISSION:

ORDER

WHEREAS, on November 12, 1982, the Dunbarton Telephone Company filed with the Commission its Section 1, 3rd Revised Sheet 3 and Section 5, Original Sheets 8 and 9 of its tariff, NHPUC No. 5 — Telephone; and

WHEREAS, these tariff revisions are proposed to correct the criteria for payment of interest on customer deposits and to implement the Granite State Service for its customers; and

WHEREAS, both filings implement Commission rule and/or directive; it is

ORDERED, that said tariff revisions be, and hereby are allowed effective on December 16, 1982 as proposed.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1982.

=====

NH.PUC*11/29/82*[79451]*67 NH PUC 865*New England Telephone and Telegraph Company

[Go to End of 79451]

Re New England Telephone and Telegraph Company

DR 82-336, Order No. 16,015

67 NH PUC 865

New Hampshire Public Utilities Commission

November 29, 1982

APPROVAL of a telephone company's revised filings on the sale and rental of certain

equipment.

BY THE COMMISSION:

ORDER

WHEREAS, on October 25, 1982, the New England Telephone and Telegraph Company filed with this Commission the following revisions to its Tariff No. 70:

Part III — Section 1 — 11th Revised Page 14 and Original Page 15 — Section 15 — 3rd Revised Page 22 — Section 22 — 20th Revised Page 2 — Section 35 — 6th Revised Page 1 and Original Pages 11-13;

and

WHEREAS, said revised pages document procedures for sale and rental of equipment formerly available on a rental-only basis; and

WHEREAS, the Commission finds such in the public interest; it is

ORDERED, that said revised tariff pages be, and hereby are, approved for

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effect on November 24, 1982 as proposed.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1982.

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NH.PUC*11/29/82*[79452]*67 NH PUC 866*New England Telephone and Telegraph Company

[Go to End of 79452]

Re New England Telephone and Telegraph Company

DE 82-300, Order No. 16,016

67 NH PUC 866

New Hampshire Public Utilities Commission

November 29, 1982

ORDER authorizing the placement of submarine telephone cable in public waters.

TELEPHONES, § 2 — Construction and equipment — Underwater cable — To meet customer needs.

[N.H.] Where submarine telephone cable was deemed necessary for meeting customer service requirements, the commission permitted its placement in public waters.

APPEARANCES: Wayne Snow, engineering manager, for the petitioner.

BY THE COMMISSION:

REPORT

On October 19, 1982, the New England Telephone Company filed with this Commission a Petition for authority to place and maintain submarine plant crossing state-owned public waters in Moultonboro and Tuftonboro, New Hampshire under Lake Winnepesaukee. Said crossing from Pole #858/12 on Long Island in Moultonboro, New Hampshire to Pole #87C/2 on Little Bear Island in Tuftonboro, New Hampshire and is designed to provide additional circuits in the New England Company's Center Harbor exchange.

The Commission issued an Order of Notice on October 20, 1982 directing all interested parties to appear at a public hearing at 10:00 a.m. on November 23, 1982 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 George Gilman, Commissioner, DRED; John Bridges, Director, Division of Safety Services; and the Office of the Attorney General.

An affidavit of publication indicating that publication was made in the Union Leader on October 28, 1982 was received in the Commission's office at Concord, New Hampshire on November 9, 1982.

Wayne Snow, Engineering Manager, explained that the petition responds to a need to add additional circuits to serve its customers on Little Bear Island and Cow Island in Lake Winnepesaukee. It

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will supplement an existing submarine cable which was installed in 1967, and which was approved by Commission Order No. 8664 in Docket DE 4556 dated May 22, 1967. The existing cable will remain in place. Addition of the proposed submarine cable will satisfy the Company's projected customer needs through the year 2,002. The estimated completion date for the project is June, 1983.

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 submarine plant crossing state-owned public waters in Moultonboro and Tuftonboro, New Hampshire under Lake Winnepesaukee, said crossing from Pole #858/12 on Long Island in Moultonboro, New Hampshire to Pole #87C/2 on Little Bear Island in Tuftonboro, New Hampshire 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 hereby

ORDERED, authority to place and maintain submarine plant crossing state-owned public waters in Moultonboro and Tuftonboro, New Hampshire under Lake Winnepesaukee, said crossing from Pole #858/12 on Long Island in Moultonboro, New Hampshire to Pole #87C/2 on Little Bear Island in Tuftonboro, New Hampshire is granted.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1982.

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NH.PUC*11/29/82*[79453]*67 NH PUC 867*Public Service Company of New Hampshire

[Go to End of 79453]

Re Public Service Company of New Hampshire

Intervenor: Community Action Program

DR 82-146, Fifth Supplemental Order No. 16,018

67 NH PUC 867

New Hampshire Public Utilities Commission

November 29, 1982

ORDER requiring a utility to provide further information on its price forecasts for coal and oil and on its power plant outages.

APPEARANCES: Eaton W. Tarbell, for Public Service Company of New Hampshire; Gerald Eaton for Community Action Program.

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BY THE COMMISSION:

REPORT

The Commission, in attempting to evaluate the factors at issue in this proceeding, calls into question certain areas for further evaluation. In particular, the Commission believes it necessary to require that the 1982 updated revision of PSNH's long term fuel price forecast for oil and coal be submitted for our evaluation at a hearing to be held at 10:00 a.m. on Tuesday, November 30, 1982. Mr. Hinds, the author of the forecast is to be present for cross-examination as to his fuel price estimates used in PSNH's forecasts for the following: (a) fuel price estimates used in PSNH's ECRM filing shown on Exhibits 5, 32, 36, 37, and 38, (b) most recent financial models; (c) any other PSNH forecast presently being used by the Company that uses a forecast in part as to oil or coal prices; and (d) all other information he can provide as to oil and coal prices.

Mr. Hinds, or Mr. Hinds and Mr. Hall are to state what oil price assumptions it is using for its generating stations and other generating stations in its present or most recent forecast as to oil prices for November and December, 1982.

PSNH is to also provide a statement as to the cost of oil (oil price) of their present inventory. PSNH is also to provide a copy of all bills for deliverings of oil from January, 1982 up to and including the present. PSNH can also expect questions as to oil price credits for quantity or quality deficiencies.

PSNH is to provide an update on the outages experienced during the month of November by all of PSNH's operating plants and also any other plants in New England of which PSNH is aware.

PSNH is also to provide Mr. Hinds, Mr. Harvey, Mr. Hall, Mr. Rodier and Mr. Ralph Johnson for purposes of questioning as to their individual inputs into PSNH's position in this proceeding.

PSNH is also to provide a statement as to which units under its analysis would qualify for the penalty provisions of ECRM and for the bonus or benefit provisions of the ECRM mechanism for the time period July 1, 1982 through December 31, 1982. To the extent that a unit qualifies for either a penalty or a bonus according to PSNH's interpretation, PSNH is to provide a dollar figure quantifying the penalty or bonus for each unit for the aforementioned time period as PSNH interprets the ECRM provisions in this regard.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the information and witnesses requested be provided for analysis and questioning at a hearing beginning at 10:30 a.m. on November 30, 1982 at the offices of the Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1982.

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NH.PUC*12/02/82*[79454]*67 NH PUC 869*Public Service Company of Hampshire

[Go to End of 79454]

Re Public Service Company of Hampshire

DE 82-160, Order No. 16,022

67 NH PUC 869

New Hampshire Public Utilities Commission

December 2, 1982

PETITION by an electric company for permission to condemn certain real property and obtain

easement rights thereon; granted.

EMINENT Domain, § 8 — Right to appropriate property — Compensation — Tax settlements.

[N.H.] The commission has authority to grant easement rights in real property and to assess damages for that taking, but it cannot settle property tax issues arising from the situation as that is a matter of local law.

APPEARANCES: Eaton W. Tarbell, Jr., for Public Service Company of New Hampshire; Albert DiSilva, pro se.

BY THE COMMISSION:

REPORT

The Public Service Company of New Hampshire, a public utility engaged in the supply of electric service in the State of New Hampshire petitioned the Public Utilities Commission of New Hampshire pursuant to the provisions of RSA 371, for permission to acquire by condemnation a perpetual right and easement in the property of Albert DiSilva of Derry, New Hampshire, said easement to be in conjunction with transmission lines emanating from the Seabrook Nuclear Power Station; and further requests the Commission to determine damages to be paid for same. The petition was filed on June 1, 1982 with a duly noticed hearing scheduled for 10:00 a.m. August 10, 1982 at which time the hearing in this matter was held before Bruce Ellsworth, Chief Engineer for the PUC and Michael W. Holmes, Hearings Examiner for the PUC.

RSA 371:1 sets forth the Commission's authority to act upon a petition for condemnation where the parties involved in a dispute over property rights cannot reach agreement and the rights are reasonably required to serve the public. That act, section 2, sets forth the necessary contents of such petition, requiring it set out the title and description of the land, the rights to be taken and the public use for which those rights are desired. The instant petition meets those requirements and is, therefore, acceptable in all respects. In addition to a proper petition, it is required by RSA 371.4 that a hearing be held subsequent to appropriate notice. This notice requirement was also complied with as sworn to in an affidavit of publication dated July 13, 1982 and signed by Elizabeth Sheppard on behalf of the Union Leader. At the hearing duly held in the Commission office at 10:00 a.m. on August 10, 1982, the Commission was charged by RSA 371:4 to hear and decide the necessity for the right prayed

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for by Petitioner and the just compensation to be paid therefor.

Upon the question of necessity the Petitioner presented evidence that the desired easement was necessary to complete a project approved by the Certificate of Site and Facility Committee under FSA 162-F. Also, questioning by Mr. Ellsworth elicited testimony that any alternate route would present engineering problems that would also require additional structures be erected on

the Respondent's property and then only at a substantially increased cost to Petitioner. Thus, the "necessity" is very apparent. Upon cross-examination, Mr. DiSilva testified to having no objection to the "need", but rather to being only concerned over the price to be paid for the easement, and for his continuing responsibility to pay taxes on the portion of his property that is encompassed by the right-of-way.

The matter of damages is next addressed as the last issue. Even though the respondent sought a greater amount, he stated at least once on the record that he did not find the amount of money proffered for damages to be unreasonable. The following abbreviated summary sets forth the Commission's basis for finding the proffered amount of \$1600 to be just and reasonable. By Exhibit No. 2, the Petitioner showed the impact on the respondent's property of the proposed right-of-way. The Exhibit reveals that the property is already encumbered with a 225 foot wide easement for power lines. The proposed easement, represents an additional taking by easement of 1.6 acres out of approximately 27 acres. The additional width would not affect access, or size of, or value of, a small parcel of land separated from the main body by the original easement. It is noteworthy that Mr. DiSilva had purchased the 27 acres with the power lines already across it.

As to the value of the total parcel, including the house, both before and after the proposed easement, the Petitioner presented the testimony of Mr. Harold F. Kelman and his 33 page appraisal (Exhibit No. 5). His credentials indicate a significant degree of expertise in real estate appraisal and his testimony was accepted by the bench at that of an expert. Mr. Kelman explained in substantial detail the basis for his conclusion that the value of the land taken by easement would have a market value of approximately \$1,000/acre, or \$1,600 for the 1.6 acres to be taken, which is the amount offered by the Petitioner. No contrary evidence was presented to the Commission, leaving the \$1,600 estimate as the sole basis by which the Commission can access damages.

Mr. DiSilva testified that it was his major concern that the Company should pay all future Derry property taxes related to the condemned parcel. Counsel for the Petitioner explained to Mr. DiSilva that theoretically the easement induced a decrease in the value of Mr. DiSilva's property which should be reflected in a lower property value assessment and lower taxes. Counsel also offered to personally assist Mr. DiSilva in understanding and pursuing his appeal rights in Derry to assure his property was being taxed properly. Mr. DiSilva expressed a lack of confidence in attorneys and rejected the offer. Repeated attempts by both the Hearings Examiner and Chief Engineer failed to elicit an understanding by Mr. DiSilva that this Commission is mandated by law to determine only the appropriate damages to which he is entitled, whereas the tax issue is a local matter.

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The Commission finds that the petition for easement is necessary public use and that the damages to Mr. DiSilva's property as a result of said easement is \$1,600. Our Order will issue accordingly.

ORDER

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

ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized

to take, pursuant to RSA 371, property described in its petition which is in the Commission files on this matter; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire pay damages for said taking in the amount of sixteen hundred dollars (\$1,600) to Albert DiSilva; and it is

FURTHER ORDERED, that the taking granted herein is perpetual right and easement as presented in the Company's petition; and it is

FURTHER ORDERED, that pursuant to RSA 371:2 the Petitioner is hereby directed to file a certified copy of the Petition and final decree thereon in the registry of deeds of the county in which said property is located; and it is

FURTHER ORDERED, that fees in the amount of \$36.00, pursuant to RSA 371.14 be remitted to the Commission by the Petitioner.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1982.

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NH.PUC*12/02/82*[79455]*67 NH PUC 871*Hudson Water Company

[Go to End of 79455]

Re Hudson Water Company

DR 82-253, Supplemental Order No. 16,023

67 NH PUC 871

New Hampshire Public Utilities Commission

December 2, 1982

AUTHORIZATION of temporary rates for a water company.

APPEARANCES: John R. McLane for Hudson Water Company.

BY THE COMMISSION:

REPORT

On October 18, 1982, Hudson Water Company filed certain revisions to its tariffs providing for increased revenues of \$316,912 (22.8%), for effect on November 18, 1982.

Included with this filing was a petition to establish the presently effective rates as temporary rates and that such temporary rates to be effective as of December 1, 1982. Hudson represents that its rate of return on average rate base is less than that allowed by this Commission in its last rate case (DR 80-218).

A public hearing was held on this petition on November 30, 1982 at which the Company introduced Exhibits T1

and T2 which demonstrated its rate of return earned over the last several years, up to an including October, 1982.

RSA 378:27 states that the Commission may, after reasonable notice and hearing, immediately fix, determine, and prescribe for the duration of the rate proceeding, reasonable temporary rates. Temporary rates are to be established under this statute, with expedition and without such investigation as required for the determination of permanent rates.

From the evidence submitted, it is our judgement that it is in the public good to grant the authority sought.

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 presently existing rates of the Hudson Water Company systems shall be designated as temporary rates with all service rendered on or after December 1, 1982.

By Order of the Public Utilities Commission of New Hampshire this second day of December, 1982.

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NH.PUC*12/03/82*[79456]*67 NH PUC 872*Fuel Adjustment Clause

[Go to End of 79456]

Re Fuel Adjustment Clause

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

DR 82-295, Order No. 16,027

67 NH PUC 872

New Hampshire Public Utilities Commission

December 3, 1982

ORDER permitting the withdrawal of requests for upward revisions in fuel adjustment clauses.

RATES, § 303 — Variable rates based on cost — Fuel clauses — Estimates versus actual bills as a basis.

[N.H.] Where requests for upward revisions in fuel adjustment clauses were based on a supplier's estimated increases in cost, but actual billed costs were substantially lower than the

estimates, it is permissible for those resulting fuel adjustment clause increases to be withdrawn.

APPEARANCES: Warren Nighswander for Concord Electric Company and Exeter and Hampton Electric Company.

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BY THE COMMISSION:

REPORT

The P.U.C. held a duly noticed public hearing on the fuel adjustment clause filings of Concord Electric Company and Exeter & Hampton Electric Company, per the requests of those companies dated November 12, 1982, at its office in Concord on November 22, 1982 at 10:00 A.M.

The Companies were requesting through their witness, Peter J. Stulgis, upward revisions in their December 1982 fuel clause rates.

In the case of Concord Electric Company the request was to change the November 1982 billing rate from \$0.465 per 100 KWH to \$1.55 per 100 KWH in December 1982. Correspondingly, Exeter & Hampton Electric Company requested a revision from \$0.435 to \$1.33 per 100 KWH.

These revisions were due to re-estimates provided the two companies on November 3, 1982 by Public Service Company of N.H., their sole electricity supplier, for November and December, 1982. These estimates were for estimated fuel rates of \$4.994730 per 100 KWH for November, 1982, and \$4.134499 per 100 KWH for December, 1982.

The Commission in the Energy Cost Recovery Mechanism hearing of November 30, 1982, Docket 82-146, which was incorporated into this docket, learned through examination of Mr. Hall of Public Service Company of N.H. by Mr. Traum of the P.U.C. staff that the actual billing rate for November, 1982 by Public Service Company of N.H. to Concord Electric Company and Exeter & Hampton Electric Company was \$4.1196 per 100 KWH and December, 1982 were estimated at \$3.834204 per 100 KWH.

Due to these major revisions in the estimates both companies by letter dated November 30, 1982, withdrew their request for a change in rates.

The Commission will honor the Companies' request and set the December, 1982, fuel adjustment rate at November, 1982 level.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Commission in correspondence dated March 2, 1982, 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 for those utilities which file monthly unless requested or needed by one of those utilities; and the Commission would not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, only Concord Electric Company and Exeter & Hampton Electric Company maintaining a monthly or quarterly FAC requested a hearing scheduled; and

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

ORDERED, that the Commission in DR 81-340, Third Supplemental Order No. 15,986, dated November 10, 1982 (67 NH PUC 784) of the N.H. Electric

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Cooperative rolled the cost of fuel on an estimated forward looking basis into base rates, thus eliminating the lagging Fuel Adjustment Clause and resulting in more stable and comprehensible rates, and

WHEREAS, the rolled in rate will remain in effect for approximately one year, unless a hearing is requested by any party, no new rate will be stated for the N.H. Electric Cooperative in this month's FAC order; and it is

ORDERED, that 5th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 — Electricity, providing for a fuel surcharge of \$0.465 per 100KWH for the month of November, 1982, be, and hereby is, permitted to remain in effect for the month of December, 1982; and it is

FURTHER ORDERED, that 5th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge of \$0.435 per 100 KWH for the month of November, 1982, be, and hereby is permitted to remain in effect for the month of December, 1982; and it is

FURTHER ORDERED, that 2nd Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of 14.5 cents (\$0.145) per 100 KWH for the months of October and November, 1982, be, and hereby is, permitted to remain in effect for December, 1982; and it is

FURTHER ORDERED, the 2nd Revised Page 30 of Granite State Electric Company, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the months of October and November, 1982, of \$0.62 per 100 KWH be, and hereby is, permitted to remain in effect for December, 1982; and it is

FURTHER ORDERED, that 23rd Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$3.91 per 100 KWH for the month of December, 1982, be, and hereby is, permitted to become effective December 1, 1982; and it is

FURTHER ORDERED, that 107th Revised Page 6 of Littleton Light Department tariff,

NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$2.16 per 100 KWH for the month of December, 1982, be, and hereby is permitted to become effective December 1, 1982; and it is

FURTHER ORDERED, that 75th Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of (\$0.88) per 100 KWH for the month of December, 1982, be, and hereby is, permitted to become effective December 1, 1982; and it is

FURTHER ORDERED, that 72nd Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of (\$0.45) per 100 KWH for the month of December, 1982, be, and hereby is, permitted to become effective December 1, 1982.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1982.

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NH.PUC*12/06/82*[79457]*67 NH PUC 875*Energy Cost Recovery Mechanism

[Go to End of 79457]

Re Energy Cost Recovery Mechanism

Intervenor: Community Action Program

DR 82-146, Sixth Supplemental Order No. 16,029

67 NH PUC 875

New Hampshire Public Utilities Commission

December 6, 1982

ORDER affirming a reduced energy cost recovery mechanism and reinstating a suspended refund order.

1. RATES, § 303 — Variable rates based on cost — Fuel clauses — Problems with monthly adjustments.

[N.H.] A monthly fuel adjustment clause was found to have significant problems because it was subject to major fluctuations in costs which confused customers and disrupted planning, provided no reward or penalty based on productivity, created a negative cash-flow situation with its two-month lag, related only to fuel costs rather than total energy costs, and generated tremendous regulatory expenses. p. 876.

2. RATES, § 302 — Variable rates based on cost — Energy cost recovery mechanism.

[N.H.] To correct the problems with a monthly fuel adjustment clause, the commission adopted an energy cost recovery mechanism that would focus on all energy costs rather than just

fuel costs, would stabilize rates and cash flow by being in effect for six months at a time instead of just one, and would provide rewards or penalties based on efficiency of productivity. p. 877.

3. REPARATION, § 21 — Grounds for allowance — Overcharge — Energy cost recovery mechanism.

[N.H.] Where a company had consistently overcollected from its customers under an energy cost recovery mechanism and that overcollection had reached the \$10 million mark, the commission ordered a reduction in rates and a refunding to the customers with interest. p. 877.

4. RATES, § 302 — Variable rates based on cost — Energy cost recovery mechanism — Balanced collections.

[N.H.] Although a company argued that a return to earlier, lower rates and an ordered refund of past overcollections would result in future undercollections under an energy cost recovery mechanism, the commission found the reinstatement of the lower rate was valid and would bring the company as close as possible to balanced collections. p. 879.

5. RATES, § 302 — Variable rates based on cost — Energy cost recovery mechanism — Adjustments to estimates.

[N.H.] The commission adjusted a company's estimates of undercollections under an energy cost recovery mechanism to account for interest owed on previous overcollections, penalty provisions related to outages, and flat sales growth due to conservation and warmer weather conditions. p. 879.

6. RATES, § 302 — Variable rates based on cost — Energy cost recovery mechanism — Triggering device.

[N.H.] The commission narrowed the use of a 10 per cent trigger device in an energy cost recovery mechanism whereby the commission would adjust the energy cost recovery mechanism rate if a company over- or undercollected by 10 per cent. p. 880.

7. PROCEDURE, § 22 — Hearing and notice — Supplemental proceedings — Conditions subsequent.

[N.H.] It is proper for the commission to include in orders provisions subject to conditions subsequent so as to account for actual rather than projected changes in such matters as wage increases, property taxes, or trigger devices for energy cost recovery mechanism rates, and separate notice and hearings are not required for those conditions subsequent. p. 881.

APPEARANCES: Eaton W. Tarbell for Public Service Company of New Hampshire; Gerald M. Eaton for Community Action Program.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On October 27, 1982, the Commission issued Third Supplemental Order No. 15,951 (67 NH PUC 743), in which it reduced the cost rate applicable to the Energy Cost Recovery Mechanism (ECRM) for the months of November and December, 1982 by \$5,367,992. Due to PSNH sales in each of these months, it can be stated that approximately \$2.4 million would be refunded to customers in the month of November and the remainder in the month of December. On November 1, 1982, PSNH filed a motion for rehearing. On November 15, 1982, the Commission granted the motion for rehearing and suspended the applicability of Order No. 15,951 to bills rendered during the month of December. The approximate \$2.4 million refund in the month of November was returned to customers. One of the questions raised in the rehearing is whether the remainder of the ordered refund in Order No. 15,951 should be reinstated.

Two days of hearings were conducted on the basis of rehearing. The number of exhibits has grown to 48 and numerous witnesses were called to testify both by PSNH and Commission request.

II. ECRM

The Energy Cost Recovery Mechanism (ECRM) is a sophisticated mechanism placed into effect to recover reasonable energy costs of PSNH from its customers. This mechanism is relatively new and this proceeding represents the first snag in its application. This mechanism is advanced compared with those employed by other jurisdictions and other utilities. Such a mechanism to even exist can only occur where there is a degree of technical and professional expertise at the utility, the Commission and by legal representatives of the public. Fortunately for New Hampshire such a combination of talent does exist and there are substantial benefits that result.

[1] The ECRM is superior as compared to previous attempts to recover energy costs in New Hampshire. The old monthly fuel adjustment clause had significant disadvantages for both PSNH and its customers. First, because of a wide variety of factors, including generating plant outages, coal and oil price fluctuations, heat rates, availability of units, line losses and sales both in and out of New Hampshire, the old monthly fuel adjustment was subject to major changes both up and down from month to month. These changes caused tremendous confusion and misunderstanding among all customers. Industrial, commercial, institutional and governmental customers were burdened by this procedure since these variations disrupted planning, either for budgetary purposes or for businesses whose product is energy intensive.

A second disadvantage to the old fuel adjustment clause was the absence of any reward or penalty based on productivity. Consumers were subject to wide variations in rate due to unscheduled outages at lower cost units. Utilities, who committed the necessary resources to maintain their generating stations at better than industry standards, received no additional consideration than did their fellow

utilities who failed to commit the necessary resources to properly maintain generating stations.

A third disadvantage to the old monthly fuel adjustment was its two-month lag. Besides the

obvious failure to match revenues and expenses, there were serious consequences for PSNH on a cash-flow basis at a time when they are in a negative cash flow situation. The old fuel adjustment clause tended to worsen PSNH's cash flow situation.

A fourth disadvantage was the failure of the old monthly fuel adjustment to adjust for changes in total energy costs. Rather, that clause tended to focus solely on changes in fuel-related costs. Potential savings through purchases of units with low fuel costs but high capacity costs were overlooked in favor of units of high fuel costs and low capacity costs even where this combination of the latter was more than the former.

A fifth disadvantage of the monthly fuel adjustment was the inability of staff or public intervenors to adequately explore major changes in fuel costs. The clause was in essence too automatic.

A sixth disadvantage of the monthly fuel adjustment was the level of regulatory expense incurred by the Company and ultimately its consumers. The transcript costs and attorneys fees are legitimate operating expenses. However, the monthly hearings tended to have a tremendously high regulatory cost. In essence, the costs were similar to that which would be incurred in 12 mini rate case proceedings.

The Commission next attempted a quarterly estimated fuel adjustment. PSNH found problems with their estimates, and undercollections developed. Because of their severe cash flow problem they on different occasions refiled during the quarter to begin charging higher rates to make up for undercollections. Because of the severe cash flow problem, the Commission granted these requests, and the rates set for the quarter were abandoned. Hearings were held in some instances in two of the three months that the quarterly rate was to be in effect. The quarterly fuel adjustment was susceptible to some of the same problems associated with the monthly fuel adjustment clause.

[2] The Commission ultimately adopted the ECRM procedure. This procedure: (1) provided total recovery of energy costs, not just fuel-related costs; (2) improved the Company's cash flow; (3) stabilized the rate for a six-month period; (4) minimized the amount of regulatory expenses associated with monthly hearings; and (5) provided penalties and bonus for inefficient or efficient operation of generating stations.

III. 1982 OVERCOLLECTIONS BY PSNH FROM CUSTOMERS

[3] For the year 1982, PSNH in *each and every month* through November 30, 1982 has stood in a financial position of cumulative over-recovery from its customers. The rates that have been charged for the first ten months of 1982 have allowed PSNH an average cumulative monthly overcollection from its customers of \$6,435,020.¹⁽⁹²⁾ In essence, PSNH has had the use of \$6,435,020 (on average) of the customers money for ten months, the first six without any cost to PSNH and the last four months with an 8% interest payment.

The following table demonstrates the level of overcollection by PSNH from its

customers as of the month end for 1982. The data is taken from PSNH documents, and PSNH has stipulated to their accuracy. The data is provided to the Commission on a one-month lagging

basis.

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

| DATE | CUMULATIVE OVERCOLLECTION FROM CONSUMERS |
|--------------------|---|
| December 31, 1981 | \$2,758,377 |
| January 31, 1982 | \$1,075,531 |
| February 28, 1982 | \$2,914,631 |
| March 31, 1982 | \$3,556,330 |
| April 30, 1982 | \$7,373,204 |
| May 31, 1982 | \$8,289,792 |
| June 30, 1982 | \$8,647,500 |
| July 31, 1982 | \$7,065,342 |
| August 31, 1982 | \$8,903,827 |
| September 30, 1982 | \$9,691,742 |
| October 31, 1981 | \$6,832,240 |

The Commission received the data indicating a \$9,691,742 over-recovery on October 22, 1982. In addition to this level of over-recovery was the corresponding interest of \$167,592 payable to consumers. Thus, at the time of Commission action, PSNH owed its customers \$9,859,334. The level of overcollection had grown since the end of the previous time period by over a million dollars. The level of overcollection, nearly 10 million dollars, was the highest in the history of either the quarterly or six-month adjustment.

PSNH, in its motion for rehearing claimed that due to Commission action, PSNH would stand in a position of cumulative underrecovery at the end of the months November and December.²⁽⁹³⁾ PSNH's original position, was that absent a reversal of the Commission's decision for the month of December, PSNH would be in a situation of a 5.1 million dollar undercollection. PSNH requested that the October rate be re-established and PSNH initially contended that even with reinstating the October rate would result in a cumulative undercollection of 2.2 million dollars.

The Commission conducted extensive questioning of PSNH witnesses on these contentions. The Commission explored numerous area including but not limited to the following: sales growth estimates, operation of Merrimack Stations I and II, operation of Newington Station, re-estimated oil and coal prices, ECRM penalty provisions, ECRM bonus provisions, interest on overcollections, weather, PSNH's financial position, opportunity to use more efficient units, and cost rates for units other than those owned by PSNH.

PSNH, on the second day of hearings held on November 30, 1982, revised their estimates significantly. PSNH agreed that despite their earlier contentions and despite the Commission's Order lowering rates in November by \$2.4 million, that as of November 30, 1982 PSNH would remain in a position of overcollection from its consumers. Thus, PSNH now agrees that for each and every month of the year ended November 30, 1982, PSNH has stood in a position of cumulative overcollection from its customers.

PSNH's revised estimate now contains an estimated undercollection of

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\$900,000 if the October rate is restored and correspondingly an undercollection of \$3,800,000 if the November reduced rate is restored for December. The \$1,300,000 downward

reduction in both of these estimates stems from a recalculation by PSNH of their recovery position in the month of November. No analysis was offered as to any revisions of December estimates.

These new estimates were accompanied by PSNH's admission that absent Commission action in November, PSNH would have been in a position of overcollection from its customers as of December 31, 1982.

[4] The question that we next turn to is the Company's estimates for December, 1982. These estimates are subject to alteration by numerous factors as actuality unfolds. An unscheduled outage, a less expensive spot oil purchase, a reduction in sales, or an extension of a scheduled outage, all can influence the final outcome; whether there is an overcollection or an undercollection. Neither PSNH nor this Commission can state that beyond a doubt there will or there won't be either an undercollection or an overcollection. However, the Commission upon an evaluation of the evidence in this proceeding finds that it is more likely that a continuation of the reduced November rate will result in a year end number being closer to zero than a restoration of the October rate. The evidence in this proceeding is found to demonstrate that a restoration of the October rate would likely lead to a cumulative overcollection as of December 31, 1982.

[5] The Commission will begin its analysis of the evidence with PSNH's estimate that a resumption of the November rate will result in an undercollection of \$3.8 million as of December 31, 1982.

The first and most obvious adjustment to this number is approximately \$250,000 of interest owed by PSNH to its customers for the high level of overcollection that occurred during the ECRM period. No party disputes this adjustment.

The second adjustment is the recognition of the penalty provisions of ECRM associated with generating stations that generate less often than anticipated and less often than the established industry criteria. No party disputes that the Newington Station has had extensive outages during this ECRM time period and that as a consequence there will be penalties calculated in the next ECRM period that will have the net effect of decreasing any undercollection. The Commission estimates that this penalty will result in a favorable adjustment for the benefit of consumers of \$350,000.

A third adjustment the Commission finds to be reasonable is to reduce the level of sales estimated for the month of December. The December estimates are a continuation of PSNH's 1981-82 revised sales forecast that was formulated in December 1981. The forecast as demonstrated by Exhibit 44 has consistently over-estimated 1982 sales. Nothing in this record demonstrates support for continued reliance in a 4% sales growth where reality had demonstrated nearly flat sales growth. The Commission will therefore reduce the estimated sales for the month of December as far as this adjustment to the actual level of New Hampshire retail sales experienced in December 1981 or 399,038 MWH.

These sales, as demonstrated by the record, would have resulted from greater operation of oil fired units. The coal, hydro, and nuclear units will run at full

operation in the month of December regardless of sales. The only real question is whether the sales reduction should use the average oil price of 50.50 mills or the average of the higher cost less efficient units of 79.21 mills (7.9¢) or some number in between.

The dollar impact range is from a reduction in costs of \$919,403 to a reduction of \$1,442,110. The Commission finds any adjustment in this range both likely and reasonable.

The fourth adjustment relates to the operation of the Merrimack II plant. A seven-day outage is included in PSNH's estimates. PSNH witness Harvey indicated that every attempt would be made to insure Merrimack II operating at full capacity throughout the month. Such a situation would save the differential between oil and coal costs, or approximately \$1.6 million.

The fifth adjustment relates to the variety of other factors that indicate there will be other cost savings including the weather, the estimates for plants not owned by PSNH and the earlier than anticipated start-up of Newington Station. The warmer weather will lead to a greater overcollection than anticipated in November, thus leading to a greater offset going into December. The warmth of December has been in sharp contrast to prior years and will lead to further reduction in cost. PSNH estimates for costs at generating stations not under their control have generally been greater than those submitted as reasonable and found to be reasonable in other fuel adjustment proceedings.

The greater operation of Newington at below 5¢ a KWH will lead to displacement of units scheduled at a higher than 5¢ per KWH rate. The culmination of these factors is found to result in an anticipated offset to costs of nearly \$500,000.

The Commission finds that there is a likelihood that PSNH and its customers will find themselves as of December 31, 1982 in a situation off a minimal overcollection or a minimal undercollection. A reinstatement of the October rate would appear to lead to a probability of an overcollection. The Commission is attempting to bring this ECRM rate for the six months as close as possible to zero. The Commission finds that retention of the reduced November rate is more likely to achieve this goal.

PSNH protests of unfairness must be contrasted against the fact that this process should ideally have an equal level of months of undercollection and overcollection. The level of costs for the next six months is presently estimated to be less than the last six months. The level of sales for the next six months is estimated to be higher than the experience of the last six months. Consequently, any impact of an overcollection or undercollection will be minimized to a greater extent over the next six months than by any adjustment in December. Furthermore, contrary to PSNH's position, the results of any over-recovery or under-recovery will be spread over three high-use months and three low-use months and *not* just the winter months.

IV. 10% TRIGGER

[6] PSNH asserts in their motion that the 10% trigger did not occur, and that the Commission should not have made an adjustment at all. However, in the proceedings, PSNH admitted that failure to make an adjustment would have resulted in overcollections in each month of 1982.

The record reveals that the 10% trigger language is recognized as being

ambiguous and subject to various interpretations. As a consequence, it is clear that either the interpretation by the Commission or PSNH is reasonable. However, clearly the reverse is also true that neither interpretation is per se unreasonable. The best avenue is for PSNH, CAP and Staff to come up with a well-defined trigger for the next ECRM proceeding.

The Commission is acutely aware that it must treat overcollections and undercollections in the same fashion as to the trigger. PSNH suggests that the original trigger would allow up to 13.5 million dollars of overcollection or undercollection. It is on this basis that PSNH contends that Commission's action at a level slightly below 10 million dollars is unreasonable. The Commission finds PSNH's interpretation as unreasonable.

Our finding is based in part on the fact that a level of undercollection on the order of 13 million dollars would force PSNH to borrow to carry this energy cost underrecovery. Because of the duration of such an undercollection, over as much as six months and recovered over the next six months, permanent financings might well have to be used at a rate of 15-16% interest. These additional costs of interests, this use of PSNH's financings for other than construction needs and the impact on an already bad negative cash flow of 13 million dollars of unrecovered energy costs would all result in the public interest not being served.

It is hard to accept such a contention where all three commissioners have continually expressed concern over the Company's cash flow situation and where PSNH itself has come back to us twice during the operation of the quarterly adjustment clause for upward rate adjustment. In those instances undercollections were being estimated in the three-million-dollar range. In both instances, PSNH stated that their severe cash flow problems would be negatively impacted by failing to adjust rates. In both instances, the Commission responded favorably to the Company's request because of our concern over cash flow.

The situation has actually worsened since those days. In fact, these cash flow concerns are of even a greater concern to the Commission than they were when we issued our order on October 28, 1982. The new cost estimates for their major construction facilities clearly establish that this Company cannot afford a mechanism whereby thirteen million dollars of undercollection can exist without rate adjustment.

In summation, our 10% trigger language was recognized can the record as ambiguous by all parties. Therefore, there was more than one interpretation that was reasonable. This situation, together with the new cost estimates, mandate the development of a more narrow trigger. If the Commission had not adjusted rates at the nearly 10 million dollar overcollection level, it could not have adjusted rates at a 10 million dollar undercollection. This Company cannot afford a mechanism which would allow a 10 million dollar undercollection. Fairness dictates that consumers cannot afford a mechanism which would allow a 10 million dollar overcollection.

V. NOTICE AND HEARING

[7] A major thrust of PSNH's motion for rehearing focused on their allegation that they have been denied due process by the Commission filing to have a hearing directly prior to the issuance of Order No. 15,951. PSNH claims that

RSA 378:7 requires a hearing prior to the issuance of an order affecting rates.

As PSNH is well aware, Order No. 15,951 (67 NH PUC 743), was issued pursuant to this docket, DR 82-146. In this docket, there have been six hearings, of which four transpired prior to the issuance of Order No. 15,951. The Commission's Second Supplemental Order No. 15,732 of July 2, 1982 (67 NH PUC 442) set an ECRM rate for the next six months provided that there was neither a 10% over or under collection. If this 10% trigger occurred, there is no question that Order No. 15,732 provided that there would be an immediate adjustment.

PSNH is well aware of this procedure, as it is not the first time the Commission has used a form of condition subsequent order. In June of 1980, the Commission issued Report and Order No. 14,271 (65 NH PUC 251) in which the Commission established new permanent rates for PSNH after hearings just as occurred in this docket. However, the Commission, just as here, established a condition subsequent, whereby if there were changes from the test year the wages paid PSNH employees as adjustment to rates would be made as of January 1, 1981. There was a clear condition subsequent that if there were changes in the level or property taxes paid there would be an adjustment to rates as of April 1, 1981. The rationale for these adjustments was that the Commission is obligated to set reasonable rates both at the time of its decision and for a reasonable time period thereafter. Rather than estimate these changes, which could or couldn't have materialized, the Commission by adopting this procedure was assured that only if these changes materialized would these adjustments be triggered into action. Furthermore, that by applying use of a trigger, only actual rather than estimated changes would be made.

In late December, 1980, PSNH filed tariff pages reflecting an increase to recover wage increases of \$3,582,240. On January 1, 1981, PSNH began charging these increased level of rates.

In late March, 1981, PSNH again filed revised tariff pages to reflect an increase in rates of \$1,003,289 associated with increased property taxes. On April 1, 1981, PSNH began charging this higher level of rates. In both of these instances, as was the case in this proceeding, the trigger mechanism set by prior orders through an orderly hearing mechanism was activated.

The hearings that established the trigger mechanism either 10% over collection (ECRM) or increases in wages or property taxes satisfied the hearing requirements. PSNH cannot receive the benefit of the prior two rate adjustments without also recognizing the validity of the Commission's action when PSNH is holding nearly ten million dollars of the consumers' money. PSNH's response that no one appealed the procedure for the second step rate relief associated with wages and property taxes is not persuasive. Either the procedure is valid or it isn't. If it was valid to trigger rate increases of 4.5 million dollars, it is equally valid to trigger rate decreases of 5.3 million dollars.

PSNH had an over-recovery from consumers of 8.6 million dollars as of June 30, 1982. This allowed some of their basic non-energy rate increase to appear to be offset by decreased energy costs. However, when this Commission finds three months into the period that PSNH has even a greater level of consumer money (\$9.8 million), then they held as of June 30th and that is essence

the ECRM mechanism instead of reducing the overcollection has been acting to increase the amount of the overcollection, the Commission is acting in a responsible fashion by reducing rates. Our order is equally valid in this instance whereby rates are reduced as was the procedure established by which rates were increased for property taxes and wages. To find one order invalid would lead to a similar finding as to the other.

If our Third Supplemental Order No. 15,951 was found to be invalid then obviously Re Public Service Co. of New Hampshire (1981) 66 NH PUC 138, would also be invalid because of its effect on taxes and thus rates and its long term rate consequences.

In conclusion, the Commission finds a continuation of the reduced ECRM rate and the refund of \$2.9 million to customers in the month of December 1982 to be reasonable.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire's (PSNH) request to alter the ECRM rate established in our Third Supplemental Order No. 15,951 is denied; and it is

FURTHER ORDERED, that the rate established by the Commission's Third Supplemental Order No. 15,951 is hereby reinstated and found to be just and reasonable for billings in the months of November and December, 1982; and it is

FURTHER ORDERED, that the parties are placed on notice that a more narrow trigger mechanism is to be developed for the next six-month period in light of PSNH's financial situation; and it is

FURTHER ORDERED, that there is a need to protect consumers from unreasonable levels of overcollection; and it is

FURTHER ORDERED, that an ECRM rate of \$.0285 per KWH is found to be reasonable for the month of December, 1982 and is to be applied to all bills rendered on or after December 1, 1982.

By order of the Public Utilities Commission of New Hampshire this sixth day of December, 1982.

FOOTNOTES

¹This average rate of overcollection is through the time period in question prior to the Commission's Order.

²Exhibit 36.

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NH.PUC*12/09/82*[79458]*67 NH PUC 883*New England Telephone and Telegraph Company

[Go to End of 79458]

Re New England Telephone and Telegraph Company

DE 82-305, Order No. 16,031

67 NH PUC 883

New Hampshire Public Utilities Commission

December 9, 1982

APPROVAL of the installation of aerial telephone cable over public water.

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TELEPHONES, § 2 — Construction and equipment — Aerial cable — Upgrading.

[N.H.] A telephone company was authorized to replace overhead cables over public waters where the commission found the upgrade would be in the public interest.

APPEARANCES: Wayne E. Snow, engineering manager, for the company.

BY THE COMMISSION:

REPORT

On October 25, 1982, the New England Telephone and Telegraph Company filed with the Commission a petition for license to install and maintain aerial plant over the Connecticut River between Littleton, New Hampshire and Waterford, Vermont. An Order of Notice was issued on October 26, 1982 setting the matter for hearing on November 29, 1982 at 10:00 a.m. in the Commission's Concord offices. Notice was sent to New England Telephone and Telegraph Company for publication and to the Aeronautics Commission, the Department of Resources and Economic Development, Division of Safety Services, and the Office of Attorney General.

Mr. Snow described the crossing at the duly noticed hearing on November 29, 1982, indicating that it comprised a 210-pair cable extending from Pole 120G/2417 situated on Route 18 in Littleton, New Hampshire to Pole 120G/ 2418 situated on said highway in Waterford, Vermont, passing over the Connecticut River at a minimum height of 26 feet. The span is 610 feet between the two poles. It replaces another cable crossing in the immediate area, and increases the available pairs substantially.

Mr. Snow also provided maps and drawings of the installation which were marked as exhibits. He additionally indicated approval was required by the Corps of Engineers, United States Army, and entered as an exhibit the Company's application to that Agency.

No intervenors were present at the hearing, not was any objection received by mail. Under such circumstances, the Commission finds this upgrade of the New England Telephone and Telegraph Company plant in the public good and will issue the appropriate license for the

crossing.

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 be, and hereby is, granted license for the installation and maintenance of aerial cable between Pole 120G/2417 and Pole 120G/2418, said cable crossing the Connecticut River in an area between Littleton, New Hampshire and Waterford, Vermont on Route 18; and it is

FURTHER ORDERED, that such crossing be in accordance with appropriate provisions of the National Electrical Safety Code.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1982.

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NH.PUC*12/09/82*[79459]*67 NH PUC 885*Manchester Gas Company

[Go to End of 79459]

Re Manchester Gas Company

DR 81-234, Fifth Supplemental Order No. 16,032

67 NH PUC 885

New Hampshire Public Utilities Commission

December 9, 1982

PETITION by a gas company for an increase in rates; rejected as field but revised tariffs approved.

1. RATES, § 374 — Gas — Step increase — Expense factors involved.

[N.H.] A step increase in gas rates was allowed after balancing increased insurance, pension, trust, and local tax expenses with decreased interest and income tax expenses. p. 885.

2. RETURN, § 26.4 — Cost of equity capital — High cost of debt — Proper average.

[N.H.] Expressing concern that a gas company's high-interest debt was not receiving adequate equity coverage, the commission ordered the company to "thicken" its equity component in proportion to its total invested capital. p. 886.

BY THE COMMISSION: REPORT

On November 8, 1982, Manchester Gas Company filed a petition for an increase in rates in

the amount of \$334,592. The filing for a second step increase results from the settlement agreement entered into by the Company, Staff and intervenors in Docket Number DR 81-234 and as modified by the Commission's Report and Order in the subject case issued on July 1, 1982.

The revenue increase on July 1, 1982 included a provision for a step increase on December 1, 1982 or thirty days after the filing of a proposed increase. The agreement provided for an increase based on changes, both positive and negative, in certain expenses. It was also agreed that capital costs would be updated to September 30, 1982. The Commission provided for a review of the cost of equity and further retained its authority to disapprove as part of any step increase any expense which the Commission determined to be unjust and unreasonable.

[1] The Company filed for known increases in health and dental insurance, bad debts, salary and wage increases and associated FICA and pension costs, gas supplier refund deficiencies, property taxes, public utility assessment, holding company expenses, inventory trust expenses, and the associated federal and state taxes. The Commission staff has audited all aspects of the step increase and has resolved all of the expense items. The original step increase filing included \$221,658 of increased operating expenses. As a result of the staff audit and discussions the operating expense increase has been reduced by \$4,628 to \$217,030. The Company filed an effective tax rate of 50 percent which has been reduced to 49 percent. Interest costs related to the removal of inventory from rate base, due to the inventory trust financing, results in a decrease in income tax expenses, in the amount of \$58,750. The required rate of return has been reduced from 13.32 percent to 13.14 percent. The return on equity has been reduced from 16 to 15.5 percent. The revisions encompassed in this filing are as follows:

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

| | <i>Original Filing</i> | <i>Revised</i> |
|--|------------------------|----------------|
| Rate base, 9/30/81, Adjusted | \$11,939,426 | \$11,939,426 |
| Rate of return | 13.32% | 13.14% |
| Required Net Operating Income | 1,590,332 | 1,568,841 |
| Less Operating Income Allowed | 1,597,298 | 1,597,298 |
| Net Decrease in Required Oper. Income | (6,966) | (28,457) |
| Proforma Adjustment – Increase (Decrease): | | |
| Health Insurance | 38,930 | 38,930 |
| Dental Insurance | 1,205 | 1,205 |
| Bad Debts | 5,503 | 8,364 |
| Salaries & Wages | 95,630 | 91,352 |
| FICA | 7,504 | 7,159 |
| Pension | 3,211 | 3,211 |
| Gas Supplier Refund Deficiency | 18,358 | 18,358 |
| Property Taxes | 32,710 | 29,874 |
| Public Utility Assessment | (9,818) | (9,818) |
| Holding Company Expense | 19,925 | 19,895 |
| Inventory Trust Financing | 8,500 | 8,500 |
| Total Revenue & Expense Adjustments | 214,692 | 188,573 |
| Less Tax Effect | 107,346 | 92,400 |
| Net Revenue & Expense Adjustments | 107,346 | 96,173 |
| Plus: Income tax effect – Interest | 59,950 | 58,750 |
| Net Adjustments | 167,296 | 154,923 |
| Required increase (+ 51%) | | 303,770 |

The Commission will allow a step increase in the amount of \$303,770 effective with all bills rendered on December 9, 1982. The Commission is aware that interest rates have been falling dramatically and consequently the cost of common equity has been falling. The Company equity also requires thickening. For the purposes of this increase we have accepted the Company's capital structure as of September 30, 1982. As of July 1, 1983 the Commission will impute a capital structure which includes 42 percent common equity at a rate of 14.52 percent which results in an overall rate of return of 12.4870. Because of the tax consequences of imputing common equity in place of debt the overall required revenue change is insignificant.

[2] The return on capital represents a very large component revenue requirement. The Commission is therefore very concerned that utilities maintain capital structures which minimize the overall cost of capital but also provide sufficient "coverage" of interest costs of debt. It is the latter which most concerns the Commission with regard to Manchester Gas Company. Given the Company's high interest cost of debt (12.38%) which changes over time mostly as a result of the large promissory note with a floating interest rate, the Company requires thicker equity participation in order to provide adequate coverage of the debt.

Both the Company and the Commission staff agree that the Company requires thicker equity participation under current circumstances. This is particularly true since the return applied to common equity capital is an estimate of the market cost of capital, and is applied to all common equity. Insofar as it appears that capital cost rates are declining, reductions in allowed equity return can have substantial impact on debt coverage if the equity participation is thin and embedded debt costs are high.

Page 886

The Commission chooses to employ the imputed capital structure* for rate-making with thicker equity participation on July 1, 1983 as a matter of principle, in recognition of the issue of optimality of capital structure. Secondly, the Commission wants to emphasize its continued concern that New Hampshire utilities employ proportions of debt and equity which minimize total capital cost rates plus provide access to external capital on reasonable terms. It is the Commission's view that Manchester Gas Company should have perceived the implications of its thin equity long ago and took appropriate action to employ relatively more equity in total invested capital.

This Commission will, in the future, take very seriously the issue by appropriate capital structure. Should Manchester Gas fail to take appropriate action, in the near term, to correct the existing thin equity participation, the Commission will consider the employment of imputed capital structures for ratemaking purposes. Like all items of the cost of service, this Commission demands that New Hampshire utilities will choose those combinations of resources (i.e., debt and equity) which are consistent with cost minimization.

The Commission has also approved the formation of a holding company which will include Manchester Gas Company and Gas Service, Inc. Both Companies have projected significant savings from that transaction, in addition to the improved market ability of common stock. The Commission will monitor the results of the consolidation with interest to determine the

beneficial effects to ratepayers.

Our Order will issue accordingly.

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

ATTACHMENT I*

Item

Debt
Preferred Stock
Common Equity
Total

* Used for the imminent step increase

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

ATTACHMENT II*

Item

Debt
Preferred Stock
Common Equity
Total
To be in the step increase of July '83

* Attachments I and II

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Second Revised Page 29 and Second Revised Page 30 to NHPUC No. 13 — Gas originally filed in this proceeding to collect \$334,592 in additional revenue be, and hereby are rejected; and it is

FURTHER ORDERED, that the Company issue Third Revised Page 29 and Third Revised Page 30 to NHPUC No. 13 — Gas to collect revenues in the amount of \$303,770; and it is

FURTHER ORDERED, that the tariff pages be effective for all bills rendered on or after December 9, 1982.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1982.

=====

NH.PUC*12/10/82*[79460]*67 NH PUC 888*Town of Raymond

[Go to End of 79460]

Re Town of Raymond

Intervenor: Boston and Maine Corporation

DX 82-291, Order No.16,033

67 NH PUC 888

New Hampshire Public Utilities Commission

December 10, 1982

PETITION by a municipality for permission to reconstruct a highway crossing over an abandoned railroad track; granted.

Highways and Streets, § 1 — Removal of structures — Reconstruction of highways — Culverts for snowmobiles.

[N.H.] In the interest of safety, a municipality was authorized to remove a highway bridge over an abandoned railroad track, to reconstruct the highway crossing to level off the grade, and to construct a culvert at the crossing for snowmobile travel.

APPEARANCES: Gordon A. Cammitt, Sr., chairman, board of selectmen, and Dana Kingston, administrative assistant, for the town of Raymond; John F. Adams for the Boston and Maine Corporation; Calvin Warburton and Ralph Blake, representatives of the town of Raymond, pro se.

BY THE COMMISSION:

REPORT

By petition filed October 13, 1982 the Town of Raymond seeks authority to remove the overhead highway bridge which carries the Onway Lake Road over the tracks of the Manchester-Portsmouth Branch of the Boston and Maine Corporation; and to provide a metal culvert for use of snowmobiles. Hearing thereon was held at Concord on November 23,

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1982, at which no one appeared in opposition to the proposal.

The bridge which is the subject of this proceeding is a wood structure approximately 18 feet in length and 14 feet 3 inches in width. It was designed for ten ton loads and is posted accordingly. It is carried on the records of the Railroad Corporation as Gile Road Crossing at Mile Post 24.09.

Witnesses for the Town indicate it is a danger to highway traffic. When vehicles are

approaching from opposite directions one operator can not see the other because of the steep grade on the approach from the south. It was a rather necessary nuisance during the time of rail traffic but now that it has been discontinued, the Town desires to eliminate this hazard.

The approach from the north is approximately level. Since the bridge is about 30 feet higher than the land south of the railroad, a steep grade exists on this approach. It is proposed to reconstruct 300 feet of highway to lessen the grade of which approximately 200 feet is at the south approach and 100 feet at the north. The rails will be removed and the grade of the highway at the railroad track location will be considerably higher than the present track because there will be a metal culvert eight feet in diameter to accommodate the snowmobile traffic.

This section of the railroad was authorized to be abandoned January 25, 1982 by the Federal Court for the District of Massachusetts. The Railroad Corporation has joined with the State Bureau of Off-Highway Vehicles to permit the use of the abandoned portion of this line and the section of the Fremont Branch to be used as a snowmobile trail. Thus, the culvert will be placed on the level with the present railroad roadbed and the fill for the reconstructed highway will be placed over the culvert.

The Town indicates that its right-of-way is of sufficient width to accommodate the new highway but if additional is required for the slopes of the fill, suitable arrangements with the Railroad Corporation can be accomplished.

The entire project is estimated to cost \$70,000; 70% of which, or \$49,000, is expected to consist of Federal Funds with the balance of \$11,000 to be borne equally between the Town and the State. No appropriation has yet been made by the Town, but it is hoped that the project can be accepted prior to the next Town Meeting in March at which time the Town can act upon its portion of the required funds. If the project is not approved and the Town's portion of the required funds are not met, the project as proposed will not materialize.

The Railroad Corporation supports the project provided it is not required to pay any portion of the costs incidental to the proposal. It is willing to transfer ownership of the bridge to the Town of a nominal fee and to work out any problem that may arise in connection with the taking of the land, if necessary, to accommodate the fill for the reconstructed highway. Railroad records indicate that the highway was in use when the railroad obtained a right to cross prior to its construction.

This is the fourth petition seeking to remove bridges or grade crossings on the abandoned portion of the Manchester-Portsmouth Branch before this Commission since the authority was granted to abandon the line of railroad issued January 25, 1982, by the Federal Court for the District of Massachusetts.

In DX 82-49, a petition submitted by the New Hampshire Department of Public Works and Highways sought authority

which was granted by Order dated August 30, 1982, to remove the rails and deposit fill over the railroad right-of-way in Candia to eliminate two bridges on a new location for New Hampshire Highway Route 101.

In DX 82-155 pursuant to a petition by the New Hampshire Public Works and Highways authority was granted on September 13, 1982, to remove the rails at the intersection of the railroad and Highway Route 107, in a project designed to widen that highway in connection with its interchange with new Route 101, a short distance south of the present crossing.

In DX 82-221, pursuant to a petition of the Town of Raymond, authority was issued on September 21, 1982, to remove the rails at the grade crossings at Main Street, Lane Road and to eliminate rough and hazardous crossings, thus improving highway conditions at locations where rail service has been abandoned and when there has been no direct evidence presented to the Commission that there is any likelihood of future rail operations.

The question of the responsibility for reconstructing a railroad track and bridge at this location, should the line be re-activated in the future, was raised. Neither the Town nor the Railroad Corporation is willing to go on record as agreeing to construct a new bridge or replace the track. However, the present statutes place sufficient jurisdiction within the Commission to consider any such request and to apportion the costs in accordance with facts that may be presented in an appropriate proceeding.

Upon consideration of all the facts the Commission is of the opinion that its consent should be given to the proposal. Our Order will issue accordingly.

ORDER

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

ORDERED, that the Town of Raymond, be, and hereby is, authorized to remove the overhead highway bridge over the tracks of the Boston and Maine Corporation at the Onway Lake Road (Gile Road Crossing) at Mile Post 24.09; and it is

FURTHER ORDERED, that authority is hereby granted to remove the rails and ties a sufficient distance to permit the reconstruction of the highway with a suitable culvert for snowmobile travel and a change of highway grades for a distance of 300 feet; and it is

FURTHER ORDERED, that no portion of the cost of the project, as proposed, shall be borne by the Boston and Maine Corporation.

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1982.

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NH.PUC*12/13/82*[79461]*67 NH PUC 891*Manchester Gas Company

[Go to End of 79461]

Re Manchester Gas Company

DR 82-274, Second Supplemental Order No. 16,034

67 NH PUC 891

New Hampshire Public Utilities Commission

December 13, 1982

MOTION for rehearing on the question of the interest calculation on propane held in inventory; granted.

BY THE COMMISSION:

Opinion by AESCHLIMAN, commissioner: On November 19, 1982, Manchester Gas Company filed a motion for rehearing of this Commission's November 2, 1982 Order No. 15,958 (67 NH PUC 758). Based on our review of that decision, the record of the proceeding and the motion of the Company, the Commission grants the motion for rehearing relative to the question of the interest calculation on propane received in December of 1978 and March of 1981.

Upon reviewing the record, the Commission has a concern regarding the amount upon which interest was assessed by Staff. The Commission is aware that the exclusion or inclusion in inventory of the propane in question affects the average cost of gas in inventory over time. The Commission will require the Company and Staff to address the questions of the proper method to determine the true average cost of inventory. Prior to the hearing, the Company is required to provide data showing the average cost of gas by month for the period in question calculated in two ways — with the propane received in December of 1978 and March of 1981 included in the inventory and without this propane included in inventory.

The Commission indicated in the Report accompanying Order No. 15,958 that it would consider additional information in a December filing. Since the time of the November order, the Commission has learned that Tennessee is considering a change in its PGA periods. For this reason, the Commissioner believes that any change in the present six-month cost of gas adjustment period should be postponed until this question is resolved by Tennessee.

At the time of the rehearing on the motion, the Commission will consider a revised filing based upon the actual Tennessee filing with FERC for the PGA to be effective January 1, 1983. For this purpose, revised data for the period January 1, 1983 through April 30, 1983 must be filed with the Commission prior to the date for the rehearing.

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 motion for rehearing by Manchester Gas Company relative to the question of the interest calculation on propane received in December of 1978 and March of 1981 is granted; and it is

FURTHER ORDERED, that the Company provide prior to the hearing the data specified in the foregoing Report; and it is

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FURTHER ORDERED, that the Company file revised data reflecting the actual Tennessee rate filed with FERC to be effective January 1, 1983; and it is

FURTHER ORDERED, that a hearing on these matters is scheduled for Friday, December 17, 1982 at 10:00 A.M. at the Commission Offices in Concord, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1982.

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NH.PUC*12/13/82*[79462]*67 NH PUC 892*Public Service Company of New Hampshire

[Go to End of 79462]

Re Public Service Company of New Hampshire

Intervenor: Town of Seabrook

DE 82-235, Order No. 16,035

67 NH PUC 892

New Hampshire Public Utilities Commission

December 13, 1982

PETITION by an electric company to condemn a take certain real property held by a municipality; granted.

EMINENT DOMAIN, § 5 — Right to appropriate — Necessity — Consensus on value.

[N.H.] Where the need for a utility to take a certain tract of land held by a municipality was evidenced by the issuance of a certificate of site and facility, and where the utility and town had agreed upon the appraised value of the tract, the commission authorized the taking.

APPEARANCES: Eaton W. Tarbell, Jr., for the Public Service Company of New Hampshire; Gary Holmes for the Town of Seabrook.

BY THE COMMISSION

REPORT

The Public Service Company of New Hampshire, a public utility engaged in the supply of electric service in the State of New Hampshire, pursuant to the provisions of RSA 371, petitioned the Public Utilities Commission of New Hampshire to determine the necessity for taking a fee simple interest in certain premises in the Town of Seabrook, New Hampshire and to determine the price to be paid for that interest.

The petition was filed on August 17, 1982 and included an exhibit describing said property as found in the Rockingham County Registry of Deeds, Book 1961, Page 223.

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On August 19, 1982, an Order of Notice was issued setting hearing for September 19, 1982 at 1:00 p.m. at the Commission's offices. On September 3, 1982, a new Order of Notice was issued rescheduling the hearing date to October 13, 1982.

Notices were sent to Eaton W. Tarbell, Jr, Esq., for publication; the Selectmen's Office, Town of Seabrook; Public Service Company of New Hampshire; and the Office of the Attorney General. An affidavit attesting to the publication of the notice in the Union Leader on Friday, September 24, 1982, was filed with this Commission at the hearing.

The petitioner offered that, in order to meet the reasonable requirements of service to the public, it had applied for, and received, a certificate of site and facility issues by this Commission for a certain site in Seabrook, Hampton Falls, and Hampton, New Hampshire by Order No. 11,267 in NHPUC Docket No. D-SF6205, January 29, 1974 (59 NH PUC 127) as modified by Order No. 13,941 dated December 13, 1979 (64 NH PUC 417), for the construction of two nuclear electric generating units and associated facilities. In order to comply with the certificate of site and facility as modified, the petitioner must now proceed with the construction of the Seabrook to Scobie Transmission line. It has acquired many rights and easements necessary to that construction through negotiations with affected land owners. It has been unable, however, to acquire through negotiations, a certain fee simple interest necessary to repair, rebuild, operate, patrol and remove overhead and underground lines consisting of wires, cables, ducts, manholes, poles and towers, together with foundations, crossarms, braces, anchors, guys, grounds and other equipment for transmitting electric current and/or intelligence over, under and across a certain tract or strip of land in the Town of Seabrook, County of Rockingham, State of New Hampshire, bounded and described as set forth in Exhibit A. That document was offered and marked at the hearing as Exhibit No. 1.

The Company also offered, as Exhibit 2, an appraisal, dated May 10, 1982 and done by Elizabeth B. Ballard, for the Town of Seabrook, which appraised the premises on a fee simple basis at \$36,500.

The Company and the Town of Seabrook now contend there is no contest with respect to value.

Based on the record, the Commission finds that the question of necessity is found in the affirmative based on the issuance of the certificate of site and facility issued in NHPUC Docket No. D-SF6205 dated January 29, 1974. The Commission also finds, based on this record, that no question with respect to value remains.

Based on the foregoing, the Commission determines there is a need for the petitioner to take a fee simple interest in the premises described in Exhibit 1 and it further finds that the price to be paid for said fee simple interest shall be \$36,500.

Our Order will issue accordingly:

ORDER

Based upon the foregoing Report which is made a part hereof; it is hereby

ORDERED, that Public Service Company of New Hampshire be and hereby is authorized to

take, pursuant to RSA 371, property described in its description as follows:

Beginning at the northeasterly corner of the land hereby conveyed at land now or formerly of William E. and Forrest S.

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Felch and at the westerly side of U.S. Route No. 1; hence, running South 04° 07' 35" West, 44.31 feet; thence by a curve to the left with a radius of 1,710.89 feet a distance of 87.74 feet to land now or formerly of Vernon R. and Elsie M. Small, the last two courses being along said highway; thence, North 72° 58' 07" West, 162.95 feet along land of said Smalls to land now or formerly of Properties, Inc.; thence, North 05° 26' 54" West, 74.24 feet along land of said Properties Inc. to land now or formerly of said Felches; thence, North 80° 33' 51" East, 170.40 feet along said Felch land to the point of beginning. (The bearings in this description are based on the New Hampshire Grid System.) and it is

FURTHER ORDERED, that Public Service Company of New Hampshire pay damages for said taking in the amount of \$36,500 to the Town of Seabrook; and it is

FURTHER ORDERED, that the taking granted herein shall be for a fee simple interest in the premises described above.

By Order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1982.

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NH.PUC*12/13/82*[79463]*67 NH PUC 894*New England Telephone and Telegraph Company

[Go to End of 79463]

Re New England Telephone and Telegraph Company

DR 82-349, Order No. 16,037

67 NH PUC 894

New Hampshire Public Utilities Commission

December 13, 1982

NOTICE of the existence of extended area service equipment and of the implementation of such service between two towns.

BY THE COMMISSION:

ORDER

WHEREAS, Commission Order 15,752 (67 NH PUC 469), directed implementation of Extended Local Service between Lisbon and Woodsville, New Hampshire; and

WHEREAS, New England Telephone and Telegraph Co. now indicates that facilities are such that this ELS service can be offered; it is

ORDERED, that Part II, Section 1, 79th Revised Page 2, 18th Revised Page 9, 9th Revised Page 11, 8th Revised Page 12, and 7th Revised Page 14 of tariff NHPUC No. 70 be, and hereby are, approved for effect on December 31, 1982; and it is

FURTHER ORDERED, that one-time notice be given affected customers.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1982.

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NH.PUC*12/13/82*[79464]*67 NH PUC 895*Concord Natural Gas Corporation

[Go to End of 79464]

Re Concord Natural Gas Corporation

DF 82-189 Supplemental Order No. 16,038

67 NH PUC 895

New Hampshire Public Utilities Commission

December 13, 1982

REQUEST by a gas company to increase its short-term debt limit in light of uncertain cash flow; granted.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Concord Natural Gas Corporation, a New Hampshire corporation having its principal place of business in Concord, New Hampshire, and operating as a gas utility under the jurisdiction of this Commission, on November 30, 1982, filed with this Commission a request to increase its short-term borrowing limitation from \$800,000 to \$1,250,000; and

WHEREAS, the Company pursuant to Order No. 15,746 issued in Docket No. DF 82-189 (67 NH PUC 462) has submitted its cash flow analysis for 1983; and

WHEREAS, the Company anticipates their peak borrowing months will be February and December 1983 in amounts of approximately \$1,200,000; and

WHEREAS, the Company, to allow some flexibility in dealing with uncertainties in cash flow during 1983 is requesting authorization to borrow up to \$1,250,000; and

WHEREAS, Concord Natural Gas Corporation alleges that it will need to have an available line of short-term credits up to \$ 1,250,000 to meet its cash requirements, and has this line of credit available from the Indian Head National Bank of Concord; it is

ORDERED, the Concord Natural Gas Corporation be, and hereby is, authorized to issue and sell, and from time to time renew, for cash its notes payable due less than 12 months after the date thereof in an aggregate principal amount not exceeding \$1,250,000; and it is

FURTHER ORDERED, that the notes shall bear interest at the most economical rates the Company can obtain; and it is

FURTHER ORDERED, that the Company will inform this Commission when the financing agreement is consummated; and it is

FURTHER ORDERED, that the authority to renew these notes up to an aggregate amount of \$ 1,250,000 shall expire as of December 31, 1983, at which time the aggregate level will be redetermined; 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

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of said proceeds shall be fully accounted for.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December 1982.

=====

NH.PUC*12/13/82*[79465]*67 NH PUC 896*Merrimack County Telephone Company

[Go to End of 79465]

Re Merrimack County Telephone Company

DR 82-346, Order No. 16,039

67 NH PUC 896

New Hampshire Public Utilities Commission

December 13, 1982

APPROVAL of a telephone company's separation of customer premises equipment fees from basic local rates.

BY THE COMMISSION:

ORDER

WHEREAS, Merrimack County Telephone Company has filed with this Commission certain revisions to its Tariff No. 7 which propose unbundling of customer premises equipment from basic local rates; and

WHEREAS, such filing conforms to directions included in earlier Commission Orders and is necessary to align with rules of the Federal Communications Commission; and

WHEREAS, said revisions appear in the public interest; it is ORDERED, that

Index — 3rd Revised Page 2 Part I — 1st Revised Page 9 Part II — Section 1 — 2nd Revised Pages 1 and 3 Section 4 — 1st Revised Page 1 Part III — Section 1 — 1st Revised Pages 1 through 4

- Section 2 — 2nd Revised page 1
- 1st Revised Page 2
- Section 4 — 1st Revised Page 1
- 2nd Revised Page 2
- Section 7 — 1st Revised Pages 1 and 2
- Section 15 — 1st Revised Page 1
- Section 25 — 1st Revised Pages 2 and 7
- Section 26 — 1st Revised Pages 3 and 5
- Section 31 — 2nd Revised Pages 9 and 13
- Section 40 — 1st Revised Pages 2, 2.3, 2.5, and 3

be, and hereby are, approved for effect on December 90, 1982; and it is

FURTHER ORDERED, that one-time public notice be given via explanatory bill insert accompanying the first billing under the revised rates.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1982.

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NH.PUC*12/13/82*[79466]*67 NH PUC 897*Chichester Telephone Company

[Go to End of 79466]

Re Chichester Telephone Company

DR 82-345, Order No. 16,040

67 NH PUC 897

New Hampshire Public Utilities Commission

December 13, 1982

ACCEPTANCE of a telephone company's separation of charges and rental fees from basic telephone rates.

BY THE COMMISSION:

ORDER

WHEREAS, Chichester Telephone Company has filed certain revisions to its tariff, NHPUC No. 3 — Telephone, said revisions separating charges and rental fees for telephone instruments

from basic telephone rates; and

WHEREAS, this filing conforms to the Commission directive to unbundle such equipment from those rates; it is

ORDERED, that Section 1, 1st Revised Sheet 2A; Section 2, 3rd Revised Sheet 1; and Section 3, 2nd Revised Sheets 3 and 9 be, and hereby are, approved for effect on January 1, 1983.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1982.

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NH.PUC*12/13/82*[79467]*67 NH PUC 897*Northern Utilities, Inc.

[Go to End of 79467]

Re Northern Utilities, Inc.

DR 82-275, Second Supplemental Order No. 16,042

67 NH PUC 897

New Hampshire Public Utilities Commission

December 13, 1982

MOTION for rehearing on projected wholesale rate increases; granted in part and denied in part.

1. PROCEDURE, § — Rehearings and reopenings — Grounds — Filed rate increases versus estimates.

[N.H.] The commission found that filed wholesale rate increases maybe the subject of a rehearing, but mere estimates of increases by suppliers should not be subject to rehearing or uses as the basis of projected retail rates because such supplier estimates are uncertain and may never be implemented or may be authorized at a much lower rate.

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BY THE COMMISSION:

Opinion by AESCHLIMAN, commissioner: On November 29, 1982, Northern Utilities, Inc. filed a motion for rehearing of this Commission's November 8th Order No. 15,983 (67 NH PUC 773). Based on our review of that decision, the record in the proceeding and the motion of the Company, the Commission grants the motion for rehearing relative to the Tennessee rate to be effective January 1, 1983 and relative to the exclusion of one-half of the Company's undercollection from the 1981-1982 winter CGA. Rehearing relative to estimated increases in

costs of gas supplied by Tennessee due to a pending rate increase is denied. All questions relative to the gas roots program are reserved for a separate proceeding, DR 82-350. (See Order No. 16,041.)

The Commission indicated in the Report accompanying Order No. 15,983 that it would consider additional information in a December finding. Since the time of the November order, the Commission has learned that Tennessee is considering a change in its PGA periods. For this reason, the Commission believes that any change in the present six-month cost of gas adjustment period should be postponed until this question is resolved by Tennessee.

The Commission will consider a revised filing based upon the actual Tennessee filing with FERC for the PGA to be effective January 1, 1983. For this purpose, revised data for the period January 1, 1983 through April 30, 1983 must be filed with the Commission prior to the date for the rehearing.

The Commission denies rehearing of the proposed adjustment relative to estimated increased costs from a pending rate increase filing by Tennessee. This issue was discussed at length in the Commission Report. Northern contends that exclusion of this adjustment was a change in Commission practice and that they were not afforded a proper opportunity to be heard on this issue.

The Commission does not agree. The burden of proof for justifying an increase is on the Company. Since the New Hampshire gas companies have intervened in this case and the filing has been suspended and set for hearing by FERC, there remains considerable uncertainty about the outcome. Past history has shown that TGP rate proceedings may be settled and a rate lower than the estimated ultimately put into effect.

Based upon the record in these proceedings, the Commission determined that putting the estimated rate into effect was unfair to consumers. Due to the nature of the CGA, consumers would be forced to pay the higher estimated rates through the winter period regardless of the final TGP rate. And customers would not have their money returned to them until the next corresponding winter period, unless the Commission intervened.

It has become increasingly apparent to the Commission that the estimates presented by the gas companies tend to be one-sided. It is inequitable for an estimate to be made including only increases but excluding estimates for refunds. Not one gas company has estimated a refund from their suppliers, whereas past history and the record in these proceedings would indicate the likelihood of refunds. As these changes become known and measurable, any party may petition the Commission for an adjustment in the CGA rate.

The Commission in its Report indicated that the exclusion or deferral of one-half of the Company's undercollection from the 1981-1982 winter period

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would be reconsidered. On page 7 of that Report, the Commission raised a number of questions to be included in this review, and the Company is expected to address these questions at the rehearing.

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 motion for rehearing by Northern Utilities, Inc. relative to the Tennessee rate to be effective January 1, 1983 and relative to the exclusion of one-half of the Company's undercollection from the 1981-82 winter CGA is granted; and it is

FURTHER ORDERED, that all questions raised relative to the gas roots program will be considered in DR 82-350; and it is

FURTHER ORDERED, that the motion relative to other issues raised is denied; and it is

FURTHER ORDERED, that a hearing on these matters is scheduled for Friday, December 17, 1982 at 10:00 A.M. at the Commission Offices in Concord, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1982.

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NH.PUC*12/13/82*[79468]*67 NH PUC 899*Gas Service, Inc.

[Go to End of 79468]

Re Gas Service, Inc.

DR 82-276, Second Supplemental Order No. 16,043

67 NH PUC 899

New Hampshire Public Utilities Commission

December 13, 1982

MOTION for rehearing on the subjects of allowable propane costs, overcollection balances, filed wholesale rate increases, filing requirements, and liquefied natural gas costs; granted in part and denied in part.

BY THE COMMISSION:

Opinion by AESCHLIMAN, commissioner: On November 22, 1982, Gas Service, Inc. filed a motion for rehearing of this Commission's November 2nd Order No. 15,957 (67 NH PUC 752). Based on our review of that decision, the record in the proceeding and the motion of the Company, the Commission grants the motion for rehearing relative to the exclusion of certain propane costs, relative to use of the September overcollection balance in computing the winter CGA, relative to the Tennessee rate to be effective January 1, 1983 and relative to the material to be filed with the Commission by the Petitioner. Rehearing relative to the other issues raised in the motion is denied.

The Company presents a lengthy argument for inclusion of \$74,250 of propane costs disallowed by the Commission. The

Commission had concluded in its prior decision that GSI was given ample opportunity during the Commission audit and during the CGA hearing to explain their position concerning this transaction. However, in the motion for rehearing, GSI has presented additional exhibits and information which the Commission wishes to explore further, and a rehearing on this question is granted on that basis.

The Commission will allow a reconsideration of the use of the September overcollection balance. Figures are now available for October, which will allow consideration of the actual balance for the summer period along with the over-collection from the prior winter period.

The Commission indicated in the Report accompanying Order No. 15,957 that it would consider additional information in a December filing. Since the time of the November order, the Commission has learned that Tennessee is considering a change in its PGA periods. For this reason, the Commission believes that any change in the present six-month cost of gas adjustment period should be postponed until this question is resolved by Tennessee.

The Commission will consider a revised filing based upon the actual Tennessee filing with FERC for the PGA to be effective January 1, 1983. For this purpose, revised data for the period January 1, 1983 through April 30, 1983 must be filed with the Commission prior to the date for the rehearing.

The Commission denies rehearing of the proposed adjustment relative to estimated increased costs from a pending rate increase filing by Tennessee. This issue was discussed at length in the Commission Report.

Based upon the record in these proceedings, the Commission determined that putting the estimated rate into effect was unfair to consumers. Past history has shown that TGP rate proceedings may be settled and a rate lower than the estimated ultimately put into effect. Due to the nature of the CGA, consumers would be forced to pay the higher estimated rates through the winter period regardless of the final TGP rate. And customers would not have their money returned to them until the next corresponding winter period, unless the Commission intervened.

It has become increasingly apparent to the Commission that the estimates presented by the gas companies tend to be one-sided. It is inequitable for an estimate to be made including only increases but excluding estimates for refunds. Not one gas company has estimated a refund from their suppliers, whereas past history and the record in these proceedings would indicate the likelihood of refunds. As these changes become known and measurable, any party may petition the Commission for an adjustment in the CGA rate.

The Commission will allow rehearing concerning the requirement of materials to be filed, as the Commission feels there is undoubtedly room for clarification.

The Commission does not deem it necessary to reconsider the question of LNG costs at this time. The Commission has not disallowed LNG costs in the instant proceedings, but merely placed the company on notice that this will be a subject for further review when the reconciliation of this winter CGA is reviewed.

Finally, the question of the 8% rate of interest was not brought out as an issue in the current proceedings except as a footnote in GSI's filing. The Commission quite plainly stated that it "will hold to a uniform rate of 8% compounded for

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both factors of input into the CGA" in Report and Order No. 15,261 (66 NH PUC 454). This issue was not appealed, and the Commission will not reconsider the question at this time.

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 motion for rehearing by Gas Service, Inc. relative to the exclusion of certain propane costs, relative to the use of the September overcollection balance in computing the winter CGA, relative to the Tennessee rate to be effective January 1, 1983 and relative to the material to be filed with the Commission is granted; and it is

FURTHER ORDERED, that the motion relative to other issues raised is denied; and it is

FURTHER ORDER, that a hearing on these matters is scheduled for Friday, December, 17, 1982 at 10:00 A.M. at the Commission Offices in Concord, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1982.

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NH.PUC*12/13/82*[79469]*67 NH PUC 901*Connecticut Valley Electric Company, Inc.

[Go to End of 79469]

Re Connecticut Valley Electric Company, Inc.

Intervenor: Sinclair Machine Products, Inc.

DR 82-67, Fifth Supplemental Order No. 16,044

67 NH PUC 901

New Hampshire Public Utilities Commission

December 13, 1982

MOTIONS for rehearing on the effective date for temporary rates and rate design; granted in part and denied in part.

1. RATES, § 630 — Temporary rates — Effective date — Applied only to subsequent usage.

[N.H.] Temporary rates cannot be made effective prior to the time the rates were filed and

notice was given thereof, and once temporary rates do become effective they should apply only to actual usage from the date thereon rather than to service billed or meter readings which could include usage prior to the effective date. p. 902.

2. RATES, § 235 — Schedules and formalities — Initiation of rates and rate changes — Temporary, bonded, and permanent rates.

[N.H.] There is no irreparable harm in rejecting bonded rates and some time savings may occur in having just temporary and permanent rates rather than the three-step design of temporary, bonded, and permanent rates. p. 902.

Page 901

APPEARANCES: Dom S. D'Ambruoso, for Connecticut Valley Electric Company, Inc.; David W. Jordan, for Sinclair Machine Products, Inc.

BY THE COMMISSION:

Opinion by LOVE, chairman: The Connecticut Valley Electric Company, Inc. ("CVEC") has filed a motion for rehearing concerning the Commission's decision to establish temporary rates on all usage on or after April 23, 1982. The Company contends that they have the right to change temporary rates on all usage taken on or after March 12, 1982.

The Commission notes that the request for temporary rates was dated March 25, 1982 and not received by the Commission until March 26, 1982. The Commission set out an Order of Notice on March 29, 1982 setting April 23, 1982 as a hearing on the merits of temporary rates. Only on April 23rd was evidence put into the record that supported the contention of CVEC that some level of temporary rates was justified. The customers were not aware of a request for temporary rates during March since the Company did not file its request until the last Friday of the month. The Order of Notice went out Monday, the next to the last day of March, 1982. The Order of Notice couldn't have been received by the Company until either the end of March, 1982 or the beginning of April. The notice to customers of the temporary rate request did not occur until April, 1982.

[1] The Appeal of Re Pennichuck Water Works (1980) 120 NH 562, provides the Commission a reasonable range as to a date by which temporary rates can begin. As long as the Commission operates within that range, the Commission's action is deemed reasonable. Since the request for temporary rates was not until March 26, 1982, the Commission finds reasonableness dictates that temporary rates under the facts and circumstances of these proceedings cannot become effective prior to March 26, 1982. Whereas, further the Order of Notice was not issued until March 29, 1982 and not mailed to the utility until March 30, 1982, the Commission finds that at the very outside no date prior to April 1, 1982 can be set for an effective date. Given the notice to customers and the hearing being held during the month of April, the Commission will alter its temporary rate order so as to allow temporary rates on all *usage* on or after April 1, 1982. The CVEC is to pro-rate where necessary as has been the practice of other electric utilities. CVEC's request to have temporary rates apply on all service billed or meter readings taken on or after April 1, 1982 must be denied in part because of the Pennichuck decision. CVEC bills its residential customers on a bi-monthly basis thus a meter read in April 2, 1982 for instance would be charged the higher level of rates for two months back to February 2, 1982. Such a date is prior

to any filing in this docket and is the type of practice found to be unreasonable by the Court in Pennichuck. Furthermore, commercial and industrial customers billed on a monthly basis would be responsible only for one month of the higher rates. Such a situation is rate discrimination that is prohibited by RSA 378:10 and found to be unreasonable under RSA 378:7 by the Commission. Therefore, this Motion for Rehearing is granted in part and denied in part.

[2] The second motion for rehearing relates to the Commission's decision to reject the bond filed by the CVEC pursuant

Page 902

to RSA 378:6. The Commission made a determination prior to the end of the six months when the Commission allowed temporary rates. Such action taken pursuant to RSA 378:27 is a determination prior to the end of the six month time period and therefore RSA 378:6 is not relevant.

Furthermore the Commission finds that even there was relevancy to RSA 378:6 to this situation, the bond filed is inadequate for our purposes and those of the statute since there is no security for the performance of the duty set forth.

Finally, the provisions of RSA 378:29 render the question presented moot. If CVEC should prevail, the Company is entitled to recoupment back to the date of establishment of temporary rates. If the Commission finds that the entire request or any level above temporary rates is justified, the Company has the statutory guarantee that they can recover the difference via surcharge. There is a no irreparable harm and in fact there is substantial time savings that result from having only two rates govern any refunds or surcharges rather than having three rates; ie. temporary, bonded and permanent. This consideration is especially relevant to our considerations whereas as here one has a utility that bills some customers on a monthly basis, others on a bi-monthly basis and where not only the revenue but also the rate design is being litigated. Avoidance of the potential for three revenue levels and/or three rate designs and attempts to accurately refund or surcharge with appropriate consideration for whether the customer is billed monthly or bi-monthly is of such a regulatory burden to be assumed to be avoidable. This motion for rehearing is denied.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report which is incorporated and made a part of this order it is hereby;

ORDERED that temporary rates pursuant to this docket are made effective on all service taken on or after April 1, 1982 and as a consequence CVEC's motion for rehearing is granted in part and denied in part; and it is

FURTHER ORDERED that the Motion for Rehearing filed concerning the bonded rate rejection is hereby denied.

By Order of the Commission this thirteenth day of December 1982

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NH.PUC*12/13/82*[79470]*67 NH PUC 903*Hillsboro Water Company, Inc.

[Go to End of 79470]

Re Hillsboro Water Company, Inc.

Intervenor: Emerald Lake Property Owners Association

DR 81-319, Second Supplemental Order No. 16,048

67 NH PUC 903

New Hampshire Public Utilities Commission

December 13, 1982

ORDER delineating factors to be considered in determining used and useful rate base.

Page 903

1. SECURITY ISSUES, § 26 — Jurisdiction and powers — Kinds of securities.

[N.H.] The commission held that an advance given a utility by its owners was equity rather than debt, citing Internal Revenue Code § 385 as authority for making the transformation. p. 904.

2. VALUATION, § 14 — State commissions — Discretion as to necessary findings.

[N.H.] The determination of the proper level of utility plant that is used and useful is a determination of fact. p. 904.

3. VALUATION, § 16 — Methods and measures for ascertaining rate base.

[N.H.] A used and useful rate base is determined by making requisite deductions, such as construction works in progress, customer deposits, customer advances, and contributions in aid of construction, and the removal of imprudent or questionable investments. p. 905.

APPEARANCES: Daniel A. Laufer for Hillsboro Water Company, Inc.; Robert E. Howard, III, for Emerald Lake Property Owners Association.

BY THE COMMISSION:

Disposition of Motion for Rehearing

Opinion by LOVE, chairman: On November 12, 1982 the Commission issued Supplemental Order No. 15,987 (67 NH PUC 785). On December 2, 1982 the Hillsboro Water Company (hereinafter referred to as either "Hillsboro" or the "Company") filed a motion for rehearing. Various errors were alleged by the petitioner and these will be discussed in the order presented in the motion for rehearing.

[1] The first issue raised concerns the transformation by the Commission of the Company's debt of \$100,000 to equity in the Company. The contention is that there was not an allowance

made for this equity in the calculation of the return on investment (rate base). The Commission finds against this contention.

The transformation from debt to equity clearly is supported by the IRS through its regulations on the subject of "Treatment of Certain Interests in Corporations as Stock or Indebtedness" Code Section 385, Federal Tax Guide Reports § 3832, pages 1338-1339. The \$100,000 advanced by the two owners of the Company is by these regulations more properly viewed as equity rather than debt.

The determination of a reasonable rate base in normal circumstances is the investment made by a utility that is used and useful in the public service less accrued depreciation. RSA 378:37 and 28. As the United States Supreme Court has noted, 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 to the public. *Bluefield Water Works & Improv. Co. v West Virginia Pub. Service Commission*, 262 US 679, PUR1923D 11, 67 L Ed 1176, 43 S Ct 675.

[2] The Commission, in determining a proper level of utility plant that is used and useful is essentially one of fact for the determination. *New England Teleph. & Teleg. Co. v New Hampshire* (1949) 95 NH 353, 365, 78 PUR NS 67, 64 A2d 9. The Commission is accorded flexibility in applying the "used and useful" test since this latitude serves to promote the public interest. *Legislative Utility Consumers' Council v Public Service Co. of New Hampshire* (1979) 119 NH 332, 343, 344, 31 PUR4th 333, 402 A2d 626.

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[3] There are requisite reductions from rate base that must be made which include CWIP, customer deposits, customer advances and customer contributions in aid of construction. *Legislative Utility Consumers' Council v Granite State Electric Co.* (1979) 119 NH 359, 402 A2d 644 RSA 378:30-a, *Windham Estates Asso. v New Hampshire* (1977) 117 NH 419, 422, 374 A2d 645, 647. After making these deductions together with an accrued depreciation deduction, the remainder begins to resemble used and useful rate base. After removal of proven imprudent or questionable investments, the result is finally a used and useful rate base.

The Commission, in this instance, performed this analysis and arrived at a proper rate base. The difference between the capitalization or advances and rate base can be explained through improper accounting, failure to repay advances, failure to keep proper records, the existence of customer contributions, and improper treatment as to accrued depreciation, all address this differential.

The Commission has gone through the uniform calculation of determining a proper rate base and a proper return. The 14% rate was applied to the entire equity component and ultimately was applied to rate base. Petitioner offers no support for its position. Based upon all the foregoing this aspect of the motion for rehearing is denied.

The second issue is the contention that the Commission failed to recognize the .1% attrition factor that it authorized in the calculation of the revenue requirement. This contention is in error. The Report on page 5 (67 NH PUC at p. 788) clearly states that the attrition adjustment of .1% will be applied to rates a year from the date of the Order or November 12, 1983.

This second step increase is to offer a protection against attrition and to minimize regulatory proceedings. The revenue requirement will be thus adjusted upwards by including the attrition factor in the rate of return calculation on November 12, 1983. Petitioner's contentions failed to recognize that this was a second step increase and this aspect of the motion for rehearing is denied.

The third issue is whether the Commission should have disallowed a portion of the electricity expense alleged to occur in 1982. The Company contends that their evidence demonstrates a 25% higher cost of electricity in 1982. The Commission has some difficulty in using partial data in 1982 to predict an entire years trend. Usage and price do vary and a more complete analysis might be appropriate. However, the Commission is also aware that with small water utilities a major source of attrition results from increases in the price of electricity. As a consequence of this knowledge, the Commission will recognize the \$640 additional requested increase in electricity prices.

The fourth issue raised is not error but rather one of form. The real question is whether rate case expenses should be collected as a surcharge or included in an ordinary expense. The Commission will accord the Company the opportunity to collect this as a surcharge or as an adjustment to ordinary expenses except for working capital purposes. However, if the latter choice is taken, the tariff pages to be filed will only be accepted if they have the 50% level of rate case expenses included on an annual basis through November 12, 1984 and a reduction in rates after this date to reflect the collection of these costs.

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The fifth issue raised by Hillsboro is the proper level of depreciation expense. Hillsboro contends that the expense should be calculated as follows: $\$193,012 - \$115,400 = \$77,612 \times .02 = \1552.24 . Hillsboro contends that the Commission erred in its calculations and cites the use of \$197,893 on page 9 of the Report (67 NH PUC at p. 790) and \$193,012 on page 12 (67 NH PUC at p. 793).

On Exhibit 4, Hillsboro's Annual Report to the Commission, fixed capital is recorded as \$202,193. In the Report, on page 9 (67 NH PUC at p. 790), the Commission has attempted to establish a reasonable depreciation expense. In doing so, the Commission properly deducted Account 2301 Organization: \$1,800, and Account 2307.1 Supply, Land and Water Rights: \$2,500. While it is true that the expense of organization and land purchase are recorded as Fixed Capital and rate base items, these accounts do not decline in usefulness as a result of wear, the action of the elements or the passing of time. As a consequence, these items are not depreciable.

Depreciable fixed capital is therefore as the following:

$\$202,193 - \$4,300$ (Accounts 2301 & 2307.1) = $\$197,893 - \$115,400$ (CIAC) and $\$9,181$ (plant adjustments) = $\$73,312$ at 2% = $\$1,466$ depreciation expense. Total Fixed Capital is: $\$202,193 - \$9,181$ (plant adjustments) = $\$193,012$

This aspect of the motion for rehearing is denied.

The sixth issue raised is the Commission's disallowance of \$200 associated with annual legal advice. The petitioner provides a satisfactory argument and the Commission will recognize these

expenses as reasonable.

The seventh issue raised in the motion for rehearing involves the question of whether there has been a proper calculation of fixed assets. The data in the record filed routinely by the utility on an annual basis demonstrates that there has been no additions to plant since 1976. Consequently, this aspect of the motion for rehearing is denied.

In our Report, dated November 12, 1982, we have eliminated (pg. 8) the allowance of a depreciation allocation against contributed plant, for the reasons stated and cited. Hillsboro would now reduce the depreciation reserve by a percentage equal to ratio of CIAC to fixed capital.

The depreciation reserve as accepted in the above Report is an accumulation of annual depreciation charges paid for by water company customers, some of which were assessed against plant or fixed capital paid for by these same customers. Hillsboro has had the benefit of the customer paying for a portion of the plant used to serve the customer and for many years prior to the issuance of our decision and, the added benefit of the customer paying to replace the same plant sometime in the future. The Commission reiterates its finding as to this matter.

The recognition of additional expenses alters both total expenses and rate base and thereby the revenue requirement. The additional \$840 expenses alter rate base as to working capital. The new level of working capital expenses, which require a cash outlay, is \$22,337. This allows for a new working capital of \$2,792 or an increase of \$105 in rate base.

The revised calculation of revenue requirements is as follows:

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

| | |
|------------------------|----------|
| Rate Base | \$34,439 |
| × 2 rate of return 14% | |
| Required NOI | 4,807 |
| Adjusted NOI: | |
| Level of Revenue | \$27,071 |
| Level of Expenses | (24,703) |
| Income Taxes | (958) |
| Income | 1,410 |
| Required Revenue | (3,397) |
| Tax Effect ÷ 76.37 | \$4,448 |

With the adjustments made in this decision, the Commission finds that the permanent rates before this proceeding were deficient by \$4,448 or \$1,362 more than what was allowed in the initial order. To this extent, the motion for rehearing is granted in part and rejected in part. Consequently, Hillsboro should file revised tariffs to reflect this new revenue level rather than that allowed in our initial Order. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Hillsboro Water Company's Motion for Rehearing is granted in part and denied in part.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1982.

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NH.PUC*12/14/82*[79471]*67 NH PUC 907*Residential Conservation Service

[Go to End of 79471]

Re Residential Conservation Service

DP 82-352, Order No. 16,046

67 NH PUC 907

New Hampshire Public Utilities Commission

December 14, 1982

ORDER directing utilities to comply with residential conservation service plan.

BY THE COMMISSION:

ORDER

WHEREAS, the National Energy Conservation Policy Act of 1978, Part I of Title II, mandated the Residential Conservation Service (RCS); and

WHEREAS, major electric and gas utilities within each state are required to provide energy audits and certain related energy services to their residential customers; and

WHEREAS, the New Hampshire Public Utilities Commission is designated as the lead agency for the New Hampshire RCS Program and has enforcement and administrative responsibilities; and

WHEREAS, the lead agency shall within 30 days of approval of the State Plan inform the covered utilities and direct them to comply with RCS; and

WHEREAS, the U.S. Department of Energy approved the New Hampshire RCS Program, effective November 22, 1982; it is

ORDERED, that those New Hampshire Utilities covered under RCS comply with the New Hampshire State RCS

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Plan and the evaluation and monitoring components developed by the Public Utilities Commission Staff.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of December, 1982.

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NH.PUC*12/14/82*[79472]*67 NH PUC 908*Union Telephone Company

[Go to End of 79472]

Re Union Telephone Company

DF 82-341, Order No. 16,049

67 NH PUC 908

New Hampshire Public Utilities Commission

December 14, 1982

ORDER authorizing borrowing from the Rural Electrification Administration.

BY THE COMMISSION:

ORDER

WHEREAS, Union Telephone Company (or "the Company"), by letter dated December 1, 1982, petitioned this Commission to borrow from the Rural Electrification Administration one hundred thirty-four thousand dollars (\$134,000) at an interest of 5%; and two million, eight hundred fifty-one thousand, eight hundred dollars (\$2,851,800) at an interest rate of 11.5%; and two million, eight hundred fifty-one thousand, eight hundred dollars (\$2,851,800) at an interest rate of 11.5%; and

WHEREAS, the Company states that their capital structure consists of 11,776 shares of \$25 par value common stock outstanding; a 20-year mortgage held by Merrimack County Savings Bank maturing on March 6, 1984, with an outstanding balance of \$15,000 and an interest rate of 5 1/2%; other long-term debt in the amount of \$432,700, carrying an interest rate of 8 1/2% to 8 3/4%; and other short-term debt, as of December 1, 1982, in the amount of \$1,082,610 at an interest rate between 8% and 14.5%; and

WHEREAS, the Company further states that the process of this borrowing will be 1) to refinance \$907,000 of existing short-term debt; 2) to purchase \$135,800 of Class B stock of the Rural Telephone Bank; and 3) to use the remaining \$1,943,000 to finance future construction requirements as set forth in the area coverage design plan; and

WHEREAS, the Rural Electrification Administration has approved the loan, and

WHEREAS, in Report and Supplemental Order No. 13,956 (DR 79-120) (64 NH PUC 434), the Commission required the Company to seek Rural Electrification Administration financing; it is

ORDERED, that Union Telephone Company be, and hereby is, authorized to borrow two million, eight hundred fifty-one thousand, nine hundred thirty-four dollars (\$2,851,934) from the Rural Electrification Administration at the interest rates stated above; and it is

FURTHER ORDERED, that the proceeds from said borrowing be used as stated above; and it is

FURTHER ORDERED, that on January first and July first of each year, the Union Telephone Company shall file

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with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of the borrowing hereby authorized, until expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of December, 1982.

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NH.PUC*12/17/82*[79473]*67 NH PUC 909*Exeter and Hampton Electric Company

[Go to End of 79473]

Re Exeter and Hampton Electric Company

DR 81-317, Third Supplemental Order No. 16,059

67 NH PUC 909

New Hampshire Public Utilities Commission

December 17, 1982

ORDER approving tariff revision for power factor.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on December 1, 1982, Exeter and Hampton Electric Co. filed Second Revised Page 24 of Tariff NHPUC #15 for effect January 1, 1983 designed to implement the rate design change for the ten (10) largest customers approved in Order No. 15,609 (67 NH PUC 290) and increase rates to those customers by \$8,280 to account for increased metering costs; and

WHEREAS, it now appears that the ten customers are likely to exceed 90 percent power factor soon after January 1, 1983, thus implying that Exeter may experience some revenue erosion from these customers; and

WHEREAS, the Company has calculated the additional metering costs in a reasonable manner but using a method that the Commission finds unacceptable; and

WHEREAS, the improvements in Power Factor for the ten customers will reduce line losses on Exeter's distribution system which will reduce Purchased Power costs for Exeter; it is

ORDERED, that Second Revised Page 24 of Tariff NHPUC No. 15 is hereby approved for effect January 1, 1983; and it is

FURTHER ORDERED, that Exeter and Hampton Electric Co. confer with staff prior to any

future tariff filings in this case to determine an appropriate costing methodology.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1982.

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NH.PUC*12/17/82*[79474]*67 NH PUC 910*New England Electric Transmission Corporation

[Go to End of 79474]

Re New England Electric Transmission Corporation

DSF 81-349, Fourth Supplemental Order No. 16,060

67 NH PUC 910

New Hampshire Public Utilities Commission

December 17, 1982

ORDER authorizing construction and operation of transmission facilities.

1. PUBLIC UTILITIES, § 12 — Public service — Factors to be considered.

[N.H.] In considering whether it is in the public interest for a company to operate as a public utility, the commission will consider: (1) financial backing; (2) management and administrative expertise; (3) technical resources; and (4) the general fitness of the applicant. p. 914.

2. DEFINITIONS — Demand.

[N.H.] In determining the need for power in authorizing a transmission line, the commission defined the term "demand" in the economic sense; that is, the amount of a commodity consumers will buy at each specified price in a given market. p. 916.

3. DEFINITIONS — Electric power.

[N.H.] In determining the need for power in authorizing a transmission line, the commission defined the term "electric power" to include both energy (the ability to perform work over a period of time) and capacity (the capability of providing energy at any given instant in time). p. 916.

BY THE COMMISSION:

REPORT

This matter involves the application of the New England Electric Transmission Corporation (NEET) for a certificate of Site and Facility for a 6.3 mile transmission line at a design voltage of \pm 450 kilovolts direct current (DC), from Moore Station, Littleton, N.H. to Comerford Station, Monroe, N.H. The application is addressed to the Bulk Power Supply Site Evaluation

Committee (SEC) and the Public Utilities Commission of the State of New Hampshire (PUC). As with most applications under RSA 162:F several issues, in addition to those involved with the four principal findings under the Act, RSA 162-F et seq., are raised in these proceedings. These subsidiary issues are:

(1.) Has NEET shown the requisite good cause for us to consider the application given that construction of the facility is planned to commence within two years of the application and, until recently, the proposed facility was not included on NEET's inventory of sites (RSA-F:6, II)?

(2.) Is the proposed facility of 6.3 miles along existing transmission lines of such a nature to require a certificate (RSA-F:2(b))?

(3.) Should NEET be authorized to conduct business as a public utility in the State of New Hampshire under RSA 374:22?

(4.) Should NEET be granted a license to cross the Connecticut River at three points along the route of the facility, — where it leaves Vermont to cross over to a point near Moore Station, Littleton, New Hampshire and midway between Moore Station and Comerford Station, Monroe, N.H.?

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(5.) Under RSA 374:4 should New England Power Company (NEPCO) be authorized to lease certain of its facilities and property interests to NEET for purposes of enabling NEET to construct, maintain and operate the proposed facility and should NEPCO be authorized to contract with NEET to have NEET operate the facilities so leased?

(6.) Will the 230 KV, alternating current (AC), transmission line of less than 1000 feet in length and proposed to cross the Connecticut River at Comerford Station, Monroe, New Hampshire have a substantial environmental impact? and

(7.) Should NEET be granted a license to cross the Connecticut River at Comerford Station, Monroe, New Hampshire with the proposed 230 KV (AC) transmission line?

With the exception of issue (6.) the PUC answers all of these subsidiary issues in the affirmative. With respect to issue (6.) the PUC finds that the 230 KV (AC) line will not have a substantial environmental impact. As will be discussed below good cause exists to proceed with a review of the application; under the circumstances the proposed facility requires a certificate; NEET is authorized to conduct the business of a public utility in the State of New Hampshire; the license for the river crossings for the 450 KV (DC) line should be issued; NEPCO should be authorized to lease certain facilities to NEET and to contract with NEET to have NEET operate those facilities; the 230 KV (AC) lines will not have a substantial environmental impact; and NEET should be issued a license to cross the Connecticut River at Comerford Station with the two 230 KV (AC) lines.

With respect to the four principal findings under RSA 162-F:8, we have received the findings of the SEC concerning regional effects and environmental impacts. Under the statute we are bound by these findings and accordingly incorporate them in this Report, Order and the Certificate of Site and Facility which we will issue. The SEC found that the proposed facility would not unduly interfere with regional development and would not have unreasonable

environmental effects. (See Findings of SEC attached to this Report and Order as Appendix A.)

As we will discuss in detail below, we find that the proposed facility will meet the "need for power" and will not adversely affect system reliability, stability and economic factors. RSA-F:8 I(b) and (c). Accordingly, a Certificate of Site and Facility will issue.

I. Procedural History

On November 13, 1981, NEET filed with this Commission an application for a certificate of Site and Facility to construct, operate and maintain an electric transmission line in Coos and Grafton Counties, New Hampshire. The application was filed pursuant to RSA 162-F. In brief, the application sought approval and a certificate for one of two alternate lines. The first line would extend 83 miles from Tabor Notch in Pittsburg, New Hampshire to a converter site south of Comerford Station. The second line would enter New Hampshire from Vermont at Moore Station and run 6.3 miles to the converter site at Comerford Station. (Application pp. 3-5, 8-9). The application stipulated a design voltage of ± 450 KV, with a carrying capacity of 2000 MW operating on direct current for either alternative. (Application pp. 2-3).

On November 25, 1981, the SEC and this Commission pursuant to RSA 162:7

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met jointly to consider the application and scheduled an informational hearing on the application in Littleton and Lancaster, New Hampshire on December 22, 1981. Informational hearings were subsequently held in Littleton and Lancaster on December 22, 1981 and in Lancaster and Littleton on January 14 and 15, 1982.

Adversarial hearings commenced on February 18, 1982 in Littleton. Subsequent hearings were held in Colebrook, March 4, 1982; in Concord on March 18 and 19, 1982; in Concord, April 15 and 16, 1982; and in Concord, April 22 and 23, 1982. At the April 23, 1982 session counsel for NEET stated that it had completed its case in chief on the issue of the "need for power." (T. 14-167, T. 15-133).

During the course of the hearings two motions of particular relevance to this matter, were filed with the SEC and this Commission. On December 29, 1981 the PEF, a group with full party status in this proceeding moved to recuse Commissioner McQuade of the Public Utilities Commission. On December 31, 1981, the Attorney General, as statutorily appointed representative of the public, also moved to recuse Commissioner McQuade and on January 18, 1982 moved to have a special commissioner appointed under RSA 363:20. Commissioner McQuade subsequently excused himself from these proceedings and the Governor and Council nominated and approved Richard J. Daschbach to sit as special commissioner in place of Commissioner McQuade.

PEF also moved on February 16, 1982 to consider Phase II of the proposed transmission line with Phase I. NEET, in its application, had stated that its proposed transmission line (each alternate) was designed at ± 450 KV and 2000 MW of capacity in the event that sufficient power would be available from Quebec in the early 1990's to warrant additional transmission line construction from Comerford Station through New Hampshire to the New Hampshire-Massachusetts border. NEET referred to the construction of each alternate proposed

in its application as Phase I and referred to the additional transmission line south from Comerford Station to the Massachusetts border as Phase II. NEET stated that if and when Phase II became viable it would make application to the SEC and this Commission for a Certificate of Site and Facility under RSA 162-F for Phase II. NEET stated, however, that the design of the proposed Phase I alternates at the higher voltage of ζ +450 KV at 2000 MW was in contemplation of the construction of Phase II, if and when Phase II were warranted. NEET witnesses also testified that if Phase II were never built, the Phase I alternates could be built at design ratings of approximately ζ +300 KV and 690 MW. NEET objected to the PEF motion to join Phase II with Phase I and the SEC asked for briefs and argument on the issues raised. On April 23, 1982 at the close of the applicant's case on the "need for power" issue, the SEC and this Commission acted on the PEF motion to join Phase I and Phase II. The PEF motion was granted in part and denied in part, (T. 15-113-115), by a ruling requiring NEET to submit an application on Phase II if it proceeded with Phase I at ζ +450 KV and 2000 MW. The SEC and the Commission also ruled that if NEET wished to go forward with the proposed alternates at ζ +300 KV there was no integration and it need not file an application on Phase II. The SEC also referred to this Commission the question of whether NEET had met its burden of proof as the "need for

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power", invited the parties to brief the issue and requested this Commission to act expeditiously in deciding the issue. (T. 15-127-128). NEET excepted to the ruling of the SEC and the Commission (T. 15-133-134). Since the ruling on April 23, 1982, NEET did not file an application on Phase II nor did it amend its present application to cover Phase II.

On June 22, 1982, after receiving briefs by the parties on the issues, the PUC rendered an opinion holding that NEET, had met its burden of proof on the issue of the "need for power." See Opinion and Order Number 15,715. The PUC then referred the matter back to the SEC for further proceedings on all issues. PEF subsequently moved for a rehearing which was denied on July 17, 1982. PEF filed a timely appeal which was withdrawn, as a result of the settlement announced on November 4, 1982 and discussed below.

Additional adversarial hearings were held on August 12, 1982 in Littleton, September 28 and 29, 1982 in Franconia and November 4, 1982 in Franconia. The hearings were closed on November 4, 1982.

At the November 4 hearing, the PUC and SEC were advised of a settlement between NEET and the principal intervenor in these proceedings, the PEF. Under this settlement NEET withdrew its application for the longer 83 mile line. PEF withdrew from the proceedings, NEET moved the SEC and PUC to reconsider its ruling of April 23, 1982 limiting the voltage of the line to ζ +300 KV and PEF filed a statement indicating that it did not object to the motion to reconsider. The Attorney General as counsel for the public and another intervenor, the Society for the Protection of New Hampshire Forests, supported NEET's motion for reconsideration (T. 19-5-12). The SEC and PUC granted the motion to reconsider, reinstated the application for the 6.3 mile line at a design voltage of ζ +450 KV and accepted withdrawal of the application for the longer 83 mile line. (T. 19-15-17)

In granting the motion and reinstating the application for the 6.3 mile line at the higher voltage, both the SEC and PUC noted that their actions on the motion in no way would affect approval of Phase II of the line if and when such a line were to be built and both the SEC and PUC noted that any Phase II facility would require a Certificate of Site and Facility. Counsel for NEET reiterated that NEET fully expected to and would file an application for a certificate if and when Phase II were to be built (T. 19-11-13).

Upon close of record on November 4, 1982, counsel for NEET and the public were asked if they had any objection to any of the exhibits marked for identification being admitted into evidence. There have been and were no objections and accordingly all exhibits have been entered into evidence. Given the narrower scope of the proceedings as a result of rulings on the motion on November 4, the PUC and SEC have prepared proposed findings which were served on November 30, 1982 on counsel for NEET and the public. The proposed findings have been reviewed by counsel and, there being no significant objection to the proposed findings, the proposed findings with certain changes and amendments, are, by this Report and Order, deemed to be final.

II. *Findings on Certain Preliminary and Ancillary Issues*

Before discussing the principal findings on need for power and effects on system reliability and stability, it is first

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necessary to dispose of certain preliminary and ancillary issues.

The first issue is whether the requisite "good cause" under RSA-F:6, II has been shown to permit us to consider the present application. This issue is discussed at length in the findings of the SEC which are included in these findings and attached as Appendix A. (SEC Findings, 67 NH PUC at pp. 921, 922, *infra.*) We concur in the findings of the SEC on this issue and adopt them as our own. We note, however, the statute is silent as to which body or both are to make the determination of "good cause". To assure compliance with the statute we independently find "good cause" for the reasons stated by the SEC and also join with the SEC in their findings on the good cause issue.

The second issue is whether, under RSA 163-F:2, I(c), the proposed facility requires a Certificate of Site and Facility. The line is less than ten miles in length over existing transmission routes. We note that the statute confers discretion on either the PUC or SEC to determine whether the proposed facility requires a certificate. The SEC has found that the proposed facility should be certificated. (SEC Findings, 67 NH PUC at p. 921, *infra.*) We concur in that finding. We also note our particular concern with the electric power systems in New Hampshire. The inescapable fact is that the proposed facility is but the tailend of a large high voltage DC transmission line connecting New England to the very large Hydro-Quebec system. It will be one of the largest DC transmission lines in the country (Ex. 30-2, Ex. 80-7-9, Ex. 86) and will permit large scale power exchanges between New England and Hydro-Quebec for the first time. Accordingly, under the circumstances, we also find that the effects of the proposed facility are substantial enough to require a certificate.

[1] A third issue, which is exclusively the province of the PUC, is whether under RSA 374:22 NEET should be permitted to operate as a public utility in New Hampshire. In a somewhat related proceeding, the PUC examined thoroughly the requirements of RSA 374:22. See Report and Order. Re International Generation & Transmission Co., Inc. (1982) 67 NH PUC 478. Under the statute, the question is whether in the judgment of the PUC the "public interest" is served by permitting a business to operate as a public utility. In considering the "public interest" the Commission examines (1.) financial backing; (2.) management and administrative expertise; (3.) technical resources; and (4.) the general fitness of an applicant. (67 NH PUC at p. 484.) Based on a review of all the evidence, we find that the "public interest" is served by permitting NEET to operate as a public utility. NEET is a subsidiary of New England Electric Systems, a large holding company which through other subsidiaries operates electric generation, transmission and distribution facilities in several New England states. (NEET Application at p. 1) (T. 9-69-71). The New England Electric System has approximately 5000 employees, a large engineering staff and has considerable experience in high voltage transmission. NEET will have ready access to these services as a subsidiary of New England Electric Systems (T. 9-69-71).

A fourth ancillary issue concerns the issuance of a license to cross public waters which license this Commission must issue if the project is to proceed. There are three crossings planned. See Table A and Map attached as Appendix C to this Report and Order. The crossings are over the Connecticut River at

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Moore Reservoir, Littleton and midway between Littleton and Monroe. No structures will be located within public waters (Ex. 32-13) and adequate clearances will be maintained in accordance with the National Electric Safety Code (Ex. 32-3). Accordingly, we hold that the license to permit the three proposed water crossings, subject to meeting the National Electric Safety Code standards, should issue as part of the Certificate of Site and Facility.

The fifth ancillary issue involves the request by NEPCO to lease certain of its transmission facilities and property interests to NEET to enable it to construct and operate the proposed 450 KV (DC) facility and to permit NEET to operate the existing 230 KV (AC) lines owned by NEPCO and located on or near the proposed right of way. NEPCO has submitted a proposed Lease (Ex. 128; T. 17-28) and a proposed Support Agreement (Ex. 129; T. 17-28). See also Petition of NEPCO to the PUC; August 20, 1982. According to these documents NEET needs access to present rights of way of NEPCO in order to construct and maintain the 6.3 mile, ±450 KV (DC) facility. Some of the rights of way held by NEPCO are in the form of easements. There exists some doubt under New Hampshire law as to whether easements are divisible and accordingly, to avoid a possible adverse interpretation of New Hampshire on the divisibility of easements, NEPCO has proposed to lease the facilities in question and contract with NEET to operate the facilities (Petition of 8/20/82, ¶ 3).

This Commission notes that NEPCO and NEET are affiliates in a holding company known as New England Electric Systems (NEET Application at p. 1) (T. 9-69-71). The basis for the petition under RSA 374:30 is to assure construction and operation of the proposed facility in the face of an ambiguity in New Hampshire law. Under RSA 374:30 we must find that the proposed

Lease and Support Agreement are in the "public good." Here, where the transfers are from one affiliate to another in the same holding company to meet what may be a technical, legal requirement of the New Hampshire law of easements, we find that the public good is served by approving the Lease and Support Agreement. Accordingly, the Lease and Support Agreement are approved.

The sixth ancillary issue involves the question whether the alternatively proposed two 230 KV (AC) lines of less than 1000 feet in length crossing the Connecticut River at Comerford Station will have a substantial environmental impact. We note that the statute, RSA 162-F:2(c) vests discretion in either the SEC or PUC to make such a finding. Presumably under the statute both agencies must find *no* substantial environmental impact in order for such a proposed facility to be exempt from the requirements of obtaining a Certificate of Site and Facility. We note that the SEC has found no substantial environmental impact. (SEC findings at p. 4). We adopt these findings as our own and independently determine that the alternatively proposed two 230 KV (AC) lines will have no substantial environmental impact. Therefore, this facility will not need a certificate of site and facility.

However, because the proposed alternate, the two 230 KV (AC) lines, will cross a public water it must obtain a license to do so from this Commission under RSA 371:17. On August 20, 1982, NEET made application to the PUC in this docket for such a license. See Petition for License, August 20, 1982. According to the testimony and petition no

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structures will be located in the Connecticut River and construction and clearances will conform to the National Electric Safety Code. (Ex. 152, T. 17-95-102) (Petition for License, 8/20/82, ¶'s 4 and 5, and Attachments 2 and 3). Under these circumstances it is appropriate to issue the license requested and, accordingly, we will include issuance of the license in our Order.

III. Findings on the Principle Issues on Need for Power and System Reliability and Stability.

The remaining findings concern whether the proposed facility:

- (a.) is required to meet the present and future demand for electric power; and
- (b.) will not adversely affect system stability and reliability and economic factors; (RSA-F:8, I(b) and (c)).

A. The Proposed Facility is Required to Meet the Present and Future Demand for Electric Power

[2] This issue of the "need for power" has been considered at length by this Commission in an earlier Opinion and Order (Opinion and Order No. 15,715 issued June 22, 1982 ([67 NH PUC 409, 48 PUR4th 477]) in this proceeding. We reiterate what was said earlier in that opinion. The term "demand" as used in the statute is appropriately viewed in either the economic sense—the amount of a commodity that buyers will buy at each specified price in a given market; and in its engineering sense—the requirements imposed on an electric system to supply energy at any instant in time or to provide energy over periods of time to perform work. (67 NH PUC at p. 415, 48 PUR4th at p. 482.)

[3] We reiterate also that the term "electric power" as used in the statute includes both energy (the ability to perform work over a period of time), and capacity (the capability of providing energy at any given instant in time). (67 NH PUC at p. 415, 48 PUR4th at pp. 482, 483.) In keeping with our earlier opinion we construe the statute with respect to the proposed facility to require us to determine whether the proposed facility meets the present and future demand for electric power in New Hampshire with due regard given to the integration of the electric systems of New Hampshire with the New England Power Pool. (67 NH PUC at pp. 415-417, 48 PUR4th at pp. 482-484.)

It should be noted that our earlier Opinion and Order merely found the NEET had met its burden of proof on the issue of "need for power" at that stage of the proceedings with respect to both alternates, the 83 mile line and the 6.3 mile line, at a voltage of \pm 300 KV and a capacity of 690 MWs. We expressly stated that the parties would have the opportunity to introduce additional evidence on the issue at subsequent proceedings. We expressed interest in hearing from witnesses from Public Service Company of New Hampshire (PSNH) and the outcome of then pending negotiations with Hydro-Quebec. (67 NH PUC at p. 426, 48 PUR4th at p. 492.)

We also point out that the proposed facility is now only the 6.3 mile line at a voltage of \pm 450 KV and not the longer line or shorter line at \pm 300 KV.

This Commission finds that the increased voltage level of the proposed facility does not make a material difference for purposes of discussing this issue. During Phase I operations the line will carry a maximum of 690 MWs (NEET Application, p. 3) and since we examined the 6.7 (sic) mile line in our

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earlier opinion, what we said in that earlier opinion on the shorter line is equally applicable here. (67 NH PUC at pp. 425, 426, 48 PUR4th at pp. 491, 492.)

Since we found that the Company had met its burden of proof on the shorter line by our earlier opinion, we need only examine the record developed since the hearings on April 23, 1982 to determine what effect the evidence has on the issue of need for power.

On August 12, 1982 Mr. Roy Barbour of the Public Service Company of New Hampshire (PSNH) testified as to the relationship of PSNH to the proposed facility. (T. 16-12-67). The upshot of his testimony was that customers of PSNH would reap substantial economic benefits from the line. Mr. Barbour testified, even if New Hampshire did not get the 5% bonus, which we note now New Hampshire will not get, PSNH would participate to the extent of 8% of the Quebec Savings Fund. (T. 16-16-17).

Secondly, at hearings on September 28, 1982 Mr. Robert Bigelow testified as to the successful completion of negotiations with Hydro-Quebec (T. 17-28-33). The various contracts have been introduced into evidence, (Exs. 128, 129, 130, 131, 132 and 133; T. 17-28-33). Exhibit 133 is a copy of the energy contract with Hydro-Quebec and is referred to as the PASNY-type contract. We discussed this arrangement in our Opinion of June 22, 1982 (67 NH PUC at pp. 421-423, 48 PUR4th at pp. 487-489) and incorporate that discussion here except to note that the record now contains a copy of the contract. Based on the discussion of these

arrangements in our earlier opinion and the newly introduced evidence at subsequent hearings we can say that NEET has only strengthened its case on the "need for power" issue and conclude that substantial energy cost savings benefits will accrue to New Hampshire rate-payers if the proposed facility is built as planned. Accordingly, we find that the proposed facility is required to meet the present and future demand for electric power in New Hampshire.

B. The Proposed Facility Will Not Adversely Affect System Stability and Reliability and Economic Factors

Both Mr. Bigelow and Mr. Robert H. Snow testified on the design of the proposed facility to reduce or eliminate adverse effects on system stability and reliability. Both have advanced degrees in electrical engineering. Mr. Snow's testimony however, was the more extensive on this issue. (Exs. 2, 3, 10 and 11-31). No other witnesses testified on issues of stability and reliability and there was little, if any, cross-examination on those issues.

At the outset, we note that the choice of direct current (DC) was made for the reason to protect the New England systems from the instability created by a single alternating current tie with the large Hydro-Quebec system (NEET Application at p. 2). Mr. Snow further described the proposed facility and its design to protect the New England transmission systems from instability and decreased reliability. Mr. Snow supervised electric power flow studies and transient stability studies for purposes of determining the effects of the proposed facility on system reliability (Ex. 11-5-14). Within these studies a number of severe conditions were simulated and the operation of the proposed facility tested in light of these conditions (Ex. 11-10-12).

In addition, tests for system stability were conducted in which tests severe disturbances, such as short circuits, were

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hypothesized. From the tests conducted and as described in Mr. Snow's testimony it can be concluded that the proposed facility will have no adverse effects on stability or reliability (Ex. 11-12 and 14.) Mr. Snow also testified that the DC design of the facility enabled both the New England and Hydro-Quebec systems to buffer disturbances on the other's system and promoted very close control of power flows. (Ex. 11-15).

With respect to economic factors, Mr. Snow testified that the choice of \pm 450 KV an appropriate compromise between physical constraints of existing transmission rights of way and an optimal voltage of \pm 500 KV. (Ex. 11-16). According to Mr. Snow, the higher voltage reduces line losses but increases right of way clearance requirements. (Ex. 11-16). In any event, Mr. Snow estimated line losses to be very low, - on the order of .5% of the power transferred at 2000 MWs and .2% of power transferred at loadings of 690 MWs. (Ex. 11-18).

In light of this uncontradicted testimony, we find that the proposed facility will not adversely affect system stability and reliability and economic factors.

IV. Conclusions

For the reasons set forth in the foregoing Report, this Commission finds that the proposed facility is required to meet the present and future demand for electric power and will not adversely affect system stability and reliability and economic factors. Being bound by the

findings of the Bulk Power Facility Site Evaluation Committee as set forth in Appendix A to this Report, we also find that the proposed facility will not unduly interfere with the orderly development of the region and will not have unreasonable adverse effects on esthetics, historic sites, air and water quality, the natural environment and the public health and safety. Accordingly, by the following Order, this Commission will issue a Certificate of Site and Facility for a \pm 450 KV DC transmission line of approximately 6.3 miles in length along existing transmission rights of way between Moore Station, Littleton, N.H. Included in this Order will also be the preliminary and ancillary findings described at pages 8 through 12 of this Report. We will also add as a condition to the certificate the sixth (6th) conclusion of the Bulk Power Facility Site Evaluation Committee as set forth in Appendix A to this Report and Order. To the sixth (6) conclusion, we also add the following comment. When and if Phase II is to be built, we fully expect that a further assessment of the "need for power" will then be made by this Commission. This assessment, we expect will take into account subsequent developments in New Hampshire and the availability of energy and capacity from sources of electricity presently being built or to be built. Finally, we will also include the reference by the Bulk Power Facility Site Evaluation Committee to the Wetlands Board and Water Supply and Pollution Control Commission for the issuance of the wetlands and dredge and fill permits as described in the fourth (4th) conclusion and will attach these permits as Appendix D.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report, the findings of the Bulk Power Facility Site Evaluation Committee attached as Appendix A, Appendix B, Appendix C and Appendix D all of which are made part of this order, it is

ORDERED, that New England Electric Transmission Corporation is authorized to commence and engage in business as a public utility in the State of New Hampshire and to construct, operate

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and maintain transmission facilities in the Towns of Littleton and Monroe, New Hampshire; and it is

ORDERED, that the proposed 450 KV (DC) transmission line facility is of sufficient character and substantial environmental impact to require a certificate of site and facility; and it is

ORDERED, that the requisite good cause exists to permit issuance of this certificate of site and facility and to permit commencement of construction of the proposed 450 KV (DC) transmission line facility within two years of November 13, 1981; and it is

ORDERED, that a Certificate of State and Facility be, and hereby is, granted to the New England Electric Transmission Corporation for the construction, maintenance and operation of a direct current transmission line of \pm 450 KV approximately 6.3 miles in length along or adjacent to existing transmission rights of way between Moore Station, Littleton, N.H. and Comerford Station, Monroe, N.H. and attendant converter station facilities; and it is

ORDERED, that a license be issued and is hereby issued under RSA 371:17 to permit, in

conformity with the National Electric Safety Code, three water crossings by the 450 KV (DC) transmission line facility over the Connecticut River at Moore Station and midway between Moore Station and Comerford Station as set forth in Appendix C to this Report and Order; and it is

ORDERED, that the Lease and Support Agreement as described in this report at p. 10, between the New England Power Company and the New England Electric Transmission Corporation are approved; and it is

ORDERED, that all licenses and/or permits referred to in the foregoing Report and attached findings of the Bulk Power Site Evaluation Committee, including the permits to be issued by the Wetlands Board and the Water Supply and Pollution Control Commission under RSA 249:8-a and RSA 483-A, are granted, or are to be granted, as specified, thus constituting compliance under RSA 162-F:8 II that all state standards and requirements shall be met by the New England Electric Transmission Corporation as a condition of granting this Certificate of Site and Facility, and it is

ORDERED, that the authority granted herein be and hereby is conditional upon the applicant obtaining the necessary approvals, permits and/or licenses from the United States Federal Energy Regulatory Commission, the United States Department of Energy and/or the President of the United States, and it is

ORDERED, that the alternative, two 230 KV (AC) lines, proposed by the New England Electric Transmission Corporation will not have a substantial environmental impact and therefore will not require a Certificate of Site and Facility; and it is

ORDERED, that a license be issued to the New England Electric Transmission Corporation to permit in conformity with the National Electric Safety Code, the crossing of the alternate, two 230 KV (AC) lines, of the Connecticut River below Comerford Station, Monroe, New Hampshire; and it is

FURTHER ORDERED, that if and when Phase II of the proposed transmission line is to be constructed, the applicant, if it is New England Electric Transmission Corporation or an affiliate, make application for a Certificate of Site and Facility for Phase II and nothing in the findings of the Bulk Power Facility Site Evaluation Committee or the New Hampshire Public Utilities Commission

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in this docket shall affect whether Phase II receives a Certificate of Site and Facility.

By order of the Public Utilities Commission of New Hampshire this 17 day of December, 1982.

APPENDIX A

FINDINGS OF THE BULK POWER FACILITY SITE EVALUATION COMMITTEE IN DSF 81-349

In the Report and Order accompanying the findings of the New Hampshire Public Utilities Commission (PUC) there is a recitation of the procedural history of this proceeding. The Bulk

Power Facility Site Evaluation Committee (SEC) need not repeat all of the details of the procedural history for purposes of its findings. However, it is necessary for the SEC, at the outset, to review briefly the motion, filed on August 20, 1982 with the PUC, concerning the proposed crossing of the Connecticut River by two alternating current lines of 230 kilovolts at Comerford Station and the Motion for Reconsideration made at the last hearing on November 4, 1982 and the ruling of the SEC and the PUC with respect to that Motion.

On August 20, 1982 the applicant, New England Electric Transmission Corporation (NEET), filed a petition with the PUC for a license to construct and maintain two transmission lines of 230 KV (AC) crossing the Connecticut River at Comerford Station, Monroe, New Hampshire ("230 KV Petition") and requested that this matter be considered in DSF 81-349. This petition involves the SEC insofar as the SEC needs to make a finding under RSA 162-F:2(c) as discussed below. As discussed below we find that the proposed 230 KV facility does not create any substantial, environmental impacts, needs no certificate of site and facility and therefore is not before us for further consideration.

On November 4, 1982 the SEC and PUC were notified that agreement had been reached among the applicant — NEET and the Powerline Education Fund (PEF), principal intervenor in this proceeding. Under that agreement NEET withdrew its application for the longer 83+ mile transmission line route and PEF withdrew from the entire proceeding at the same time. NEET requested the SEC and PUC reconsider their order of April 23, 1982 in which they ruled that unless NEET amended its application to include Phase II of the transmission line, NEET was to proceed with a proposed line of \pm 300 KV. The motion to reconsider was not opposed by PEF, supported by the Attorney General and endorsed by the Society for the Protection of New Hampshire Forests, another active participant.

The SEC and PUC granted NEET's motion to reconsider and upon reconsidering the matter voted to lift the voltage limitation on the shorter route from Moore Station to Comerford and reinstate NEET's application for the shorter route of \pm 450 KV's. (T. 19-5-11, 17-18) Accordingly, the SEC for purposes of fulfilling its responsibilities under RSA 162-F:1 et seq. has before it a proposed DC transmission of approximately 6.3 miles in length between Moore Station in Littleton, N.H. and Comerford Station in Monroe, N.H. It is also important to reiterate in these findings that by granting the motion to reconsider and by removing the voltage limit on the shorter line, the SEC was in no way passing on or indicating whether or not favorable consideration would be given to an application by NEET or any of its

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affiliates for Phase II. Moreover, the SEC holds that its findings which are a partial basis for issuance of a certificate of site and facility for the proposed shorter route are in no way to be construed as favoring Phase II or supporting Phase II. If and when Phase II is ready to be built the SEC expects the appropriate sponsor to make application for a certificate of site and facility at that time and, accordingly, the SEC requests that a condition be contained in the certificate issued by the PUC requiring the applicant or its affiliates to file an application for Phase II at the appropriate time. (T-19-11-14)

Before discussing the two principle findings which the SEC must make under the statute

there are three preliminary matters on which we must make findings. The first preliminary matter is whether the proposed 6.3 mile 450 KV (DC) facility should require a certificate of site and facility because of a substantial environmental impact. RSA 162-F:2(c) defines a bulk power supply facility, among other definitions, as a line in excess of 100 kilovolts (KV) and ten miles in length not over existing transmission rights of way or a line which the SEC /f2or/f1 the PUC determines should require a certificate of site and facility because of substantial environmental impacts. The proposed facility is less than 10 miles in length, more than 100 KVs in design and goes for almost its entire length over existing transmission rights of way. Because of the pendency of the application for the longer 83 mile route neither the PUC or SEC expressly addressed the issue presented by RSA 162-F:2(c). However, for purposes of these findings, the SEC finds that the proposed facility is one which should require a certificate. The reasons for this finding are that the proposed facility is the first DC transmission line of any distance in New Hampshire; DC transmission lines are relatively new to the electric utility industry in the United States (Ex. 78-2-3); and the line is designed to interconnect with a longer DC transmission line in Vermont which in turn links two very large utility systems (Hydro-Quebec and New England) together for large scale power exchanges for the first time. For these reasons prudence dictates that the proposed facility obtain a certificate of site and facility.

Unlike the 6.3 miles transmission line discussed above, the alternatively proposed 230 KV (AC) line crossing at Comerford Station requires no certificate of site and facility. According to NEET's petition the 230 KV (AC) line will only be built if the entire D.C. transmission line and converter station is located in Vermont. (230 KV Petition, ¶ 4) (Ex. 152, T. 17-95-102) The 230 KV line will be at most 1000 feet in length in New Hampshire, on land owned by NEET's affiliate, New England Power Company and will interconnect with the existing switchyard at Comerford Station. (230 KV Petition, ¶ 4) (Ex. 152, T. 17-95-102) Under the circumstances, the 230 KV will not have a substantial environmental impact, does not need a certificate of site and facility and accordingly the matter is referred to the PUC for their disposition.

The third preliminary finding is whether the requisite "good cause" exists to award a certificate for the proposed facility notwithstanding the application for the proposed facility was not filed with the PUC two years prior to the planned date of commencement of construction. See 162-F:6, II. We find that the requisite good cause exists in this instance. As we noted above, the proposed facility is designed to interconnect

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with a longer Vermont sited transmission line. The proceedings in Vermont are near completion and it is of importance to the Vermont process to complete the process here in New Hampshire. (T. 19-19-26) Moreover the plans to proceed with construction of the transmission line only recently came to fruition with the occurrence of two events. The first event was the increased and strong interest of Hydro-Quebec to engage in serious contract negotiations for the exchange of energy between the New England and Hydro-Quebec system and the second was the stimulus of the Governor of New Hampshire and the State of Vermont to encourage these negotiations. (NEET Application at p. 5, Ex. 3-7-9, T. 19-19-26) Under the circumstances and given the relatively small size of the New Hampshire segment of a much larger line, adequate good cause exists to permit the filing and consideration of this application.

Having disposed of these preliminary matters, it is now necessary to address the two principle findings which are the responsibility of the SEC under the statute.

Under RSA 162-F:8 the SEC must find that the proposed facility

(1) will not unduly interfere with orderly development of the region with consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies and

(2) will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment and the public health and safety.

The SEC hereby finds that the proposed facility will not unduly interfere with the orderly development of the region and will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment and the public health and safety.

The following is a discussion of the basis for these findings.

A. The Proposed Facility Will Not Unduly Interfere with the Orderly Development of the Region.

The single most important fact bearing on this finding is that the proposed transmission line with the exception of 2000 feet of new right of way, occupies or follows existing transmission lines for its entire length of 6.3 miles. The line joins with a converter station occupying some 23 acres of land adjacent to switch-yards at Comerford Station in Monroe, N.H. (Ex. 64-4-23-24). Under these circumstances the proposed facility is compatible with land use patterns in the area and will not interrupt or conflict with land use plans or developments or interfere with existing commerce. There are three highway crossings proposed for the line over Routes 18/135, 135 and Interstate 93 for which NEET has already obtained the requisite approval from the Department of Public Works and Highways; see letter of December 2, 1982, appended to the PUC Report and Order in this docket as Appendix "B".

Moreover, whatever slight effects the proposed facility may have on development of the region appear to be offset by the tax benefits associated with the facility, especially in the Town of Monroe. NEET has estimated that based on 1980 tax data tax rates could be decreased by in excess of 75% for the Town of Monroe due to the increased revenue from the converter station alone. (Ex. 64-5-23, Ex. 147) These figures, of course, do not take into account the savings in costs of electrical energy for customers in the region of New Hampshire's electric utilities

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which will receive the benefits of the exchange between Hyrdo-Quebec and the New England system.

B. The Proposed Facility Will Not Have an Unreasonable Adverse Environmental Impact.

Within the broader category of environmental impacts there are five specific categories of impacts which the SEC must address. These five categories are (1) impacts on aesthetics, (2) impacts on historic sites, (3) impacts on air and water quality, (4) impacts on the natural environment and (5) impacts on public health and safety. RSA 162-F:8. Each will be treated separately below.

Before examining these five specific impacts it should be reiterated that the proposed facility will be located on or near to existing transmission lines and electrical switchyards. Secondly, every human activity has some effect on the environment and construction and operation of the proposed facility is no exception to the rule. However, the relevant inquiry under the statute is whether the proposed facility will have an "unreasonable" environmental impact. Whether the impacts are "unreasonable" depends on the assessment of the environment in which the facility will be located, an assessment of statutory or regulatory constraints or prohibitions against certain impacts on the environment and a determination as to whether the proposed facility exceeds those constraints or violates those prohibitions.

NEET has performed an environmental assessment and has offered testimony by Messrs. Smith, Perry, Paul and Sicuranza and several exhibits (Ex. 32-38, 64, 66, 71, 139-157) The testimony and exhibits show no violation of existing regulatory or statutory constraints by construction, operation and maintenance of the proposed facility (T. 12-24, Ex. 76) With respect to Wetlands permit requirements and Dredge and Fill requirements we make the requisite finding below and refer issuance of the permits to the respective agencies charged with these administrative duties under the law. In two areas, that of use and application of herbicides and electrical effects on human health, the expert testimony is in conflict, but given the evidence adduced and the present record before us we find that there will be no unreasonable, adverse environmental effects.

(a.) *Esthetic Impacts*

The proposed transmission line will be located on or near, with exception of some 2000 feet, either 115 KV transmission lines or 230 KV transmission lines. The proposed towers will be from 75 to 115 feet high and will be taller than the existing 115 KV and 230 KV towers by some 25 to 40 feet (Ex. 34, NEET application p.3). Given the existence of relatively tall transmission towers along the proposed route the addition of the 450 KV DC towers will have a minimal esthetic impact.

The converter station, to be located at Comerford Station in Monroe will be adjacent to a large switchyard presently used for that station. The converter station will be a large, low building located on some 23 acres of land adjacent to the switchyard (Ex. 64, 152, 153). Again, given the existence of a large switchyard adjacent to the converter station, the esthetic impacts of the proposed facility will be minimal.

(b.) *Impacts on Historic Sites*

There are no known historic or archaeological sites within the area of the proposed facilities. Hence there are no identifiable impacts on historic sites of the proposed facility. Moreover, NEET has stated it will maintain contact with

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the State Historic Preservation Offices as the project proceeds. (Ex. 64-1-8, 2-61-63)

(c.) *Impacts on Air and Water Quality*

With the exception of air ions and application of herbicides for ground cover control, there

are no substantial impacts on air and water quality of the construction and operation of the proposed facilities. The situations involving air ions and herbicide application are discussed in detail under "(e.) Impacts on Public Health and Safety."

In its application, NEET seeks permission to dredge and fill in certain state waters and wetlands from the Wetlands Board and the Water Supply and Pollution Control Commission. NEET Application Appendix G. Given that only the 6.3 mile line is before us we are now concerned with five stream crossings and one wetlands crossing. See Table A and Map (Revised 12/82) appended to the Report and Order of the PUC as Appendix "C". (Exs. 145, 150, T. 17-85-96) According to the application, Appendix G and Mr. Smith's testimony only those access roads necessary to cross streams and wetlands will be built. Where access roadways are needed across streams and wetland culverts would be aligned and constructed to permit free passage of water. The roads would be constructed of clean gravel and would be so constructed as not to interfere with fish passage. NEET Application, Appendix G at p. 3. Where construction of structural supports for towers could be necessary, the record discloses that all fill material will be clean and will not be discharged into wetlands or streams. (NEET Application Appendix G, at p. 3.)

On the basis of this evidence we find there would be no reasonable adverse environmental impact of the proposed facility on the five stream crossings and one wetland crossing contemplated and as indicated in Appendix "C" to the Report and Order of the PUC.

Under RSA 162-F:1 et seq. and *Society for the Protection of New Hampshire Forests v Site Evaluation Committee* (1975) 115 NH 163, we, accordingly, refer the application for a wetlands permit and dredging permit to the Wetlands Board under its authority in RSA 149:8-a and the Water Supply and Pollution Control Commission under its authority in RSA 483-A for their issuance of the necessary permits subject to their standard terms and conditions. We also add as a term of the Certificate of Site and Facility to be issued herein, an order that such permits shall issue pursuant to reasonable and standard terms and conditions in such matters.

(d.) Impacts on the Natural Environment

A review of all the testimony and exhibits discloses that there would be no continuing, significant impacts on water quality standards adopted by the legislature for the surface waters in the area under consideration. (Ex. 64-2-17) Deer yards are also not located near or within the project boundaries of the proposed facility. (Ex. 172-10) Endangered species have not been sighted in the project area. (Ex. 64-2-13-15)

Waterfowl will not be substantially affected as no major migration routes traverse New Hampshire and there is one minor waterfowl migration area located just below Moore Dam. (Ex. 64-2-16) To the extent that common species of wildlife inhabit the area of the proposed facilities, these species have cohabited with existing transmission lines and will not be substantially affected by the addition of a new line.

(e.) Impacts on Public Health and Safety

The SEC heard considerable testimony concerning use and application of

herbicides for right of way clearing and the health effects of electrical phenomena occasioned by operation of the line. The substance of this testimony concerned the most significant aspects of public health and safety resulting from maintenance and operation of the line.

With respect to herbicide use, NEET proposes to use herbicides selectively to suppress the high growing plant species. (Ex. 33-10-11) Only herbicides registered with the United States Environmental Protection Agency (EPA) and the New Hampshire Pesticide Control Board (NHPCB) are to be used. (Ex. 33-10, Exs. 48 and 59) Moreover, these herbicides are to be applied by hand operated applicators by licensed herbicide application companies subject to inspection by the arborist employed by NEET and will be applied consistent with any condition stipulated by the NHPCB. (Exc. 58 and 59)

With respect to the herbicide issue, a discussion is warranted of the testimony of Dr. Ruth Shearer who testified on behalf of the PEF. (Ex. 163) (T. 18-3-97) Her testimony concerned the possible chronic effects of the use of the chemical 2-4-D and Picloram, two chemicals which NEET proposes to use in right of way maintenance. Both substances or compounds of these substances are registered by EPA and 2-4-D appears to be permitted for use by the NHPCB and Picloram is on the restricted use list. See Regulations-NHPCB, January 1, 1970, revised March 12, 1980, page 8 of State Restricted Use of Pesticide List. Dr. Shearer's testimony was that registration by EPA of 2-4-D and Picloram did not signify affirmatively that either compound did not cause deleterious health effects over the long term, the existing data are inadequate and further research needs to be performed. NEET offered testimony and evidence through Mr. Van Bossuyt, Dr. Devlin and Dr. Deubert (Exs. 182, 184, 186) (T. 19-125-137) which tended to rebut Dr. Shearer's testimony. Specifically, Drs. Devlin and Deubert noted that both chemicals degrade quickly in an environment of normal rainfall and that there was only the very remote possibility that the chemicals would reach ground water levels even in very small quantities. (T. 19-125-137).

We should note at this juncture that the expert testimony conflicts and that there is a dearth of data and studies on the chronic, long term effects of the chemicals at issue. However, we are compelled by the statute to make a finding concerning the reasonableness or unreasonableness of identified, adverse impacts. This task, especially when confronted with conflicting expert testimony and a dearth of information, is a difficult one. We should also note that our inquiry necessarily requires us to assess the risks of harm or adverse impacts. As discussed above, the NHPCB closely regulates herbicide use under conservative standards and rules. Moreover, NEET also imposes conservative restrictions on herbicide use above and beyond those of the NHPCB. Our assessment of the risks based on the record, information presently available and controls exercised by the NHPCB are that risks of adverse impacts on public health are low and the proposed use of herbicides by NEET do not create unacceptable risks to public health.

Under the circumstances and given existing statutory and regulatory authorization of the NHPCB, we find that the selective use of registered pesticides by licensed applicators per the NHPCB's rules on application and NEET's internal requirements to be prudent. We find at

this time that use under these restrictions and circumstances will not create an unreasonable adverse impact on public health and safety. The conditions on use laid down by the Mr. Smith in his testimony (Ex. 32-10-11) and prescribed by the NHPCB shall be followed by NEET.

The other issue of significance concerned the health effects of certain electrical phenomena associated with operation of the line. NEET offered testimony through a brace of witnesses Mr. Haralampu, Mr. Comber, Dr. Charry and Mr. Banks. The SEC called its own witnesses, Dr. Medici. (Exs. 90, 80, 93, 78 and 179) The principle concern of the NEET witnesses was the effects on human health of air ions emitted by the line when it enters a state known as "corona" (Ex. 80-2). The line will not always be in corona as that depends on the surface condition of the conductor and weather conditions. Rain or snow appears to cause corona. (Ex. 80-4-7) Mr. Comber also testified that the design of the line was "conservative" in favor of reducing corona when compared to other DC lines in operation. (Ex. 80-8) Mr. Comber also testified that concentrations of air ions created by the line would not exceed or in many cases be substantially less than concentrations of air ions in other environments of common human experience. (Ex. 80-26, Ex. 85) Mr. Comber has also had considerable experience in examining the electrical effects of D.C. transmission lines and he testified that he had observed no adverse public health impacts. (T. 13-22-40) (Ex. 80-29) Dr. Charry testified that very few, if any, studies of DC electrical effects had been replicated but that based on the small body of literature available no deleterious effects had been uncovered. (Ex. 93-18) Dr. Medici testified that the small body of literature did *not* suggest that no harmful effects occurred. (Ex. 179-14-15)

We should note again we are compelled by the statute to make a finding on the reasonableness or unreasonableness of the impacts on public health and safety of the electrical effects of the proposed line. As with the testimony on herbicides, the testimony on electrical effects is in conflict in that one group of experts has the opinion that there are no adverse health effects and another witness has the opinion that one cannot conclude from the data that there are no adverse health effects. We note also there is a lack of information in this field. Accordingly we must undertake an assessment of the risks of unreasonable adverse health effects and make a judgment based on the record and the present, imperfect state of human knowledge. As we discussed above, the line is "conservatively" designed, emits air ions only when in corona and the concentrations of air ions emitted from the line will be substantially less than encountered by human beings in a number of common experiences. NEET'S witness who testified on these matters had considerable experience in examining electrical effects of D.C. lines. Given this testimony and evidence and the present state of our knowledge, we find that the risks of adverse impacts on the public are low and that the effects on public health, if any, fall within an acceptable range. Accordingly, we find that the electrical effects of the facility will not unreasonably affect public health and safety.

CONCLUSION

The SEC hereby finds and determines that:

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1. Requisite good cause exists under RSA 162-F: to consider the application for a site and facility for the proposed facility;

2. The proposed facility, in light of all the circumstances, is a facility which has a sufficiently significant environmental impact, to require a certificate of site and facility;

3. The proposed facility consisting of 6.3 miles of ¶ 450 KV DC transmission line running over or adjacent to existing transmission rights of way and facilities between Moore Station in Littleton, N.H. and Comerford Station in Monroe, N.H. and a converter station located adjacent to the switchyards at Comerford Station;

(a.) will not duly interfere with the orderly development of the region;

(b.) will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment and the public health and safety; and

4. The application for the Wetlands permit under RSA 149:8-a and for dredge and fill under RSA 483-A is referred to the Wetlands Board and the Water Supply and Pollution Control Commission respectively for their issuance of such permits as required by law and pursuant to standard and normal conditions for such permits.

5. The facility for two 230 KV (AC) lines of less than 1000 feet crossing at Comerford Station, Monroe, N.H. will not have a substantial environmental impact, and

6. If and when Phase II of the proposed line is to be constructed, the applicant, if it is New England Electric Transmission Corporation or an affiliate, shall make application for a certificate of site and facility for Phase II and nothing in the actions taken by the Bulk Power Facility Site Evaluation Committee in this docket shall affect whether Phase II receives a certificate of site and facility.

The undersigned, members of the Bulk Power Site Evaluation Committee, hereby adopt these findings and transmit them to the New Hampshire Public Utilities Commission under RSA 162-F:8, I: William A. Healy, Chairman Executive Director, Water Supply and Pollution Control Commission George Gilman, Commissioner Department of Resources and Economic Development Charles E. Barry, Director Fish and Game Department Ronald F. Poltak, Director Division of Parks John R. Stanton, Chief Bureau of Environmental Health Delbert F. Downing, Chairman Water Resources Board Dennis R. Lunderville Director, Air Resources Agency Edgar J. Helms, Commissioner Department of Health & Welfare Theodore Natti, Director Division of Resources J. Michael Love, Chairman Public Utilities Commission Bruce B. Ellsworth, Chief Engineer Public Utilities Commission DATE: December 10, 1982

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APPENDIX B

JOHN A. CLEMENTS. P.E. COMMISSIONER

Mr. Michael Love Chairman N. H. Public Utilities Commission 8 Old Suncook Road.
Building #1 Concord, New Hampshire 03301

Dear Mr. Love:

SUBJECT: DSF 81-349 Application of New England Electric Transmission Corporation for a Certificate of Site and Facility to Construct, Operate and Maintain An Electric Transmission

Line in Coos and Grafton Counties, New Hampshire

The New Hampshire Department of Public Works and Highways has considered the Petition for a Permit under RSA Chapter 254 to cross state highways with overhead conductors with respect to the above captioned matter. The Petition is considered with respect to the three state highway crossings involved in the Moore to Comerford alternate route which are identified on Exhibit 142 as State Route 18/135, State Route 135, and I-93, all in the Town of Littleton.

In recognition of the Applicant's Petition for there highway crossings, a permit is granted with the following conditions:

- a. All wires and cables located within public ways will conform to clearances required by the National Electric Safety Code and any additional clearances required by the Department of Public Works and Highways, as deemed appropriate to allow for improvements to existing highways.
- b. All poles or structures will be located outside the highway right-of-way and where practicable at least 50-feet from the highway right-of-way to allow future improvements to the highway facilities.

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- c. All other facilities installed within the limits of the public right-of-way including temporary structures, appurtenances and equipment used in the construction phase of these transmission lines shall conform to the Public Utilities and Facilities Policy and Procedure by the State of New Hampshire, Department of Public Works and Highways. Construction schedules and procedures including traffic control measures shall be approved in advance of construction by Highway Division Engineer Ralph E. Sanders at our Twin Mountain Office (Tel: 846-5572).

I understand that this permit with the accompanying conditions will be incorporated into a Certificate of Site and Facility with respect to the Application, as and when issued by the Public Utilities Commission pursuant to RSA Chapter 162-F.

Licenses for the above-mentioned crossings of State maintained highways will be granted in the normal manner after the crossings are installed, provided the petitions for licenses are submitted and the installations are made in compliance with the foregoing provisions.

Very truly yours,

John A. Clements, P. E. Commissioner

APPENDIX C

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

TABLE A

SURFACE WATER CROSSINGS
PREFERRED ROUTE

TOWN

Littleton

Monroe

*Line would cross approximately 500 ft. through this woodlot adjacent to NEP's existing 230-kV lines.

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[Graphic Not Displayed Here]

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APPENDIX D

December 8, 1982

New England Electric Transmission 4 Park Street Concord, New Hampshire 03301

SUBJECT: REQUEST TO CONSTRUCT AN OVERHEAD DIRECT CURRENT TRANSMISSION LINE, LITTLETON AND MONROE, NEW HAMPSHIRE

Dear Sirs:

Subject request has been duly considered and is hereby approved pursuant to RSA 149:8-a.

This permit is valid for two years from the date of issue under the following conditions:

1. There shall be no interference with water supplies or fish and other aquatic life; and 2. There shall be no lowering of the Class B water quality classifications assigned by the legislature.

Very truly yours, For Ronald B. Junce Terrence P. Frost Chief Aquatic Biologist

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SPECIAL CONDITIONS

1. Use of stream beds for skid trails or yards is prohibited. 2. Culverts, bridges, or other suitable stream crossing devices are required to cross all streams. 3. All skid trails shall be located to prevent erosion problems. 4. An apron of suitable distance shall be left between the roads and skid trails and the watercourse to allow silt and other suspended materials to settle out before runoff reaches the watercourse.

THE STATE OF NEW HAMPSHIRE WETLANDS BOARD Concord. N.H.

PERMIT

This certifies that New England Electric Transmission Corporation of Four Park Street, Concord on December 7 1982 in accordance with RSA 483-A (supp) was issued a permit No. N-604 to perform the following activities in or adjacent to Various Streams and Wetlands Various towns/cities brook and Wetlands crossings in accordance with plans and specifications on file with the Wetlands Board. Specific conditions: approval as per plan and application with the condition that suitable means to prevent turbidity be used

PER ORDER OF WETLANDS BOARD Delbert F. Downing Chairman

Application is hereby made for a permit to accomplish work described below relating to filling, dredging, or construction of structures under the provisions of RSA Chapters 483-A and 149:8a. One copy of your application will be acted upon by the U.S.P.C.C. and such action will be incorporated in one distribution.

1. Name of Owner New England Electric Transmission Corporation Telephone No. (605) 225-5528 Residence or principal business address 4 Park Street, Concord, New Hampshire 03301

2. LOCATION OF PROPOSED CONSTRUCTION Various Towns — See List of Stream and Wetland Crossings

3. Complete the location map on reverse side on all copies or attach map to each copy.

4. Adjacent to, or in (salt) (fresh) water See List of Stream and Wetland Crossings

5. Type of project — Fill (x) Dredge () Wharf () Other

6. Reason(s) for proposed construction Construction of a 450 kV electric power line

7. Proposed starting date Summer 1983 Completion date October 1986

8. Description of construction (use reverse side for additional information):

(a) Type of material: Dredge. Fill See Page 1 attached.

(b) Estimated quantity of dredge material (cu. yd.)

(c) Estimated quantity of fill material (cu. yd.).

(d) Final disposition of dredged material

(e) If any channel is to be constructed, the distance the flow of water is to rerouted:

9. Contractor or Agent Contractors to be hired at a later Telephone No. Address

10. Major Project Yes x No If yes (1) file one copy of project plan with town/city clerk
See section 10 on reverse side clerk

(2) submit photograph(s) to Wetlands Board depicting wetlands to be filled or dredged

11. I hereby certify that the applicant has filed three copies of said application with the town/city of as required by Chapter 483-A:1 as amended 1973.

DATE Signature
(Town/City Clerk)

12. Complete list of all abutting owners. their addresses, and phone numbers. This certifies that they have been notified in writing of the work proposed. A permit issued under this application shall be non-transferable and shall expire two years from date or issue. The permit must be received by the application prior to commencement of the work and the posting petit is to be posted in a secured manner in a permanent place at the site of the approved project.

Signature of Owner or Authorized Agents/ Robert O. Bigelow Date November 12, 1981

INTERFERENCE WITH ADJACENT PROPERTIES

Authorization of work or structures by the Wetlands Board, and/or Water Resources Board, does not convey a property right, nor authorize any injury to property of invasion of other(s) rights. This permit (or approval) does not relieve the applicant from the obligation to obtain such other local, state, or federal permits or approvals as may be required by law.

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NH.PUC*12/17/82*[79475]*67 NH PUC 936*Mountain Springs Water Company

[Go to End of 79475]

Re Mountain Springs Water Company

Intervenor: Mountain Lakes District

DR 82-334, Supplemental Order No. 16,062

67 NH PUC 936

New Hampshire Public Utilities Commission

December 17, 1982

ORDER dismissing petition for rate increase.

APPEARANCES: Daniel Laufer for Mountain Springs Water Company; Dar-tell Hotchkiss for the Mountain Lakes District.

Before Love, chairman.

BY THE COMMISSION:

REPORT

This proceeding was initiated by Mountain Springs Water Company on November 8, 1982. By Order No. 16,007 the Commission suspended the tariffs filed. A hearing was scheduled for December 20, 1982 at 10:00 a.m. by an Order of Notice issued on November 23, 1982. This proceeding is, however, the result of Commission concern over the need to improve certain filter beds associated with the Mountain Springs System. The rate increase proposed is alleged by the Company as necessary for the completion of this project.

The history of proceedings involving Mountain Springs before this Commission include a recent rate decision, a recent valuation of the Company for purposes of transfer of ownership, and a consumer complaint.

These three decisions are presently winding their way through the judicial system. At stake are the rates, the value of the Company, the ownership of the Company and the ability of the Commission to order certain actions to be taken by the Company.

The Commission finds that further proceedings involving this Company and its customers on the issue of capital improvements is bound to lead to further controversy concerning the very same issues that are before the various State Courts. The Commission finds that decisions in these appellate proceedings are imminent and that reasonableness dictates waiting for resolution of at least some of the issues associated with the previous three cases.

The Commission also finds that the filing is deficient in that our filing rules have not been adhered to and as consequence even absent the appeals, the case is not ripe for hearing.

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Based upon the foregoing, the Commission dismisses the petition without prejudice. Furthermore, the Commission removes any order regarding the treatment of these filter beds. In doing so, the Commission notes that the Company is still obligated to honor any requirements of the Water Supply and Pollution Control Board. Finally, as long as Mountain Springs is a water utility they are obligated to adhere and comply with the RSA 374:1 standard of service to their customers.

This petition is hereby dismissed without prejudice. Furthermore, this case is closed.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that this petition is dismissed without prejudice; and it is FURTHER ORDERED, that this docket is closed.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1982.

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NH.PUC*12/17/82*[79476]*67 NH PUC 937*Boston and Maine Corporation

[Go to End of 79476]

Re Boston and Maine Corporation

DR 82-360, Order No. 16,063

67 NH PUC 937

New Hampshire Public Utilities Commission

December 17, 1982

Order authorizing implementation of transit storage tariff.

BY THE COMMISSION:

ORDER

WHEREAS, the Boston & Maine Corporation, Robert W. Meserve and Benjamin H. Lacy, Trustees, by their Agent, J.A. Truesdale, Manager — Tariff Bureau, for and on behalf of the Boston & Maine Corporation's Tariff, NHPUC BM 900, has filed a petition pursuant to Chapter 378, praying for authority to put into effect on one day's notice, the above numbered intrastate New Hampshire tariff of decreased rates and charges thereby allowing to publish the following:

To publish Boston & Maine Corporation NHPUC BM 900, the storage in transit arrangements for sanitary paper products in Boston & Maine Corporation Box Cars on Boston & Maine tracts at Berlin, Gorham, Littleton-Bethlehem or Whitefield, New Hampshire, which will become effective December 21, 1982, and will expire May 31, 1982 unless sooner cancelled changed or extended; and

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WHEREAS, the petitioner bases such a request for a rate reduction upon the following facts: Public Warehousing has been exhausted or the present line haul operation, and a halt in production will result unless the alternative solution is authorized; it is hereby

ORDERED, that the petitioner, under the statute referred to above be, and hereby is, authorized to put into effect on one days notice, the publication above mentioned; and it is

FURTHER ORDERED, that the above Order Number shall be shown on the face of the tariff as authority for this less than statutory notice.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1982.

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NH.PUC*12/17/82*[79477]*67 NH PUC 938*Concord Natural Gas Corporation

[Go to End of 79477]

Re Concord Natural Gas Corporation

DE 82-8, Fifth Supplemental Order No. 16,064

67 NH PUC 938

New Hampshire Public Utilities Commission

December 17, 1982

ORDER extending due date for report and lifting fines previously assessed.

FINES AND PENALTIES, § 4 — Jurisdiction and powers — Commission.

[N.H.] The commission found that it had statutory authority to assess a fine for failure to file a report required by the commission at the time specified by the commission.

APPEARANCES: David W. Marshall.

Before Love, chairman.

BY THE COMMISSION:

On August 26, 1982 the Commission issued Second Supplemental Order No. 15,844 (67 NH PUC 601) and on September 2, 1982 the Commission issued Third Supplemental Order No. 15,866 (67 NH PUC 617). In those orders, the Commission imposed fines on the company for a failure to provide reports ordered by the Commission.

Concord Natural Gas filed a timely motion for rehearing as to these two orders on September 15, 1982. The Concord Natural Gas offers in essence two reasons for the Commission to reconsider these orders. One of these contentions is that the Commission is without the statutory authority to assess fines. The second contention is that the Commission should not impose fines because of the good faith efforts made by the company to file the requisite reports.

The Commission finds that pursuant to RSA 374:17 the Commission has the statutory authority to assess fines for failure to file a report required by the Commission at the time specified by the Commission. Pursuant to that statute, the Commission also has the authority to extend time of compliance. The Commission

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will accept the reasoning offered by company counsel that due to the pendency of their rate case, Concord Natural Gas was not able to direct its full attention to the matters of concern in this docket. Based upon the fact that this rate proceeding is not concluded, the Commission will impose a new date by which the entire report originally requested together with a report as to the actions proposed by the company to be taken based upon the findings in the aforementioned report. This new date will be January 6, 1983. These reports are to be filed with copies for each Commissioner, the Executive Director, the Gas Safety Engineer, the Chief Engineer and the Finance Director.

Because the Commission has extended the date for filing these two reports, the Commission

will remove any assessment of fines from its previous two orders. However, failure to comply by filing these two reports on or before January 6, 1983 will result in the statutorily required \$100 a day fine for each day either one of the reports is late.

Based upon the foregoing, the motion for rehearing is granted in part and denied in part.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the Motion for Rehearing is granted in part and denied in part; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation is to file on or before January 6, 1983 two reports, the first being their entire report in final form as to a Distribution System Analysis and the second being a report on the actions the Company has taken or will take because of the findings of the first report.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1982.

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NH.PUC*12/17/82*[79478]*67 NH PUC 939*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 79478]

Re Continental Telephone Company of New Hampshire, Inc.

DR 82-357, Order No. 16,065

67 NH PUC 939

New Hampshire Public Utilities Commission

December 17, 1982

ORDER approving tariff for custom calling.

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BY THE COMMISSION:

ORDER

WHEREAS, on November 29, 1982, Continental Telephone Company of New Hampshire, Inc. filed with the Commission certain revisions of its tariff NHPUC No. 11 — Telephone, proposing to offer Custom Calling Services in the Antrim exchange; and

WHEREAS, the Commission finds such service availability to be in the public interest; it is

ORDERED, that Section 6, Fourth Revised Sheet 8, of said tariff be, and hereby is, approved for effect on December 29, 1982.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of

December, 1982.

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NH.PUC*12/17/82*[79479]*67 NH PUC 940*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 79479]

Re Continental Telephone Company of New Hampshire, Inc.

DR 82-356, Order No. 16,067

67 NH PUC 940

New Hampshire Public Utilities Commission

December 17, 1982

ORDER approving revisions of tariff sheets on customer premises equipment.

BY THE COMMISSION:

ORDER

WHEREAS, Continental Telephone Company of New Hampshire, Inc. filed with this Commission on November 29, 1982 certain revisions of its tariff, NHPUC No. 11 — Telephone, said revision adding clarification to the provision of customer premises equipment under guidelines of the Federal Communications Commission's Docket 20828; and

WHEREAS, the Commission finds such revision to be in the public interest; it is

ORDERED, that Section 2, 1st Revised Sheet 1, 2nd Revised Sheet 3, and 3rd Revised Sheets 4 and 4.1 be, and hereby are, approved for effect on January 1, 1983.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1982.

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NH.PUC*12/17/82*[79480]*67 NH PUC 941*Union Telephone Company

[Go to End of 79480]

Re Union Telephone Company

DF 82-341 Supplemental Order No. 16,068

67 NH PUC 941

New Hampshire Public Utilities Commission

December 17, 1982

ORDER amending previous order.

BY THE COMMISSION:
SUPPLEMENTAL ORDER

So much of the title of Commission Order No. 16,049 (67 NH PUC 908) that reads " ... \$2,851,934 ... " is amended to read " ... \$2,985,800 ... " and so much of the first paragraph of Page 2 of said Order that reads " ... two million, eight hundred fifty-one thousand, nine hundred thirty-four dollars (\$2,851,934) ... is amended to read " ... two million, nine hundred eighty-five thousand, eight hundred dollars (\$2,985,800) ... "

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1982.

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NH.PUC*12/20/82*[79482]*67 NH PUC 943*Customer Deposits — Electric Utilities

[Go to End of 79482]

Re Customer Deposits — Electric Utilities

Intervenors: Community Action Program, Volunteers Organized in Community Education, Exeter and Hampton Electric Company, Connecticut Valley Electric Company, and Concord Electric Company

DRM 82-125, Order No. 16,073

67 NH PUC 943

New Hampshire Public Utilities Commission

December 20, 1982

ORDER denying proposed rule change on customer deposits.

BY THE COMMISSION:

REPORT

On March 1, 1982, the Commission staff recommended a rulemaking which would allow electric utility companies to impose customer deposits after receipt of two (2) disconnect notices in any twelve (12) months period:

PUC 303.04 (a)(2) — Existing Service

For existing residential service, a utility may require a cash deposit or other guarantee only when:

a. The customer when billing monthly has had *two* (2) disconnect notices for non payment ...

Notices were sent to all electric utilities and their legal representatives, to Donald S. Jennings, Director, Office of Legislative Services; M. Arnold White, Jr., Chairman, Science and Technology Committee; Gerald Eaton, Community Action Program; William Weismann, N.H. People's Alliance; Joseph Gentilli, Esq, Consumer Advocate; Alan Linder, Esq., New Hampshire

Legal Assistance; and the Office of the Attorney General.

Hearings were held at the Commission's Concord offices on June 3, and October 7, 1982. Parties participating in the October 7 hearing included Gerald Eaton for Community Action Program; Alan Linder and Dixie Henry for VOICE; Warren Nighswander for Exeter and Hampton Electric Company; Joseph Krauze for Connecticut Valley Electric Company; and George Blood for Concord Electric Company.

The Commission's Chief Engineer, Bruce Ellsworth, testified that adoption of the rulemaking would make the rules consistent with those adopted by the Commission for telephone utilities in DRM 81-102, Order No. 15,087 on October 10, 1981 (66 NH PUC 346). His review of the existing rule, which provides that a customer must receive four (4) disconnect notices in any twelve (12) month period before a deposit may be imposed, led him to the position that four notices provided an unnecessarily risky period of time before a Company could be expected to be paid for its service.

Witness for Connecticut Valley Electric Company testified that the primary reason their company supports the revision is that the winter period rules have curtailed the sending of disconnect notices during the period January through March, and as a result of 4,400 notices for which customers qualified, only

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1,656 could be sent. The Company bills primarily on a bi-monthly billing system, so customers are entitled to three (3), disconnect notices before a deposit is imposed. When the three (3) notice policy is interjected into a twelve month period, and then four (4) months are removed from consideration because of the Winter Period then there remains the possibility that a customer may never actually receive a disconnect notice. Upon cross-examination, he admitted that the rule, as presently proposed, would not provide any relief for his company, and that it should be revised to allow two (2) disconnect notices even if the company bills on the bi-monthly basis.

Gerald Eaton, representing Community Action Program, made comparisons between the uncollected revenues of the utility companies and uncollected revenues of fuel dealers with whom he had spoken. The fuel dealers advised that they are willing to live with a 2% -3% revenue write-off for a year, and Mr. Eaton offered that the calculations of utility companies which he had checked revealed write-offs of less than 0.5%. He observed that if a company's reason for imposing more frequent deposits is to further decrease their revenue loss, then the deposit issue is the wrong forum. In his judgement, the customer who ultimately fails to pay a bill and who leaves the company with a revenue loss, is not the customer who has been levied a deposit. The non-paying customer is, in his opinion, the one who accrues a large unpaid bill as a result of the Winter Termination Rules, and then fails to make proper arrangements during the following year. Mr. Eaton's proposed solution is to revise the Winter Termination Rules but not to change the deposit rule.

Comments of the Exeter and Hampton Electric Company support the proposed amendment, although they also refer to the Winter Period Rule as being responsible for accumulating the large arrears which ultimately result in revenue losses. Because of those rules, during the period

of January, February and March 1982, the company mailed only 2,322 disconnect notices of a total of 6,079 printed. The company concurred with the position of Connecticut Valley that a customer taking full advantage of the rules would more than likely never receive four (4) disconnect notices in a twelve (12) month period.

VOICE is opposed to the rule change. It claims that the PUC staff has not demonstrated the inadequacy of the current rule, and has shown no indication for the need for the change. In written comments, it suggests that there has been no showing of cash flow problems or excessive write-offs by New Hampshire Electric Utilities, and that no data has been offered to support the change. It contends that the proposed rule appears to seek to remedy problems that have not been brought forth to the Commission, and for which, if such problems do exist, might be more appropriately addressed in a manner other than the proposed rule change. It contends that the rule change fails to recognize that slow paying customers are not the same who entirely fail to pay their bills, and that most low income people act in good faith and try to pay their bills, although sometimes the payments are small or not always on time. It contends that the new rule would merely be a penalty for those people by tying up their limited resources by holding money as a deposit which could have been put toward their bills. Finally, VOICE suggests that the proposed change may

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be in violation of New Hampshire law and PUC regulations by making the cost of electric service too high and unaffordable for low income people.

COMMISSION ANALYSIS

There are compelling reasons to favorably consider this rule change, particularly when the effect of the present rule is set in the perspective of the present Winter Termination policy. The Commission's original intent in allowing four (4) termination notices per year was to allow a customer a reasonable number of disconnect notices without severe penalties, without giving him free reign to consistently ignore the need to make prompt payments. It was the Commission's judgement that four (4) disconnect notices constituted that reasonable period, and it was satisfied that if a customer consistently neglected his bill that on the fifth notice, the deposit would be imposed. The companies present an interesting dilemma when they show that this policy, when coupled with Winter Termination policy, allows the customer, under proper circumstances, four additional months before such a deposit can be imposed. If, for instance, a customer applies for service on July 2, his first bill becomes due on August 2; failing payment, the first disconnect notice is issued on September 2. If only the arrears is paid, then a second disconnect notice follows on October 2, a third disconnect is issued on November 2, and the fourth disconnect, which would arrive on December 2 is suddenly within the Winter Termination period. Disconnect notices are not enforceable within the four month Winter Termination period. The customer then is released from any deposit responsibility until that fourth disconnect arrives on April 2.

The offsetting balance to this dilemma, however, in this docket, is the lack of compelling data showing that the effect of this scenario has caused any actual harm to the company. While we disagree with Mr. Eaton's inference that any uncollected revenue level which is less than that

experienced by local oil dealers should be acceptable, we find no evidence that there has been economic harm caused by the specific deposit rule in question.

This lack of evidence contrasts to that offered by the Telephone Company in the companion docket which allowed the rule change to take place.

We have striven for uniformity in our rulemaking policies. Uniform rules are more easily understood by customers, and are more easily explained by utilities and, in fact, regulators. There is a basic difference, however, between the electric industry and the telephone industry. The electric bill is predictable within reasonable limits because usage is reasonably predictable. A telephone bill is not predictable, however, because of the opportunities afforded the customer to access the long distance toll network, and to accumulate extremely high bills over a short period of time.

The absence of adequate data to support staff's position in this docket leads us to deny the proposed rule change. The stated difference between the characteristics of telephone and utility service lead us to support different rules as they apply to the customers of these two industries.

Our Order will issue accordingly.

ORDER

Based upon the foregoing Report which is made a part hereof; it is hereby

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ORDERED, that the proposed amendment to PUC 303.04 (a) (2) is denied.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1982.

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NH.PUC*12/21/82*[79483]*67 NH PUC 946*Peak-shaving Fuel Storage

[Go to End of 79483]

Re Peak-shaving Fuel Storage

DRM 82-314, Order No. 16,076

67 NH PUC 946

New Hampshire Public Utilities Commission

December 21, 1982

ORDER adopting rule on on-site gas storage.

BY THE COMMISSION:

ORDER

WHEREAS, the Commission instituted a rulemaking docket, DRM 82-314, on November

19, 1982 to amend PUC 506.03 to read as follows:

"Where a gas Company owns or leases tank trucks or has a fuel supply purchase contract, or a dedicated service contract, either of which includes guaranteed daily delivery capability, 70% of this delivery capability, from a dependable bulk fuel supply point over a five day period may be counted on as on-site storage." and

WHEREAS, written comments were received from Northern Utilities, Concord Natural Gas Corporation, Gas Service, Inc, and Manchester Gas Company in support of said amendment; it is therefore

ORDERED, that Rule PUC 506.03 be adopted as set forth above.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of December, 1982.

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NH.PUC*12/21/82*[79484]*67 NH PUC 946*Manchester Gas Company

[Go to End of 79484]

Re Manchester Gas Company

DR 82-274, Third Supplemental Order No. 16,077

67 NH PUC 946

New Hampshire Public Utilities Commission

December 21, 1982

ORDER revising cost of gas adjustment.

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BY THE COMMISSION:

Opinion by AESCHLIMAN, commissioner: On December 17, 1982 a hearing was held pursuant to Manchester Gas Company's motion for rehearing of this Commission's Order No. 15,958 (67 NH PUC 758). The Commission had granted a rehearing on the question of the interest calculation on propane received by the Company in 1978. The Commission also allowed the Company to submit a revised CGA for the January 1, 1983 through April 30, 1983 period to reflect the actual Tennessee filing for the PGA to be effective January 1, 1983.

In Order No. 15,958, the Commission had assessed interest on propane which was received by the Company in November 1978 and accrued in inventory until an adjustment was made in the inventory account in April 1982 pursuant to Commission order. The Company has never paid for the propane in question, and the questions raised concerned the proper accounting treatment and the effect of the propane accrual on the average cost of inventory.

Staff had contended that the method by which the Company accounted for this propane

resulted in a higher average cost of inventory for the period in question than the actual average cost of inventory experienced by the Company. The Company disputed this position. It was finally determined that the accounting adjustment made by the Company in April 1982 had compensated for this problem and that an interest assessment was not appropriate. The Company's winter CGA rate will be adjusted accordingly.

While the Commission is satisfied with the resolution of this particular item, the Commission must note that Staff is not completely satisfied with the Company's handling of the propane inventory. A complete audit will be performed at a later date to review the accounting methodology used to accrue inventory. An accounting bulletin will be issued to detail proper accounting treatment under the Uniform Classification of Accounts.

Pursuant to Commission Order No. 16,034 (67 NH PUC 891), the Company filed Sixth Revised Page No. 26 of Tariff NHPUC No. 13 — Gas. This filing presented a revised rate of \$.4187 per therm. At the hearing, the Company indicated that this figure should be adjusted to \$.4184 per therm.

The Company also testified that they had been notified the previous day of an additional refund from Tennessee. A letter subsequently received from the Company indicated that \$1,168 of this refund should be credited to this winter's CGA.

The Commission finds that this adjustment, together with the interest adjustment, results in a revised winter cost of gas adjustment rate of \$.0483 per therm.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Sixth Revised Page 26 of Tariff NHPUC No. 13 — Gas of Manchester Gas Company be rejected; and it is

FURTHER ORDERED, that Manchester Gas Company file 7th Revised

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Page 26 of Tariff NHPUC No. 13 — Gas reflecting \$.0483 per therm effective January 1, 1983.

By order of the Public Utilities Commission of New Hampshire this Twenty-first day of December, 1982.

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NH.PUC*12/27/82*[79481]*67 NH PUC 941*Hudson Water Company

[Go to End of 79481]

Re Hudson Water Company

DR 82-253, Supplemental Order No. 16,070

67 NH PUC 941

New Hampshire Public Utilities Commission

December 27, 1982

ORDER setting schedule for rate proceeding.

APPEARANCES: Alice Briggs and John R. McLane for the company; Kenneth E. Traum, assistant finance director, and Robert B. Lessels, water engineer for the New Hampshire Public Utilities Commission staff. As an individual appearance, not requesting or receiving full party status: Robert Skinner.

BY THE COMMISSION:

REPORT

On October 18, 1982, Hudson Water Company filed certain revisions to its tariffs providing for increased revenues of \$316,912 (22.8%), for effect on November 18, 1982.

Included in that filing was a petition to establish the presently effective rates as temporary rates effective as of December

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1, 1982. A public hearing was held on said petition on November 30, 1982. The result of said hearing was Supplemental Order No. 16,023 dated December 2, 1982 (67 NH PUC 871), which established the presently existing rates of Hudson Water Company as temporary rates with all service rendered on or after December 1, 1982.

A second duly noticed public hearing was held at the Public Utilities Commission in Concord on December 17, 1982 for the purpose of developing a procedural schedule which was acceptable to all parties. The agreed upon schedule which is acceptable to the Commission is as follows:

(1) A hearing to receive additional public input will be held at the Windham Town Hall on January 11, 1983 at 7:30 P.M. The Company shall publish notice of such hearing in the "Windham Independent" and the "Nashua Telegraph".

(2) Data requests of the Company are to be mailed by January 14, 1983. By scheduling the cut-off date for data requests after the date of the public night hearing, the Commission staff will be able to question the Company and receive responses under oath to concerns raised at the Windham hearing.

(3) Data responses to be mailed by the Company by January 31, 1983.

(4) Between February 1 and February 24, 1983 the parties will endeavor to reach a partial or complete settlement agreement for submittal to the Commission.

(5) On February 24, 1983 at 9:00 A.M. an additional hearing will be held in Concord.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report which is made a part hereof; it is hereby ORDERED, that on January 11, 1983 at 7:30 P.M. the Commission will hold a public hearing at the Windham, N.H. Town Hall for the purpose of receiving comments, testimony, and exhibits from the general public on the Company's filing; and it is

FURTHER ORDERED, that data requests to the Company are to be mailed by January 14, 1983; and it is

FURTHER ORDERED, that data responses by the Company are to be mailed by January 31, 1983; and it is

FURTHER ORDERED, that a further hearing shall be held on February 24, 1983 at 9:00 A.M. at the Commission office in Concord.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of December, 1982.

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NH.PUC*12/28/82*[79485]*67 NH PUC 948*Gas Service, Inc.

[Go to End of 79485]

Re Gas Service, Inc.

DR 82-276, Third Supplemental Order No. 16,080

67 NH PUC 948

New Hampshire Public Utilities Commission

December 28, 1982

ORDER setting rate of cost of gas adjustment.

RATES, § 303 — Fuel clauses — Cost of gas adjustment.

[N.H.] In setting an amount for a cost of gas adjustment, the commission recognized that it must balance the need of the company to assure adequate sources of supply with the need of the consumer to benefit from the best possible price; therefore, the amount for the cost of gas adjustment was set at the supplier's average price for a four-month period.

BY THE COMMISSION:

Opinion by AESCHLIMAN, commissioner: On December 21, 1982, a hearing was held pursuant to Gas Service Inc.'s motion for rehearing of this Commission's Order No. 15,957 (67 NH PUC 752). The Commission had granted a rehearing on four subjects: (1) the actual increase in Tennessee Gas Pipeline's Purchase Gas Adjustment (PGA) as of January 1, 1983; (2) the

proper summer CGA balance to be booked against the winter CGA estimates; (3) the disallowance of propane costs of \$74,250 and applicable financing charges of \$2,200; and (4) a clarification of future CGA information requirements.

Gas Service, Inc. presented Exhibit 52 as the Company's request in resolving the three financial questions and in adjusting the winter CGA for certain other known changes. The Commission finds the figures relative to the PGA effective January 1, 1983 to be accurate and also accepts GSI's actual summer CGA over-collection balance of \$22,237. The Commission finds that the use of the actual summer CGA balance is more appropriate than the use of the September estimate in Order No. 15,957. This adjustment will be made accordingly.

The Commission also compliments Gas Service for updating its filing to include the following adjustments — an increase in the seasonal sales margin reflective of actual figures; a decrease in the estimated propane cost per gallon that the Company is currently experiencing; and a reduction in the Tennessee Gas Pipeline commodity rate effective January 1, 1983. The Commission will accept these adjustments.

The Commission does not accept the full reinstatement of the propane costs and the applicable financing charges as

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incorporated in Exhibit 52. These costs were called into question by the Commission, and the evidence demonstrates that it would be unreasonable to pass these costs on to ratepayers. The Company should have sought to either question the supplier's terms or seek alternatives.

In the motion for rehearing, Gas Service set forth two basic arguments to support its position that the Commission was in error in excluding \$74,250 of actual propane costs and \$2,200 of associated estimated inventory financing. First, the Company contends that its supply requirements called for storage gas which would be available this winter and could only have been purchased from the Philadelphia refinery. Second, the Petitioner alleges that even if the propane had been available earlier, the Company had no reason to believe that the price of propane would increase as it did during the summer of 1982. The Commission finds that the record in these proceedings does not support the Company position in either instance.

The testimony indicates that the Petitioner requested deliveries in June, July and August, but did not purchase the propane until September. The fact that the Company made repeated requests for deliveries during the summer supports the conclusion that management felt it was prudent to purchase the propane at an earlier time. The evidence is clear that the Company accepted Warren Petroleum's excuse for not delivering — that the Philadelphia refinery was operating in a curtailed capacity — without pursuing other options which may have been available to the Company under its contract with Warren.

At the rehearing, the Company presented a letter from Warren Petroleum dated November 16, 1982, which is identified as Exhibit C. The letter states that "All of these customers [purchasers of Warren's Philadelphia refinery product] were obliged to either hold off on taking the Philadelphia product *or to receive shipments from alternate supply points ...*" (Emphasis added.) Other customers of Warren apparently chose to receive shipments from alternative supply points. While Mr. Stagney testified that a change in shipping points was at the option of

the seller (Exhibit B), the language of Warren's letter indicates that at least in practice the buyer also had an option. In fact, Mr. Stagney admits that if the buyer pursued this point, they would have a strong bargaining position.

However, the record clearly indicates that the Company did not pursue the option of alternative shipping points. Mr. Stagney did not ask Company legal counsel to review the contract to determine what options the Company might have.

The Petitioner in the motion for rehearing raises the question of the "force majeure" clause in the contract. The Commission finds this argument to be unpersuasive for two reasons. First, the Company has not demonstrated that the curtailment in supply was directly or indirectly caused by "Acts of God, war floods" et al. Second, the testimony indicates that Warren Petroleum never raised this provision as a reason for nonperformance.

The Commission agrees with the Company that it may not have been reasonable for the Company to seek price concessions from Warren after the fact. The Commission understands that the Company must be concerned with an assured supply and must maintain the good will of its suppliers. However, this does not excuse the Company from vigorously

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pursuing its legitimate options under the contract.

The Commission also rejects the Petitioner's contention that the Company had no reason to believe that the price of propane would increase during the summer of 1982. While it is clear that the prediction of propane prices is uncertain and subject to changing conditions in both demand and supply, it is also clear that the dramatic price changes during the summer could hardly go unnoticed by the Company and, in fact, the Company was aware of these changes. Testimony also indicates that the Company was aware that the May price of propane was the lowest it had been in more than two years.

While the Commission could not expect the Company to have predicted that the May price was the "bottom", the Company clearly recognized that this price was very low by recent standards and the Commission could expect the Company to act as the changing price trend emerged over the summer. The Company's own requests for delivery indicate management's awareness of this situation. Fuel supply procurement decisions must be judged reasonable in light of market conditions existing at the time they are made, and the Commission finds that GSI has not met this test in this instance.

[1] The Commission must constantly balance the need of the Company to assure adequate sources of supply with the need of the consumer to benefit from the best possible price. If the Commission simply allows all fuel supply purchases without questioning their reasonableness in light of market conditions, the Company will have no incentive to pursue options which will benefit consumers.

The Commission believes that a fair resolution of this question is to allow the Company the average price of its supplier for the months of June through September. The record indicates that Warren Petroleum's price per gallon for these months was as follows: June — 40¢ ; July — 42¢ ; August — 48¢ ; and September -60¢ . Thus, the average price per gallon over the period was

47.5¢ . Adjusted for storage and discounts, this figure comes to 51.6¢ per gallon. By allowing this price, the Warren storage purchase requested on Attachment N of Exhibit 52 reduced by \$60,258 in propane cost and by \$1,900 for related financing charges.

These amounts are to be removed from the cost of gas and allocated below the line. These costs may be recovered by increasing the cost of product sold to non-utility customers or, if unrecoverable, will flow to stockholders. To insure that these costs do not contribute to an undercollection in the next reconciling period, they are to be removed from the winter CGA balance.

At the hearing, it was agreed that all parties would consult to attempt to resolve the problem relative to future CGA information requirements. The Commission notes that only point (5) in the initial order is the subject of discussion. The Commission will reserve judgment on this issue.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Gas Service, Inc. Tariff Page NHPUC No. 6 — Gas, revised draft page, 1, 12/15/82, is hereby rejected; and it is

FURTHER ORDERED, that Gas Service, Inc. file a revised tariff page to

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reflect a cost of gas adjustment of .0772 per therm, effective January 1, 1983.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1982.

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NH.PUC*12/28/82*[79486]*67 NH PUC 951*Concord Natural Gas Corporation

[Go to End of 79486]

Re Concord Natural Gas Corporation

DR 82-278, Third Supplemental Order No. 16,081

67 NH PUC 951

New Hampshire Public Utilities Commission

December 28, 1982

ORDER setting rate for cost of gas adjustment.

RATES, § 303 — Fuel clauses — Cost of gas adjustment.

[N.H.] The commission set the cost of gas adjustment at the average price of the delivered

cost of gas for a four-month period to give the company an incentive to pursue options that would benefit customers and to balance the prudence of the company's procurement decisions with the need of the customer to benefit from the best possible price.

BY THE COMMISSION:

Opinion by AESCHLIMAN, commissioner: On December 17, 1982, a hearing was held pursuant to Concord Natural Gas Corporation's motion for rehearing of this Commission's Order No. 15,980 (67 NH PUC 767). The Commission had granted a rehearing on the question of the disallowance of a portion of the 1982 propane purchases. The Commission also allowed the Company to submit a revised CGA for the January 1, 1983 through April 30, 1983 period to reflect the actual Tennessee filing for the PGA to be effective January 1, 1983.

The Commission accepts the revisions presented by the Company with the exception of the request to reinstate the full amount of the propane costs disallowed in Order No. 15,980.

The Commission rejects the Petitioner's contention that the Company had no reason to believe that the price of propane would increase during the summer of 1982. While it is clear that the prediction of propane prices is uncertain and subject to changing conditions in both demand and supply, it is also clear that the dramatic price changes during the summer could hardly go unnoticed by the Company and, in fact, the Company was aware of these changes. Testimony also indicates that the Company was aware that the May price of propane was the lowest it had been in more than two years.

While the Commission could not expect the Company to have predicted that the May price was "the bottom", the Company clearly recognized that this price was very low by recent standards and the Commission could expect the

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Company to act as the changing price trend emerged over the summer.

The Commission also notes Exhibit 49, which shows that the Company carried higher levels of inventory in 1980 and 1981. The higher balances in the two previous years are attributed by the Company to lower winter/spring use due to warmer than average temperatures. However, the Commission notes that the Company in its recent rate case (DR 82-34) included average propane inventory in the rate base of 361,011. Since the Company requested this to reflect a normal level of inventory, the Commission must take this into account in evaluating the Company's justification for delaying propane purchases until September, 1982.

The Commission must constantly balance the prudence of the Company's procurement decisions with the need of the consumer to benefit from the best possible price. If the Commission simply allows all fuel supply purchases without questioning their reasonableness in light of market conditions, the Company will have no incentive to pursue options which will benefit consumers.

The Commission believes that a fair resolution of this question is to allow the Company the average price of the delivered cost of product for the months of June through September as

shown on Exhibit 32. This calculation yields an average price of \$.4561 (plus shipping), which the Commission will use as a proxy for the actual result had the Company made purchases over this period of time. This adjustment results in a cost of gas adjustment of \$.4013.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Concord Natural Gas Corporation file a revised Page 21 of Tariff, NHPUC No. 13 — Gas, reflecting a cost of gas adjustment of \$.4013 per therm effective January 1, 1983.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1982.

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NH.PUC*12/28/82*[79487]*67 NH PUC 952*Northern Utilities, Inc.

[Go to End of 79487]

Re Northern Utilities, Inc.

DR 82-229, Supplemental Order No. 16,085

67 NH PUC 952

New Hampshire Public Utilities Commission

December 28, 1982

ORDER authorizing use of accelerated depreciation and tax normalization.

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BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Company filed on December 8, 1982 a Motion for Approval of Compliance Tariff Pages and Other Relief in this proceeding; and

WHEREAS, the Company has filed Revised Tariff pages with an effective date of January 1, 1983 which comply in full with the requirement or Order No. 16,002 (67 NH PUC 841) granting the Company's Petition in this proceeding; and

WHEREAS, the further relief requested is merely to state without a rate change the policy of this Commission in regards to the Economic Recovery Tax Act of 1981 and is found to be in the best interest of the Company and its customers; it is hereby

ORDERED, that the following tariff pages are approved for effect on all bills rendered on or after January, 1, 1983:

16th Revised Page 23 15th Revised Page 25 14th Revised Page 27 10th Revised Page 30
8th Revised Page 31 12th Revised Page 32

and it is

FURTHER ORDERED that the Company is authorized to use the accelerated cost recovery system for calculating depreciation for income tax deduction purposes and is further authorized to use the normalization method of accounting as defined and prescribed in Internal Revenue Code section 168(e)(3) as added by the Economic Recovery Tax Act of 1981, and as defined and prescribed in any rulings or regulations that may be promulgated to further explain or define the provisions of section (e)(3) of the Code.

By Order of the Public Utilities Commission of New Hampshire this twenty-eight day of December, 1982.

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NH.PUC*12/28/82*[79488]*67 NH PUC 953*Merrimack County Telephone Company

[Go to End of 79488]

Re Merrimack County Telephone Company

DR 82-362, Order No. 16,086

67 NH PUC 953

New Hampshire Public Utilities Commission

December 28, 1982

ORDER approving tariff revisions.

BY THE COMMISSION:

ORDER

WHEREAS, on December 1, 1982, Merrimack County Telephone Company filed with this Commission tariff revisions proposing certain changes relative to Mobile Telephone Service; and

WHEREAS, the Commission finds the proposed revisions to be for the public good; it is

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ORDERED, that Part VII, Section 1, 1st Revised Pages 4, 12, 13 and 14 of Merrimack County Telephone Co. tariff, NHPUC No. 7 — Telephone, be, and hereby are, approved for effect January 3, 1983.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1982.

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NH.PUC*12/28/82*[79489]*67 NH PUC 954*New England Telephone and Telegraph Company

[Go to End of 79489]

Re New England Telephone and Telegraph Company

DR 82-365, Order No. 16,087

67 NH PUC 954

New Hampshire Public Utilities Commission

December 28, 1982

ORDER approving tariff revisions.

BY THE COMMISSION:

ORDER

WHEREAS, on December 1, 1982, New England Telephone and Telegraph Company filed with the Commission revised tariffs Nos. 75 and 76, proposed to replace Nos. 70 and 73 respectively on January 1, 1983; and

WHEREAS, the exceedingly large number of revisions to the existing tariffs have made them cumbersome and confusing; and

WHEREAS, new formats in the proposed tariffs have been designed to facilitate their use; and

WHEREAS, the proposal has no impact on rates, revenues, or regulations; it is

ORDERED, that tariffs NHPUC No. 75 and NHPUC No. 76 of New England Telephone and Telegraph Company be, and hereby are, approved for effect January 1, 1983.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1982.

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NH.PUC*12/28/82*[79490]*67 NH PUC 955*Continental Telephone Company of Maine

[Go to End of 79490]

Re Continental Telephone Company of Maine

DR 82-364, Order No. 16,088

67 NH PUC 955

New Hampshire Public Utilities Commission

December 28, 1982

ORDER approving revised tariffs with regard to customer premises equipment.

BY THE COMMISSION:

ORDER

WHEREAS, Continental Telephone Company of Maine filed with this Commission on December 7, 1982 certain tariff revisions clarifying the providing of customer premises equipment under guidelines of the Federal Communications Commission in its Docket 20828; and

WHEREAS, the Commission finds such revisions to be in the public interest; it is

ORDERED, that Section 2, 1st Revised Sheet 3 and 3rd Revised Sheet 4 of Continental Telephone Company of Maine tariff, NHPUC No. 4 — Telephone, be, and hereby are, approved for effect January 1, 1983; and it is

FURTHER ORDERED, that Continental Telephone Company of Maine give public notice of this filing by a onetime bill insert explaining the revisions and their effect.

By order of the Public Utilities commission of New Hampshire this twenty-eighth day of December, 1982.

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NH.PUC*12/29/82*[79491]*67 NH PUC 955*Public Service Company of New Hampshire

[Go to End of 79491]

Re Public Service Company of New Hampshire

DF 82-307, Order No. 16,090

67 NH PUC 955

New Hampshire Public Utilities Commission

December 29, 1982

ORDER approving issuance of common stock.

APPEARANCES: Frederick J. Coolbroth and D. Pierre G. Cameron.

Before Love, chairman.

BY THE COMMISSION:

This petition was filed by Public Service Company of New Hampshire (PSNH) on October 25, 1982 requesting permission

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to issue and sell not exceeding 3,000,000 shares of common stock. An order of notice was

issued setting hearing for November 15, 1982. At that hearing, there was no evidence offered which would call into question the issuance of these securities.

On December 8, 1982, PSNH filed a motion to amend their petition and to increase the level of proposed common stock offering from 3,000,000 shares to 5,000,000 shares. The reasoning for the increased issuance level was stated by Mr. Bayless, Financial Vice-President, as being a concern of PSNH's investment bankers that it was better for the Company to issue two 5,000,000 share issuances over the next year instead of three issuances — two 3,000,000 shares and one 4,000,000 share issuance.

The motion to amend was granted by the Commission, and a hearing was held on December 23, 1982 on the amended petition.

The stock offering in this proceeding is a routine stock issuance for, among other purposes, a construction program that PSNH has a vested right to complete. Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 51 PUR4th 298, 454 A2d 435. By this decision, the Supreme Court has set forth that PSNH has a vested right to complete both units at Seabrook and that any questions regarding the prudence of the use of these proceeds or any other prudence question regarding their construction program be deferred until said construction program is asked to be borne by ratepayers in their electric rates.

Based on the foregoing, the Commission approves the proposed financing as for a lawful corporate purpose and will, therefore, approve the issuance pursuant to RSA 369.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Public Service Company of New Hampshire is authorized to issue not more than 5,000,000 shares of common stock.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 1982.

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NH.PUC*12/29/82*[79492]*67 NH PUC 956*Public Service Company of New Hampshire

[Go to End of 79492]

Re Public Service Company of New Hampshire

DF 82-306, Order No. 16,091

67 NH PUC 956

New Hampshire Public Utilities Commission

December 29, 1982

ORDER approving the issuance and sale of debentures.

APPEARANCES: Frederick J. Coolbroth and D. Pierre G. Cameron, Jr., for Public Service Company of New Hampshire (PSNH).

Before Love, chairman.

BY THE COMMISSION:

On October 25, 1982, PSNH filed a petition for authority to issue and sell not exceeding \$75,000,000 of Debentures. An Order of Notice was issued setting hearing for November 15, 1982. After this hearing, PSNH filed on December 8, 1982 a motion to amend the petition to issue and sell Debentures in the principal amount of not more than \$100,000,000. The reasoning for the increased level was based on a recommendation by PSNH investment bankers who conveyed to the Company that it was under present market conditions wiser to increase the levels of dollars sought and reduce the number of issuances.

The motion to amend was granted by the Commission, and a hearing was held on December 23, 1982 on this amended unopposed petition.

The issuance of debentures presented in this proceeding is a routine financial instrument of indebtedness that will be used for, among other purposes, a construction program that PSNH has a vested right to complete. Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 51 PUR4th 298, 454 A2d 435. By this decision, the Supreme Court has set forth that PSNH has a vested right to complete both units at Seabrook and that any questions regarding the prudence of the use of these proceeds or any other prudence question regarding their construction program be deferred until said construction program is asked to be borne by ratepayers in their electric rates.

Based upon the foregoing analysis, the Commission approves the proposed financing as for a lawful corporate purpose and thereby approves the issuance pursuant to RSA 369.

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 authorized to issue no more than the principal amount than 100,000,000 worth of debentures; and it is

FURTHER ORDERED, that on or before January first end duly first in each year, said PSNH 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 securities, until the expenditure of the whole of said proceeds shall have been fully accounted for.

By Order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 1982.

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NH.PUC*12/29/82*[79493]*67 NH PUC 958*Public Service Company of New Hampshire

[Go to End of 79493]

Re Public Service Company of New Hampshire

DR 81-87, 15th Supplemental Order No. 16,092

67 NH PUC 958

New Hampshire Public Utilities Commission

December 29, 1982

ORDER extending period of recoupment.

APPEARANCES: As noted previously.

Before Love, chairman.

BY THE COMMISSION:

PSNH, pursuant to Orders issued pursuant to this docket has been collecting a recoupment between the permanent rates and those established pursuant to previous Orders. PSNH's right to recoupment is established by RSA 378:29.

This recoupment, which has been in existence for a period of time, is drawing to a close. PSNH has filed reports with us demonstrating a net recoupment balance of \$156,997 as of December 31, 1982. PSNH proposes a one month extension of this recoupment to January 31, 1983 to complete the recoupment. The proposal does reflect minor adjustments which we find would satisfy the recoupment and be in accord with provisions of previous dockets. The Commission will therefore accept the PSNH filing and the corresponding tariff pages.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

On the basis of the foregoing Report which is made a part hereof; it is

ORDERED, that 1st Revised Pages 18, 19, and 20 are approved for effect on bills rendered on or after January 1, 1983, and that the appropriate recoupment amounts be included in the company's basic rates as of January 1, 1983; and it is

FURTHER ORDERED, that recoupment provisions for PSNH Tariff No. 27, will be subsequently eliminated as of February 1, 1983 and the PSNH shall provide a final recoupment accounting to this Commission as soon as possible thereafter.

By Order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 1982.

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NH.PUC*12/29/82*[79494]*67 NH PUC 959*Continental Telephone Company of Maine

[Go to End of 79494]

Re Continental Telephone Company of Maine

DR 82-367, Order No. 16,093

67 NH PUC 959

New Hampshire Public Utilities Commission

December 29, 1982

ORDER approving tariff revisions for selective calling service.

BY THE COMMISSION:

ORDER

WHEREAS, Continental Telephone Company of Maine, on December 7, 1982, filed with this Commission certain revisions to its tariff NHPUC No. 4 — Telephone, said revisions proposing the addition of Selective Calling Service to its Chatham and East Conway exchanges; and

WHEREAS, wide implementation of such service has been determined to be in the public interest, and already has wide application in other jurisdictions on standard terms; it is

ORDERED, that Section 7, Original Sheets 2 and 4 of Continental Telephone Company of Maine tariff NHPUC No. 4 — Telephone, be, and hereby are, approved for effect January 7, 1983; and it is

FURTHER ORDERED, that Section 7, Original Sheet 3, of said tariff be, and hereby is, rejected; and it is

FURTHER ORDERED, that Continental Telephone Company of Maine file with this Commission, for effect January 7, 1983, Section 7, 1st Revised Sheet 3, in lieu of Original Sheet 3 rejected, the revision showing the following rates for various Selective Calling Services:

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

Toll Band 1 \$.95
Toll Band 2 1.25
Toll Band 3 1.60

and it is

FURTHER ORDERED, that the availability of such services be publicized by a one-time bill insert to affected customers.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 1982.

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NH.PUC*12/29/82*[79495]*67 NH PUC 960*Concord Natural Gas Corporation

[Go to End of 79495]

Re Concord Natural Gas Corporation

DE 82-272, Order No. 16,094

67 NH PUC 960

New Hampshire Public Utilities Commission

December 29, 1982

ORDER assessing fines for noncompliance with gas safety standards.

1. COMMISSIONS, § 43 — Jurisdiction and powers over particular matters — Safety.

[N.H.] The commission has a statutory duty to insure the safety of the public that is paramount to its other responsibilities. p. 968.

2. PUBLIC UTILITIES, § 129 — Operation and utility practices — Safety.

[N.H.] By statute, every public utility is required to furnish service and facilities that are reasonably safe and adequate. p. 968.

3. SERVICE, § 31 — Jurisdiction and powers of state commissions — Methods of service.

[N.H.] The commission has statutory authority to require changes in the methods employed by a utility to provide gas service. p. 968.

4. FINES AND PENALTIES, § 4 — Jurisdiction and powers — Commissions.

[N.H.] The commission has authority to impose civil penalties on a gas utility for failure to meet commission standards or regulations. p. 968.

5. FINES AND PENALTIES, § 8 — Defenses and excuses — Mitigating circumstances.

[N.H.] The commission chose not to levy the maximum fine for failure to meet its standards on gas safety where it was likely to bankrupt the utility. p. 970.

6. EXPENSES, § 89 — Regulation expense — Fines.

[N.H.] Fines charged for failure to comply with gas safety standards are to be charged to stockholders, not ratepayers, and are to be booked below the line. p. 973.

Before Love, chairman and McQuade (dissenting), commissioner.

APPEARANCES: David W. Marshall on behalf on Concord Natural Gas Corporation.

BY THE COMMISSION:

REPORT

I. *Procedural History*

In the recent Concord Natural Gas rate request, Staff sought to raise certain gas safety matters. Concord Natural Gas moved that the Commission initiate a separate docket for

resolution of gas safety matters. The Commission granted this request and the result was the initiation of these proceedings. The Commission held hearings in this docket on October 6 and 15, 1982.

II. *Staff Position*

The Staff initially raised their safety concerns through memorandums of Mr. Richard Marini, the Commission's Gas Safety Engineer. The first such memorandum was dated August 23, 1982 and was entitled:

"Inadequacy/Failure of Concord Natural Gas Corporation's Safety Programs".¹⁽⁹⁴⁾

This report was later supplemented by a memorandum dated September 8, 1982. Both were the subject of cross-examination

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by Concord Natural Gas Corporation.

These reports focused in the following seven areas of concerns:

A) Corrosion Control Program B) LNG/LP Facilities C) Emergency Valves D) Regulator Vaults E) Maintenance of Mains F) Company Personnel G) Pressure Relief

(A) Corrosion Control Program

§ 192.457 Buried Steel Pipelines installed before August 1, 1971 had not been cathodically protected in the urban Concord area. Electrical surveys have not been made to determine areas of active corrosion.

§ 192.459 No program existed to assure that any buried pipelines which were exposed for any reason were being examined for evidence of external corrosion.

§ 192.465 No monitoring program existed to assure that each pipeline which is under cathodic protection was being tested at least once each calendar year, or that at least 10% of service lines were being surveyed each calendar year. No program exists to reevaluate any unprotected pipelines at intervals not exceeding three years.

§ 192.467 The Company had no program to assure that buried pipelines were being electrically isolated from underground metallic structures, or that insulating devices were being installed on services to facilitate the application of corrosion control. Specifically insulating unions here not being installed on low pressure services in the center of Concord to assure isolation from interior piping.

(B) LNG/LP Facilities

Concord Natural Gas had retained Paul Johnson Associates, Inc. in September, 1981. This firm was retained to provide an analysis of Concord's compliance with the minimum safety requirements for the operation of an LNG facility set by the DOT and the Commission. This consultant provided 21 recommendations that if undertaken would achieve the necessary compliance with the regulations relating to the Federal and State Safety Standards, CFR Part 193 for Liquefied Natural Gas Facilities.

When Mr. Marini conducted an inspection on July 14, 1982, he found and subsequently

testified that only six of these recommendations had been implemented. Mr. Marini testified that Concord was still in violation of the following standards:

193.2511 — Two sets of fire protective clothing had not been purchased for the facility.

One self-contained breathing apparatus had not been purchased.

Two personnel gates for rapid egress had not been installed in the security fence.

Suitable first aid kit and material had not been provided.

193.2519 — Portable radios had not been provided to operating personnel.

193.2625 — The buried carbon steel components of LNC facility had not been cathodically protected.

193.2813 — Proper storage facilities had not been designated for flammable fluids.

193.2819 — Gas detectors had not been installed at strategic locations in yard in building with appropriate alarm system.

Two portable combustible gas indicators had not been provided at the control room.

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Gas detectors had not been installed at propane storage, unloading and vaporizer areas.

193.2821 — UV Detectors had not been placed at strategic locations in the plant yard with appropriate alarm systems.

Heat detector had not been installed in a flammable storage room with appropriate alarm systems.

193.2913 — A permanent warning system with alarms had not been installed at the perimeter defense.

193.2195 — An alternate power source such as a generator or battery system had not been installed.

(C) Emergency Valves

Mr. Marini conducted inspections of Company facilities and held discussions with Company personnel on various matters. One of the subjects of these discussions was emergency valves. Mr. Marini testified that Concord Natural Gas personnel had not identified emergency valves. Nor had they compiled records indicating that these valves had been identified, checked or serviced at intervals not exceeding one year. This failure was testified to being a violation of 192.747.

(D) Regulator Vaults

Mr. Marini testified that his inspections found an absence of records as to pressure limiting stations, relief devices or pressure regulating stations being inspected and tested at intervals not exceeding one year. His testimony was that this was a violation of 192.739.

His inspections of these pressure stations revealed that two of the inspected stations were not properly ventilated and one had no relief valve or monitor regulator so as to prevent downstream

over pressure. These failings were testified to as violations of 192.195.

(E) Maintenance of Mains

Inspections in the greater Concord area led Mr. Marini to conclude that buried cast iron pipeline, when disturbed, had not been properly protected against damage. He further testified that steps had not been taken to provide permanent protection against external loads. These were cited as violations of 192.755.

Furthermore, Mr. Marini's inspections also led him to testify that cast iron caulked bell and spigot joints, when exposed, had not been properly sealed with mechanical clamps leading to a violation of 192.753.

(F) Company Personnel

Based upon a number of inspections, observations, discussions and other input, Mr. Marini concluded that in his judgment the Concord Natural Gas Corporation doesn't have qualified technical personnel to formulate and administer its pipeline safety program. One example referred to in his testimony relates to a recent fire incident at the Company's Broken Bridge Road Facility. The report concerning this July 13, 1982 incident submitted by Concord Natural Gas contained a report of the Concord Fire Department in which the reporting fireman indicated that "it took some time to shut off the flow of gas because the gas employee who first arrived was not thoroughly familiar with this unit".

(G) Pressure Relief

Exhibit 2 in this proceeding is a summation of Mr. Marini's concerns relating to a lack of pressure relief at the primary meter station on Broken Bridge Road. This juncture is important in that this is where Concord Natural Gas takes its sole supply from the Tennessee Gas Pipeline Company.

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Testimony was received that the Tennessee meter station as comprised of an eight-inch turbine meter having an inlet pressure of 100 PSIG followed by two regulators in parallel that reduce the pressure to 50 PSIG. Mr. Marini testified that the protection against accidental over-pressuring was required by 192.195. Further, he testified that if the Tennessee Pressure were to exceed 60 PSIG then failure of the Company's own regulators would result and lead to an over-pressuring of the customers inlet pressure. Mr. Marini concluded this aspect of his focus by stating that no company personnel were knowledgeable as to Tennessee's inlet pressure or as to whether or not monitor regulation was necessary on the installation. His recommendation to the Commission was that a qualified consultant should be retained to perform a complete technical evaluation of the regulating facilities.

III. Concord Natural Gas Position

The Concord Natural Gas Company called a number of witnesses to testify. Some of these witnesses were consultants, while others worked directly for the utility.

One of these witnesses was Daniel P. Remian, the President of CD Engineering Corporation. Mr. Remian had been employed in a consulting capacity with the Company since 1979. His

responsibility has been to develop Concord's current corrosion control program. As to this aspect of his work, Mr. Remian offered progress reports on the system within the City of Concord, which revealed that as of August 28, 1982 approximately 35% of the Concord city system had been analyzed with a soil resistivity survey.

His conclusions related to this survey were that the city system of primarily cast iron pipe is in good shape and that the soils tested are not highly corrosive.

He testified to a meeting with Mr. Marini in July, 1982 that resulted in a joint determination that certain required work was not being performed on Concord services. Mr. Remian became aware that approximately 1,200 anodes had been installed on services in conjunction with the ongoing sewer project.

Mr. Remian instituted a program to identify services requiring insulators and this program has resulted in a survey of 25% of the system. While Mr. Remian testified that approximately 99.5% of high pressure services are installed with insulators, he expects that approximately 4070 of the total services are not presently insulated. He anticipated completion of this insulator check within two months of the later date of hearing and, therefore, this program should be completed this month.

In regard to the cathodic protection of the LNG facility, Mr. Remian testified that the existing system which is in existence to protect the East Concord distribution system was also designed to protect the LNG facility. However, at the time of hearing, a discontinuity existed which does not provide full plant protection.

Mr. Remian sponsored Exhibit 6, which provides an estimate of 1,050 person days and a cost of approximately \$300,000 to bring the system into compliance with the Federal and State regulatory requirements as to corrosion control. In Mr. Remian's judgment, compliance could be achieved by July 1, 1985.

Mr. Remian testified that he had been recommending for three years that annual leak surveys should be made on the total system. He also testified that he had made repeated recommendations for

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more frequent surveys, especially in the areas known to be disturbed by the recent sewer project.

Mr. Remian noted that an inventory of all steel mains had been submitted to the Company on August 30, 1982, and that the soil sensitivity survey was completed on the total system on September 9, 1982.

Cross-examination reviewed recent developments, such as the three sections of the Capitol Shopping Center steel main having been protected with galvanic anodes. There was also focus on what had not occurred. Despite Mr. Remian's recommendation to isolate and protect a steel distribution main extending from Rumford Street, High Street, Pleasant Street and Clinton Street, this work has not been undertaken. Mr. Remian acknowledged that certain of the federal-state standards were not being adhered to by Concord Natural Gas as of the date of Mr. Marini's inspection. These included section 192.453 — establishment of procedures for

corrosion control, section 192.457 requiring all submerged and buried pipelines installed before August 1, 1971 to be cathodically protected, section 192.465 requiring an external corrosion control monitoring program, section 192.567 requiring electrical isolation, section 192.469 requiring test stations for electrical measurement, and section 192.475 requiring a program for inspecting for internal corrosion control.

During the sewer construction period, the Company had been required to remove and replace many service segments in order to accommodate the new sewer lines. In most instances, the Company chose to replace only the portion of the service which extended from the main to the property line. The remainder of the service which extended across other property into the buildings was left intact. Staff questioned Mr. Remian as to the Company's reasons for leaving the remaining sections since many services were found to be nearly 100 years old. Mr. Remian defended the Company's position and explained that the characteristics of the remaining pipe sections led him to speculate that there was a minimum of 15 years remaining life in those sections. Mr. Remian has developed a program which will assure that these remaining sections will be either replaced or cathodically protected within the 15-year period. Cathodic protection will extend their useful life for up to an additional 50 years.

A second company witness was Mr. Clay Higgins, Supervisor for the Engineers Security Services, Stone and Webster. Mr. Higgins provided Exhibit 9 describing his findings and recommendations for bringing the Company's LNG facility into compliance with the standards of 49CFR193. That report included a review of a study provided by the Paul Johnson Associates (Exhibit 4). He found no basis for disagreement with the recommendations in that study. He testified that his firm was responsible for assisting Concord in complying with certain aspects, but not all of the recommendations. Vendors for the various fire detection, gas detection and security systems were selected by a bidding project, and purchase orders were expected within two weeks to a month's time from the date of the hearing. Mr. Higgins estimated that between 3 and 6 months would be necessary to install the various components. He estimated that costs would be in the range of \$40,000 to \$45,000.

Upon questioning, Mr. Higgins stated that he had not observed any safety hazards at the plant, and that in his opinion a three-to-six month period is

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reasonable and will not compromise public safety.

Mr. Higgins' report stated that " ... the installation of upgraded security and fire and gas detection systems are behind schedule." Staff questioned him on the use of the word "upgraded" as to whether an existing gas detection system was being improved or whether any gas detection system exists at all. Mr. Higgins admitted that, although two portable gas detectors are stored at the site, they are of no value unless Company personnel are there to use them. Since there are not normally personnel at the site, he admitted that there is currently no gas detection there.

Mr. Higgins' report also stated that the Company's personnel involved with the LGN facility are intimately familiar with its system and equipment, and that procedures for operation, maintenance, emergency response and security are generally adequate for their intended purpose. Upon cross-examination, Mr. Higgins admitted that he was relying solely on the comments of

the Company President, Mr. Dustin, to reach those findings, and that he had not personally conducted any evaluation of Concord's personnel. No personnel records were reviewed to support or challenge Mr. Dustin's comments.

Upon further cross-examination, Mr. Higgins admitted that he was knowledgeable in the operations of LNC facilities only from the security and safety standpoint. He did not express expertise in LNC operations, and in fact, the Company had not contracted his firm to explore those areas. Mr. Higgins was cross-examined extensively about the necessity for interim safety measures at the LNC site during the interim period before the alarm and security systems are installed. He found the need for no interim measures. He was reminded of an incident on July 13, 1982, at which escaping propane had ignited and burned a grassy area approximately 100 ft. long by 75 ft. wide in the plant area. He was reminded that there was no alarm system in place, and asked whether temporary precautions should be taken to signal any future occurrences prior to the time the permanent equipment is installed. Mr. Higgins answered that he saw no immediate problem and found it unlikely that another incident would occur.

Mr. Cedric Dustin, President, Concord Natural Gas Corporation was the Company's third witness. He did not dispute or attempt to refute any of Mr. Marini's findings as specified in Exhibit 1 and Exhibit 2.

He testified that the Company has accepted all of the recommendations which were encompassed in the Paul Johnson Associates Inc. Report and plans to implement them all. Two of them, Number 7 and Number 8, were dealt with by Mr. Remian in previous testimony. Seven others, Numbers 3, 13, 15, 16, 17, 19, and 20 were dealt with by Mr. Higgins. As noted earlier, Mr. Marini acknowledged that six of the recommendations had been implemented.

Mr. Dustin explained the Company's intended action with respect to the remaining Johnson recommendations. Two sets of fire protective clothing (#1) were ordered from a clothes manufacturing company in Pittsfield, New Hampshire about two months ago, and delivery is expected at any time. Self-contained breathing apparatus (#2) has been purchased, and is now located at the LNC plant. A requirement for portable radios (#5) has been filled by the purchase of two portable CB radios. There is a base station in the control

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room with two portable CB units for use by personnel. The Company is unsure about the acceptance of portable CB's as being MSA approved, however, and they have committed themselves to purchase two MSA approved radios within a month from the date of hearing. Flammable liquids (#11) have been removed from the boiler room, and are no longer stored inside the building. Portable Combustible Gas Detectors (#14) are now located in the control room. Brush and Tree Clearing (#18) is an annual project that has been done in 1980 and 1981, and will be continued in 1982.

Mr. Dustin testified in response to Mr. Marini's findings relative to regulator stations, that he had contacted Stone and Webster Engineering Corp. for a review of those stations to make recommendations for compliance with all federal standards. Two exhibits (Exhibit 10 and 11) were offered which provided the findings and conclusions of their review. Four general comments were included in the report which applied to nearly all stations, and 17 specific

comments were as a result of the individual regulatory station inspections. With regard to the general observations, Mr. Dustin testified that:

1. Permanent ladders would be installed in all regulator vaults before April 1, 1983;
2. A method for testing the internal atmosphere of existing vaults before removing the cover will be devised to be consistent with whatever regulations are currently required for new vaults;
3. All regulators and relief valves will have provisions to determine operating pressure. Those provisions will be implemented before the end of 1982.
4. Valves which are installed ahead of relief devices will be locked to prevent operation by unauthorized personnel.

Concord's position with regard to over-pressure protection requirements on its distribution system is that over-pressure protection is required only if the operating pressure within the system is over 60 pounds. Mr. Dustin testified that they plan to operate their system at no more than 60 pounds; accordingly, no over-pressure protection will be installed at the Airport Road Regulator Station, the Basin Street Regulator Station, the Broken Bridge Regulator Station, or the Route 3A (Bow) Regulator Station.

The Broken Bridge Station is the Company's supply point from the Tennessee Gas Pipeline Company. The inlet pressure to the Company's regulator is controlled by Tennessee's regulator. Mr. Dustin offered an exhibit (Exhibit 11) from its Consultant, advising that adequate over-pressure protection does exist at that site since Tennessee's regulator acts as a series regulator to Concord's primary regulator. It cites to the ASME Guide for Gas Transmission and Distribution Piping Systems — 1980 as its reference.

The remaining regulator stations mentioned will be given no additional over-pressure protection by the Company due to their position that the inlet pressure will remain at less than 60 pounds, and house service regulators are installed at each location.

The Consultant found that common sensing lines were installed for the regulator and over-pressure protection at the Fisherville Road and Stickney Avenue regulators. Mr. Dustin testified that separate sensing lines will be installed at each station before the end of the year.

Mr. Dustin noted that an undersized vault vent at the Kensington Road regulator vault will be removed by the end of the year. He also stated that an undersized

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vent at the Pleasant Street Regulator Station has now become adequate following the replacement of the regulator with a new smaller one.

Undersized vents at the Rumford Street Station and the Springfield Street Station will also be removed since they are not required by code.

There was no sensing line at the security valve in the South Street regulator station. According to Mr. Dustin, that has now been installed.

The relief line at the White's Park Station was undersized for the existing regulator. The Company found, however, by decreasing the pressure, that the existing over-pressure protection

was adequate. Over-pressure protection on the three-inch security valve was to be installed within a week of the hearing along with a planned new regulator within the next two weeks.

Mr. Dustin next responded to that section of Mr. Marini's report concerning critical valves, and indicated that all critical valves were identified by the middle of July, and all have been inspected and operated. On September 1, 1982, he addressed a letter to Mr. Marini indicating that 50% of the critical valves had been checked and operated. On September 17, 1982, Mr. Dustin reported by letter that all critical valves of the distribution system have been checked, operated and left in good working order. He also offered a document showing the inspection dates for the years 1982, 1983, 1984, 1985, and 1986 and, for 1982, showing the exact date at which a particular valve was inspected, operated and left in good condition.

Mr. Dustin addressed the area of maintenance of mains by testifying that it is the Company's policy to clamp joints when they are exposed, but that he is aware that some joints were not clamped when the sewer contractor would not allow his people to do the work. He indicated they used abusive language and even threatened bodily harm.

Mr. Dustin explained the Company's leak detection survey program and testified that the Company is complying with the requirements set forth by the Commission. Mr. Dustin contends that Concord Natural Gas is actually doing more than is required in the sense that whenever construction is going on in the City of Concord, they have a truck equipped with sensing devices for gas leak detection that cruises the area on a weekly basis. Upon being asked whether he objected to recommendations by Mr. Marini that all services in the areas effected by the sewer project should be checked prior to the winter period, and that all mains in the areas effected by the sewer project should be checked every two weeks during the winter period and once a month during other seasons for 24 months. Mr. Dustin indicated that he had no objection to Mr. Marini's recommendation, and that all services would be checked by the flame ionization method prior to the onset of this winter heating season.

In regards to Mr. Marini's finding that a training program should be established, Mr. Dustin testified that four people will attend a school such as that run by Paul Johnson Associates. In the past he is aware that Company personnel had attended schools conducted by Process Engineering Company. He indicated an interest in investigating a training program organized by the Institute of Gas Technology.

Cross-examination of Mr. Dustin by Mr. Marini revealed that the Company has established an inspection program at the Broken Bridge Plant whereby it is visited three times per day on a seven

day a week basis to monitor the plant facility until detection equipment is installed by Stone and Webster Engineering Corp. It is visited at 8:00 each morning, again between 4:00 p.m. and midnight, and again between midnight and 8:00 a.m. Mr. Dustin was unaware whether records were kept of the inspection and advised that the personnel making the inspections for the second and third shifts are not Company personnel.

Mr. Dustin summarized his position to be that the Company has accepted, but not necessarily implemented, all of the recommendations which were encompassed in the Johnson Report, all of

the recommendations made by the Representatives of Stone and Webster, and all of the recommendations made by Mr. Remian's Cathodic Protection Firm.

IV. *Commission Analysis*

[1] The Commission's obligation to insure the safety of the public is paramount to all other responsibilities entrusted to the Commission. Safety considerations and the Commission's affirmative duty to enforce these considerations are specifically set forth in the utility regulatory statutory framework.

[2] In RSA 374:1 every public utility is required as a utility to furnish such *service* and *facilities* that are reasonably safe and adequate. Through RSA 374.3 the Commission has the general supervisory authority to insure compliance with the safety provisions of RSA 374:1 and all other provisions of RSA 374.

RSA 374:4 sets forth not only reinforcement of our authority but also our duty to insure safety. The statute is set forth below:

"RSA 374:4 Duty to keep informed.

"The Commission shall have the power, and it shall be its duty, to keep informed as to all public utilities in the state, their capitalization, franchises and the manner in which the lines and properly controlled or operated by them are managed and operated, not only with respect to the safety, adequacy and accommodation offered by their service, but also with respect to their compliance with all provisions of law, orders of the commission and charter requirements."

[3] In RSA 374:7 the Commission is granted the authority to investigate the quality of the supplier and the methods used in supplying gas. Furthermore, the Commission is granted the specific authority to order all reasonable and just improvements and can require changes in the methods employed by a utility to provide gas service.

RSA 370:2 provides the Commission with the authority to ascertain and establish standards for the measurement of quality pressure or any other condition relating to a utility's act of furnishing service.

[4] RSA 374:7-a specifically provides the Commission with the authority to levy fines for violations of provisions of RSA 370:2 or *any* standards or regulations promulgated by the Commission relative to gas pipelines. The statute reads as follows:

374:7-a Violation.

"I. Any person who violates any provision of RSA 370:2 or any standards or regulations promulgated thereunder by the public utilities commission, relative to gas pipelines, shall be subject to a civil penalty of not exceeding one thousand dollars for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations.

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"II. Any civil penalty assessed under the preceding paragraph may be compromised by the public utilities commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person

charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts."

The legislative history of this statute reveals a clear mandate to enforce the provisions of the Natural Gas Pipeline Safety Act Public Law 90-148. This Act required that the laws of participating states must make "provision for the enforcement of the safety standards of such state agency by way of *injunctive and monetary sanctions* substantially the same as are provided in Section 9 and 10."

The language of Section 9(a) of the Act is identical to the provisions of RSA 374:7-a, in that said language states that any person who violates the provisions "shall be subject to a civil penalty of not to exceed one thousand dollars for each violation for each day that such violation persists; except that the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations."

The Commission has attempted to protect the public through increased efforts in gas safety inspections. The role of our gas safety engineer is to continually, rather than sporadically, inspect all systems and equipment that relate to the supply of gas to consumers. Our concern over gas safety is not a new phenomena. In 1970, the Commission adopted the "Minimum Federal Safety Standards, Parts 191 and 192, Title 49 or the Code of Federal Regulations" which for the first time established federally accepted performance standards for the installation, operation and maintenance of gas distribution and transmission companies. In 1972, the Commission increased its staff with a Gas Safety Engineer who had as one of his obligations the monitoring and enforcement required by the Federal Standards. During the 1972 to early 1979 time period this position was filled from time to time but due to numerous factors, the position was unoccupied a considerable period of time and remained unoccupied when I ascended to the position of Chairman.

In 1979, the position was filled by a full time experienced gas safety engineer with experience in both government gas safety and the gas utility business. Rather, than the previous allocation of time being split evenly between gas safety and all other functions, the present gas safety engineer was placed into fulltime, 100%, gas safety enforcement. Countless inspections have been made over the entire New Hampshire gas utility industry. These inspections had as a goal; public safety. Prior to any action being taken as to fines through a formal docket, this Commission has endeavored to insure the compliance with the decade old federal standards. As the record in this proceeding reveals, the Manchester Gas Company, the Gas Service Company and Northern Utilities Inc. have met the federal standards. Concord Natural Gas has not met the standards set forth by the federal government or this Commission. This failure to honor the protection of the public leads to the imposition of

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fines and an order for immediate corrective action.

Concord Gas' response to the safety standards over the 12 years they have been in effect, as

ascertained from the record, is one of continuously studying the safety problems but failing until the advent of Commission action to do much. Concord Gas has over time had the advice and recommendations of experts as to the necessary steps to be undertaken to insure public safety and compliance with the standards. Staff's specific allegations of failure to adhere to the standards have been set forth in Exhibits 1 and 2. The Concord Gas Company did not dispute these allegations and therefore the Commission will adopt as its findings the allegations or findings of its Staff. Because we adopt the Staff findings as to the nature of the specific violations, the provisions of RSA 370:2, RSA 374:7-a, and the remainder of provisions set forth in RSA 374 apply.

Pursuant to Concord Natural Gas Company's violation of RSA 370:2 and RSA 374:7-a, and Commission has the authority to levy fines for the respective violations. In determining the amount of the penalty the Commission must recognize that there is a statutorily set maximum of \$1,000 a day for each day the violation exists with a total maximum penalty of \$200,000 for any related series of violations. The ultimate or final determination of fines is to reflect consideration of the size of the business, the gravity of the violation and the good faith effort undertaken in an attempt to achieve the necessary compliance.

The violations have existed for a considerable period of time. To the extent that notification was required in addition to the rules and standards themselves, it is evident that such notification occurred with Mr. Marini's inspection in mid July of 1982. However, Concord Gas was notified by its own consultant as far back as late 1981 that its inaction had resulted in noncompliance. The Commission will however find that the Marini memo of August 23, 1982, Exhibit 1, as the beginning of the violation period. As a consequence the violation period is found to be 125 days to date.

[5] The Commission is aware that Concord Natural Gas is one of the smallest utilities that the Commission regulates. A penalty for each violation for each day of its existence would in all likelihood bankrupt the utility. Consequently, the Commission will mitigate the level of the penalty and chooses not to employ the maximum. Furthermore, the Company has through the hiring of experts and the implementation of a few of their recommendations demonstrated some good faith compliance. The violations themselves cannot so easily be mitigated. This utility has already had two incidents where due to their improper allocation of resources has resulted in the public being endangered. The two incidents are the events that occurred at the Eagle Hotel and the fire that occurred at the Company's Broken Bridge Road Facility on July 13, 1982. Furthermore, the violations are in of themselves direct threats to the public safety and of the most serious nature. The Commission based upon these considerations will levy a \$10,000 fine for inadequate training and a fine of \$1,000 for each of the other six violation areas discussed in Section II of this decision. This total fine of \$16,000 is the largest fine that the Commission has levied. However, the public safety is of such paramount importance that this step is found to be warranted.

Since the Commission's concern is one of seeing to the public safety rather

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than being a collector of fines, we will avail ourselves of the mitigation clause of RSA

374:7-a II and forgive the \$10,000 associated with the inadequate personnel training if such training is demonstrated to have been accomplished in an open public hearing prior to March 31, 1983. Therefore, the Commission will require that Concord Natural Gas tender a check payable to the State of New Hampshire for \$6,000 on or before January 17, 1983. The remaining \$10,000 is to be tendered by check on March 31, 1983 if there exists no order from this Commission finding that the personnel of Concord Natural Gas have been adequately trained.

There remains one last issue for disposition; corrective action. The Commission has set forth certain violations and the Company has responded in some instances as to the methods it intends to employ in correcting the violations. There exists a question as to the scope of the Commission's authority to order improvements in the way that gas service is provided by Concord Natural Gas. The Commission finds that the provisions of RSA 374:7 provide us with the authority to require improvements in service and changes in the methods used to provide said service. The Commission further finds that pursuant to the provisions of RSA 374:3 the Commission has the authority to undertake such steps as are necessary to insure that the adequate and safe service provisions of RSA 374:1 actually occur. Finally, the Commission finds that an inherently dangerous result would occur if the Commission had only the power to fine and not the authority to require correction of the various deficiencies that necessitated the imposition of penalties.

The Company has asserted the position that over-pressure protection at the Broken Bridge Road Station is unnecessary. A Company witness testified that an upstream regulator owned and operated by the Tennessee Gas Pipeline Company would provide the over pressure protection for the Concord Gas System. The Commission finds to the contrary. This regulator is the property of a separate corporate entity. Its pressure is set and monitored by personnel who may or may not have Concord's customers own interests under consideration when they adjust and maintain their system pressures. The regulations do not provide or allow Concord to be dependent upon the equipment of another corporate entity for its sole over pressure protection. The Commission will require Concord to install and maintain its own over pressure protection equipment at the Broken Bridge site. This equipment is to be properly installed immediately and no later than March 31, 1983.

In regard to the Airport Road regulator station, Mr. Dustin testified that since the outlet pressure of the Broken Bridge Station is never more than 60 PSIG, that the Airport Road regulator station is no longer necessary and is scheduled for removal. We caution the Company, however, that the maximum allowable operating pressure down stream of the Airport Road regulator station is limited to the highest actual operating pressure to which that line was subjected during the five years preceding July 1, 1970 (49 CFR Section 192.619) unless procedures are taken to up-rate the line in accordance with 192.155. Mr. Marini testified (T-1-56) that his inspections revealed that the outlet pressure at Airport Road is 35 PSIG.

Another area of concern is the Company's security and gas detection systems. The testimony offered by Company witnesses has not shown that

there presently exists adequate fire and gas detection systems prior to the upgraded systems

proposed by Stone and Webster. The evidence that an incident did occur resulting in escaping propane being ignited and burning a grassy area approximately 100 feet long by 75 feet wide without any alarm system in place compels the Commission to require interim measures until a fully operational alarm system is in place. The evidence in this docket demonstrates that the potential existed for the incident to have caused far more damage to properties outside the Company's perimeter than actually did occur.

The Commission does not find the Company's interim program, which theoretically provides an inspection three times a day, to have been documented. Nor is it found to be properly supervised. The Commission will require the Company to develop a program which will include a specific walking inspection tour, which is conducted three times in each 24-hour period throughout the LNG/LPG plant site until the permanent detection systems are in place. The Commission will also require that documentation shall be available for review by the Commission and its Staff.

The Commission has considerable concern relating to the training of its employees as to gas safety. The evidence in this record leads to the conclusion that the Company's training has been less than adequate and in violation of the regulations governing this aspect of gas safety.

The Commission adopts the testimony of Staff Witness Marini. The Commission does not accept the testimony of the consultants hired by Concord Natural Gas, as they did not themselves review the Staff training. Staff, on the other hand, explained in detail the number of incidents which lead to the concern over inadequate training. The Commission finds on the basis of Staff testimony that the Company personnel who are involved with the operation and maintenance of the gas facility do not have the expertise to assure that safe gas service is the result. This includes findings that they are generally not aware of critical valves, regulator stations, or inlet pressures. There is some instances a failure to make sure that all cast iron joints are clamped when exposed. After the incident at Broken Bridge Road, Concord Natural Gas employees were unaware of the proper type of replacement gasket for the ruptured valve section. This finding is additionally supported by the written report of the Concord Fire Department, which stated that there was unfamiliarity with the unit whose breakdown was causing the fire.

The failure to provide adequate training is found to be a violation of 192.605, 192.615 and especially 192.617. The Commission, because of these findings, assesses the fines discussed. However, the Commission also will require the Company to undertake the following and report the results to the Commission by March 31, 1983:

1. A review as to whether or not there is an adequate number of Company operating personnel.
2. The steps being taken to ensure that each operating employee is enrolled and/or participating in a comprehensive training program which will ensure that he or she is thoroughly capable of performing his operating responsibilities.

During the proceedings, Staff emphasized the critical area of monitoring the gas distribution system involved with the City of Concord's sewer project. Testimony from both sides stated how leaks can develop from cast iron mains that

have been disturbed in any way and, in some instances, be serious problems weeks or months after construction work has been completed.

The Commission is aware of this problem and also understands that the same could happen when services are disturbed during such a massive construction project. Although the Company has agreed with Mr. Marini's recommendations concerning a leak detection survey for both mains and services, the Commission has great concern that such a leak survey will not be as comprehensive as necessary to protect the safety of the residents of Concord. Therefore, the Commission will require as a *minimum*:

a) All services in the areas affected by the sewer project be surveyed from the main up to and including through the foundation wall. These services will be surveyed prior to each of the next two

b) All mains will be surveyed every two (2) weeks during the winter period and once (1) a month during other seasons for twenty-four (24) months.

c) Company records will be maintained to reflect the comprehensiveness of the Leak Survey Program.

The Commission stated in Report and Order No. 15,915 that a second step increase to rates would be allowed for reasonable capital expenditures to correct corrosion problems. The Commission will expand this second step increase allowed to include recurring reasonable expenses and reasonable capital expenditures incurred between now and the date of the second step allowance that leads to compliance with the gas safety regulation.

Gas safety is an extremely serious matter and all companies regardless of size must comply with the regulations promulgated to protect the public. Concord Natural Gas must take the necessary steps to achieve the standards set for well over a decade.

[6] These safety standards are twelve years old, and there can be no serious representation of lack of notice. Nor can the Commission ignore the fact that the legislature specifically has required the Commission to fine for safety violations. These fines are being levied after years of noncompliance, which is hardly a punitive measure. These fines are to be booked below the line chargeable to stockholders. Ratepayers are never to pay for these fines. The Commission's true concern is the protection of the public, and these steps required by the Commission are to be undertaken as quickly as is humanly possible. The Commission does not want any repetition of the Broken Bridge incident.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Concord Natural Gas tender a check payable to the State of New Hampshire for \$6,000 on or before January 17, 1983; and it is

FURTHER ORDERED, that the remaining \$10,000 is to be tendered by check to the State of New Hampshire on March 31, 1983, if Concord Natural Gas Corporation is not in possession of an order from this Commission by that date demonstrating the necessary training to have been accomplished; and it is

FURTHER ORDERED, that the aforementioned fines are to be booked below the line and thus chargeable to stockholders; and it is

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FURTHER ORDERED, that the requirements, methods, additions and reports required by the report are to be complied with the Concord Natural Gas Corporation.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 1982.

Dissenting opinion by MCQUADE, commissioner: The value of the public good being best served by punitive fines is questionable. The fine process is appropriate only when it is necessary to get the attention of the parties involved and has limited and lessening impact on long term results, which should be our goal. Also, fines can only be levied where parties have willfully disregarded our specific written orders.

I recommend that the parties involved; Commission's Staff Engineers, Concord Natural Gas Corporation and it's engineering firms, join together with Commissioner McQuade to set up a program of compliance based on agreed safety concerns. In this manner we can fully and effectively protect the public in a timely manner that is controllable and truly affective to satisfy the concerns of the Public Utilities Commission and the safety of the Concord Natural Gas Corporation's ratepayers.

This process will clearly allow for compliance and provide adequate penalties should the parties fail to respond as agreed upon.

The long term benefits of such a process are clear and the first priority of safety for the consumer must be more appropriately addressed. The process would include a series of directives by this Commission should the Company not respond as agreed. Further, this process could be a hallmark for future problems, such as this, should similar circumstances occur.

The punitive fine process and other relief to protect the public good and safety is best addressed after my recommended consultation process has been allowed to determine the responsibilities of all the agreed parties. The Commission and Concord Natural Gas Corporation, on the record are agreed upon the problems but not upon the method or priority of solving the problems. My process will assure that the long term benefits will accrue to the public safety.

FOOTNOTE

¹Exhibit #1.

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NH.PUC*12/29/82*[79496]*67 NH PUC 975*Fuel Adjustment Clause

[Go to End of 79496]

Re Fuel Adjustment Clause

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

DR 82-330, Order No. 16,106

67 NH PUC 975

New Hampshire Public Utilities Commission

December 29, 1982

ORDER implementing fuel adjustment clause filings, as modified.

APPEARANCES: Peter J. Stulgis for Concord Electric Company and Exeter and Hampton Electric Company; Michael D. Flynn for Granite State Electric Company; Gerald Cook for Connecticut Valley Electric Company; Kenneth E. Traum for the public utilities commission staff; George Gantz; and Lisa Braiterman.

BY THE COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed public hearing on the fuel adjustment clause filings of Concord Electric Company, Exeter and Hampton Electric Company, and Granite State Electric Company for the first quarter of 1983, at its office in Concord on December 16, 1982.

The Concord and Exeter and Hampton Electric Companies' were represented by one witness, Peter J. Stulgis. On December 8, 1982, those companies filed for FAC rates for the first quarter of 1983 of \$0.715/100 KWH and \$0.810/100 KWH respectively. Such rates reflected increases from December, 1982 rates of \$0.465/100 KWH and \$0.435/100 KWH respectfully.

The Public Utilities Commission staff cross-examined the witness on such diverse items as weather-normalized sales estimates, the ratchet demand charge from PSNH, etc. As a result of that cross-examination, the Company supplied additional data and due to updated fuel charge estimates supplied by PSNH, filed revised tariff pages reducing the requested FAC rates for the first quarter of 1983 to \$0.358/100 KWH and \$0.492/100 KWH respectfully. This reflects a rate reduction to an average 500 KWH user per month on Concord's system of \$0.54; while the average Exeter-Hampton customer will see an increase of \$0.29 per month.

The Commission accepts these revised rates. Our order will issue accordingly.

Granite State Electric Company requested its FAC be increased for the first quarter of 1983 from \$0.62/100 KWH to \$1.36/100 KWH, and the OCA be increased from 14.5¢ /100 KWH to 15.1¢ /100 KWH.

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The FAC increase was proported to be due to fuel cost increases and an under collection carried into the period of approximately \$227,000. This under-collection which acts to raise FAC

rates requested for the first quarter of 1983 by 24¢ /100 KWH was due to significantly lower hydro generation than anticipated and lower KWH sales. For instance the hydro generation expected for October, 1982 was roughly three times higher than actual.

Correspondingly, the OCA increase is due to an expected increase in the oil-coal price differential of which approximately two-thirds flows through OCA and one-third directly benefits customers; and a prior period adjustment.

Through exhibit 13 the Company filed in compliance with Order No. 16,026 the rates it is proposing to pay for electricity purchased from qualifying small power producers in the first six months of 1983. As the Commission has granted a Motion for Rehearing on this Order, the Commission will accept this filing pending results of that rehearing.

In addition to the prospective rates filed by the Company and herein accepted by the Commission of:

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

| | <i>Primary</i> | <i>Secondary</i> |
|----------------------|---------------------|---------------------|
| <i>Rating Period</i> | <i>Distribution</i> | <i>Distribution</i> |
| Peak Period | 7.240¢ /KWH | 7.555¢ /KWH |
| Off-Peak Period | 5.283¢ /KWH | 5.346¢ /KWH |
| Total Period | 6.441¢ /KWH | 6.543¢ /KWH |

The Company made an offer, which is accepted by the Commission, to get a check to Baltic Mills by December 25, 1982, calculated on a 100 MW increment/decrement basis, which may need further adjustment based on the results of the Motion for Rehearing.

The Company witness, Mr. Morrissey, responded to Public Utilities Commission staff questions on such diverse matters as generating units outage schedules, sales growth, the AFUDC rate charged by Northeast Utilities on Mt. Tom through OCA, the booking of short-term sales, etc.

As a result of this cross-examination and information filed after the hearing, the Commission accepts an FAC rate for the first quarter of 1983 of \$1.36/100 KWH and an OCA rate for the first quarter of 1983 of \$0.151/100 KWH.

Our order will issue accordingly.

ORDER

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

WHEREAS, the Commission in correspondence dated March 2, 1982 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 Wolfboro, 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 for those utilities which file monthly unless requested or needed by one of those utilities; and the Commission would 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 scheduled; and

WHEREAS, this is not one of the two off months for quarterly FAC utilities; hearings were held for Concord Electric Company, Exeter & Hampton Electric Company, and Granite State Electric Company; and

WHEREAS, the Commission in DR 81-340, Third Supplemental Order No.

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15,986, dated November 10, 1982 (67 NH PUC 784), of the N.H. Electric Cooperative rolled the cost of fuel on an estimated forward looking basis into base rates, thus eliminating the lagging Fuel Adjustment Clause and resulting in more stable and comprehensible rates, and

WHEREAS, the rolled in rate will remain in effect for approximately one year, unless a hearing is requested by any party, no new rate will be stated for the N.H. Electric Cooperative in this month's FAC order; it is hereby

ORDERED, that Sixth Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 — Electricity, is rejected; and it is

FURTHER ORDERED, that Seventh Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 — Electricity, providing for a fuel surcharge of \$0.358 per 100 KWH for the months of January, February and March 1983, be, and hereby is, permitted to go into effect for the month of January, 1983; and it is

FURTHER ORDERED, that Six Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, is rejected; and it is

FURTHER ORDERED, that Seventh Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge of \$0.492 per 100 KWH for the months of January, February and March 1983, be, and hereby is permitted to go into effect for the month of January, 1983; and it is

FURTHER ORDERED, that Third Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of 15.1 cents (\$0.151) per 100 KWH for the months of January, February and March 1983, be, and hereby is, permitted to go into effect for January, 1983; and it is

FURTHER ORDERED, that Third Revised Page 30 of Granite State Electric Company, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the months of January, February and March 1983, of \$1.36 per 100 KWH be, and hereby is, permitted to go into effect for January, 1983; and it is

FURTHER ORDERED, that Twenty-Fourth Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$4.43 per 100 KWH for the month of January, 1983, be, and hereby is, permitted to become effective January 1, 1983; and it is

FURTHER ORDERED, that One Hundred Eighth Revised Page 6 of Littleton Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of \$1.76 per 100 KWH for the month of January, 1983, be, and hereby is permitted to become effective January 1, 1983; and it is

FURTHER ORDERED, that 76th Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of \$1.17 per 100 KWH for the month of January, 1983, be, and hereby is, permitted to become effective January 1, 1983; and it is

FURTHER ORDERED, that 73rd Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of \$0.69 per 100 KWH for the month of January, 1983, be, and hereby is, permitted to become effective January 1, 1983.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 1982.

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NH.PUC*12/30/82*[79497]*67 NH PUC 978*Policy Water Systems, Inc.

[Go to End of 79497]

Re Policy Water Systems, Inc.

DE 82-324, Order No. 16,096

67 NH PUC 978

New Hampshire Public Utilities Commission

December 30, 1982

AUTHORIZATION for company to operate as a public utility.

APPEARANCES: Robert W. Christian, president, for the petitioner.

BY THE COMMISSION:

REPORT

By a petition filed, Policy Water Systems, Inc., seeks authority to establish and operate a water public utility in the Scobie Pond development in Derry, Nesenkeag in Londonderry, R & B in Londonderry, Liberty Tree in Raymond, and Beaver Hollow in Sandown.

Policy is presently serving the residents of these areas and represents that it will continue to do so under the terms and conditions of its tariff presently on file with this Commission.

Granting of this petition will also validate Commission Report and Order in DR 81-229/No. 15,743 (67 NH PUC 455).

Our Order will issue accordingly.

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 operate as a

water public utility in limited areas in the Towns of Derry, Londonderry, Raymond, and Sandown. These areas are bounded and described as follows, and are in addition to areas granted by previous Commission orders:

Derry — Scobie Pond

Beginning at the junction of Route 28 by-pass and Scobie Pond Road proceed Westerly to Londonderry line. From that point advance Northerly along town line 5000', then Easterly across Route 28 Bypass 2500'. From this point advance Southerly parallel to the Route 28 Bypass to Shields Road and Westerly back to start.

Londonderry — Nesenkeag

Beginning at a point on High Range Road 1000' Southerly of Royal Lane, proceed Westerly 5000' to power lines, then Northeasterly 5000' to power lines, then Northeasterly 5000' to Mayflower Drive. Proceed Easterly along Mayflower Drive Proceed Easterly along Mayflower Drive to High Range Road, then Southerly along High Range Road back to start.

Londonderry — R & B

Starting at the intersection of West Road and Wiley Hill Road proceed Westerly along Wiley Hill Road to the Litchfield town line. Then proceed Southerly along town line to the Nesenkeag

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Brook then Easterly along Nesenkeag Brook 1600'. Then proceed Northerly parallel to West Road to Wiley Hill Road then Westerly along Wiley Hill Road back to start.

Raymond — Liberty Tree

Beginning at a point on Batchelder Road 3000' Westerly of Route 107 and proceeding Northerly 1200', advance Westerly 2500' then Southerly 2100' across Batchelder Road. Advance Easterly 2400' then Northerly 1200' back to start.

Sandown — Beaver Hollow

Beginning at the Northerly end of Phillips Pond proceed Northerly to Route 121A then Southeasterly along 121A to Odell Road. Then proceed Southwesterly to Little Mill Road then Northwesterly to the South end of Phillips Pond. Then advance Northerly along shore back to start; and it is

FURTHER ORDERED, that the customers served in the areas here described shall be served under the terms and conditions of tariff NHUC No. 1 Water of Policy Water Systems, Inc.; and it is

FURTHER ORDERED, that Policy Water Systems, Inc. shall file revised pages 1, 2, and 3 to include service to these areas, and in accordance with the tariff filing rules of this Commission.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1982.

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NH.PUC*12/30/82*[79498]*67 NH PUC 979*Department of Resources and Economic Development

[Go to End of 79498]

Re Department of Resources and Economic Development

DX 81-122, Supplemental Order No. 16,105

67 NH PUC 979

New Hampshire Public Utilities Commission

December 30, 1982

ORDER establishing snowmobile crossing on railroad line.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on August 6, 1981, this Commission, in Order No. 15,051, authorized a private crossing presently existing across the Berlin Branch of the Boston and Maine Corporation at Engineering Station 599+06 in the Town of Jefferson to become a public crossing during the period from December 1, 1981 to April 1, 1982 for the use of snowmobiles; and

WHEREAS, on August 20, 1982, the Department of Resources and Economic Development, Bureau of Off Highway Vehicles, requested an extension of that Order; and

WHEREAS, upon investigation, the Commission finds that all required safety

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crossing provisions which were mandated by its Order No. 15,051 have, in fact, been met; and

WHEREAS, the Commission upon further investigation finds that no incidents were reported at the Jefferson Crossing during the period in which the previous order was in affect; it is

ORDERED, that the private crossing presently existing across the Berlin Branch of the Boston and Maine Corporation at its Engineering Station 599+06 in the Town of Jefferson, be and hereby is declared a public crossing during the period from December 1, 1982 to April 1, 1983 for the use of snowmobiles; and it is

FURTHER ORDERED, that approval of this crossing shall be contingent upon the continued placement and maintenance of standard stop signs, advance warning disks, and standard crossing whistle posts by the N.H. Department of Resources and Economic Development, Bureau of Off Highway Vehicles, and of the Town of Jefferson, all as provided in our Order No. 15,051; and it is

FURTHER ORDERED, that failure to comply with the provisions of this Order will result in the closing of this crossing to snowmobile use.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1982.

Dissenting opinion by LOVE, chairman: The decision by the majority, the result of work done by Commissioner Aeschliman, is far superior to the Commission's original decision in this docket, Order No. 15,051. In my dissent in this previous decision, I raised the issue of safety and found that the placement of a stop sign and occasional plowing would not provide suitable protection of the public from encounters between these two forms of transportation. The placement of whistle posts, advance warning disks and stop signs is a significant improvement over that required by our prior order. However, there remains significant problems stemming from the very nature of snowmobiling itself. This sport severely reduces the availability of two senses, sight and hearing. While more warnings should provide a greater level of safety, I believe that some form of warning lights would be necessary to provide an acceptable level of protection.

As I also raised in my prior dissent, the evidence demonstrates that the operation of snowmobiles across railroad tracks leads to severe icing problems which may well lead to train incidents long after snowmobilers have left the scene. This action of allowing snowmobiles across this track is unfairly imposing burdens, costs and liabilities on the railroad without compensation.

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NH.PUC*12/30/82*[79499]*67 NH PUC 981*Meriden Telephone Company

[Go to End of 79499]

Re Meriden Telephone Company

DR 82-371, Order No. 16,107

67 NH PUC 981

New Hampshire Public Utilities Commission

December 30, 1982

ORDER revising depreciation rates for telephone equipment.

BY THE COMMISSION:

ORDER

WHEREAS, Meriden Telephone Company filed a petition for the re prescription of depreciation rates for terminal equipment, Accounts 231 and 234; and

WHEREAS, Meriden Telephone Company has filed a depreciation accrual rate study based upon the remaining lives of the plant in those accounts at year end 1981; and

WHEREAS, Meriden Telephone Company has requested that the effective date for the revised depreciation rates be January 1, 1982; and

WHEREAS, rapid technological advancements and changes throughout the industry due to deregulation, divestiture and removal of customer premises equipment (CPE) have precipitated

the need to recover capital costs over the remaining useful lives of the subject plant; and

WHEREAS, the current offering of touch-tone services will further accelerate the obsolescence of rotary telephone sets and similar terminal equipment; and

WHEREAS, the Commission staff has reviewed the depreciation accrual rate study and recommends approval of the rates formulated therein; it is

ORDERED, that the revised depreciation rates for terminal equipment are hereby approved; and it is

FURTHER ORDERED, that Meriden Telephone Company is allowed to book the subject rates effective January 1, 1982.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1982.

=====

NH.PUC*12/30/82*[79500]*67 NH PUC 981*Kearsarge Telephone Company

[Go to End of 79500]

Re Kearsarge Telephone Company

DR 82-375, Order No. 16,108

67 NH PUC 981

New Hampshire Public Utilities Commission

December 30, 1982

ORDER revising depreciation rates for telephone equipment.

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BY THE COMMISSION:

ORDER

WHEREAS, Kearsarge Telephone Company filed a petition for the represcription of depreciation rates for terminal equipment, Accounts 231 and 234; and

WHEREAS, Kearsarge Telephone Company has filed a depreciation accrual rate study based upon the remaining lives of the plant in those accounts at year end 1981; and

WHEREAS, Kearsarge Telephone Company has requested that the effective date for the revised depreciation rates be January 1, 1982; and

WHEREAS, rapid technological advancements and changes throughout the telephone industry due to deregulation, divestiture and removal of customer premises equipment (CPE) have precipitated the need to recover capital costs over the remaining useful lives of the subject plant; and

WHEREAS, Kearsarge Telephone Company will be installing digital switching technology in 1983 and anticipates the accelerated obsolescence of rotary telephone sets and similar terminal equipment; and

WHEREAS, the Commission staff has reviewed the depreciation accrual rate study and recommends approval of the rates formulated therein; it is

ORDERED, that the revised depreciation rates for terminal equipment are hereby approved; and it is

FURTHER ORDERED, that Kearsarge Telephone Company is allowed to book the subject rates effective January 1, 1982

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1982.

=====

NH.PUC*12/30/82*[79501]*67 NH PUC 982*Gas Service, Inc.

[Go to End of 79501]

Re Gas Service, Inc.

DR 80-36, Fifth Supplemental Order No. 16,109

67 NH PUC 982

New Hampshire Public Utilities Commission

December 30, 1982

ORDER requesting attorney general to institute criminal proceedings.

1. FINES AND PENALTIES, § 4 — Jurisdiction and powers — Commissions.

[N.H.] The commission has specific statutory grants of authority to impose fines. p. 983.

2. FINES AND PENALTIES, § 6 — Violation of commission order — Criminal penalties.

[N.H.] The appropriate action for violation of a commission order is for the state attorney

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general to institute criminal proceedings.

APPEARANCE: Charles H. Toll

BY THE COMMISSION:

Opinion by LOVE, chairman: The Commission issued Forth Supplemental Order No. 15,701

ordering refunds and fining Gas Service, Inc. \$10,000 for failure to comply with our prior Orders which did not allow the charges that ultimately led to the requirement of refunds. Gas Service, Inc. filed a motion for rehearing alleging errors made by the Commission in the various Orders in this proceeding.

The motion for rehearing has not disputed the correctness of the Commission's Order as to the requirement of refunds or the addition of interest to the refunds. These refunds and the interest therefore will stand.

The first contention is whether the Commission will recognize for ultimate accounting purposes and for ratemaking purposes a deduction for the total amount of the refunds together with the interest thereon and thereby an appropriate addition to rate base.

The Commission did not address this area in its earlier Orders but will avail itself of this opportunity to address this subject at this time. Obviously, if the Commission found as it did that customers shouldn't pay these costs, then there should be a corresponding deduction from the account set up to record customer supplied funds. Equally obvious, is that if the utility rather than the customer provides the funds then there must be a corresponding addition to rate base. However, this addition is not to reflect interest. The interest component was set forth to compensate the specifically overcharged customers. This is not found to be a proper cost for other consumers to bear.

The Company, in its motion for rehearing, acknowledges the appropriateness of the refunds and does not dispute the interest component. However, the Company does challenge the imposition of the fine. The arguments offered by the Company include an allegation that the Commission is without statutory authority and that even if the Commission has authority that any fine should be forgiven due to good faith attempts to comply with Commission Orders.

[1] The Commission does have specific grants of authority to fine. RSA 374:7-a and RSA 374:17 are but two examples. However, the action in question here was the failure to comply with a Commission Order. RSA 365:40 requires that all utilities and all of their officers and agents comply with Commission Orders while they remain in force. RSA 365:41 and 42 set forth specific criminal penalties for failure to comply.

[2] If such a failure to comply with a Commission Order occurs, the attorney general, pursuant to 365:43 and 365:44 has the authority to institute and action and seek the appropriate criminal penalties pursuant to the new criminal code.

The Commission previously was allowed to fine pursuant to RSA 365:41 and 42. The regulatory remedies have now been replaced with criminal sanctions. Consequently, the Commission will simply request the attorney general to review this docket and provide the Commission a recommendation as to the appropriate action. During the interim the \$10,000 check is to be returned to the Company.

Based upon the foregoing, the motion for rehearing is granted.

Page 983

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 motion for rehearing is granted; and it is

FURTHER ORDERED, that the \$10,000 check previously set forth as a fine is to be returned to Gas Service, Inc.; and it is

FURTHER ORDERED, that the Commission formally asks the Attorney General to review this record and make a recommendation as to the appropriate steps to be undertaken by either the Commission or the Attorney General itself.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1982.

=====

NH.PUC*12/30/82*[79502]*67 NH PUC 984*Granite State Telephone Company

[Go to End of 79502]

Re Granite State Telephone Company

DR 82-376, Order No. 16,111

67 NH PUC 984

New Hampshire Public Utilities Commission

December 30, 1982

ORDER allowing telephone company to book remaining life depreciation rates.

BY THE COMMISSION:

ORDER

WHEREAS, Granite State Telephone on November 19, 1982 filed a petition for the prescription of depreciation rates for station apparatus, Account 231; and

WHEREAS, Granite State Telephone has requested that a remaining life depreciation rate of 16.8 percent be approved on an effective date of January 1, 1982; and

WHEREAS, Granite State Telephone states that the depreciation rates must be adequate to insure full recovery of its investment during the phase but of station equipment in the separations process over the next five years; and

WHEREAS, the Commission staff has reviewed the Company's filing and recommends that the requested rate be revised to a remaining life depreciation rate of 15.6 percent (using 576 future net salvage); it is

ORDERED, that Granite State Telephone is allowed a remaining life depreciation rate of 15.6 percent; and it is

FURTHER ORDERED, that Granite State Telephone is allowed to book the subject rates effective January 1, 1982.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1982.

=====

NH.PUC*12/31/82*[79503]*67 NH PUC 985*New England Telephone and Telegraph Company

[Go to End of 79503]

Re New England Telephone and Telegraph Company

DA 82-303, Order No. 16,112

67 NH PUC 985

New Hampshire Public Utilities Commission

December 31, 1982

ORDER permitting capitalization of interest on short-term construction projects.

VALUATION, § 224 — Construction work in progress.

[N.H.] Neither short-term nor long-term construction projects may be included in rate base under the anticonstruction work in progress statute, and neither will be used to calculate revenue requirements.

BY THE COMMISSION:

Opinion by LOVE, chairman: On December 3, 1982, New England Telephone (NET) filed a request with this Commission for a change in its accounting practices. Specifically, the request is to allow NET permission to capitalize interest on short-term construction projects. At the present, NET capitalizes interest during construction on projects of a duration more than one year.

The Federal Communications Commission (FCC), through its system of accounts, does not capitalize interest on construction projects expected to be completed. However, the FCC also allows short-term construction projects to be used for determining revenue requirements.

Pursuant to RSA 378:30-a, the so-called anti-CWIP statute, this Commission does not allow either short-term or long-term construction projects to be included in rate base and thereby not included for purposes of calculating revenue requirements.

The Commission presently allows electric utilities to capitalize interest on short-term, less than one year, construction projects. The Commission finds no reason to disallow NET the same regulatory treatment. The Commission will therefore grant the request for this accounting

change. However, as noted previously, short-term and long-term construction projects cannot be included in rate base and, therefore, cannot be used for ratemaking purposes.

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 is granted permission to capitalize interest on short-term construction projects.

By Order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1982.

=====

NH.PUC*12/31/82*[79504]*67 NH PUC 986*City of Manchester

[Go to End of 79504]

Re City of Manchester

DX 82-377, Order No. 16,114

67 NH PUC 986

New Hampshire Public Utilities Commission

December 31, 1982

ORDER rescinding previous order.

BY THE COMMISSION:

ORDER

WHEREAS, the City of Manchester was ordered in DT 5403, Order No. 9560 dated January 10, 1969 to install and maintain standard stop signs at each approach on Lake Shore Road at the grade crossing of the Boston and Maine Railroad's Portsmouth Branch identified as AARDOTB45750V; and

WHEREAS, the Boston and Maine Railroad has received abandonment authority for the Portsmouth Branch east of Page Street to Rockingham Jct.; and

WHEREAS, there is no rail traffic over this portion of the line, Lake Shore Road being east of Page Street; it is

ORDERED, that the provisions of Order No. 9560 in DT 5403 dated January 10, 1969 be and hereby are rescinded.

By Order of the Public Utilities Commission of New Hampshire this December 31, 1982.

=====

NH.PUC*12/31/82*[79505]*67 NH PUC 986*Concord Electric Company

[Go to End of 79505]

Re Concord Electric Company

DE 82-244, Order No. 16,115

67 NH PUC 986

New Hampshire Public Utilities Commission

December 31, 1982

ORDER certifying questions to the New Hampshire supreme court.

APPEARANCES: Dom S. D'Ambruoso for Concord Electric Company.

BY THE COMMISSION:

Opinion by LOVE, chairman: On August 23, 1982, Concord Electric filed a petition in which it requested that the Commission after notice and hearing enter an order finding that the Commission

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has authority to exercise jurisdiction to regulate rates, terms, conditions of pole attachments affixed by cable television companies upon poles of New Hampshire public utility companies, and that in so regulating the Commission also has authority to consider, and will consider, the interests of the subscribers of cable television services, as well as the interests of the consumers of utility services.

The Commission seeks the guidance of the Court pursuant to RSA 365:20 in resolving the question of law as to the question of our statutory authority. The Commission recognizes that the Court already has an extensive docket. However, the Commission seeks to avoid what occurred in the radio paging service area recently reviewed by the Court in *Re Omni Communications, Inc.* (1982) 122 NH — 451 A2d 1289.

In that business sector, the Commission asserted jurisdiction in *Re Comex, Inc.* (1963) 45 NH PUC 196. In this earlier decision, Comex was given authority to provide radio paging services but not exclusive authority. Fight years later, the Commission after notice and hearing provided Comex with exclusive authority. *Re Comex, Inc.* (1971) 56 NH PUC 162.

As the Court noted in its *Omni* decision, there was then offered a piece of legislation in 1977 which would have placed radio paging service companies under PUC jurisdiction. This legislation, which was rejected by the legislature, is interesting given that the Commission had exerted jurisdiction fourteen years previously.

Eighteen years after the Commission originally exerted jurisdiction, *Omni* filed its petition seeking the Commission, among other requests, to state that the Commission did not have jurisdiction in this business sector. The Commission issued its decision *Re Omni*

Communications, Inc. (1981) 66 NH PUC 261, and (1981) 66 NH PUC 435, in which the then present Commissioners followed the orders of their predecessors eighteen years earlier. Omni appealed and the Court found that the Commission lacked jurisdiction in this area.

To avoid a possible repeat of this nineteen years of incorrect regulation, the Commission would respectfully request that the following questions be responded to by the Court pursuant to RSA 365:20. Based upon the allegations set forth in the Petition of Concord Electric Company entitled "In Re Petition of Concord Electric Company, Cable Television Pole Attachment Jurisdiction" and any inferences resulting therefrom:

1. Does the New Hampshire Public Utilities Commission have the requisite statutory jurisdiction over the rates, terms and conditions of attachments to the plant (poles) of New Hampshire utility companies by cable television operators?

2. If the answer to the above question is yes, does the Commission by regulating such rates, terms, conditions have the authority to consider the interests of the subscribers of cable television services, as well as the interests of consumers of utility services?

The Commission will send copies of this decision to all telephone and electric utilities and to as many cable television companies as we are presently aware. Our Order will issue accordingly.

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ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the questions set forth in the Report are to be certified to the Court pursuant to RSA 365:20.

By Order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1982.

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NH.PUC*12/31/82*[79506]*67 NH PUC 988*Kearsarge Telephone Company

[Go to End of 79506]

Re Kearsarge Telephone Company

DR 82-355, Supplemental Order No. 16,116

67 NH PUC 988

New Hampshire Public Utilities Commission

December 31, 1982

ORDER on telephone tariff revisions.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Kearsarge Telephone Company filed with this Commission on December 1, 1982, certain revisions to its tariff, NHPUC No. 5 — Telephone, proposing the unbundling of customer premises equipment from local exchange rates; and

WHEREAS, said filing was suspended by Commission Order No. 16,066 pending investigation and decision thereon:

WHEREAS, said investigation is now complete; it is

ORDERED, that the following revisions of Kearsarge Telephone Company tariff, NHPUC No. 5 — Telephone, be, and hereby are, rejected:

Section 1 — Original Forward (sic) — 2nd Revised Sheet 6 Section 2 — Original Sheets 1B and 1C — 4th Revised Sheets 1 and 1A Section 3 — Original Sheets 71 and 72 — 4th Revised Sheet 7 Section 7 — Original Sheet 26A — 1st Revised Sheet 26 Section 10 — Original Sheets 1-12 Section 11 — Original Sheets 1 and 2; and it is

FURTHER ORDERED, that Kearsarge Telephone Company file revised pages in lieu of those rejected, said pages to incorporate a "Station Set" rate of \$1.00 per month; and it is

FURTHER ORDERED, that said revisions also adjust basic local exchange service rates to reflect the removal of the "Station Set" as well as removal of monthly charges for extension service; and it is

FURTHER ORDERED, that caveats regarding the Federal Communications Commission Order in its Docket 20828, originally proposed as "Original Section

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1 — Forward (sic)", should appear as a preface to Section 3 listing those services affected; and it is

FURTHER ORDERED, that establishment of Sections 10 and 11 is deemed unnecessary at this time, with such services remaining in Section 3 subject to the Preface cited earlier; and it is

FURTHER ORDERED, that tariff revisions directed by this Order become effective on January 1, 1983; and it is

FURTHER ORDERED, that one-time public notice of the results of this Order be given, preferably by bill insert.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1982.

=====

NH.PUC*12/31/82*[79507]*67 NH PUC 989*Meriden Telephone Company

[Go to End of 79507]

Re Meriden Telephone Company

DR 82-358, Supplemental Order No. 16,117

67 NH PUC 989

New Hampshire Public Utilities Commission

December 31, 1982

ORDER on telephone tariff revisions.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Meriden Telephone Company filed with this Commission on December 1, 1982 certain revisions of its tariff, NHPUC No. 5 — Telephone, proposing the unbundling of customer premises equipment from local exchange rates; and

WHEREAS, said filing was suspended by Commission Order No. 16,061 pending investigation and decision thereon; and

WHEREAS, said investigation is now complete; it is

ORDERED, that the following revisions of Meriden Telephone Company tariff, NHPUC No. 4 — Telephone, be, and hereby are, rejected:

Section 1 — Original Forward (sic)

— 1st Revised Sheet 7 Section 2 — Original Sheets 1-B and 1-C — 3rd Revised Sheet 1 Section 3 — Original Sheets D-1, N-5, O-1 and O-2 Section 7 — Original Sheets 1-4 Section 8 — Original Sheets 1 and 2; and it is

FURTHER ORDERED, that Meriden Telephone Company file revised tariff sheets in lieu of those rejected, said sheets to incorporate a "Station Set" rate of \$1.45 per month; and it is

FURTHER ORDERED, that said revisions also adjust basic local exchange service rates to reflect the removal of the "Station Set" as well as removal of monthly charges for extension service; and it is

FURTHER ORDERED, that caveats regarding the Federal Communications Commission Order in its Docket 20828,

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originally proposed as "Original Section 1 — Forward (sic)", should appear as a preface to Section 3 listing those services affected; and it is

FURTHER ORDERED, that establishment of Sections 7 and 8 is deemed unnecessary at this time, and that such services should remain in Section 3 subject to the Preface cited earlier; and it is

FURTHER ORDERED, that tariff revisions directed by this Order become effective on January 1, 1983; and it is

FURTHER ORDERED, that one-time public notice of the results of this Order be given,

preferably by bill insert.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1982.

=====

NH.PUC*12/31/82*[79508]*67 NH PUC 990*Granite State Electric Company

[Go to End of 79508]

Re Granite State Electric Company

DR 81-361, Third Supplemental Order No. 16,118

67 NH PUC 990

New Hampshire Public Utilities Commission

December 31, 1982

ORDER allowing extension of temporary rate increase.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission, pursuant to Supplemental Order No. 15,784 (67 NH PUC 562) has allowed Granite State Electric Company temporary rates of \$965,262 on an annual basis as of August 2, 1982; and

WHEREAS, the Commission, pursuant to Order No. 15,784 has allowed temporary rates as to any usage rendered after March 1, 1982; and

WHEREAS, the Commission, pursuant to Supplemental Order No. 15,922 (67 NH PUC 695) has allowed Granite State Electric Company to temporarily increase its basic rates by \$.0040 per KWH for all KWH's rendered in October and November, 1982 to collect the difference between \$0 and the annual level of increase, \$965,262, the Company was entitled to for the time period of usage between March 1, 1982 and August 1, 1982; and

WHEREAS, Granite State Electric Company has requested an extension of the temporary increase through December, 1982 to recover the remaining level of increase the Company was entitled to for the period between March 1, 1982 and August 1, 1982; and

WHEREAS, based on testimony given to this Commission, none of this \$965,262 of permanent rates relates to abandoned plant; it is hereby

ORDERED, that Granite State Electric Company temporarily increase its basic rates by \$.0014 per KWH for all KWH's rendered in December, 1982, January, 1983 and February, 1983 to collect the remaining difference between \$0 and the annual level of increase, \$965,262, the Company was entitled to

for the period between March 1, 1982 and August 1, 1982; and it is

FURTHER ORDERED, that this surcharge be subject to review and reconciliation under DR 82-327; and it is

FURTHER ORDERED, that Granite State Electric Company continue to submit monthly reports pursuant to Order No. 15,922.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1982.

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NH.PUC*12/31/82*[79509]*67 NH PUC 991*Public Service Company of New Hampshire

[Go to End of 79509]

Re Public Service Company of New Hampshire

Intervenors: Business and Industry Association and Community Action Program

DR 82-61, Order No. 16,120

67 NH PUC 991

New Hampshire Public Utilities Commission

December 31, 1982

ORDER accepting settlement agreement.

APPEARANCES: Martin L. Gross for Public Service Company of New Hampshire (PSNH); Dom S. D'Ambruoso for Business and Industry Association (BIA); Gerald M. Eaton for Community Action Program (CAP); George Gantz, rate analyst, Lisa Braiterman, staff economist for staff.

BY THE COMMISSION:

Opinion by LOVE, chairman: The Commission, pursuant to Order No. 15,516 (67 NH PUC 189), initiated this docket for purposes of establishing a consultative process whereby professionals associated with the previously noted appearances could regularly meet and address unresolved rate design issues.

This process went on for the greater part of 1982. The result has been a settlement as to certain issues involving rate design. The parties request that the Commission approve the settlement and that all rate design issues associated with DR 82-333, PSNH's new \$33 million rate increase request, be governed by the settlement.

The Commission appreciates the substantial level of effort that went into this docket. The quality of the people addressing these issues is substantially superior to that level of expertise demonstrated in previous rate design proceedings before this Commission.

The Commission will give temporary approval to the settlement for two months — January

and February 1983.

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The Commission will, in its procedural hearings in DR 82-333, raise the issue of proper rate design so as to allow all parties in that docket to have input. As noted in this record, BIA doesn't represent all business customers and CAP doesn't represent all residential customers. Neither separately nor together do these parties represent all PSNH customers.

Once the parties in this docket failed to reach an agreement prior to the filing of the new increase, DR 82-333, there existed certain procedural due process rights vested in parties which appear in this latter docket, but not this docket. The Commission will not foreclose the rights of any person to raise rate design issues in DR 82-333.

The agreement put forward is accepted for two months. During that time period, the Commission will have the opportunity to ask the necessary questions so as to understand all of the ramifications associated with this proposed rate design. A clear example of an area where the Commission has questions is in the complicated formula put forward for allocation between rate classes. The parties took over ten months to reach this settlement; the Commission will not be constrained to reach a decision in less than ten days.

PSNH is instructed to file temporary tariff pages to comply with the settlement for application to bills rendered during the months of January and February 1983. A failure by the Commission to extend these tariff pages is to result in their demise as of the end of February, 1983. This docket is, however, closed and any further negotiations are to occur pursuant to DR 82-33.

The Commission has not had an opportunity to make a final determination as to whether or not this settlement is in the public interest, and no party is to suggest to the contrary to the public.

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 to file tariff pages in compliance with the settlement agreement for effect on all bills rendered on or after January 1, 1983 and before or on February 27, 1983; and it is

FURTHER ORDERED, that this docket is closed; and it is

FURTHER ORDERED, that the tariff pages filed pursuant to this order have no effect past February 27, 1983 unless the Commission by specific order so finds in the public interest in DR 82-333.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1982.

=====

NH.PUC*12/31/82*[79510]*67 NH PUC 993*Energy Cost Recovery Mechanism

[Go to End of 79510]

Re Energy Cost Recovery Mechanism

Intervenor: Community Action Program

DR 82-342, Order No. 16,121

67 NH PUC 993

New Hampshire Public Utilities Commission

December 31, 1982

ORDER setting rate for energy cost recovery mechanism.

APPEARANCES: Eaton W. Tarbell, Jr., for the company; Gerald Eaton for Community Action Program (CAP); Kenneth E. Traum, assistant finance director, and George Gantz, rate engineer, for the New Hampshire Public Utilities Commission staff.

BY THE COMMISSION:

Opinion by LOVE, chairman: The Commission held duly noticed public hearings at its office in Concord on December 15 and 20, 1982, on PSNH's filing for an Energy Cost Recovery Mechanism (ECRM) rate for the period January 1, 1983 through June 30, 1983.

In PSNH's original filing on November 22, 1982, the rate requested was \$3.682/100 KWH and related to Exhibits 1 through 12 in this docket. On December 14, 1982, the Company filed updates which became Exhibits 1A through 12A and reflected a reduction in the rate to \$3.460/100 KWH.

During the course of the proceedings, many additional exhibits were submitted, ranging from the Company's monthly ECRM status reports as submitted to the Public Utilities Commission, to data responses to Public Utilities Commission Staff requests, to explanations of outages.

The hearings started with PSNH Witness Stephen Hall, who provided an overall explanation of the filings. One item Mr. Hall discussed was the Company's estimate as to the level of undercollection/overcollection as of December 31, 1982.

The Commission ordered reductions for the months of November and December, 1982 totalling some 5.3 million dollars. There were filings made by PSNH that alledged that due to Commission action, PSNH would undercollect in both the months of November and December 1982. There were also claims that as a result of Commission action, PSNH would undercollect by in excess of 4.5 million dollars for the year ended 1983.

Subsequent review yields the following: (1) that as of November 30, 1982, there remained a substantial overcollection from customers by PSNH; (2) that the mechanism has resulted in a cumulative overcollection for each month in the last twelve months; (3) that whatever the result as of December 31, 1982, the average for the year will be an overcollection and by millions of dollars; (4) that it is likely that there will be a relatively small undercollection or over-collection

as of December 31, 1982; (5) that absent Commission action, there

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would have been an overcollection as of December 31, 1982.

The submission by PSNH as to the level of estimated undercollection as of December 31, 1982 reveals an undercollection of approximately \$800,000. However, the calculation does not reflect all of the necessary factors. PSNH is instructed to alter its method of reporting overcollections and undercollections by taking into account the interest component and any rewards or penalties as to efficiencies or lack thereof.

The interest on the overcollections to date should have been netted against the alleged undercollection. Furthermore, this interest component should be calculated on an 8% compounded basis either for undercollections or overcollections. This reduces the estimated ECRM undercollection by nearly \$225,000.

The Commission also recognizes that there is a penalty provision applicable due to the failure to run Newington Station on a usual or normal business basis. The Commissioners do not agree as to the extent of the penalty, but it is clear that the range is between \$233,804 to \$300,000. The Commissioners agree that the penalty is applicable and that stockholders, not ratepayers, are to swallow the costs of these additional unreasonable expenses. The Commissioners do disagree on the level of the penalty as will be discussed *infra*.

Finally, the remainder of the undercollection assumes that certain units will respond to certain sales growth. A key factor is the assumption as to Merrimack, units which the Commission assumes will operate without outage.

Based upon the foregoing, the Commission will assume neither an overcollection nor an undercollection heading into this six-month period.

The ECRM period ending December 31, 1982, is the first to include many of the incentive-disincentive features, built into the ECRM calculations.

For instance, that period had one feature to reward or penalize the Company for having its generating units available more than targeted, as far as unplanned outages are concerned. PSNH did not meet its target in this area and thus estimated a 10% penalty or approximately \$233,000. This penalty will be discussed later in greater detail.

Another built in incentive for the Company relates to short-term or secondary sales or purchases. In cases where PSNH can make sales or purchases which act to reduce the overall costs in ECRM, the Company's cash flow is temporarily improved and must only pay 8% interest on these funds in comparison to a much higher interest rate on normal short-term borrowings. The Company estimates that over the July, 1982 to December, 1982, ECRM period the savings from these transactions was in the range of \$3 million for which the Commission applauds the Company. Due to a lack of significant historical data and to maintain a strong incentive to PSNH, no estimate of these savings was or will be front-loaded into the ECRM period commencing January 1, 1983.

PSNH witnesses, Zimmerman and Johnson testified on the Availability Target factors the

Company will use in reconciling at the end of the ECRM period any penalty or bonus it will receive for surpassing or falling short of the targets. The targets have been expanded for this upcoming period to encompass all outages, whether planned or unplanned at all generating units in which PSNH has an ownership interest.

In the current period PSNH will be assessed a penalty in excess of \$230,000

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due to its plants not being available up to target levels. This penalty, which is 10% of the additional cost as calculated under an agreement between PSNH, NHPUC staff and CAP and outlined in Exhibits 19 and 20, arose mainly due to an extended outage at Newington Station.

The costs to ratepayers of the Newington outage were partially offset by the Company's postponement of a scheduled Merrimack outage.

The Commission finds reasonable the actions undertaken by the Company to delay the Merrimack scheduled outages. The Commission also wishes to provide strong support for the actions of Mr. Johnson in developing short-term purchases of power from different units around New England. These efforts reflect positively on PSNH and have already provided savings to PSNH customers.

There is disagreement among the participating Commissioners as to the level of the penalty. When the initial ECRM order was set forth for July 1, 1982 to December 31, 1982, the penalty/bonus provision related only to the unscheduled outage targets and not the scheduled outages. The Commission will adopt for purposes of January 1, 1983 forward the position that this penalty/bonus target process is to cover scheduled, as well as unscheduled, outages. The questions of applying this new standard to the July 1, 1982 to December 31, 1982 period is one of whether there is or is not retroactive rate making and what is reasonable. This aspect will be separately discussed.

The Company's exhibit 24 illustrates the methodology used by PSNH to calculate the target for the January June, 1983 ECRM period. Based on the size of all of the units listed and/or lack or readily available data, the Commission accepts the targets as calculated for all of the units except Merrimack 1 & 2 and Newington. For those 3 units the Commission feels a 5-year rolling average is a more appropriate methodology since current history will carry more weight as time drifts forward and the units get older. The Commission's analysis of changing the methodology will be to lower the targets by approximately 0.01% to 0.29%, so rather than ordering the Company to revise its calculation at this point in time, the Company is simply ordered to utilize the revised target calculation methodology in the reconciliation at the end of January June, 1983 ECRM period.

PSNH had its expert on fuel costs, Mr. Hines, testify on the Company's estimate of fuel costs for the next 6 months and peripheral matters.

Mr. Hines predicted the costs of contract oil per barrel which were running around \$26.65 in mid-December 1982 to drop to the \$24.00 per barrel level by the late spring of 1983. These prices are naturally contingent upon many areas beyond the Company's control such as abnormal weather or the results of the late-December, 1982 O.P.E.C. meetings in Vienna.

Oil prices for the month of February, 1983, were estimated to be reduced by \$780,650 due to a refund by C. H. Sprague, as a result of a settlement with the Department of Energy arising from the period October, 1973 to December, 1974.

The Commission was concerned by the fact that PSNH apparently accepted the dollar amount of the refund without any analysis to determine whether or not more was required. Due to this the Commission during the course of the hearings required PSNH to collect and

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submit additional information under oath for review.

An additional item discussed was the the recurrent issue of the coal pile survey. During the July, 1982 to December, 1982 ECRM period the results of the latest survey were flowed through as a credit to PSNH and thusly ECRM ratepayers. In connection with this adjustment, PSNH has again tried to determine the reasons for inaccuracies in tons burned, and concluded that the historical inaccuracies have resulted from a 5% bias in the scales. PSNH has acted to correct such and the Commission can only hope that that action will finally correct this long running problem.

The Commission accepts Mr. Hines input into the ECRM filing.

Wyatt Brown, a Senior Engineer with PSNH, sponsored exhibit 27 and response 7 to PUC Staff data requests. In those papers he estimated a 1.9% growth in prime sales for the first 6 months of 1983 and a 2.7% annual increase for the 10 years, 1982-92.

The Commission has witnessed that for the better part of three years sales growth has been stagnant. The Commission will continue to assume no sales growth until Mr. Brown's new forecast can be evaluated in DE 81-312. The Commission will reduce the ECRM rate to reflect this lower sales estimate and the differential between Mr. Brown's sales estimate and zero will result in removal of these sales and their respective costs from the lease efficient units.

The result is an approval of an ECRM rate of 3.426¢ per 100 KWH. PSNH's filings of \$3.460 per 100 KWH and \$3.682 per 100 KWH are hereby rejected. Our Order will issue accordingly.

DISCUSSION OF PENALTY PROVISION

Opinion by AESCHLIMAN, commissioner: In its July 2, 1982 Order No. 15,732 (67 NH PUC 442) establishing an ECRM rate for the July through December period, the Commission also adopted an incentive provision agreed to by all of the parties to the proceeding. This incentive provision provided for a reward or penalty to the Company for the performance of its generating units relative to unscheduled outages. In this proceeding, the Company seeks to modify this provision to account for a change in planned outage for Merrimack Station in December.

All of the parties agree that the incentive provision should be changed for the next ECRM period to include both planned and unplanned outages. While the other parties do not oppose PSNH's proposed adjustment for Merrimack Station, they recognize that the Commission must address the issue of the propriety of a retroactive adjustment.

Counsel for PSNH takes the position that while the adjustment probably does constitute retroactive ratemaking, which has been prohibited by the Court in *Re Pennichuck Water Works* (1980) 120 NH 562, that the proposed change can be allowed by the Commission since no party will appeal the question. Upon questioning by the Commission, PSNH counsel indicated that the Company would reserve its right to raise the question of retroactive ratemaking in future proceedings should such a change be proposed which benefitted consumers rather than the Company.

Since the Company takes this position, I believe the Commission sets a bad precedent by allowing this adjustment. The ECRM mechanism is a complex and

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evolving method for reimbursing the Company for its energy costs. As experience is gained, changes will continue to be made and should, I believe, be applied to future ECRM periods rather than incorporated retroactively on a selected basis.

Opinion by LOVE, chairman: I agree with Commissioner Aeschliman as to certain aspects of the penalty provision, and disagree as to certain others. Both of us agree that the penalty provision has been called into play. Both of us agree that the penalty is at least \$233,804, which is to be borne by stockholders and not ratepayers. Both of us agree that PSNH's legal argument is unsound when they state that merely the failure to appeal can somehow justify retroactive ratemaking, which is prohibited. Both of us agree that the ECRM rate should be reduced by the amount of the penalty. However, I cannot agree that the penalty should be increased to \$300,000.

I do not think the adoption of a penalty/bonus provision incorporates scheduled as well as unscheduled out-ages in retroactive ratemaking. As far as impacting on rates, the impact does not begin until January 1, 1983. Consequently, it simply is not retroactive. As to the reasonableness of the standard, we have decided that such a standard is reasonable for reconciling adjustments from this point forward. I believe there is some merit that PSNH's contention that delaying the scheduled outage of Merrimack Station could result in problems down the road, and consequently ignoring the bonus provision for the time period of July 1 through December 31, 1982 works to the detriment of the Company.

I believe the consumers have enjoyed the benefit of greater coal generation in the month of December, thanks to the Company's action. And I would accept the use of this more encompassing standard for application in the reconciling adjustment. However, the Company should also be aware that my acceptance of this provision as prospective ratemaking would also lead me upon an appropriate factual presentation to change other factors on a prospective reconciling adjustment, such as interest rates.

ORDER

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

ORDERED, that the ECRM rate for the next six months is to be 3.426¢ per KWH and tariff pages are to be filed with this number reflected,; it is

FURTHER ORDERED, that the tariff pages filed in this docket to date are hereby rejected.

By Order of the Commission this thirty-first day of December, 1982.

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Endnotes**1 (Popup)**

¹This does not suggest, nor should it be interpreted, that if granted all bills would increase by the same percentage.

2 (Popup)

²PUC Rules and Regulations 311.01.

3 (Popup)

³RSA 374:35 Re New England Power Co. (1980) 65 NH PUC 442.

4 (Popup)

⁴New England Power Pool Agreement, dated September 1, 1971, as amended through October 1, 1978. Docket DE 79-223, Company Exhibit 2B.

5 (Popup)

⁵RSA 369:1.

6 (Popup)

⁶*Id.*

7 (Popup)

⁷*Id.*

8 (Popup)

⁸RSA § 369:3.

9 (Popup)

⁹RSA § 369:4.

10 (Popup)

¹⁰RSA § 369:11.

11 (Popup)

¹¹*e.g.*, DF 81-188; DF 81-76; DF 81-2 and DF 80-239.

12 (Popup)

¹²(1979) 64 NH PUC 487, 489.

13 (Popup)

¹³RSA 373:1,374:3.

14 (Popup)

¹⁴RSA § 369:1.

15 (Popup)

¹⁵See Re Legislative Utility Consumers' Council (1980) 120 NH 173, 412 A2d 738 where the Court interpreted a similar public good standard in RSA § 374:30 as including consideration of the financial necessity to avoid insolvency. The future need for power must be weighed against the financial capability to supply the power.

16 (Popup)

¹⁶See, e.g. (1979) 64 NH PUC 487, 489.

17 (Popup)

¹Following this meeting, the Commission approved of the lifeline tariffs of the New Hampshire Electric Coop; Connecticut Valley Electric and Concord Electric.

18 (Popup)

²The 3 final determinations, which were reviewable under RSA 541:3 were: (1) the legality of the institution of lifeline rates in New Hampshire; (2) that such rates were to be non-targeted and apply to the first 200 KWH/month of usage; and (3) revenue loss would be made up from the residential class.

19 (Popup)

³It should be noted that the Commission was not required by PURPA to institute lifeline rates; it was merely obligated to consider this type of tariff. The Commission also went beyond the minimum PURPA requirement when it made the investigation into lifeline rates applicable to all utilities within its jurisdiction.

20 (Popup)

¹As stated on pp. 152 and 153 of 67 NH PUC in the above captioned Order, the issues raised by VOICE in their November 27, 1981 motion were ripe for review, if ever, within the statutory time frame of RSA, Chapter 541. In Commission initiated further hearings on its own authority to determine the adequacy of its original Order. The scope of these further hearings is solely within the discretion of the Commission and not subject to objection by VOICE. To spite of the fact that VOICE's motion was deemed untimely as well as without merit, the Commission discussed in some detail its compliance with Section 114 of PURPA in the Report accompanying the Sixth Supplemental Order. The the extent the issues were the same as those set forth in VOICE's motion should be considered a matter of coincidence.

21 (Popup)

¹"Examination of that full question and answer, however, reveals that Mr. McDade's 'a lag in the opposite direction' reference was to the effective date of the fuel adjustment clause, not to the company's shortfall in revenues. His statement is clear that collection lagged behind payment of expense. Simply because Granite started billing a fuel factor in January 1972 (the first month in which the clause was effective) does not change the fact that recovery lagged one month behind incurrence of expense. In short, a one month lag was created because December 1971 costs were not recovered until bills issued in January 1972 were paid."

22 (Popup)

¹As stated in the Company's reply brief, Gas Service bonds are not rated by Moody's, but that in itself cannot be taken they are not of Aa quality.

23 (Popup)

²The rate State employees are reimbursed for the use of their personal vehicles on State business.

24 (Popup)

³Exhibit 28, AGA Energy Analysis, page 8.

25 (Popup)

⁴This Commission recognizes the potentially disastrous impacts of Indefinite Gas Price Escalator Clauses cited in Exhibit 28, and maintains that such clauses do not represent true economic costs.

26 (Popup)

⁵Report and Order Nos. 15,424 (67 NH PUC 25) and 15,425 (67 NH PUC 97).

27 (Popup)

¹Wharton Econometric Forecasting Associates, Inc. The Wharton Quarterly Model Forecast. January 27, 1982. Pre-meeting Forecast Review

28 (Popup)

¹Transcript, page 4-27.

29 (Popup)

²Exhibit 39, page 5.

30 (Popup)

³The Commission also finds that PSNH's estimates as to the cost of delay are overstated to the extent that the Commission finds their assumptions as to load growth and oil prices are overstated.

31 (Popup)

⁴MMWEC assumes 1985 and 1987. While NEES assumes a late 1984 and 1988 date of operation for the two units.

7. Commissioners Love and Aeschliman failed in their responsibility to the ratepayers to assure dependable and economical energy in their Order of March 24, 1982 because it:

A. Allows out of state interests to dictate the future of the Seabrook project and the affects on the ratepayers of New Hampshire.

B. Suggests that blackmail of a proposed hydro-transmission line hearing process is the way to negotiate.

C. Influenced the stock and bond market adversely and undermines investor confidence in PSNH and Seabrook construction. Our previous Order dated January 11, 1982 gave a wrong signal, thus it had to be clarified and re-clarified for true signals and clear direction. The Order of March 24 will further adversely affect the cost of borrowing and the expense to our ratepayers.

8. The Order of March 24 further orders PSNH to reduce its ownership in Seabrook without recognizing the costs to our ratepaying customers. If we follow through with the July 11 deadline set by my fellow Commissioners, they will set in motion irreversible consequences that could mean the loss of control of any necessary electrical energy because it could be exported outside New Hampshire even though the plant is operating in New Hampshire. This possibility is intolerable to me. We didn't build Sea-brook so the power would be exported and then sold back to us at a higher rate, as we have done with the hydro power along the Connecticut River.

9. I do not support any more loss of ownership in Seabrook to outside utilities when this energy is desperately needed to kick our dependency on our imported oil habit. Why should New Hampshire have a nuclear plant within our State and on our shores, with the concerns associated with it, if the people of New Hampshire do not reap the benefits in rate payer savings. As I said before, this plant will pay for itself in 14 years. Only our determined commitment to finish that project will make it a reality. Your Commission must represent you in making sure that New Hampshire electric customers have dependable, economic energy for the next 30 — 40 years even though the short term costs may be costly.

32 (Popup)

¹Rule 205.07.

33 (Popup)

²Rule 205.07.

34 (Popup)

¹Whatever weight or interpretation is to be given to Chairman Kalinski's letter is not here relevant as Chairman Kalinski either destroyed or removed all of his correspondence prior to February 14, 1979.

35 (Popup)

²Although an expanded role would appear to be allowed pursuant to RSA 363-18a as amended.

36 (Popup)

¹Transcript 2/22/82, page 10.

37 (Popup)

¹The Commission at that time did not have the sound advice of its present Finance Director, who would never have allowed such a financing to be approved.

38 (Popup)

²A failure to notify the Commission as to any proposed changes in depreciation will in the future result in a fine being levied.

39 (Popup)

¹ $1.0 - [1,881,500 \div (37,4220, \times 10.83\%)] = 0.537$

40 (Popup)

²Per Mr. Blair and Mr. Moniz of the Water Works, this amount is a gross figure, but the current cost to the Water Works to determine the net amount by subtracting retirements and replacements, would greatly offset the amount of the retirements and replacements which are miniscule as compared to the \$1,880.500. So the net figure was not requested.

41 (Popup)

¹The parties have characterized the issue as one of burden of proof. Technically the issue is whether NEET has met its "burden of going forward". However, for consistency with terminology used in the SEC Order and briefs of the parties we will refer to the burden as the "burden of proof."

42 (Popup)

²This conclusion is based on Mr. Bigelow's testimony at T. 15-43, and will be discussed more fully *infra*.

43 (Popup)

³The New Hampshire Electric Co-op is not a member of NEPOOL. However, it shares in the benefits in that its wholesale suppliers of electricity have the NEPOOL opportunity to operate at reduced costs.

44 (Popup)

⁴We have difficulty with the applicant's case that the entitlement under the Interconnection Agreement meet a need for power in New Hampshire. First, we do not know whether PSNH will exercise its right to the entitlement if the line is built. However, we expect this question will be addressed by PSNH when it appears at subsequent hearings. Second, it is not clear what kind of power will be available from Hydro-Quebec under an entitlement purchase. Mr. Lalande testified that there would be at most seasonal capacity (Spring-Fall) available and that Hydro-Quebec experienced sharp winter peaks. (T. 14-66, 67). If PSNH exercised its rights to an entitlement it appears it would get "firm" energy or "seasonal" capacity from Hydro-Quebec for the period of Spring through Fall. We note the peak for PSNH is the winter. However, we could infer from this evidence that PSNH could use its entitlement to reduce its costs, especially when it schedules maintenance for its plants during its off-peak periods or to reduce its somewhat higher costs when it experiences a moderate peak in the summer. We note also that under the Interconnection Agreement, PSNH could sell a part or all of its entitlement to another participant who had greater need for an entitlement. While PSNH would undoubtedly benefit from such a sale we have difficulty ruling that the bartering of contractual rights is what the legislature intended when it required proposed facilities to meet the demand for power.

45 (Popup)

⁵Representatives of PSNH have not testified in this proceeding. However, the SEC and

the Commission have requested PSNH testimony and appearances by PSNH witnesses were scheduled after April 23, 1982, but now postponed as a result of the action taken on the PEF Motion on April 23, 1982 (T. 14-167).

46 (Popup)

⁶As is well known to all the participants in this proceeding an alternate route is being planned through Vermont. It is unclear at this time in which state the line will ultimately be built. However, for present purposes we must assume that a line of approximately \pm 300 KV will be sited in New Hampshire. We will discuss separately in this opinion the question of whether NEET has met its burden on the shorter 6.7 mile line. The latter line assumes that the largest segment of the line will be located in Vermont.

47 (Popup)

¹Adjustment would result from either a significant increase or decrease in the prime interest rate.

48 (Popup)

¹ $\$1,181,110 \times 87\% = \$1,027,566$

49 (Popup)

²Exhibit 60.

50 (Popup)

¹These figures are put in for simplicity and not to be used for precedent.

51 (Popup)

²Operating expense which should have been capitalized.

52 (Popup)

³This is but one example of an apparent unawareness of the Commission Rules and Regulation, much less proper accounting principles.

53 (Popup)

⁴April 23, 1982 Transcript, page 90.

54 (Popup)

⁵Company Responses, May 10, 1982 #5.

55 (Popup)

⁶It is the Commission's understanding that a new source of water has been connected to the policy System in Green Hills since the close of the evidence. We will rely on the residents of Green Hills to keep the Commission informed as to service.

56 (Popup)

¹It is noted that IG&T has also failed to pay any of the stenographer's fee for transcripts in these proceedings.

57 (Popup)

³It should be noted that in this case Green Mountain proposed trading part of its interest in Sears Island for an interest in Seabrook, so that the possibility of Seabrook being an alternative to Sears Island was raised in this instance in 1979.

58 (Popup)

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59 (Popup)

⁴Value Line, a prominent investor service, also finds the Commission responsive Exhibit 45.

60 (Popup)

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61 (Popup)

⁵ Mr. Bayless later gave an example if 100 people were doing a job then they would increase the level to 300 (Transcript DF 82-141 Volume (6 page 750).

62 (Popup)

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63 (Popup)

⁶ PSNH cites our attention to the language of Re New Hampshire Gas & E. Co. 88 NH at p. 59, 16 PUR NS 322, where the Court states that a "utility may take or leave what the Commission permits and the Commission may not order it to take it and not leave it". However, under RSA 369 the Commission can tell the company where to "put it" (or conversely not) should it decide to "take".

64 (Popup)

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65 (Popup)

⁷Because of the incident of Three Mile Island, NJCP&L was encountering problems including: exhaustion of short term debt limit, insufficient coverage for sale of long term debt and preferred stock, and inability to sell common equity at a reasonable price. Note that the record in this proceeding indicates ample reason for such concerns regarding PSNH because of its construction program. It is interesting to note that NJCP&L is one of only a few utilities with a bond rating as low as PSNH. The New Jersey Commission decision contrary to PSNH's interpretation, clearly supports a Public Utilities Commission intervention into management

decisions when the financial situation of a given utility is on the brink of financial collapse.

66 (Popup)

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67 (Popup)

⁸Elyria Teleph. Co. v Ohio Pub. Utilities Commission (1953) 158 Ohio St 441, 98 PUR NS 246, 110 NE2d 59; Ohio Central Teleph. Corp. v Ohio Pub. Utilities Commission (1934) 127 Ohio St 556, 2 PUR NS 465, 189 NE 650.

68 (Popup)

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69 (Popup)

⁹48 Ala Code §§ 309, 310 (Code 1940).

70 (Popup)

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71 (Popup)

¹⁰Hawaii Rev Stat, § 269-17 (1976).

72 (Popup)

¹⁰Hawaii Rev Stat, § 269-17 (1976).

73 (Popup)

¹¹Michigan statute, Act 144 of the Public Acts of 1909, § 1; Mich Stat Ann. § 22.101 (Supp 1982-83).

74 (Popup)

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75 (Popup)

¹²Ohio Rev. Code Ann. §§ 4905.40 - 4905.42 (Page, 1977).

¹²A66 Pa CSA §§ 1901-1904 (Purdon 1979).

76 (Popup)

¹²Ohio Rev. Code Ann. §§ 4905.40 - 4905.42 (Page, 1977).

^{12A}66 Pa CSA §§ 1901-1904 (Purdon 1979).

77 (Popup)

¹³Wis Stat, Chap 184 (West 1957).

78 (Popup)

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79 (Popup)

¹⁴Second Revised Motion of Chairman Susan M. Shanaman, Re Limerick Nuclear Generating Station Investigation (1982) 48 PUR4th 190, 56 Pa PUC 47.

80 (Popup)

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81 (Popup)

¹⁵PSNH Clarification Report, DR 81-87 (1982).

82 (Popup)

¹Report and Order No. 15,760 (67 NH PUC at p. 512, 47 PUR4th at pp. 187, 188.)

83 (Popup)

²Report and Order No. 15,760 (67 NH PUC at p. 513, 47 PUR4th at pp. 187, 188.) For perspective it is interesting to note the Commission records, which include the Forbes 500, indicates that Braniff International Airlines had a negative internal cash of 72,105,000 as of December 31, 1981.

84 (Popup)

³A position very close to the Commission's decision in DF 82-141 and in accordance with PSNH's prior position that they could afford a 35% ownership level only if Seabrook II was delayed four years.

85 (Popup)

⁴PSNH's workforce at Seabrook is 1400 workers over that estimated to be employed at this time in the April 1981 forecast.

86 (Popup)

⁵DF 82-141, Order No. 15,760 (67 NH PUC 490, 47 PUR4th 167).

87 (Popup)

⁶Re Washington Electric Co-op., Inc. (Vt 1982) 45 PUR4th 178.

88 (Popup)

⁷DF 82-141, Order No. 15,760 (67 NH PUC 490, 47 PUR4th 167).

89 (Popup)

¹Transcript pages 39-40

90 (Popup)

²Narragansett Electric Co. v Bulke (1977) — RI — , 23 PUR4th 509, 381 A2d 1358.

91 (Popup)

¹\$773,373 MWH is PSNH's actual MWH sold to Total Ultimate Users in Nov. & Dec. 1985, as shown on page 31, line 26, of its monthly report.

92 (Popup)

¹ See page 11, \$12,338 - 12,312 = \$26.

93 (Popup)

¹State law: The Limited Electrical Energy Producers Act (LEEPA RSA 362-A, (Supp. 1982-2), Federal Law: The Public Utility Regulatory Policies Act of 1978 (PURPA § 210) 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.

94 (Popup)

² Those generators under LEEPA are only a subset of those facilities qualifying under PURPA: qualifying facilities (QFs) under PURPA include cogenerators and the size criteria encompasses such facilities up to 80 MWs, LEEPA applies to facilities of 5MW or less.

95 (Popup)

³ "Avoided costs means the incremental cost to an electric utility of electric energy or capacity or both which, but for the purchase from the small qualifying facility ... such utility would generate for itself or purchase from another source.

96 (Popup)

⁴ "New capacity" means any qualifying facility which began construction after the enactment of PURPA (November 9, 1978) 18 CFR § 292.304(b)(1).

97 (Popup)

⁵ "Thus our holding should not be read as requiring FERC to establish a different standard ... but the Commission must justify and explain it fully, particularly in its balancing of the interests of cogenerators, the public interest and electric consumers of the electric utilit(ies)." American Electric Power, 45 PUR4th at p. 374, Oct. 18.

98 (Popup)

⁶ 18 CFR § 292.304(e) states: *Factors affecting rates for purchases*. In determining avoided costs, the following factors shall, to the extent practicable, be taken into account: (1) the data provided pursuant to § 292.302(c), (c) or (d) including state review of such data; ... "

99 (Popup)

⁷ FERC Order No. 69, 18 CFR 292.303(d).

100 (Popup)

⁸ 45 *Federal Register* Par p. 12219, Preamble No. 303.

101 (Popup)

⁹ Fifth U.S. Circuit Court of Appeals (81-4470), Oct. 4, 1982, (49 PUR4th 323). See Inside FERC Oct. 18, 1982, p. 9.

102 (Popup)

¹⁰ See Macdonald Transcript, III pp. 14-18.

103 (Popup)

¹¹ See Transcript, III — pp. 30, 34, 41-48, Exhibit 11.

104 (Popup)

¹This average rate of overcollection is through the time period in question prior to the Commission's Order.

105 (Popup)

²Exhibit 36.

106 (Popup)

¹Exhibit #1.