NH.PUC*01/04/84*[61305]*69 NH PUC 1*Granite State Electric Company

[Go to End of 61305]

69 NH PUC 1

Re Granite State Electric Company

DR 83-347, Order No. 16,836

New Hampshire Public Utilities Commission

January 4, 1984

Opinion and order approving purchase power cost adjustment for an electric utility.

Automatic Adjustment Clauses, § 15 — Purchased power — Wholesale tariffs.

A purchase power cost adjustment proposed by an electric utility to reflect an increase in wholesale tariffs charged by a generation and transmission utility was approved, despite the fact that the wholesale tariffs were based on the inclusion of construction work in progress in the rate base of the transmission utility and would not have been approved if they had been proposed in a retail rate case, because the wholesale tariffs had been approved by the Federal Energy Regulatory Commission and therefore a state commission does not have authority to deny a purchase power cost adjustment based on the wholesale tariffs.

APPEARANCES: Michael Flynn, Esquire for Granite State Electric Company; Larry M. Smukler, Esquire for the Staff of the New Hampshire Public Utilities Commission.

By the Commission:

REPORT

On November 7, 1983, Granite State Electric Company ("Company" or "GSE") filed a request for approval of a change in its Purchase Power Cost Adjustment ("PPCA") to reflect increases in New England Power Company's ("NEPCO") wholesale tariffs No. W-6(I) and W-6(A). The W-6(I) tariff, reflecting an interim wholesale revenue increase of approximately $51 million, is to be effective on January 1, 1984 and the W-6(A), reflecting the entire requested wholesale revenue increase of $74 million, is to be effective March 1, 1984. After due notice, the Commission held a hearing on December 14, 1983. At that hearing, the Staff raised significant issues about the propriety of the proposed PPCA. We have reviewed Staff concerns and, for the reasons set forth below, we have decided that we must approve the Company's PPCA as filed.

The Company and its wholesale supplier, NEPCO, are both wholly owned subsidiaries of the New England Electric System ("NEES"). GSE is an electric distribution company located in

New Hampshire. Its retail rates are regulated by this Commission. NEPCO is a generation and transmission utility which sells energy and capacity to GSE and the other NEES owned distribution companies. Pursuant to Part II of the Federal Power Act, its wholesale rates are regulated by the Federal Energy Regulatory Commission ("FERC"). See also, Federal Power Commission v Southern California Edison Co. (1964) 376 US 205, 52 PUR3d 321, 11 L Ed 2d 638, 84 S Ct 644; Rhode Island Pub. Utilities Commission v Attleboro Steam & Electric Co. 273 US 83, PUR1927B

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348, 71 L Ed 549, 47 S Ct 294. The instant PPCA filing is based on NEPCO's recent W-6 wholesale rate filing before the FERC which has been approved by the FERC on an interim basis. We have considered two issues in our review of GSE's request to adjust its PPCA to reflect the W-6 filing: 1) whether the rates established in the W-6 filing are just and reasonable; and 2) whether we have the authority to deny the adjustment even if we would not have approved such rates for retail ratemaking purposes. We shall address each of the issues in turn.

On the basis of the record before us, we conclude that we would not have approved the rates set forth in the W-6 filing if they had been a part of a retail rate case. The major infirmity with the rates is that NEPCO's rate base includes a portion of its Construction Work in Progress ("CWIP"); a practice that has been expressly prohibited by the New Hampshire Legislature. See, RSA 378: 30-a.[1(1)] NEPCO has accounted for CWIP in this manner because of a recent change in FERC regulations. The amended regulations allow utilities to include a certain portion of CWIP in rate base. See e.g., 18 C.F.R. § 35.26. The record reflects that the issue of whether NEPCO's accounting treatment of CWIP is consistent with the amended FERC regulations will be addressed in the course of the W-6 proceedings.[2(2)]

The record reflects that the effect of including CWIP in rate base is not insignificant; a substantial percentage of the W-6 revenue deficiency is directly attributable to NEPCO's change in its CWIP accounting. Thus, if we must approve GSE's PPCA, we will be requiring GSE's customers to support the cost of construction, including Seabrook construction, prior to the time that construction is completed. GSE's customers are, accordingly, in a different position from all other ratepayers in New Hampshire who have thus far been shielded from such costs by the so-called "Anti-CWIP" law (RSA 378:30-a).[3(3)]

Having determined that NEPCO's request could not have been approved had it been a part of a retail rate case before this Commission, it remains to determine whether we have the authority to deny a PPCA based on a FERC approved tariff. Our review of the applicable law leads us to conclude that RSA 378:30-a is preempted by federal law in this case and, accordingly, we may not deny a PPCA filing based on a FERC approved rate.

As noted above, the FERC's authority over interstate wholesale electric rates is complete and, thus, there can be no question that FERC approval authorizes NEPCO to impose its W-6 rate on its

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wholesale customers. See e.g., New England Power Co. v New Hampshire (1982) 455 US 331, 45 PUR4th 641, 71 L Ed 2d 188, 102 S Ct 1096; Federal Power Commission v Southern California Edison Co., supra.

However, resolution of the issue of whether NEPCO can impose the W-6 tariff does not necessarily determine whether we must allow GSE to recover that cost from its ratepayers. If State authority to withhold such approval exists, the "antiCWIP" law, RSA 378:30-a, would be determinative and we would adjust the PPCA to exclude the cost of including CWIP in rate base. Our review of the experience of other states leads us to conclude, however, that we do not have the authority to deny recovery of a FERC approved PPCA in retail rates. For example, one of the more recent attempts to deny full retail recovery of a FERC approved wholesale rate involved the findings by the Massachusetts Department of Public Utilities (DPU) which denied Eastern Edison Company's request to pass through the FERC approved wholesale rates of its affiliate, Montaup Electric Company, when those rates included full recovery of the cost of the abandoned Pilgrim II nuclear facility. The DPU had previously decided in a retail case that full recovery of those costs was inappropriate. Re Boston Edison Co. (Mass 1982) 46 PUR4th 431. In Eastern Edison Co. v Massachusetts Dept. of Pub. Utilities (1983) 388 Mass 292, 466 NE2d 684, the Massachusetts Supreme Judicial Court held that the DPU did not have the jurisdiction to review the reasonableness of a FERC approved wholesale charge. So long as a purchase power cost consists solely of a FERC approved rate, the DPU had to take it as a prudently incurred reasonable expense. The DPU's experience in Eastern Edison Co. reflects similar regulatory experiences throughout the nation. See e.g., Public Service Co. of Colorado v Colorado Pub. Utilities Commission (1982) — Colo —, 644 P2d 933 (FERC approved gas costs must be considered to be reasonable operating expense.)[4(4)] ; People's Counsel of the District of Columbia v District of Columbia Pub. Service Commission (DC App 1982) 444 A2d 975 (state commission was preempted by Federal Power Act from reviewing reasonableness of FERC approved wholesale rate); Northern States Power Co. v Hagen (ND Sup 1981) 45 PUR4th 141, 314 NW2d 32 (state commission must allow pass through of Tyrone Energy Project abandonment cost to retail ratepayers when such costs are included in FERC approved wholesale rate); Narragansett Electric Co. v Burke (1977) 119 RI 559, 23 PUR4th 509, 381 A2d 1358 (FERC approved wholesale rate must be considered to be a reasonable operating expense for retail ratemaking purposes). In view of our review of the foregoing, we believe that the clear weight of authority dictates a conclusion that we must deem a FERC approved wholesale rate as a reasonable operating expense, even when that rate includes a CWIP element in

violation of New Hampshire legislation.[5(5)]

Accordingly, given that RSA 378:30-a must be deemed to be preempted by the Federal Power Act, U.S. CONST., ART VI, we will approve the tariff pages in this docket associated with the NEPCO W-6(I) and W-6(A) FERC filing.

Our Order will issue accordingly.

ORDER

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

ORDERED, that tariff pages filed in this docket associated with the W-6(I) filing before the Federal Energy Regulatory Commission are approved for all bills rendered on or after January 1, 1984.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1984.

FOOTNOTES

[1]The record also reflects that NEPCO's filing allocates all benefits from the Investment Tax Credit ("ITC") to its investors; an allocation which has never been approved by this Commission. While this allocation is inconsistent with the Commission practice, we cannot conclude that it has been prohibited by statute. Accordingly, we are not able to conclude here, without hearing, that the ITC allocation would always be rejected by this Commission. Cf., Re Granite State Electric Co. (1981) 121 NH 787, 793, 435 A2d 119 (Commission must consider a rate change when conditions so warrant).

[2]For example, the amended FERC regulations limit the amount of CWIP which can be included in ratebase to an amount which will not have a revenue impact of more than 6%. 18 C.F.R. § 35.26(d)(i). NEPCO has included revenues attributable to its Oil Conservation Adjustment in this calculation, with the effect of increasing the amount of CWIP that can be included in ratebase. This calculation is a disputed issue before the FERC.

[3]To date, only one other New Hampshire utility, Connecticut Valley Electric Company ("CVEC"), has sought to include CWIP in rate base indirectly through a PPCA. The Commission has not yet held a hearing on CVEC's request and thus it remains to be determined whether CWIP has been included pursuant to a FERC Order. Accordingly, the Commission expresses no opinion about that request here.

[4]In the Public Service Co. of Colorado case, the Court did hold that the state commission was not obligated to pass automatically the gas cost increase on to the retail consumers because the manner in which the gas adjustment clause was treated is an administrative matter and the state commission is vested with considerable discretion in carrying out such functions. The New Hampshire Commission also has considerable discretion in the manner in which the PPCA cost is to be recovered. Re Granite State Electric Co. (1983) 123 NH —, 467 A2d 252. However, we do not believe that the issue here is one of the manner of recovery; rather a finding that a CWIP pass through is violative of RSA 378:30-a would be, in effect, a collateral attack on a FERC decision. The Colorado Court, like the other courts cited, found that the state commission must accept any FERC decision as reasonable.

[5]The cases cited all involve situations where FERC rates were not deemed reasonable as a matter of regulatory policy. Here, the issue of reasonableness is brought into play by a statute. However, given the preemption rationale, we do not believe that the distinction is meaningful. Federal preemptive authority would apply equally to legislative as well as administrative policy.

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69 NH PUC 4

Re Granite State Electric Company

DR 84-1, Order No. 16,837

New Hampshire Public Utilities Commission

January 4, 1984

Order establishing a docket for a determination of whether the return on equity of an electric utility should be reduced.

By the Commission:

ORDER

WHEREAS, the Commission in Re Granite State Electric Co. (1982) 67 NH PUC 117 ("Rate Order") approved a rate of return on common equity of 16% for Granite State Electric Company ("GSE"); and

WHEREAS, the Rate Order provided that the GSE rate of return on common equity was to be composed of a 15.5% return element and a .5% incentive element; and

WHEREAS, the discussion of the incentive in the Rate Order stated (67 NH PUC at pp. 132, 133):

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 [Community Action Program] CAP confronted this subject

in brief. We find they both agree, that, in most instances, [New England Electric System] NEES has shown good management practices. The commission 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 the 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. (Emphasis in original);

and

WHEREAS, GSE is a subsidiary of NEES; and

WHEREAS, NEES has not attempted to purchase additional shares of Seabrook Unit I or II; and

WHEREAS, NEES has attempted to benefit investors at the expense of ratepayers by including CWIP in rate base and allocating the entire Investment Tax Credit to investors in New England Power Company's ("NEPCO") current W-6 filing before the Federal Energy Regulatory Commission ("FERC"); and

WHEREAS, the NEPCO W-6 filing has a direct effect on New Hampshire ratepayers through GSE's Purchase Power Cost Adjustment, See, Report and Order No. 16,836 ([1984] 69 NH PUC 1); and

WHEREAS, the cost of capital for electric utilities has generally decreased since the Rate Order was issued; and

WHEREAS, all of the above circumstances warrant a formal evaluation of whether GSE's currently allowed rate of return on common equity, including the .5% incentive, continues to be just and reasonable; and

WHEREAS, RSA 365:5 provides inter alia that the Commission on its own motion may investigate or make inquiry in a manner to be determined by it as to any rate charged; and

WHEREAS, RSA 378:7 provides inter alia that the Commission may, after hearing, determine just and reasonable rates if it is of the opinion that existing rates

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are unjust or unreasonable; it is hereby

ORDERED, that pursuant to RSA 365:5 and RSA 378:7, Docket No. DR 84-1, is established for the purpose of determining whether Granite State Electric Company's rate of return on

common equity should be reduced and, if so, by what amount; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:16V(b)(c), a procedural hearing is scheduled for 10:00 a.m. on February 7, 1984 at the offices of the Commission, 8 Old Suncook Road, Concord, New Hampshire; and it is

FURTHER ORDERED, that Granite State Electric Company notify all persons desiring to be heard to appear at said hearing by causing an attested copy of this Order of Notice to be published once in a newspaper having general circulation in that portion of the State in which operations are conducted, such publication to be not later than January 25, 1984, such publication to be designated in an affidavit to be made on a copy of this Order of Notice and filed with this office.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1984.

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NH.PUC*01/05/84*[61307]*69 NH PUC 6*Millenium Power Incorporated

[Go to End of 61307]

69 NH PUC 6

Re Millenium Power Incorporated

DE 83-14,
Supplemental Order No. 16,838

New Hampshire Public Utilities Commission

January 5, 1984

Petition for a license to cross public waters; granted.

APPEARANCES: as previously noted.

By the Commission:

REPORT

On January 13, 1983, Millenium Power Incorporated ("Petitioner") filed a petition for a license to cross public waters pursuant to RSA Chapter 371. A duly noticed hearing was held on February 23, 1983 which resulted in the issuance of Report and Order No. 16,464 ([1983] 68 NH PUC 397) ("Order"). The facts and procedural history of this matter have been fully set forth in the Order and it is not necessary to repeat them here. It is sufficient to state that the Order granted a temporary license to cross the Upper Salmon Falls River in the requested locations and scheduled a further hearing for the purpose of inter alia obtaining additional necessary record information.

As a result of the Order, the Commission held a further hearing on August 22, 1983. At that hearing, the Petitioner represented that it had addressed all of the Commission's safety concerns

with two exceptions. The first exception involved the burying of certain portions of an electric cable running along the river bed. The petitioner represented that the burying work would be performed upon

receipt of the appropriate authorization from the Wetlands Board. The second exception involved a requirement that operations cease when the water level is less than four feet over an exposed portion of the cable. The Petitioner presented extensive evidence showing that the requirement is not required to safely operate the cable. In addition, the Petitioner undertook to provide certain additional information after the close of the hearing.

On December 8, 1983, the Commission received a letter from the Petitioner confirming that certain portions of the cable have been encased as required. In addition, natural silting and certain measures, including the posting of warning signs, have ensured that the facility can be operated without presenting an undue safety risk.

After complete review, we are satisfied that our safety concerns have been addressed. Accordingly, we will issue the requested license.

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 Petition of Millenium Power Incorporated for authority to install and maintain approximately 7,000 feet of submarine cables following the thread of the Upper Salmon Falls River in Milton Mills, New Hampshire be, and hereby is, granted.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1984.

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NH.PUC*01/06/84*[61308]*69 NH PUC 7*White Rock Water Company, Inc.

[Go to End of 61308]

69 NH PUC 7

Re White Rock Water Company, Inc.

DR 83-282,
Second Supplemental Order No. 16,840

New Hampshire Public Utilities Commission

January 6, 1984

Order approving a settlement agreement on a permanent rate increase for a water utility.

APPEARANCES: Dom D'Ambruoso, Esquire for the Company; Michael Holmes, Esquire for

the Consumer Advocate; Kenneth E. Traum and Robert B. Lessels for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

On August 30, 1982, White Rock Water Company, Inc., a New Hampshire public utility supplying water to customers in Bow, New Hampshire, filed a petition for Temporary and Permanent rates requesting an annual increase in revenues

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of $9,472 or 42.6% to a total annual revenue figure of $31,729.

By Order No. 16,629, dated September 12, 1983, said petition was suspended pending investigation thereon. On November 4, 1983, the Commission issued an Order of Notice setting the matter for hearing on December 8, 1983 at 10 a.m. at the Commission's office in Concord.

A duly noticed hearing was held accordingly, and resulted in Report and Supplemental Order No. 16,808 dated December 15, 1983 (68 NH PUC 730). Said Order increased annual revenues by $5,722 on a temporary basis, and stated, "The subject of permanent rates is continuing as a matter of discussion between the parties, who will report to the Commission, as soon as possible on the results of said discussions. The Commission will then take whatever action is appropriate."

The parties met on December 8 and December 19, 1983 and reached a settlement of the issues. The Commission was notified of such on December 20, 1983, and a hearing was held on December 21, 1983 for the purpose of putting said settlement agreement on the record.

The agreement results in a permanent rate level of $30,488 on an annual basis or an increase in meter billings of $8,793, to be billed to customers at a rate of $35.33 per quarter, initial charge including use of up to 500 cubic feet per quarter, with the balance to be billed at a flat rate of $4.27 per 100 cubic feet.

In summarizing the settlement, the following items are significant:

(1) Rate Base is $75,984

(2) Rate of Return is 9.23%

(3) Net operating income requirement is $7,013

(4) Actual tax bills and rates were utilized.

(5) Test year operating revenues were pro formed to recognize the step increase which occurred in the test year.

(6) Operation and Maintenance expenses included $7,500 for an affiliate service contract, which will be rewritten to broaden the services provided under the contract. In addition, in accepting the $7,500, no assumptions were or should be made as to a rate per hour imputed in agreeing upon the $7,500. The nature of this system and its location make it unique as far as New Hampshire water utilities are concerned.

(7) Similarly, regarding depreciation, the settled figure was $2,964 which included a ten (10) year life for a computer, five (5) years for check valves, and twenty-five (25) years for arsenic removal equipment. These lives were for settlement purposes and subject to change in the future.

(8) Reasonable rate case expenses will be surcharged to customers over a two year period.

After analyzing the proposed Settlement Agreement, the Commission feels acceptance of such is in the public good 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 Order No. 16,808, which granted an increase in annual revenues of $5,722 on a temporary basis, is hereby rescinded; and it is

FURTHER ORDERED, that White Rock Water Company, Inc. shall file

revised tariff pages reflecting a permanent increase in annual revenues of $8,793, such increase to be reflected only in the rate charged for consumption over 500 cubic feet used in any quarter as detailed in this Report; and it is

FURTHER ORDERED, that revised tariff pages shall be designated and marked in accordance with Commission tariff filing rules, and shall bear the effective date of December 15, 1983; and it is

FURTHER ORDERED, that a surcharge shall be applied equally to all customer's bills that will recover reasonable rate case expenses over a two year period.

By Order of the Public Utilities Commission of New Hampshire this sixth day of January, 1984.

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NH.PUC*01/06/84*[61309]*69 NH PUC 9*Northern Utilities, Inc.

[Go to End of 61309]

69 NH PUC 9

Re Northern Utilities, Inc.

DF 83-394, Order No. 16,841

New Hampshire Public Utilities Commission

January 6, 1984

Order authorizing gas utility to issue and renew short-term notes.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a New Hampshire Corporation having its principle place of business in Portsmouth, New Hampshire, and operating as a gas utility under the jurisdiction of this Commission, on December 28, 1983, filed with this Commission a petition changing its short-term borrowing limitation from $7,000,000 as ordered in Order No. 16,511 issued July 1, 1983, to $4,000,000; and

WHEREAS, expiration of Order No. 16,511 on December 31, 1983 (68 NH PUC 444), places the Company under Supplemental Order No. 7,446, which authorizes the Company to issue and have outstanding aggregate short-term indebtedness in the amount not to exceed 10% of its fixed capital account rounded to the highest $10,000; and

WHEREAS, the net fixed capital for the Company as of September 30, 1983 was $23,678,244 against which the Company would be entitled to have outstanding $2,370,000 of short-term notes; and

WHEREAS, on September 30, 1983 the Company had outstanding total short-term notes payable of $3,000,000 and was not able to solicit long term financing during 1983 under the indenture which bonds New Hampshire property; and

WHEREAS, the Company's Fuel Inventory Financing approved by the Commission in Order No. 16,002 dated November 22, 1982 (67 NH PUC 841) has continued to reduce the Company's need for external short-term debt financing; and

WHEREAS, the Company expended $981,900 in nine months ending September 30, 1983 for additions, extensions and improvements to plant and equipment

and estimates Capital Expenditures of $2,205,700 in 1984; it is

ORDERED, that Northern Utilities, Inc. be, and hereby is, authorized to issue and sell, and from time to time to renew for cash its notes or notes payable less than twelve (12) months after the date thereof in an aggregate principle amount not exceeding $4,000,000; and it is

FURTHER ORDERED, that authority to renew its notes up to an aggregate amount of $4,000,000 shall expire December 31, 1984 and the Company will be required to submit its plans for future financing and to redefine the level of short-term debt by November 30, 1984, or thirty (30) days prior to the expiration of this authorization; and it is

FURTHER ORDERED, that on or before January 1 and July 1 of each year, the Company will file with this Commission a detailed statement duly sworn by its Treasurer, showing the 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 sixth day of January, 1984.

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[Go to End of 61310]

69 NH PUC 10

Re Southern New Hampshire Water Company, Inc.

DE 84-3, Order No. 16,842

New Hampshire Public Utilities Commission

January 6, 1984

Order issuing special contract for construction of a water system.

By the COMMISSION:

ORDER

WHEREAS, Southern N.H. Water Company, Inc., a utility under the jurisdiction of this Commission, has filed copies of its Main Extension Application and Agreement entered into with Gerald Q. Nash and Samuel A. Tamposi, Sr., d/b/a Bon Terrain Industrial Park, in the Town of Amherst, N.H.; and

WHEREAS, this application and agreement are for the initial construction of a water system, for which no tariff exists; and

WHEREAS, upon investigation and considerations, we are of the opinion that the nature of the construction of this water system requires the issuance of a Special Contract, and is in the public good; it is hereby

ORDERED, that the Application and Agreement here discussed shall be designated Special Contract No. 15 and

become effective as of the date of this Order.

By Order of the Public Utilities Commission of New Hampshire this sixth day of January, 1984.

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NH.PUC*01/06/84*[61311]*69 NH PUC 11*Northern Utilities, Inc.

[Go to End of 61311]

69 NH PUC 11

Re Northern Utilities, Inc.

DR 83-387, Order No. 16,845

New Hampshire Public Utilities Commission

January 6, 1984

Petition for reduction in winter cost of gas adjustment; granted.

APPEARANCES: Elias G. Farrah, Esquire for the Petitioner; Kenneth E. Traum for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

On December 20, 1983, Northern Utilities, Inc. a public utility engaged in the business of supplying gas service in the state of New Hampshire, filed with this Commission certain revisions to its tariff providing for a reduction in its cost of gas adjustment for effect January 1, 1984.

A duly noticed public hearing was accordingly held at the Commission's offices in Concord on January 3, 1984 at 2 p.m.

Prior to and during the course of the hearing, the Company submitted two exhibits and was represented by one witness, Richard B. Davis.

The Company's request was for a 4.47/therm reduction in the CGA which would result in a reduction of approximately 5.5% to a residential customer's total bill.

This proposed reduction has several causes:

1. A reduction in the cost of gas purchased from Granite State Gas Transmission, Inc. which results from a reduction in the cost of gas from Tennessee Gas Pipeline, Inc. effective January 1, 1984, as approved by the FERC.

2. A settlement agreement proposed to the FERC from Tennessee Gas Pipeline, Inc. et.al. which will result in a further reduction to Tennessee demand and commodity rates.

3. Incorporation of November, 1983 results.

4. An increase in the profits estimated to be received from Interruptible sales flowed through the CGA, due to a larger profit margin resulting from lower Tennessee Gas costs.

5. Updated interest calculations.

No other adjustments were made to the filing originally accepted by the Commission for effect from November 1, 1983 to April 30, 1984. All other areas of concern of the New Hampshire Public Utilities Commission Staff were satisfactorily responded to under cross-examination.

Recognizing that the CGA is a reconcilable account, the Commission will

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approve the Company's request as being in the common good, and our Order will issue accordingly.

At this point the Commission would like to thank the Company for its prompt filing and

cooperation with our Staff, and would expect this to continue; especially with regards to the forthcoming refund from Tennessee Gas Pipeline, Inc. related to the previously mentioned settlement proposal.

ORDER

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

ORDERED, that 47th Revised Page 22A of Allied Gas Division, Northern Utilities, Inc. tariff NHPUC No. 6 - Gas, is accepted.

By Order of the Public Utilities Commission of New Hampshire this sixth day of January, 1984.

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NH.PUC*01/06/84*[61312]*69 NH PUC 12*Manchester Gas Company

[Go to End of 61312]

69 NH PUC 12

Re Manchester Gas Company

DR 83-388, Order No. 16,846

New Hampshire Public Utilities Commission

January 6, 1984

Petition for reduction in winter cost of gas adjustment; granted.

APPEARANCES: Charles Toll, Esquire for the Petitioner; Kenneth E. Traum and Richard G. Marini for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

On December 22, 1983, Manchester Gas Company, a public utility engaged in the business of supplying gas service in the state of New Hampshire, filed with this Commission certain revisions to its tariff providing for a reduction in its cost of gas adjustment for effect January 1, 1984.

A duly noticed public hearing was accordingly held at the Commission's offices in Concord on January 3, 1984 at 2 p.m.

Prior to and during the course of the hearing, the Company submitted one exhibit and was represented by one witness, Michael J. Mancini, Jr.

The Company's request was for a 3.34/therm reduction in the Cost of Gas which would result in a reduction of approximately 5% to a residential customer's total bill.

This proposed reduction has several causes:

1). A reduction in the cost of gas purchased from Tennessee Gas Pipeline, Inc. effective January 1, 1984, as approved by the FERC.

2). A settlement agreement proposed to the FERC from Tennessee Gas Pipeline, Inc. et.al. which will result in a further reduction to Tennessee demand and commodity rates.

3). A reduction in LNG prices effective December 1, 1983.

4). A correction in the conversion calculation.

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5). Inclusion of an additional supplier refund.

No other adjustments were made to the filing originally accepted by the Commission for effect from November 1, 1983 to April 30, 1984. All other areas of concern of the New Hampshire Public Utilities Commission Staff were satisfactorily responded to under cross-examination.

Recognizing that the CGA is a reconcilable account, the Commission will approve the Company's request as being in the common good, and our Order will issue accordingly.

At this point the Commission would like to thank the Company for its prompt filing and cooperation with our Staff, and would expect this to continue especially with regards to the forthcoming refund from Tennessee Gas Pipeline, Inc. related to the previously mentioned settlement proposal.

ORDER

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

ORDERED, that 12th Revised Page 26 of Manchester Gas Company tariff NHPUC No. 13 - Gas, is accepted.

By Order of the Public Utilities Commission of New Hampshire this sixth day of January, 1984.

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NH.PUC*01/06/84*[61313]*69 NH PUC 13*Gas Service, Inc.

[Go to End of 61313]

69 NH PUC 13

Re Gas Service, Inc.

DR 83-389, Order No. 16,847

New Hampshire Public Utilities Commission

January 6, 1984

Petition for reduction in winter cost of gas adjustment; granted.

APPEARANCES: Charles Toll, Esquire for the Petitioner; Kenneth E. Traum and Richard G.

Marini for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

On December 22, 1983, Gas Service, Inc., a public utility engaged in the business of supplying gas service in the state of New Hampshire, filed with this Commission certain revisions to its tariff providing for a reduction in its cost of gas adjustment for effect January 1, 1984.

A duly noticed public hearing was accordingly held at the Commission's offices in Concord on January 3, 1984 at 2 p.m..

Prior to and during the course of the hearing, the Company submitted one exhibit and was represented by one witness, Michael J. Mancini, Jr.

The Company's request was for a 3.47/therm reduction in the CGA which would result in a reduction of approximately 5% to a residential customer's total bill.

This proposed reduction has several causes:

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1). A reduction in the cost of gas purchased from Tennessee Gas Pipeline, Inc. effective January 1, 1984, as approved by the FERC.

2). A settlement agreement proposed to the FERC from Tennessee Gas Pipeline, Inc. et.al. which will result in a further reduction to Tennessee demand and commodity rates.

3). Incorporation of the actual seasonal sales margin through October, 1983.

4). A reduction in LNG prices effective December 1, 1983.

5). A correction in the conversion calculation.

6). Inclusion of an additional supplier refund.

No other adjustments were made to the filing originally accepted by the Commission for effect from November 1, 1983 to April 30, 1984. All other areas of concern of the New Hampshire Public Utilities Commission Staff were satisfactorily responded to under cross-examination.

Recognizing that the CGA is a reconcilable account, the Commission will approve the Company's request as being in the common good, and our Order will issue accordingly.

At this point the Commission would like to thank the Company for its prompt filing and cooperation with our Staff, and would expect this to continue, especially with regards to the forthcoming refund from Tennessee Gas Pipeline, Inc. related to the previously mentioned settlement proposal.

ORDER

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

ORDERED, that 8th Revised Page 1 of Gas Service, Inc. tariff NHPUC No. 6 - Gas, is accepted.

By Order of the Public Utilities Commission of New Hampshire this sixth day of January, 1984.

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NH.PUC*01/06/84*[61314]*69 NH PUC 14*Concord Natural Gas Corporation

[Go to End of 61314]

69 NH PUC 14

Re Concord Natural Gas Corporation

DR 83-390, Order No. 16,848

New Hampshire Public Utilities Commission

January 6, 1984

Petition for reduction in winter cost of gas adjustment; granted.

APPEARANCES: David Marshall, Esquire for the Petitioner; Kenneth E. Traum and Richard Marini for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

On December 22, 1983, Concord Natural Gas Corporation, a public utility engaged in the business of supplying gas service in the state of New Hampshire, filed with this Commission certain revisions to its tariff providing for a reduction in its cost of gas adjustment for effect January 1, 1984.

A duly noticed public hearing was

accordingly held at the Commission's offices in Concord on January 3, 1984 at 2 p.m..

Prior to and during the course of the hearing, the Company submitted one exhibit and was represented by one witness, Ronald Bisson.

The Company's request was for a 8.49/therm reduction in the Cost of Gas which would result in a reduction of approximately 12.18% to a residential customer's total bill.

This proposed reduction has several causes:

1). A reduction in the cost of gas purchased from Tennessee Gas Pipeline, Inc., effective January 1, 1984, as approved by the FERC.

2). A settlement agreement proposed to the FERC from Tennessee Gas Pipeline, Inc., et.al. which will result in a further reduction to Tennessee demand and commodity rates.

3). Incorporation of November, 1983 results.

4). Updated interest calculations.

5). The Tennessee reductions will also reduce the payments due to Gas Service, Inc. for natural gas to service the Loudon area.

6). A reduction in the estimated price of LNG.

No other adjustments were made to the filing originally accepted by the Commission for effect from November 1, 1983 to April 30, 1984. All other areas of concern of the New Hampshire Public Utilities Commission Staff were satisfactorily responded to under cross-examination.

This reduction is significantly larger than the other New Hampshire gas utilities receiving natural gas from Tennessee Gas Pipeline, Inc. due to several facts:

1). Only Concord Natural Gas in New Hampshire is supplied gas under a GS-6 rate which reflected a larger reduction in the Winter period.

2). Concord Natural Gas utilizes a different supplemental gas % than the other New Hampshire natural gas utilities.

Recognizing that the Cost of Gas is a reconcilable account, the Commission will approve the Company's request as being in the common good, and our Order will issue accordingly.

At this point the Commission would like to thank the Company for its prompt filing and cooperation with our Staff, and would expect this to continue, especially with regards to the forthcoming refund from Tennessee Gas Pipeline, Inc. related to the previously mentioned settlement proposal.

ORDER

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

ORDERED that 38th Revised Page 21 of Concord Natural Gas Corporation tariff NHPUC No. 13 - Gas is accepted.

By Order of the Public Utilities Commission of New Hampshire this sixth day of January, 1984.

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NH.PUC*01/09/84*[61315]*69 NH PUC 16*Granite State Electric Company

[Go to End of 61315]

69 NH PUC 16

Re Granite State Electric Company

DR 83-347,
Supplemental Order No. 16,850

New Hampshire Public Utilities Commission

January 9, 1984

Order amending inaccurate and erroneous language in previous commission order.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Report and Order No. 16,836 ([1984] 69 NH PUC 1) in this docket which, inter alia, approved Granite State Electric Company's ("GSE") Purchase Power Cost Adjustment ("PPCA") for all bills rendered on or after January 1, 1984; and

WHEREAS, the Commission intended to authorize the PPCA for all service rendered on or after January 1, 1984; and

WHEREAS, the "bills rendered" language in Report and Order No. 16,836 was inaccurate and erroneous; it is hereby

ORDERED, that Order No. 16,836 be amended to state that the tariff pages filed in this docket associated with the W-6(I) filing before the Federal Energy Regulatory Commission are approved for all service rendered on or after January 1, 1984.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1984.

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NH.PUC*01/10/84*[61316]*69 NH PUC 16*Concord Natural Gas Corporation

[Go to End of 61316]

69 NH PUC 16

Re Concord Natural Gas Corporation

DE 82-272,
Third Supplemental Order No. 16,851

New Hampshire Public Utilities Commission

January 10, 1984

Order approving stipulation and closing docket.

APPEARNACES: As previously noted.

By the COMMISSION:

REPORT

This docket was opened by Second Supplemental Order No. 15,909 (September 29, 1982) issued in Docket No. DR 82-34 for the purpose of inter alia investigating whether Concord Natural Gas Corporation ("Company") was in compliance with certain gas safety standards. After duly noticed hearings, the Commission issued Report and Order No. 16,094 ([1982] 67 NH PUC 960) which found inter alia that

the company had been in violation of certain safety standards and assessed penalties in the amount of $16,000 pursuant to RSA 374:7-a. The company filed a timely Motion for Rehearing and, as a result, the Commission issued Report and Second Supplemental Order No. 16,228 ([1983] 68 NH PUC 78) which inter alia vacated the $10,000 portion of the penalty attributable to inadequate training and, instead, required the Company to show cause why it should not be fined an additional $10,000 for inadequate training.

Pursuant to Report and Second Supplemental Order No. 16,228, hearings were held on March 30 and April 21, 1983. At the April 21, 1983 hearing, the Staff indicated that many of its concerns had been addressed and that several concerns had not yet been addressed. Subsequent to the hearing, the Company submitted further written information and the Staff met with Company officials and conducted inspections of Company facilities. As a result, the Staff and the Company entered into a Stipulation Agreement which resolved all outstanding issues (Exh. Stipulation No. 1).

The Stipulation Agreement was presented to the Commission at a hearing on December 15, 1983. That agreement specifies the steps taken to address the Commission's safety concerns and the steps which will continue to be taken to bring the Company's system into compliance with applicable state and federal safety regulations.

Our review of the stipulation agreement satisfies us that its terms are just and reasonable and that compliance with those terms will ensure that the Company's system is brought into compliance with applicable safety standards in a timely manner.*(6) Accordingly, we will adopt the terms of the stipulation Agreement, which will be incorporated into this Report by reference, and close this docket.

While the Commission believes it is appropriate to close this docket, the Company should be aware that the Commission intends to continue monitoring the Company's safety programs and efforts. The Commission is particularly concerned that the position of Chief Engineer has been vacant since March of 1982 and the position of Assistant Engineer has become vacant as of November 1983. The Commission will expect Concord Natural Gas Corporation to redouble its efforts to fill these positions promptly with qualified personnel. We will require the Company to report to the Commission by February 10th the efforts being made 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 terms of the

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Stipulation Agreement (Exhibit Stipulation No. 1) are accepted and adopted; and it is

FURTHER ORDERED, that this docket is closed; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation report to the Commission by February 10, 1984 concerning the Company's efforts to fill the vacant positions of Chief

Engineer and Assistant Engineer.

By order of the Public Utilities Commission of New Hampshire this tenth day of January, 1984.

FOOTNOTE

*We were initially concerned that the Company has not committed itself to actually have the work completed by a date certain. See e.g., Exh. Stipulation No. 1 at 3: "The Company has continued to make substantial progress in its corrosion control program, and it appears that the Company's entire distribution system will be cathodically protected in accordance with applicable federal regulations on or before July 1, 1985" (Emphasis supplied.) However, since we must assume that the Company has implicitly agreed in good faith to use its best efforts, we have determined that the language is satisfactory.

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[Go to End of 61317]

69 NH PUC 18

Re Cheshire Bridge Corporation

DR 83-70, Order No. 16,852

New Hampshire Public Utilities Commission

January 11, 1984

Opinion and order setting revenue requirement and rates for a private toll bridge company.

Expenses, § 71 — Maintenance — Private toll bridge.

Maintenance and repair expenses proposed by a private toll bridge company were reduced because the proposed expenses were not based on detailed projections of repairs and maintenance. [1] p.20.

Expenses, § 93 — Rentals — Private toll bridge — Collection equipment.

Expenses for leasing of toll collection equipment by a private toll bridge company were rejected because the company had not experienced serious problems with manual toll collection and because use of the equipment would not result in payroll savings. [2] p.21.

Rates, § 315 — Bridges — Per axle charges.

A proposal by a private toll bridge company to charge all vehicles the same amount per axle was rejected because under the proposed rate structure passenger cars would have been charged more relative to weight than trucks or railroad cars and the company had not justified shifting a larger portion of costs to passenger cars. [3] p.21.

Revenues, § 2 — Test-year projections — Bridges.

The revenue requirement of a private toll bridge company was reduced based on a oneweek survey of bridge traffic. [4] p.23.

Rates, § 315 — Bridges — Cars and trucks.

Rates for a private toll bridge were set at 25 cents for passenger vehicles and 20 cents per axle for trucks and trailers. [5] p.23.

APPEARANCES: Robert T. Clark, Esquire for the petitioner; Eugene F. Sullivan, Finance Director for the Public Utilities Commission Staff.

By the COMMISSION:

REPORT

On February 23, 1983, Cheshire Bridge Corporation (The "Company" or "Cheshire") filed for authority to place into effect its tariff No. 7, to become effective March 30, 1983. The filing was suspended by Order No. 16,288, dated March 22, 1983, pending investigation and hearing

thereon. On May 11, 1983 an Order of Notice was issued setting a procedural hearing for June 8, 1983.

At the procedural hearing the Company and the staff requested that they be allowed to meet and determine a discovery schedule. The Commission also set June 29, 1983 as the date for a public hearing to be held at the Charlestown Town Hall at 7:00 p.m. A public hearing was held on that date to receive public comments regarding the proposed rate increase.

The Commission's finance staff performed an audit of the Company's filing. Several conferences were held between the staff and the Company in order to resolve differences which the staff had discovered during the audit. A hearing was held on September 29, 1983, at which time the Company presented its revised schedules which were prepared as as result of the conferences between the parties and the staff audit.

The Company's filing included several items which resulted from the Company's previous rate case (DT 80-250). On July 10, 1981, the Commission in its Supplemental Order No. 14,967 (66 NH PUC 251), ordered the Company to complete repairs and replacements required to render the bridge safe for vehicle and train traffic of all types. The Commission further ordered the Company to set up separate accounting records and bank accounts for use only by the Cheshire Bridge Corporation and stated that they were not to be combined with the accounts of the parent company. Finally, Cheshire was ordered to develop and implement a system to track the accuracy of each day's cash receipts by taking all the necessary steps to improve internal controls. The Commission indicated in the report that once the aforementioned requirements were accomplished, any related costs of implementation which were reasonable and prudently incurred would be considered in subsequent rate increases.

Subsequent to Order No. 14,967, Cheshire completed the necessary repairs and replacements. The bridge was reconditioned at a cost of $448,204. The Company has also implemented a separate accounting system. As part of this filing, the Company presented cost estimates for the installation of toll collecting equipment, either on a purchase or lease basis, that would automatically record receipts and count axles. The Company claims that as a result of a traffic survey, which was further substantiated by testimony at the public hearing, toll counting equipment is required to ensure greater control of receipts. The traffic survey was performed by an outside consulting firm, Management Safeguards, Inc.

The Company's original proposed increases would increase revenues from $238,689 in 1982 to $360,344 in 1983, or an increase of $121,655. When projected into 1984, the proposed increase would result in revenues of $481,643, or an increase of $242,954. The revenues would be realized by implementing an increase in the toll for passenger vehicles, including motorcycles, from $0.20 per vehicle to $0.20 per axle. All other vehicles, trucks, tractors, trailers, etc. would be increased from $0.15 per axle to $0.20 per axle. Railroad cars, including locomotives, would be charged $5.00 per round trip. Emergency vehicles would continue to pass free of charge. In order to evaluate the proposal, the Commission will analyze the expenses, rate base, and the cost of money to the Company.

Expenses

Cheshire has projected expense levels of $310,853 for 1983 and $419,695 for 1984. The basic difference between the two years

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is due to the fact that the 1984 figures include an increase of $50,000 for major maintenance and $59,750 for federal and state income taxes. Expense levels were derived by using the 1982 test year expenses in the amount of $274,030. An amount of $10,000 was added for contingencies, $50,000 for annual maintenance, increasing expenses where known, and adding a 6 percent inflation factor to the remaining expenses. An additional $20,075 was added to provide for toll collection equipment.

[1] The Commission has historically adjusted expenses for known and measurable changes. The Commission recognizes that an ongoing program for bridge maintenance is required. However, the maintenance expense which the Company has estimated is unreasonably high in our view. The Company has requested a pro forma annual repair expense of $50,000 which is to be used for repairs and maintenance. No explanation or detailed listing of projected repairs or maintenance was filed with the rate request. Mr. King, Cheshire Bridge Corporation superintendent, at the hearing on September 29, 1983, explained that he had projected the repair expense based on information received. Testimony brought out that the expenses suggested were inspections of underwater piers and pilings every three years at $12,000, steel rating the overall bridge annually at $5,000 to $19,000, depending on the extent of inspections, point up piers above water level periodically at $25,000, touch up painting, fixing and patch paint of guardrails, miscellaneous drainage work, roadway work, lights, maintenance of adjacent bridge property, etc. at approximately $18,000 a year.

The request for $50,000 for major maintenance expense is related to such specific items as

capitalization, depreciation, payroll and equipment costs. Any major repairs should be deferred and amortized over the life of the improvement. Pointing up the granite blocks used for construction of piers and pilings should not have to be done annually. Complete replacement of asphalt on bridge decking, at an estimated cost of $6,000 with an average life of five years, should be amortized over that period. Labor for ordinary maintenance and repairs when Springfield Terminal employees are used is charged through payroll on a time basis. Equipment used, owned by Springfield Terminal such as, trucks, snow plows, small tools, etc. is charged to Cheshire at a cost of $500 a month, or $6,000 annually. The Company completed major bridge renovations in 1982 at a cost of $480,000 which will be expensed as depreciation over the period of years. Repairs and maintenance over past years have been nil, therefore, there is no known history on which to base a program of maintenance cost for rate purposes. An annual expense of $50,000 would allow Cheshire double cost recovery. The Company would be reimbursed from ratepayers for the equivalent of complete cost of the 1982 renovations within the next ten years in addition to the allowable depreciation costs for the 1982 costs. The Commission has determined the $10,000 would be more appropriate. Therefore, in addition to the equipment, labor and depreciation costs included in other expenses of the Company, the Commission will allow $10,000 to cover materials, supplies and outside labor and equipment costs. Any portion of the $10,000 which is not used for maintenance and repair should be placed in a maintenance fund and should not be used for any other purposes.

The lease of toll collection equipment at an annual cost of $20,075 to cover both east and west bound traffic has been reviewed. The Company argued (Tr. P.

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54-56) that a positive check of collector's receipts, by comparing the automatic count of vehicles with payments received, would eliminate the estimated 8-10% loss of revenues due to toll takers allowing vehicles to cross without paying or cash not being recorded and should result in revenue which would more than offset the cost of the toll collection equipment.

[2] Based upon the evidence presented, the Company has not satisfied its burden of proof in justifying a $20,000 annual expense for the rental of "state of the art" toll equipment. The testimony does indicate that there is a serious problem in lost revenues either because the toll takers are not collecting from vehicles or the toll-taker is taking some of the money himself. (Tr. P. 54) The Company's best estimate is an 8-10% revenue erasion. (Tr. at 54, 55)

However, the testimony indicates that the Company has not done any real investigation or cost/benefit analysis of a less sophisticated monitoring system. (Tr. P. 93, 94) Not only is there a substantial cost to state of the art toll equipment for this small bridge corporation but there will be no payroll savings. The company cites three reasons why there will be no payroll savings: (1) the bridge must be manned at all times; (2) someone must be available to make change; and (3) the toll equipment proposed requires an attendant to punch buttons to indicate the type of vehicle. (Tr. P. 73, 74) Given this situation, it would appear that the Company should consider a counting system that could provide a means for monitoring toll collectors at a much lower cost. While the monitoring might be somewhat less than 100% effective, it could improve substantially the present situation. The Commission is not justified in accepting the cost of sophisticated toll equipment in the absence of analysis of less costly options.

The Company will be required to submit alternative proposals along with an appropriate cost/benefit analysis for a vehicle (axle) counting system(s).

[3] The new toll collecting equipment is also used as the justification for the proposed rate design, i.e. it is contended that all vehicles must be charged the same amount per axle. The result is a much higher proposed increase for passenger cars than for trucks or railroad cars. The Company's original proposal would have raised the rates for passenger cars, motorcycles and mopeds by 100% while trucks would have been raised 33 1/3% and railroad cars would have had no increase. (Tr. P. 76, 77) The rate structure is accordingly determined more by the capability of the toll equipment than by any cost justified analysis. The testimony indicates that under the proposed rate structure cars would be charged substantially more relative to weight than would trucks or railroad cars. (Tr. P. 76-81) The fact that the state may charge tolls relative to axle is not an adequate justification because the state has other charges, license fees, etc. where a weight factor can be assessed. If rates are to be non-discriminatory they should be largely cost based, and the Company has not presented any cost justification for shifting a larger portion of the costs to passenger cars, in fact the evidence would tend to support the opposite conclusion.

Depreciation and amortization are accepted at the pro forma level of $56,321. The Commission recognizes that additional rate case expenses will be incurred due to this rate case. However, previous year expenses for similar items will be completely amortized resulting in a minimal amount of change.

Cheshire has projected a cost of $18,000 during 1983 for administrative and support services. The projected costs include

amounts of $6,000 each for the President, the engineering services and inspections, and financial and accounting services. As a result of conferences between the Company and the staff, administration and support services for 1982 has been reduced to $8,800. The difference results from expenses that should be capitalized and other non-recurring items. The 1982 adjusted test year costs of $8,800 include time necessary to meet with legal, financial and technical people in connection with the bridge renovations. The Commission's conclusion is that a normal year would not require renovations of this size. Therefore, part of the expense is regarded as non-recurring. Consequently, for rate purposes, a downward adjustment to the pro forma expenses will be made.

Recognizing the Company's limited source of revenue in addition to the onsite supervision of Superintendent L. King, who is responsible for company decisions and operation, additional top management administrative, engineering and financial service requirements should be minimal. The Commission will allow $8,500 for necessary Administrative and Support services beyond the capability of on-site management required to operate the toll bridge.

The estimate of $10,000 contingency being neither known or measurable appears excessive. Over the past few years those non-recurring expenses, except for the 1982 toll house destruction, have ranged from $1,000 to $2,000 charged as house demolition, sand, fill, grading, bridge pictures, etc. The Commission, does, however, recognize there will be future costs for signs, loss and/or damage to patron's vehicles, possible injury, etc., therefore, will allow $1,500 per year to

cover those expenses.

The Commission has historically recognized increases in payroll. The increase as presented is known and measurable and, therefore, is allowed, as are fringe benefits directly related to payroll.

Another expense item traditionally allowed as a pro forma adjustment is property tax adjustments. This pro forma adjustment is accepted as a known measurable change.

Finally, additional pro forma costs for insurance, gas, audit services, telephone, electric, office expenses, etc., as proposed have been demonstrated by the Company to be known and measurable and will therefore, be accepted.

The following is a summary of the pro forma expenses which will be allowed for ratemaking purposes:

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

Administrative Costs and Services	$ 8,500
Payroll	53,060
Fringe Benefits	17,908
Repairs and Maintenance	10,000
Contingencies	1,500
Real Estate Tax	39,945
Other Measurable Costs	36,105
Depreciation and Amortization	56,321
TOTAL	$223,339

Cost of Capital

The Company in this case has not filed the traditional cost of capital information that is usually required by this Commission. The filing includes interest expense for its long term note issued in order to finance the 1982 renovations. The remainder of the capital is clouded by the past accounting practices of Cheshire's parent company, The Springfield Terminal Railroad Company. The common equity consists of negative retained earnings due to the fact that dividends in the past were greater than earnings. Net income in the future should be used to reduce the negative common equity.

The Company, in conjunction with Vermont National Bank, revised the mortgage note from the original set payment

of $7,700 per month fixed rate principle and interest to a fixed monthly retirement of principle at $2,026.20 plus interest payable monthly at the available variable rate equal to Vermont National Bank base rate plus 1%. The revision is believed advantageous to retire principle at a regular rate and take advantage of possible interest reductions available on a variable rate basis. The revision was effective February 25, 1983 with payment due March, 1983. Interest payments projected for 1983, two months at the higher fixed rate and ten months at the revised lower rate are at $57,813, for 1984 $50,939, and 1985 $48,021. For rate purposes, annual interest expense is reduced in ratio to principle payments. The Commission will allow interest costs of $50,939. Any increase in interest rate will be offset by the principle reduction, thus maintaining a level cost.

The above interest costs will be incorporated into the final revenue calculations. Any profit margin over and above the interest costs will be addressed further under the revenue requirements.

Revenue Requirements

[4] Combining the pro forma operating expenses of $223,339 and the allowed interest costs of $50,939 results in an overall minimum revenue requirement of $274,278. The revenues for the test year 1982 were $238,689. Using the revenues which were collected in 1983 in the Company's monthly financial reports, it is projected that the revenue for a full year would amount to $244,500. That revenue is obviously insufficient to meet the minimum revenue requirement of $274,278.

Using the December 1, 1982 to December 7, 1982 traffic survey (seven days, twenty-four hours per day) done by Management Safeguards, Inc. of Boston Massachusetts, the Company projected toll revenues to be $476,843. When railroad car revenues and other miscellaneous revenues of $4,800 are added the total proposed annual revenues would be $481,643. The proposed revenue would exceed the minimum requirement by $207,395, before taxes, a revenue level in excess of that found to be reasonable by this Commission.

For the reasons cited, the Company's revenue requirement should be reduced. Using the aforementioned survey and applying a toll of $0.25 per passenger car and motorcycles, and $0.20 per truck and trailer axle a total revenue level of $326,544 is projected (including $4,800 of other revenues). That level of revenues assumes that there are controls in place by which the Company would not suffer any loss of revenue. Based upon the Company's projections of an 8% revenue reduction due to unrecorded tolls, the revenue level would be $300,804. The Commission finds that level of revenue to be sufficient to cover the minimum requirement and to provide an additional profit of $26,526, before taxes. When the Company submits an alternative proposal along with an appropriate cost benefit analysis for a vehicle (axle) counting system, the revenue level should be enhanced by the reduction of lost revenues.

[5] Accordingly, the rate of tolls per passenger vehicles is allowed at a rate of $0.25 per vehicle and a rate of $0.20 per axle for trucks and trailers is allowed. The additional revenue from these increases will help to defray the costs of $448,204 which were used to recondition the bridge.

Our Order will issue accordingly.

It should be noted that for the long term it is clear that a private toll bridge is an anachronism in this day and age. The residents of the area should be served by a bridge which is part of the overall State

Highway system. Since the Commission is charged with regulating the Cheshire Bridge Corporation as a utility, it has no means to accomplish this end. However, the Commission along with the Representatives from the area could support legislation requiring an assessment by the highway department of the alternatives of having the state acquire the present bridge or of having the state build a new bridge in the area.

ORDER

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

ORDERED, that tariff pages entitled "Tariff of Toll Rates" identified as NHPUC No. 7 canceling NHPUC No. 6 are hereby rejected; and it is

FURTHER ORDERED, that Cheshire Bridge Corporation file revised tariff pages to reflect the following changes: Passenger vehicles — automobiles, motorcycles, mopeds, $0.25; Other motor vehicles and trailers, $0.20 per axle; emergency vehicles (police, fire, ambulance) responding to or returning from a call, pedestrians and bicycles, no charge; railroad cars (including locomotive) per round trip $5.00; and a rate of $10.00 for any vehicle that exceeds either the speed or load restrictions posted at the bridge; and it is

FURTHER ORDERED, that the speed and load restrictions are to be posted, enforced and the signs to be maintained; and it is

FURTHER ORDERED, that Cheshire submit to the Commission alternative proposals along with cost/benefit analysis for a vehicle (axle) counting system(s) within three (3) months of the date of this order.

By order of the Public Utilities Commission of New Hampshire this eleventh day of January, 1984.

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NH.PUC*01/12/84*[61318]*69 NH PUC 24*New Hampshire Electric Cooperative, Inc.

[Go to End of 61318]

69 NH PUC 24

Re New Hampshire Electric Cooperative, Inc.

DF 83-360, Order No. 16,855

New Hampshire Public Utilities Commission

January 12, 1984

Order granting motions to intervene.

By the COMMISSION:

ORDER

WHEREAS, a hearing was convened in this docket on January 12, 1984 at 10:00 A.M. at the Commission offices pursuant to Order of Notice dated November 21, 1983; and

WHEREAS, during said hearing the Commission granted a motion of the Consumer Advocate to postpone the proceeding; and

WHEREAS, Motions to Intervene in this docket were filed by Gary McCool, Roger Easton and Lynn Chong; and

WHEREAS, said Lynn Chong did not appear at the January 12, 1984 hearing; it is hereby

ORDERED, that the Motion to Intervene by Lynn Chong is denied; and it is

FURTHER ORDERED, that the Motions to Intervene filed by Messrs. McCool and Easton are granted; and it is

FURTHER ORDERED, that the hearing in this matter reconvene at the Commission offices at 8 Old Suncook Road, Concord, New Hampshire on the eighth day of February, 1984 at ten o'clock in the forenoon; and it is

FURTHER ORDERED, that data requests, if any, be filed with the Commission and the parties no later than January 19, 1984; and it is

FURTHER ORDERED, that written testimony of the parties and their responses to data requests be filed no later than February 1, 1984.

By order of the Public Utilities Commission of New Hampshire this twelfth day of January, 1984.

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NH.PUC*01/16/84*[61319]*69 NH PUC 25*Mountain Springs Water Company

[Go to End of 61319]

69 NH PUC 25

Re Mountain Springs Water Company

DR 82-359,
Supplemental Order No. 16,859

New Hampshire Public Utilities Commission

January 16, 1984

Denial of motion for rehearing.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On December 14, 1983, the Commission issued Report and Order No. 16,803 (68 NH PUC 723). That Order provided inter alia that Mountain Springs Water Company, Inc. ("Company") would be denied the opportunity to recover from ratepayers any costs associated with liabilities resulting from the Court's findings in Richter v Mountain Springs Water Company, Inc. (1982) 122 NH 850. On December 30, 1983, the Company filed a timely Motion for Rehearing. After due consideration, we will deny the Motion. However, we will provide in this Order that the

Company may have leave in a future proceeding to demonstrate that our findings or conclusions were incorrect.

In its Motion for Rehearing, the Company asserted that rehearing is warranted on both substantive and procedural grounds. In support of its contentions, the Company stated certain facts (Paragraphs 1-11) which it believed warranted rehearing and certain legal arguments which it believed demonstrated that our Order is unjust, unreasonable and unlawful (Paragraph 12). We shall address the Company's substantive and procedural arguments in turn.

The Commission's Order rested on certain findings which identified both the

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nature and cause of a barrier to the Company's ability to collect rates approved by this Commission. Even if we were to accept all of the factual assertions contained in the Motions in the light most favorable to the Company, those findings would not be disturbed.[1(7)] Thus, the Company has not provided us with any substantive reason to grant its Motion.

The Company's procedural contentions are more persuasive. The Company contended, in effect, that it was misled by certain Commission representations that questions of law would be certified to the Court (Tr. at 103-104). As a result, it was denied the opportunity to present the evidence or address the legal issues. While the Company in its Motion has not asserted any facts would would cause us to change our findings, nor has it advanced any legal arguments which would cause us to change our conclusions, we do believe that it should be afforded the opportunity to present evidence at some appropriate time. It is clear that the time has not yet arrived since the Company has not incurred any refunding costs. The Company has asserted that it will shortly file a rate case which will include a provision for the refund of standby fees and the funding of that refund.[2(8)] Although we have concerns about approving rates for expenses which have not yet been incurred, we will allow the Company to make a formal presentation in the course of those proceedings. We expect that such a presentation will contain either evidence that our factual findings were incorrect or argument that our legal conclusions were erroneous. Of course, any other party will also be afforded an opportunity to address the same issues.

In sum, we will deny the Motion for Rehearing because we have not been provided with any information which would cause us to disturb our findings and conclusions. However, we believe that the Company should have an opportunity to address itself to those findings and conclusions at an appropriate time. It is thus important to leave our Order intact so that the issues will be properly framed. The Company bears the burden of proof in any ratemaking proceeding, RSA 378:8, and it is important to provide adequate notice of the nature of the Company's burden in these special circumstances. Our findings and conclusions are not immutable and the Company will have an opportunity to present all relevant evidence at an appropriate 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 of Mountain Springs Water Company, Inc. is denied without prejudicing the Company's ability to present additional evidence or argument at an appropriate proceeding.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1984.

FOOTNOTES

[1]For the purpose of this Order we have accepted the asserted facts in the light most favorable to the Company. However, this Order should not be construed as Commission acceptance of those facts for other purposes, since they may be subject to dispute. For example, the Company asserted at paragraph 10 that its owners have not received any return on their investment. This fact depends on the level of investment or, in other words, the Commission established value of the Company's rate base. The issue of rate base valuation has been remanded to the Commission in Re Mountain Springs Water Co., Inc. (1983) 123 NH —. The remanded issues will be the subject of upcoming Commission hearings.

[2]The Company's Motion for Rehearing asserted at paragraph 11 that a rate case will be filed within 30 days. Such a filing cannot be accepted because the Company has not yet filed the Notice of Intent to File Rate Schedules required by Regulation 1603.02. It hardly needs to be stated that we will expect the Company to adhere to the tariff filing requirements set forth in Chapter 1600 of our regulations.

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NH.PUC*01/18/84*[61320]*69 NH PUC 27*Concord Natural Gas Corporation

[Go to End of 61320]

69 NH PUC 27

Re Concord Natural Gas Corporation

Intervenors: Community Action Program and Office of Consumer Advocate

DR 83-206,
Supplemental Order No. 16,862

New Hampshire Public Utilities Commission

January 18, 1984

Order setting effective date for temporary rates and approving stipulation agreement.

APPEARANCES: Orr and Reno by David W. Marshall, Esquire for Concord Natural Gas Corporation; Gerald Eaton, Esquire for Community Action Program; Michael Holmes, Esquire for the Consumer Advocate; Larry Smukler, Esquire for the Staff.

By the COMMISSION:

REPORT

On July 25, 1983, Concord Natural Gas Corporation (the "Company"), a public utility providing gas service in a portion of this State, filed revised tariff pages to Tariff NHPUC No. 13 providing for increased revenues in the amount of approximately $503,012 or 6% (net of the franchise tax) or 7.07% including the State Franchise Tax effective August 25, 1983. By Order No. 16,583 (August 9, 1983), the Commission suspended the revised tariff pages pending investigation. On August 12, 1983, the Company filed a petition for Temporary Rates pursuant to RSA 378:27 requesting temporary rates in the amount of $224,903. After due notice, hearings were held on September 28, 1983, October 4, 1983, and January 12, 1984.

Per Supplemental Order No. 16,704 dated October 14, 1983 (68 NH PUC 613), this Commission accepted a settlement proposal of the parties which enabled the utility to recover $212,000 in temporary rates. This $212,000, plus the State Franchise Tax resulted in a temporary increase of approximately 3.56%.

On November 3, 1983, the Company filed a Motion for Rehearing, requesting the Commission at a time subsequent to the permanent rate hearing, to modify its Report and Order No. 16,704 to amend certain findings contained therein and to fix the Company's temporary rates effective for service rendered on or after August 25, 1983. Since the issues raised in said Motion for Rehearing were not part of the agreement submitted on January 12, 1984 and were specifically reserved

for further consideration, the Commission will address the subject presently. The Company originally proposed an effective date of August 25, 1983 based on its initiative of providing notice to its customers of the proposed effective date and based on its representations of its need for rate relief. Penacook Fibre Company et al. argued for an effective date which is not earlier than the temporary rate order based on the Commission's longstanding policy and practice. CAP proposed an effective date of November 1, 1983, the effective date of the Company's winter cost of gas adjustment. The Consumer Advocate proposed an effective date which is no earlier than the date of the October 4, 1983 hearing based on the issue of notice to the Company's customers.

After due consideration, we have decided to leave the effective date of the temporary rates as stated in the October 14, 1983 Order. The Commission previously recognized that the Company's customers have had notice that temporary rate increase was proposed to be effective at an earlier date. However, since the temporary rates cannot be changed until they have been reviewed and approved by the Commission, the Company's customers could not make knowledgeable decisions about gas usage before the date of this Order. This remains the basis of the Commission's longstanding policy. The Company has not presented sufficient evidence of financial hardship to override the original rationale for adhering to this longstanding policy.

During the course of the January 12, 1984 hearing, the parties submitted a stipulation agreement on the revenue deficiency, but not rate structure aspects of this case.

The parties requested more time from the Commission in which to complete a Cost of

Service Study and to jointly discuss such. Said request is reasonable and the Commission will agree to it.

Returning to the proposed Stipulation Agreement, labelled as Exhibit 5 in the docket, said agreement supported a Supplemental Temporary Rate[1(9)] increase of $265,389 net of the Franchise Tax, or $349,883 including the State Franchise Tax. This results in a rate increase of approximately 4.33% (including the franchise Tax) as compared to 7.07% (including the F.T.) as originally requested, and 3.56% (including the F.T.) per the Temporary rates.

Some highlights of the Agreement are:

1). 14.5% of common equity and 12.714% overall cost of capital.

2). 13 month average rate base for the test year ending May 31, 1983, plus the updating of the 13 month average to December 31, 1983 for nonrevenue producing maintenance or safety related additions to net plant as required by the Commission in conjunction with DE 82-272.

3). PUC Finance department audit related adjustments.

4). The difference between Temporary and Supplemental Temporary Rates to be surcharged over 9 months, but not commencing until issuance of the Commission's permanent rate order.

5). Step adjustments shall be allowed on June 1, 1984 and January 1, 1985.

6). If the Commission does not issue an order by May 1, 1984 relating to the utility's cost of gas roll-in to base rates, as of May 1, 1984, the utility will fold 20 more per

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therm into base rates. Thus putting Concord Natural Gas's roll-in (fold-in) more in line with the other New Hampshire gas utilities.

7). The Supplemental Temporary Rates will employ the temporary rate design as approved by the Commission in Report and Order No. 16,704.

8). Recognition was made for the loss of a major customer as well as allowance in future steps for potential growth or loss in sales to large customers in the future.

9). The uncollectible account expense was adjusted based on current writeoffs.

10). Actual property taxes were utilized.

11). Reasonable rate case expenses will be recouped through the surcharge noted in (4).

Based on the Commission's analysis of the stipulation agreement, the balance of the record in this case, the testimony of Dr. Kraemer of the Commission staff in conjunction with Exhibit 6, etc., the Commission finds the Stipulation Agreement to be in the public good. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Concord Natural Gas Corporation shall file a tariff supplement effective as of January 1, 1984 to recover additional annual revenues of $265,389 (net of the New Hampshire

State Franchise Tax) in Supplemental Temporary Rates, over its rates in effect prior to October 14, 1983, and it is

FURTHER ORDERED, that said increase and corresponding recoupments and step adjustments be made in accordance with the provisions of the foregoing Report; and it is

FURTHER ORDERED, that the Company's petition for a change in the date temporary rates went into effect is denied; and it is

FURTHER ORDERED, that the parties shall keep the Commission informed on a regular basis as to the status on the Rate Structure aspect of the docket.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of January, 1984.

FOOTNOTE

[1]The rates are not labelled as Permanent Rates as the rate structure issue is still undecided.

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NH.PUC*01/18/84*[61321]*69 NH PUC 29*Small Power Producers and Cogenerators

[Go to End of 61321]

69 NH PUC 29

Re Small Power Producers and Cogenerators

DE 83-62,
Seventh Supplemental Order No. 16,863

New Hampshire Public Utilities Commission

January 18, 1984

Order extending procedural schedule.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS the Commission has received a request from Public Service Company of New Hampshire to extend the procedural schedule in docket DE 83-62 to permit the parties to undertake settlement discussions; and

WHEREAS the Commission agrees that it is in the public interest to allow the parties to undertake settlement discussions in an effort to narrow and simplify the issues in the instant case; and

WHEREAS the settlement discussions will be most fruitful if the parties are provided with

all necessary information; and

WHEREAS the establishment of a new procedural schedule will assure that the docket continues to progress in an orderly and expeditious manner; it is therefore

ORDERED, that the procedural schedule established by Commission Order No. 16,619 is hereby suspended; and it is

FURTHER ORDERED, that the initial settlement conference be scheduled for February 6, 1984 at the Commission offices in Concord New Hampshire at 10:00 a.m.; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire is continued to be required to provide all available data responses according to the original procedural schedule; and it is

FURTHER ORDERED, that the parties are required to present a new procedural schedule which may include additional discovery, no later than February 7, 1984.

By Order of the Public Utilities Commission this eighteenth day of January, 1984.

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NH.PUC*01/18/84*[61322]*69 NH PUC 30*Northern Utilities, Inc.

[Go to End of 61322]

69 NH PUC 30

Re Northern Utilities, Inc.

DR-83-90,
Fourth Supplemental Order No. 16,870

New Hampshire Public Utilities Commission

January 18, 1984

Order accepting rate case settlement agreement with modifications.

Rates, § 125 — Reasonableness — Ability to pay — Discounts.

A utility was barred by a settlement agreement accepted by the commission from collecting any revenue deficiency resulting from a discount rate to low-income elderly residential customers. [1] p.31.

Expenses, § 89 — Regulation or rate case expenses — Recovery through step adjustment.

A utility was allowed to recover reasonably incurred regulatory expenses through the step adjustment process rather than through the procedure outlined in the settlement agreement. [2] p.31.

APPEARANCES: The appearances are as listed previously in the Second Supplemental Report and Order No. 16,693 ([1983] 68 NH PUC 603).

By the COMMISSION:

REPORT

On October 13, 1983 the Commission issued Second Supplemental Order No. 16,693 (68 NH PUC 603) regarding Northern Utilities, Inc. and an Offer of Settlement (Exhibit 2) that was filed by the parties at the October 3, 1983 hearing. The Commission accepted the proposed increase in annual operating base revenues of $1,175,000 and ordered the implementation of the temporary rates in accordance with the terms of the Offer of Settlement. The Commission further ordered that hearings on the remaining issues in the permanent rate case be scheduled for November 16 and 17. The Commission, having been informed by the parties that significant progress had been made towards a resolution, rescheduled the hearing for December 6, 1983. At that time, the parties presented their agreement on the remaining issues of rate design and rate structure.

The Company presented the testimony of James Simpson, Rate Manager for Northern Utilities, Inc. to explain the agreement and support its terms. Mr. Simpson presented testimony and exhibits which substantiated the adoption of the interim rate design on a permanent basis. Mr. Simpson indicated that inter alia an objective of this proposal was the movement of basic rates for all classes closer to the cost of serving each of those classes.

[1] Mr. Simpson addressed the issue: whether or not the revenue deficiency created by the discount rate to low income elderly residential customers could be collected from other customers. He stated that the Company was not requesting the ability to recover from any customer no matter what the class the customer may be in, and that the Company had agreed with the parties that they will not collect any revenue deficiency resulting from said discount rate. The Company reserved the right to formulate such a request prospectively in the future, and when the Commission at such time would have an opportunity to investigate.

After due consideration, the Commission finds that the record supports the acceptance of the recommendations of the parties. We believe that the proposed rate design and revenue allocation are just and reasonable and conform to conventional ratemaking principles.

[2] The issue of regulatory expense has been raised before the Commission. Regulatory expense was also addressed in the Offer of Settlement (Exhibit 2). The parties agreed that the Company, at the conclusion of the Commission's consideration of permanent rate design issues, would revise the amortization of regulatory expense to reflect the amount actually incurred. The company was also to adjust their rates accordingly.

The Staff and the Company have reviewed the regulatory expense issue and recommend that reasonably incurred rate case expenses be recouped by the Company through the step adjustment process instead of through the procedure described in the Offer of Settlement.

The Commission finds this request to be reasonable and accepts addressing the rate case expenses in the course of the step adjustment process.

The Commission has also carefully considered Staff's recommendation of the future requirement of a marginal cost study. We believe that such marginal cost data will be useful for the Commission for a number of purposes, including but not limited to, a comparison with embedded cost data.

Our Order will issue accordingly.

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SUPPLEMENTAL ORDER

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

ORDERED, that Northern Utilities, Inc. be allowed rate increases in the following amounts:

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

Allocated Percent of Adjusted
 Increase Gross Revenues

Residential
Rate R-1 $ 523,877 12.98%

General Rate G-1    94,901 10.38

Large Volume
Rate LV-1    56,243  6.28

Air Conditioning     3,084  7.01

Commercial
Heating Rate
GH-1   496,895  9.16

 $1,175,000 10.38%
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and it is

FURTHER ORDERED, that tariff pages approved for temporary rates by Second Supplemental Order No. 16,693 and amended by Third Supplemental Order No. 16,752 ([1983] 68 NH PUC 663) be and hereby are now approved as permanent rates; and it is

FURTHER ORDERED, that regulatory expenses be recouped by the Company through the step adjustment process; and it is

FURTHER ORDERED, that the Company, in its next rate case, provide the Commission with a marginal cost of service study.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of January, 1984.

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NH.PUC*01/19/84*[61323]*69 NH PUC 32*New England Telephone and Telegraph Company

[Go to End of 61323]

69 NH PUC 32

Re New England Telephone and Telegraph Company

DE 84-7, Order No. 16,861

New Hampshire Public Utilities Commission

January 19, 1984

Order transferring license of submarine plant pursuant to divestiture.

By the COMMISSION:

ORDER

WHEREAS, Commission Order No. 8,113 issued under Docket DE 4142 on September 4, 1963 granted license to New England Telephone and Telegraph Company for the construction and maintenance of submarine plant under and across the Connecticut River in the town of Haverhill, N.H., a distance of approximately three hundred seventy-seven feet (377%); and

WHEREAS, divestiture of the American Telephone and Telegraph Company (AT&T) on January 1, 1984 resulted in the division of assets between NET and AT&T; and

WHEREAS, a NET letter of December 29, 1983 indicates that the submarine plant cited in the license granted by Order No. 8,113 was a part of said transfer to AT&T; and

WHEREAS, said transfer is consistent with decisions rendered at Federal and State levels regarding divestiture, and in the public interest; it is

ORDERED, that the license granted NET by Order No. 8,113 be, and hereby is, transferred to AT&T Communications of New England, Inc., effective January 1, 1984.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of January, 1984.

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NH.PUC*01/19/84*[61324]*69 NH PUC 33*New England Telephone and Telegraph Company

[Go to End of 61324]

69 NH PUC 33

Re New England Telephone and Telegraph Company

DE 83-186,
Supplemental Order No. 16,868

New Hampshire Public Utilities Commission

January 19, 1984

Order permitting telephone company to offer local measured service as an option.

Rates, § 539 — Telephone — Measured local service.

The commission found it was in the public interest to allow a telephone company to offer optional local measured service.

APPEARANCES: For New England Telephone and Telegraph Company, Jeanne S. Conroy, Esquire.

By the COMMISSION:

REPORT

On May 27, 1983, New England Telephone and Telegraph Company (NET) filed with this Commission tariff revisions proposing the implementation of measured service on an optional basis in various New Hampshire exchanges. The filing was made according to direction of Order No. 15,752 in DR 82-70 ([1982] 67 NH PUC 469), which specified that lowuse measured service would be made available by NET system-wide the [sic] the end of 1985. Three of the exchanges impacted by this filing were proposed to receive Low-Use Measured Residence Service (LMR), while the remaining 21 exchanges or localities were to have the Four-Element Measured Service (MS-4E). Concerned that the latter was not equivalent to that ordered in DR 82-70, the Commission suspended those tariff pages, filed to implement MS-4E, by its Order No. 16,504 issued on June 29, 1983 (68 NH PUC 440), pending its investigation and decision.

An Order of Notice was issued on July 27, 1983 setting the matter for hearing at 10 a.m. on September 7, 1983 at the Commission's Concord offices. The duly noticed hearing was convened at the time specified, with New England Telephone

represented by Attorney Jeanne S. Conroy. No intervenors were present.

Attorney Conroy presented one witness, James J. Doyle, District Manager for New England Telephone. Mr. Doyle's prefiled testimony was entered as Exhibit No. 1. He summarized that testimony and was subjected to cross-examination by Commissioners and Staff.

Background

The Low-Use Measured Residential Service (LMR) was introduced in New Hampshire several years ago. While its popularity was not overwhelming, it was attractive to certain customers. With information gained in its investigation under Docket DR 82-70, the Commission felt that this type of service was a viable alternative to ever-increasing flat rates; consequently, it was ordered that such service be offered by NET system-wide on an optional basis no later than December 31, 1985.

Subsequent to the issue of Order No. 15,752 in DR 82-70, New England Telephone

introduced its MS-4E service in the Exeter and Portsmouth exchanges. The MS-4E is a four-element measured service, compared to the two-element feature of the LMR. The May 1983 filing in the instant docket proposed broad implementation of the MS-4E as the NET compliance with the earlier order of DR 82-70.

First exposed to the MS-4E system when it was introduced in the Exeter and Portsmouth exchanges, the Commission was made aware of its further expansion by construction plans forwarded by NET in December, 1982. Little though was given at that time regarding the adequacy of the MS-4E as a substitute for the LMR mandated earlier. The May 1983 filing raised concern whether the low-use customer under the MS-4E would be receiving equal benefits for his basic fee as would one with LMR.

Company Position

The NET witness, Mr. Doyle, insists that the average customer would pay the same under the MS-4E as he would under the LMR. He did stress that there would be cases where the LMR were cheaper and others where the MS-4E were cheaper. As examples, he cited an LMR customer making 30 five-minute calls per month and an MS-4E customer making 50 one-minute calls, all during off-peak hours.

One important feature of the MS-4E's one-minute timing was the customer control over the duration of his calls. Compared to the LMR's five-minute message units, this offers incentive to be brief. A second incentive is the discounted offpeak period during which rates were halved. Both can save the customer money.

Another advantage cited in Mr. Doyle's testimony was its trend toward future considerations. These, he claimed, are the integration of local and intrastate rate schedules in the long term, with the MS-4E a stepping stone to this end. (One notes, however, that the Company has no immediate plans to seek the mandatory replacement of flat rates by measured service.)

The Company indicated a preference for the MS-4E system, but found its installation in certain locations were not cost effective. In those cases, it chose to meet the Commission's directive by implementing the LMR.

Commission Analysis

As indicated earlier, when this Commission directed NET to implement a Low-Use Measured Residence Service state-wide by late 1985, its only view of

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such service was the message unit system (LMR), with a customer receiving 30 such units for his basic monthly fee — about one five-minute call per day. With the advent of MS-4E, the equivalency became an issue. Would a low-use customer under MS-4E have as equal service as the neighboring exchange customer with LMR? The Company assures the Commission than an average customer would have equal service.

Commission concern is for low-income customers and their ability to have telephone service at reasonable cost. The LMR plan seemed to fill this requirement; however, based upon five-minute calls during peak hours, a MS-4E customer would be able to make substantially

fewer calls than his LMR counterpart. Could this limitation impair the low-income subscriber? Company testimony and exhibits show that most calls are much shorter than five minutes and the minute pricing of the MS-4E offers great incentive to minimize the call to save money. These facts, plus the 9 p.m. to 9 a.m. discounts, are also beneficial not only to the subscriber, but also the [sic] the network, possibly leveling peaks or deferring the need for new plant.

Based upon the features offered by the MS-4E system, it appears in the public interest to allow its implementation on an optional basis. (No compelling evidence is found at this time which would mandate MS-4E, LMR or any type of measured service.) In the interest of standardization of service available throughout the New England Telephone system, the Commission feels MS-4E should include a residential option having the same features as the LMR service, viz. 30 fiveminute message units for a basic fee. Such option will be offered without discount in addition to the two choices proposed by the Company.

For measured business service, the Commission finds the MS-4E acceptable. It also agrees with the concept that such measured service is an acceptable replacement for multi-party business service and will allow the discontinuance of the latter in those exchanges offering measured service.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the following pages of New England Telephone and Telegraph Company tariff, NHPUC No. 75, be, and hereby are, rejected:

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

Pt. A, Sec. 5—Table of Contents, 1st Rev. Pgs. 1
and 2
Original Pgs. 8.1, 29.1, 29.2 and
29.3
1st Rev. Pgs. 8, 9, 19 and 20;

and it is

FURTHER ORDERED, that replacement pages be filed bearing the next revision number, with an effective date of January 16, 1984, plus an annotation cit- ing this Order; and it is

FURTHER ORDERED, that Section 5.1.8 of said tariff revisions be amended to include a third alternative of residential MS-4E service, said alternative to be comparable to that Low-Use Measured Residence Service (LMR) offered in non-4E exchanges; and it is

FURTHER ORDERED, that public notice be given in those exchanges affected by the implementation of the MS-4E in a manner deemed most effective by the Company.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of January, 1984.

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69 NH PUC 36

Re New England Telephone and Telegraph Company

DE 83-380, Order No. 16,873

New Hampshire Public Utilities Commission

January 24, 1984

Order granting license for the installation and maintenance of submarine telephone plant.

APPEARANCES: for NET&TCo. — Robert Lamothe, Engineering Manager.

By the COMMISSION:

REPORT

On December 12, 1983, New England Telephone and Telegraph Company filed with this Commission a petition seeking license under RSA 371:17 for the installation and maintenance of submarine plant in Bow Lake, Strafford, New Hampshire. An order of notice was issued on December 14, 1983 setting the matter for hearing at 2 p.m. on January 17, 1984. Public notice was also directed and copies of the order were sent to the Aeronautics Commission, the Department of Resources and Economic Development, the Division of Safety Services, and the Attorney General.

The duly noticed hearing was convened as ordered, with the Company represented by Robert Lamothe, Engineering Manager. No intervenors were present, nor was any objection to the crossing received by mail.

Mr. Lamothe presented four exhibits. Ex. 1 was the Company's petition, which described the crossing of Bow Lake as a two-pair submarine wire extending from Beech Island to Long Island. The plant would provide the Sager property with telephone service in the Barrington Exchange. Ex. 2 was a geological map on which the proposed plant was sketched. The plant was shown as beginning at the Company's Pole 24R/13-1R on Beech Island and terminating at Pole 24R/13-2R on Long Island. (It is noted that these are joint poles, also used by Public Service Company of New Hampshire and bearing that Company's numbers 825C1/ 5B and 825C1/5B1 respectively.) Ex. 3 was the Company's drawing No. 44-8 showing the new plant. It represented the distance as approximately 900%, at an estimated depth of 25%. Mr. Lamothe's Ex. 4 consisted of three pages comprising all necessary authority by the Water Resources Board and the Water Supply and Pollution Control Commission for the construction.

The Company indicated that all construction would comply with the requirements of the National Electrical Safety Code.

With no objections to this crossing, and compliance with safety codes, the matter appears in the public interest; and license will be granted. Our order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company be, and

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hereby is, granted license for the installation and maintenance of submarine plant in the public waters of Bow Lake, Strafford, New Hampshire; said plant extending from Beech Island (Pole 24R/ 13-1R) to Long Island (Pole 24R/13-2R), a distance of approximately 900 feet.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of January, 1984.

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NH.PUC*01/24/84*[61326]*69 NH PUC 37*Franconia Power and Light Associates

[Go to End of 61326]

69 NH PUC 37

Re Franconia Power and Light Associates

DR 84-20, Order No. 16,874

New Hampshire Public Utilities Commission

January 24, 1984

Order nisi approving long-term rate filing.

By the COMMISSION:

ORDER

WHEREAS, on January 19, 1984, Franconia Power & Light Associates ("FPLA") filed a long-term rate filing pursuant to Docket No. DE 83-62, Report and Fourth Supplemental Order No. 16,619 ([1983] 68 NH PUC 531) and Report and Fifth Supplemental Order No. 16,664 ([1983] 68 NH PUC 575); and

WHEREAS, FPLA's filing appears to be consistent with the aforementioned Order; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire the opportunity to file comments or exceptions; and

WHEREAS, it is in the public interest to approve long-term rate filings expeditiously; it is therefore

ORDERED NISI, that the long-term rate filing of FPLA is approved; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire may file comments and exceptions no later than 14 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this

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

By Order of the Public Utilities Commission of New Hampshire this twentyfourth day of January, 1984.

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NH.PUC*01/24/84*[61327]*69 NH PUC 37*Connecticut Valley Electric Company, Inc.

[Go to End of 61327]

69 NH PUC 37

Re Connecticut Valley Electric Company, Inc.

Intervenors: Sinclair Machine Products, Inc. et al.

DR 83-372, Supplemental Order No. 16,875

New Hampshire Public Utilities Commission

January 24, 1984

Order approving purchase power cost adjustment subject to refund.

APPEARANCES: Steven J. Allenby, Esquire for Connecticut Valley Electric Company; Myers and Laufer by David William Jordan, Esquire for Sinclair Machine Products, Inc. et al.; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On December 1, 1983, Connecticut Valley Electric Company, Inc. ("Company") filed certain revisions to its tariff No. 4 proposing a Purchase Power Cost Adjustment ("PPCA") of $0.009024/kwh to be effective January 1, 1984. The proposed adjustment would increase total revenues by 12.5%. A duly noticed hearing on the matter was held on January 17, 1984.

The PPCA results from the operation of Central Vermont Public Service's ("CVPS") RS-2 tariff which has been approved by the Federal Energy Regulatory Commission ("FERC"). The Company is a wholly owned subsidiary of CVPS. Pursuant to the RS-2 rate, CVPS may put into effect an estimated wholesale rate on January 1st of the calendar year. Subsequent to the calendar year, CVPS will file with the FERC certain information which reconciles CVPS's actual wholesale costs with the estimated costs. At that time, the FERC staff and other interested parties may review any aspects of the RS-2 rate and resolve any issues before the FERC. CVPS has put the 1984 estimated wholesale rate into effect on January 1, 1984 automatically through the RS-2 mechanism. The FERC has not issued an Order approving the estimate; however, no such Order is required under the terms of the RS-2 tariff. The Company seeks to pass those estimated

wholesale costs to consumers through its PPCA.

At the hearing, the Company presented evidence pertinent to its level of wholesale costs. The record reveals that a significant component of those costs is CVPS Construction Work in Progress ("CWIP"); CWIP which includes a portion of CVPS's investment in the Seabrook project. The inclusion of CWIP costs, while not approved specifically by FERC Order is permitted by FERC regulations (e.g., 18 C.F.R. § 35.26).

Sinclair Machine Products et al. ("Intervenors") objected to the PPCA on the basis of the CWIP inclusion. The intervenors contended that under the facts of this case, Commission approval is prohibited by the New Hampshire "AntiCWIP" statute, RSA 378:30-a. The Intervenors noted that this issue is substantially the same as that presented by the inclusion of certain abandoned plant costs in the wholesale rate; an issue to be addressed by the Commission in the Company's current rate case (Docket No. DR 83-200). As a result, the Commission was requested to incorporate the rate case record into the record made in this docket and defer ruling on the CWIP issue until it is addressed in the context of the rate case.

After review, we conclude that the two issues are substantially the same and we will provide that the evidence in DR 83-200 will be incorporated into this docket. In addition, we will provide that the recovery allowed here will be subject to refund if the Commission ruling in DR 83-200 is inconsistent with that recovery.

Although we have deferred a final adjudication of the issue until it is addressed in DR 83-200, we will allow the PPCA adjustment proposed here by the Company subject to refund. We believe that

the Company has made a prima facie case which justifies recovery. We base this on the similarity of the instant case to that of Re Granite State Electric Co. (1984) 69 NH PUC 1.*(10) Since the Company has met its burden of making a prima facie case, it is now up to the Intervenors to show us why Granite State is inapplicable to the facts of this docket. If, after review of the presentation of the Intervenors in DR 83-200, we are convinced that the PPCA allowed here is no longer just and reasonable, we shall order the appropriate refunds.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Connecticut Valley Electric Company's Tariff NHPUC No. 4, 9th Revised Page 17 (superceding 8th Revised Page 17) be, and hereby is, approved for all meters read on or after January 16, 1984 for monthly billed cus- tomers and January 31, 1984 for bimonthly billed customers, which is equivalent to a January 1, 1984 service rendered effective date; and it is

FURTHER ORDERED, that the PPCA component attributable to the inclusion of CWIP in rate base is subject to refund if the Commission should find in Docket No. DR 83-200 that RSA 378:30-a is applicable to this PPCA.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of

January, 1984.

FOOTNOTE

*In Granite State, the Commission concluded that FERC regulatory approval of inclusion of CWIP in rate base in a wholesale rate will act to preempt any inconsistent provision contained in RSA 378:30-a.

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NH.PUC*01/25/84*[61328]*69 NH PUC 39*Northern Utilities, Inc.

[Go to End of 61328]

69 NH PUC 39

Re Northern Utilities, Inc.

DR 84-14, Order No. 16,876

New Hampshire Public Utilities Commission

January 25, 1984

Order approving contract for sale of gas at special rates.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a utility selling gas under the jurisdiction of this Commission, has filed with this Commission Special Contract No. 57 with Foss Manufacturing, effective on approval by Commission order, for gas service at rates other than those fixed by its schedule of general application; and

WHEREAS, upon investigation and consideration, this Commission is of the opinion that special circumstances exist

relative thereto which render the terms and conditions thereof just and consistent with the public interest; it is

ORDERED, that said contract may become effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twentyfifth day of January, 1984.

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NH.PUC*01/26/84*[61329]*69 NH PUC 40*New England Telephone and Telegraph Company

[Go to End of 61329]

69 NH PUC 40

Re New England Telephone and Telegraph Company

DR 83-396, Order No. 16,877

New Hampshire Public Utilities Commission

January 26, 1984

Order approving "unbundling" of automatic identification of outward dialing service from Centrex rates.

By the COMMISSION:

ORDER

WHEREAS, New England Telephone and Telegraph Company has filed with this Commission proposed revisions to its tariff, NHPUC No. 75, said revisions introducing Automatic Identification of Outward Dialing (AIOD) Service, and "unbundling" it from packaged Centrex CU rates; and

WHEREAS, said filing results from divestiture of the American Telephone and Telegraph Company according to Federal mandates; and

WHEREAS, the proposal appears to be in the public interest; it is

ORDERED, that Supplement No. 7 (Title Page and Original Pages 1-4) and Part A, Section 7, Original Pages 6.1 and 6.2 of New England Telephone and Telegraph Company tariff, NHPUC No. 75, be, and hereby are, approved for effect January 28, 1984; and it is

FURTHER ORDERED, that notice of this approved filing be given those customers affected, in a manner deemed effective by the Company.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of January, 1984.

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NH.PUC*01/26/84*[61330]*69 NH PUC 41*Fuel Adjustment Clause

[Go to End of 61330]

69 NH PUC 41

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 83-374,
Supplemental Order No. 16,878

New Hampshire Public Utilities Commission

January 26, 1984

Order permitting fuel adjustment clause filings to become effective without a hearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Exeter & Hampton Electric Company, Connecticut Valley Electric Company, Inc., Granite State Electric Company, Municipal Electric Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), 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 be scheduled; it is

ORDERED, that 121st Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $2.14 per 100 KWH for the month of January, 1984, be, and hereby is, permitted to become effective January 1, 1984.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of January, 1984.

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NH.PUC*01/26/84*[61331]*69 NH PUC 41*New England Telephone and Telegraph Company

[Go to End of 61331]

69 NH PUC 41

Re New England Telephone and Telegraph Company

DR 83-306, DR 83-370,
Order No. 16,880

New Hampshire Public Utilities Commission

January 26, 1984

Order approving revisions to tariff pages.

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By the COMMISSION:

ORDER

WHEREAS, the timeliness of the issue of orders under DR 83-306 and DR 83-370 was such

that an error appeared on certain tariff pages; and

WHEREAS, New England Telephone and Telegraph Company has filed corrected revisions to reflect approved decisions in both dockets; and

WHEREAS, this Commission finds such corrected tariff pages in the public interest; it is

ORDERED, that First Revised Pages 63 through 65 of Supplement 6 to New England Telephone and Telegraph Company tariff, NHPUC No. 75; and Third Revised Page 71 of Part A, Section 7 of said tariff be, and hereby are approved for effect January 1, 1984.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of January, 1984.

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NH.PUC*01/26/84*[61332]*69 NH PUC 42*Public Service Company of New Hampshire

[Go to End of 61332]

69 NH PUC 42

Re Public Service Company of New Hampshire

DE 81-312,
18th Supplemental Order No. 16,881

New Hampshire Public Utilities Commission

January 26, 1984

Order awarding compensation for costs incurred by intervenors in a proceeding under the Public Utility Regulatory Policies Act.

Costs — Compensation of intervenors — Time spent on recovery of compensation.

Only time spent in preparation and presentation of a position defined in the Public Utility Regulatory Policies Act is subject to compensation, to the exclusion of time spent on the recovery of compensation. [1] p.43.

Costs — Compensation of intervenors — Attorney's fees — Guidelines.

Prevailing salaries paid to in-house counsel of similar experience and training serve as a reasonable standard for compensation of attorney's fees. [2] p.43.

Costs — Compensation of intervenors — Expert witness fees.

Expert witness fees related to the presentation of a position defined in the Public Utility Regulatory Policies Act, where substantial contribution has been found, are eligible expenses for compensation. [3] p.44.

Costs — Compensation of intervenors — Other reasonable costs.

Photocopying, postage, travel, reasonable long-distance telephone calls, and stenographer

expenses are "other reasonable costs" as defined in Rule 205.01(b) and (h) and are eligible for compensation when related to the presentation of a position defined by the Public Utility Regulatory Policies Act where a substantial contribution has been found. [4] p.44.

Costs — Compensation to intervenors — Public Utility Regulatory Policies Act proceedings — Substantial contribution.

The commission defined what constituted a proceeding under the Public Utility Regulatory Policies Act and found that two intervenors had substantially contributed to the commission's decision in the proceeding and were therefore eligible for compensation. [5] p.44.

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Costs — Compensation to intervenors — Attorney's fees — Guidelines.

The commission rejected the "lodestar" or "market value approach" (used under federal statutes providing for the award of attorney's fees), stating that prevailing salaries paid to in-house counsel with similar experience and training were a better and more reasonable guideline. [6] p.45.

Costs — Compensation for intervenors — Other reasonable costs.

Compensation for staff members who were not attorneys or expert witnesses was approved as "other reasonable costs," on the condition that the cost not exceed 25 per cent of the total of attorney's fees and expert witness fees awarded. [7] p.46.

(Aeschliman, commissioner, concurs, p.48.)

APPEARANCES: As Previously Noted

REPORT

By the COMMISSION:

I. Procedural History

In Report and Eighth Supplemental Order No. 15,655 ([1982] 67 NH PUC 334), the Commission found the Conservation Law Foundation of New England, Inc. (CLF) and the New Hampshire Energy Coalition (NHEC) eligible for compensation in this docket. The Union of Concerned Scientists (UCS) request for eligibility was denied. A final order, Sixteenth Supplemental Order No. 16,374, was issued in this docket on April 29, 1983 (68 NH PUC 257), and on May 19, 1983, Public Service Company of New Hampshire (PSNH) filed a Motion for Rehearing which was denied by Seventeenth Supplemental Order No. 16,489, issued on June 23, 1983 (68 NH PUC 429). Subsequently, on June 24, 1983, CLF filed a Documentation of Expenses and Request For Intervenor Funding (Request) pursuant to PUC Rule 205.07. In addition, on July 26, 1983, CLF filed a Request For Recovery By Union of Concerned Scientists of Expert Witness Fees (UCS Request).

Public Service Company of New Hampshire (PSNH) filed an Objection to CLF's Request on July 26, 1983. In response thereto, on August 8, 1983, CLF submitted a Reply to PSNH's

Objection.

On March 31, 1983, the Commission issued Fifteenth Supplemental Order No. 16,301 (68 NH PUC 161) in which it ordered both PSNH and the Commission Staff to provide the Commission with a list of all costs incurred for counsel, expert witness fees and any other contracted services related to the preparation of the case. In response thereto, by letter dated August 24, 1983, PSNH provided the Commission with a listing of these costs, the total of which was $661,252.81. On September 6, 1983, Staff submitted its re- sponse. Because Staff did not require any outside counsel or witnesses, the only costs it incurred were for services in support of Staff's direct participation in the case, the total of which was $105,678.

II. Findings

[1] 1. Time spent on the recovery of compensation is not subject to an award for compensation. Only time spent on the preparation and presentation of a position defined in the Public Utility Regulatory Policies Act of 1978 (PURPA) is an eligible expense for intervenor compensation.

[2] 2. Prevailing salaries paid to inhouse counsel of similar experience and training serve as a reasonable standard for compensation for attorney's fees. We will adopt as a reasonable guideline the $25 per hour fee adopted in two prior PURPA dockets involving PSNH for purposes of determining compensation in this

proceeding regarding billable hours expended by Douglas Foy, Esq.[1(11)]

3. A rate of $10 per hour is a reasonable standard in this proceeding for compensation with respect to the billable hours expended by other nonattorney staff members of the CLF and the two members of the NHEC staff employed in the presentation of the issues in this docket. These billable hours are "other reasonable costs" as defined in Rule 205.01(b) and (h).

4. Both CLF's and NHEC's time expenditure calculations are reasonable for the purpose of determining compensation in this docket.

[3] 5. Expert witness fees related to the presentation of a PURPA position where substantial contribution has been found are eligible expenses for compensation.

[4] 6. Photocopying, postage, travel and stenographer expenses related to the presentation of a PURPA position where substantial contribution has been found are eligible expenses for compensation. These expenses are "other reasonable costs" as defined in Rule 205.01(b) and (h).

7. Reasonable long distance telephone expenses related to the preparation and presentation of a PURPA position where substantial contribution has been found are eligible expenses for compensation. These expenses are "other reasonable costs" as defined in Rule 205.01(b) and (h).

8. PUC Rule 205.01(h) limits the abovestated "other reasonable costs" to 25% of the total of reasonable attorney's fees and expert witness fees awarded. Because the total of CLF's reasonable attorney's fees and expert witness fees total $67,719, the maximum allowable "other reasonable costs" CLF may be awarded is $16,929.75 (25% of $67,719). NHEC incurred no attorney or expert witness fees and thus is not subject to this limitation.

9. The Commission previously determined in Report and Eighth Supplemental Order No. 15,655 ([1982] 67 NH PUC 334) for reasons stated therein that UCS was not eligible for compensation in this docket. We therefore deny CLF's request for recovery by UCS of expert witness fees.

10. The Commission, in Report and Sixteenth Supplemental Order No. 16,374, previously determined that both CLF and NHEC substantially contributed to this proceeding.

DISCUSSION

Designation As A PURPA Proceeding

[5] In its Objection to CLF's Request, PSNH contends that there has been no sufficient finding that CLF and NHEC have substantially contributed to a determination by the Commission in relation to a PURPA standard as required by PUC Rules 205.02 and 205.07. PSNH argues that these rules allow intervenor compensation only when the Commission is considering one of the PURPA standards listed in Rule 205.01, sections D and E,[2(12)] and that the Commission's findings as to CLF's contribution relate to non-PURPA standard issues in this proceeding.

Contrary to PSNH's contention, in its final substantive report and order, Supplemental Order No. 16,374 issued on

April 29, 1983, the Commission found the purposes and findings of this docket to be fundamentally related to the aforementioned PURPA standards. The Commission stated as follows (68 NH PUC at pp. 259, 260):

There is a federal authority and a federal mandate to conduct this docket. The Commission designated this docket as a "PURPA proceeding". The Public Utility Regulatory Policies Act of 1978 (PURPA) requires state commissions to encourage (1) the conservation of energy supplied by electric utilities; (2) the optimization of the efficiency of use of facilities and resources and by electric utilities; and (3) equitable rates to electric consumers (Section 101).

Section 111 establishes certain federal standards that must be examined by the state commissions such as this one. In considering these standards (cost of service, load management techniques, interruptible rates, time of day rates, and declining block rates) it is necessary to understand the underlying demand of the customers and the various supply options including

conservation that are available. Estimates for new plants under construction, oil prices, price elasticity, emerging technologies, growth and numerous other factors are essential if the purpose of the PURPA Act of 1978 are to be accomplished. (Emphasis added)

In addition, in this same report and order the Commission found that CLF and NHEC substantially contributed to its findings in this case (68 NH PUC at p. 307).

Therefore, the Commission has in fact determined that CLF and NHEC has substantially contributed to a determination by the Commission relating to a PURPA standard.

Time Spent on Recovery of Compensation

CLF is requesting compensation for the time spent by the members of its Staff in preparing its Request for Compensation as follows:

Attorney Foy — 16 hours (Foy affidavit, p. 16)

Linzee Weld — 11.5 hours (Weld affidavit, p. 9)

In addition, CLF is requesting compensation for 64 hours of its senior counsel, Attorney Cleve Livingston, whose time was "limited to work on the preparation of this accounting of attorney's fees and other costs ..." (CLF Request, p. 14). Our past rulings however preclude such expenses from the compensation recovery. As we stated in those decisions:

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. (68 NH PUC at p. 549; 67 NH PUC at pp. 611, 612.)

CLF has not presented any reason to reverse our prior rulings. We therefore will exclude these hours from the calculation of compensation.

Determination of Attorneys' Fees — The "Lodestar" or "Market Value" Approach

[6] CLF advocates that this Commission adopt what is known as the "lodestar" or "market value approach" for computing attorneys' fees in this proceeding. This approach is most commonly employed in civil rights cases brought under 42 USCA § 1983 and has been utilized in lawsuits brought under other

federal statutes where attorneys' fees may be awarded.[3(13)]

This method is described in detail in CLF's Request. Essentially, the fee is to be based on the market value of services rendered. In accordance therewith, CLF based its determination of a reasonable value to be assigned to each individual's services for hourly billing rate purposes on an assessment of the individual's educational background, experience, degree of expertise, ability, and reputation (citation omitted), and on the customary billing rates within the legal community for lawyers of similar experience, expertise and competence. (CLF Request, p. 10).

We have considered this market rate approach in several prior PURPA dockets. In DE 80-174, entitled Re Information to Consumers, and DP 80-260, entitled Re Lifeline Rates, VOICE (Volunteers Organized In Community Education) proposed that attorneys' fees be awarded at the prevailing market rate for private attorneys of comparable training and experience who offer similar services. We rejected this approach in both dockets, finding instead that prevailing salaries paid to in-house counsel with similar experience and training are a better and more reasonable guideline. (68 NH PUC at p. 549; 67 NH PUC at p. 611; 67 NH PUC at p. 605.) In both dockets the Commission adopted a range $10-$25 per hour, with the highest amount applied to the lead or primary attorney.

We are not inclined at this time to reverse our past rulings. We therefore will award CLF attorneys' fees based upon the prevailing salaries paid to in-house counsel with similar experience and training. As in the above-stated docket, we will adopt for the purposes of this proceeding the amount of $25 per hour.

Non-Attorney CLF and NHEC Staff Compensation

[7] The non-attorney technical members of the CLF staff who contributed the majority of CLF's billable hours were Charles Cary, Linzee Weld and Stephanie Pollock. NHEC staff participants were Richard Lewis and Kirk Stone. Given their considerable expertise and experience, as documented in CLF's request, we hereby find that $10 per hour is a reasonable standard for compensation in this proceeding with respect to their billable hours.

PUC Rule 205.01(b) defines "Compensation" as "attorneys' fees, expert witness fees, and other reasonable costs". Because the above-stated CLF and NHEC staff members are not attorneys and provided no expert testimony, compensation for their participation in this docket is available as "other reasonable costs", in addition to the claimed expenses for photocopying, postage, travel, stenographer and long distance telephone calls.

Rule 205.01(h) provides that these costs may not exceed "twenty-five percent (25%) of the total of reasonable attorneys' fees and expert witness fees awarded." Thus, the total amount CLF can be awarded for these costs is $16,929.75 (25% of $67,719). (See computations below.)

Reasonableness of CLF's and NHEC's Time Expenditure Calculations

The staff of CLF spent a total of 2,865.4 hours in the preparation and presentation of its case (CLF Request, p. 6)

4(14) . A

conservative estimate based upon the record and an informal survey of the Commission Staff reveals that Staff spent at least an equal and perhaps a greater amount of time on this docket. In addition, CLF represents in its Request that the following, among other factors, all illustrate the conservative nature and overall reasonableness of its calculations:

(1) the division of work to avoid duplication;

(2) the omission for the most part of time spent in travel; and

(3) the omission of 190 hours expended by CLF's legal interns on this docket.

We agree. Based on the above, therefore, we find CLF's time expenditure calculations to be reasonable for the purpose of determining compensation.

NHEC's calculations are likewise conservative. In the affidavit in CLF's Request, Mr. Lewis and Mr. Stone state that many discussions with CLF, office discussions between themselves and travel expenses to and from Boston were excluded. We, therefore, find the 69 hours of staff time for which NHEC seeks compensation to be reasonable.

Union of Concerned Scientists Expert Witness Fees

The Commission previously determined in Report and Eighth Supplemental Order No. 15,655 (67 NH PUC 334) that UCS was not eligible for intervenor funding in this docket. CLF is now requesting that this Commission reconsider this previous denial, or in the alternative, to add to CLF's recovery of fees the sum of $36,373 with which CLF would in turn compensate UCS

for expert witness testimonies provided by Dr. Gordon Thompson and Dr. Vince Taylor.

The reasons for our earlier decision are stated in the Order. Nothing provided by CLF in its Request convinces us that our prior determination was incorrect. Therefore, we will deny CLF's request for recovery of UCS's expert witness fee.

Conclusion

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.]

1. CLF

Attorney's Fees

Foy

Expert Witness Fee

Analysis and Inference

Energy Systems Research Group

Other Reasonable Costs Hours Rate

(a) CLF Staff
Cary
Weld
Pollock

(b) Court Stenographers

(c) Photocopy

(d) Postage

(e)Travel

Total "other reasonable costs"
based on request
Total "other reasonable costs"
as allowed by PUC Rule
205.01(h) (25% of $67,719) $16,929.75

CLF TOTAL AWARD $84,248.75

2. NHEC

Staff Hours Rate Total

Richard Lewis and
Kirk Stone 69 $10 $690

Telephone Expenses

NHEC TOTAL $915

Our Order will issue accordingly.

Concurring Opinion of Commissioner Aeschliman

The majority opinion applies the following finding from previous PURPA cases where the Commission has awarded compensation.

2. Prevailing salaries paid to in-house counsel of similar experience and training serve as a reasonable standard for compensation for attorney's fees. We will adopt as a reasonable guideline the $25 per hour fee adopted in two prior PURPA dockets involving PSNH for purposes of determining compensation in this proceeding regarding billable hours expended by Douglas Foy, Esq. (69 NH PUC at pp. 43, 44, supra.)

This standard was applied previously for two reasons: (1) PSNH counsel in the proceedings in question was in-house counsel; and (2) the consumer intervenor was represented by New Hampshire Legal Assistance which receives government funding to cover its overhead.1(15)

In the instant proceeding, PSNH has been represented by outside counsel. In fact, on numerous occasions during the proceedings, PSNH had three attorneys in the hearing room, two from the firm of their outside counsel and one in-house counsel. Furthermore, it is clear that the skill and expertise of Mr. Foy is not equivalent to in-house counsel.

However, the Commission's rules do not allow for a "market value approach" or "lodestar" approach but require consideration of the financial hardship placed upon the consumer intervenor by participation in the case. In finding eligibility for consumer compensation for CLF the Commission stated (67 NH PUC at p. 336):

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 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 CLF June filing of documentation of expenses and request for intervenor funding does not provide additional information on the financial hardship question. CLF's original filing for intervenor funding does present a financial

statement which provides sufficient evidence of limited financial resources for the Commission to conclude that participation in the case presents a significant financial burden. However, CLF has not presented adequate information relative to its actual salary costs and overhead attributable to this case for the Commission to set an hourly compensation rate above that awarded in previous cases.

While the level of expertise required and demonstrated in this case could warrant a higher hourly compensation rate than that previously awarded by the Commission, the financial hardship criterion requires that a higher award be supported by actual cost data. Without such supporting information, the Commission is justified in applying the general standard previously adopted. The Commission in its prior decisions has found the $25 hourly rate for legal fees appropriate where other funding is available to pay for overhead costs. While CLF does not have

government funding for overhead costs, it does have support from private contributions and foundations. In the absence of actual salary and overhead data, it is reasonable for the Commission to determine that this rate will provide adequate compensation to CLF for its participation in this case.

SUPPLEMENTAL ORDER

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

ORDERED, the CLF is awarded $84,248.75 and NHEC $915 for consumer intervention in this docket; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire will render to CLF $84,248.75 and to NHEC $915; 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 twentysixth day of January, 1984.

FOOTNOTES

[1]This standard was adopted by the Commission in Docket No. DP 80-260, entitled Re Lifeline Rates (1982) 67 NH PUC 610 and (1983) 68 NH PUC 547, and in Docket No. DE 80-174, entitled Re Information to Consumers (1982) 67 NH PUC 604.

[2]These standards are as follows: cost of service, declining block rate, time of day rates, seasonal rates, interruptible rates, load management techniques, lifeline rates, master metering, automatic adjustment clauses, information to consumers, procedures for termination of electric service and advertising.

[3]42 USCA § 1988 provides for the recovery of "reasonable attorneys' fees".

[4]The CLF staff breakdown of the total is as follows:

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

Douglas Foy 529
Linzee Weld 932.4
Charles Cary 1,324
Stephanie Pollock 80
Total 2,865.4

These figures do not include the hours spent by Douglas Foy and Linzee Weld on the preparation of CLF's Request. In addition, the 64 billable hours of Attorney Cleve Livingston are also excluded. His participation in this docket was limited to compiling CLF's Request. As stated above, the time spent on the recovery of compensation is not subject to an award for compensation.

Concurring Opinion of Commissioner
Aeschliman

[1]DP 80-260, Re Lifeline Rates (1982) 67 NH PUC 610 and (1983) 68 NH PUC 547, and in Docket No. DE 80-174, Re Information to Consumers (1982) 67 NH PUC 604.

69 NH PUC 49

Re Gas Service, Inc.

Intervenors: Community Action Program and Office of Consumer Advocate

DR 83-345,
Supplemental Order No. 16,882

New Hampshire Public Utilities Commission

January 27, 1984

Order approving temporary rates.

APPEARANCES: Orr and Reno by Charles H. Toll, Jr., Esquire for Gas Service, Inc.; Gerald Eaton, Esquire for Community Action Program; Michael Holmes, Esquire for the Consumer Advocate; Larry Smukler, Esquire for the Staff.

By the COMMISSION:

REPORT

On December 20, 1983, Gas Service, Inc. ("Company"), a public utility providing gas service in a portion of this State, filed revised tariff pages to its Tariff NHPUC No. 6—Gas (the "revised tariff pages") setting forth basic rates (the "proposed basic rates") designed to produce additional annual gross revenues of $2,224,258 or 8.38% (before adjusting for the effect of the utility franchise tax) effective with bills rendered on or after January 19, 1984. By Order No. 16,843 dated January 6, 1984, the Commission suspended the revised tariff pages pending investigation and decision thereon. On December 30, 1983, the Commission filed a Petition for Temporary Rates pursuant to RSA 378:27 requesting temporary rates sufficient to produce additional annual gross revenues of not less than $1,486,991. After due notice, a hearing on temporary rates and procedural matters was held on January 25, 1984.

A Motion to Intervene was filed by the Community Action Program ("CAP"). Since this Motion was unopposed, the Commission will grant the Motion to Intervene. An appearance was also entered by the Consumer Advocate.

At the hearing, the Company, among other things, presented testimony and exhibits of Michael J. Mancini, Jr., the Company's Treasurer. Mr. Mancini presented evidence which supported temporary rates designed to produce additional revenue of at least $1,486,991 (before adjusting for the effect of the utility franchise tax). Mr. Mancini stated that the requested

additional revenue was based on an updated rate base and an updated cost of capital (using the 15% rate of return on equity allowed in the Company's last rate proceeding). Mr. Mancini also testified that the temporary rate increase would be achieved by increasing the existing base rates on a prorata basis, while leaving the customer charge unchanged.

Kenneth Traum of the Staff Finance Department indicated that the Staff had reviewed the Company's evidence and concluded that the Company was entitled to temporary rates, but felt that in determining the amount of additional revenue to be permitted by such rates the following adjustments were appropriate, which would reduce the amount of additional revenue from $1,486,991 to $1,236,568 (before adjusting for the effect of the utility franchise tax). The revenue reductions proposed by the Staff were as follows:

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

Reduction attributable to substituting cash working
capital of $562,000 (using 45 days of operating and
maintenance expenses) for working capital of $933,000
based upon witness Callahan's analysis $ 92,200

Reduction attributable to eliminating from the
Company's rate base pro forma adjustment annualizing
non-revenue producing rate base items in the amount
of $369,718 added during the base year 91,881

Reduction attributable to eliminating the Company's
proposed load erosion adjustment 66,342

Total reductions in gross revenues $250,423
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The Company responded that, although it believed that the reductions proposed by the Staff should not be made when its permanent basic rates are fixed, the Company did not object to these reductions in connection with the establishment of temporary rates.

The Consumer Advocate and the CAP did not oppose the establishment of temporary rates designed to produce additional annual revenues of $1,236,568 (before adjusting for the effect of the utility franchise tax) per the proposed rate structure, but opposed the effective date of such rates proposed by the Company (i.e., January 19, 1984). Both the Consumer Advocate and CAP indicated that they supported or had no objection to having temporary rates made effective with bills rendered on or after March 1, 1984. The Staff took no position with respect to what the effective date of the temporary rates should be. Company witness Giordano testified that the Company's parent, EnergyNorth, Inc., will be issuing 150,000 shares of its common stock in the near future, that the price of those shares is expected to be fixed January 30, 1984 and that receipt prior to that date of a Commission order allowing temporary rates would tend to enhance the price set for these shares, $1,000,000 of the proceeds of which are proposed to be contributed to the Company's equity. Mr. Giordano added that, although the Company believed that the temporary rates should be made effective with bills rendered on or after a date prior to March 1, 1984 in order to alleviate more expeditiously the adverse effect of its current basic rates which the Company believes are confiscatory, the Company would not object to temporary rates made effective with bills rendered on or after March 1, 1984 if it could obtain an immediate order so establishing such rates and if the report accompanying such order made clear that the

establishment of temporary rates effective as late as March 1, 1984 would not in any future proceedings in which temporary rates are sought by the Company (1) be relied upon as, or deemed to constitute, any precedent as to the appropriate time for the establishment of temporary rates or (2) prejudice any right the Company may have to the establishment in any such future proceedings of temporary rates effective as of a relatively earlier time in the course of such proceedings.

Accordingly, the Commission, finding such in the public good, will establish temporary rates for the Company designed to produce $1,236,568 of additional revenue (before adjusting for the effect of the utility franchise tax) effective with bills rendered on or after March 1, 1984, per the proposed rate structure, without thereby establishing any precedent for the future as to the time when temporary rates should become effective or prejudicing the Company's ability to take a position in future rate cases that temporary rates should be made effective at a time relatively earlier than that on which such rates are established herein.

The parties also submitted a proposed schedule for conducting the remainder of the proceedings. The schedule will be adopted as follows:

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

February 15, 1984 Due date for data requests to the Company

March 2, 1984 Due date for responses to data requests

March 16 & 20, 1984 Conference of parties to narrow issues

April 10, 1984 Due date for prefiled Staff and Intervenor testimony and exhibits

April 17, 1984 Due date for data requests to Staff and Intervenors

May 1, 1984 Due date for responses by Staff and Intervenors to data requests

May 15 & 16, 1984 Hearing on the merits.

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., shall file tariff pages to recover additional annual revenues of $1,236,568 (before adjusting for the effect of the utility franchise tax) through temporary rates, effective with bills rendered on or after March 1, 1984, in accordance with the provisions of the foregoing Report; and it is

FURTHER ORDERED, that the Motion to Intervene of the Community Action Program be, and hereby is, granted; and it is

FURTHER ORDERED, that the procedural schedule shall be as set forth in the foregoing

Report.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of January, 1984.

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[Go to End of 61334]

69 NH PUC 52

Re Northern Utilities, Inc.

DR 83-387, Order No. 16,883

New Hampshire Public Utilities Commission

January 27, 1984

Order approving proposed method of refunding customer overcharges.

By the COMMISSION:

ORDER

WHEREAS, the Commission in Order No. 16,845, dated January 6, 1984 (69 NH PUC 11), set a Cost of Gas Adjustment (CGA) rate credit of $(0.0161) per therm effective January 1, 1984; and

WHEREAS, to account for recovery of the New Hampshire State Franchise Tax, the net CGA billing rate should have been a credit of $(0.0163) per therm; and

WHEREAS, the utility has notified this Commission of a billing error, in that customers in January billing cycles 1, 2, and 3 were overcharged by $0.0002 per therm for a total overcharge of $52.01; and

WHEREAS, the Company has discussed the situation with Mr. Traum of the NHPUC Staff, and per letter of January 20, 1984, proposed that customers in the first three (3) billing cycles of February, 1984, be billed at a CGA rate of credit ($0.0165) per therm; it is

ORDERED, that the utility's proposed method of refund is found by the Commission to be in the public good and accepted.

By Order of the Public Utilities Commission of New Hampshire this twenty seventh day of January, 1984.

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[Go to End of 61335]

69 NH PUC 53

Re Concord Electric Company

Intervenors: Exeter and Hampton Electric Company and New England Cable Television Association

DE 83-303, Order No. 16,884

New Hampshire Public Utilities Commission

January 27, 1984

Order certifying to the Federal Communications Commission that the public utilities commission has authority to regulate cable television pole attachments.

Public Utilities, § 105.1 — Radio and television — Cable television.

The cable television industry is not a public utility and is therefore not subject to the regulatory jurisdiction of the public utilities commission. [1] p.56.

Commissions, § 11 — Jurisdiction, powers, and duties in general.

The public utilities commission has broad administrative and supervisory powers to ensure that service provided by utilities is adequate, and that the cost of service is fair and reasonable; however, the commission's authority is a creation of the legislature and it is limited to only those powers expressly granted or fairly implied by existing statutes. [2] p.57.

Radio and Television, § 7.1 — Cable television — Pole attachments.

The public utilities commission has the requisite jurisdiction to regulate cable television pole attachment charges. [3] p.57.

Statutes, § 12 — Construction, operation, and effect — Extrinsic facts.

Proposed legislative amendments that failed to pass cannot be used in interpreting existing statutes. [4] p.57.

Radio and Television, § 7.1 — Cable television — Regulation of pole attachments.

The broad supervisory powers of the public utilities commission include the authority to control the utility practice of renting pole space for cable attachments to ensure safety and adequacy, to apportion costs, and to establish rates that are fair to utility customers and cable television operators. [5] p.58.

Radio and Television, § 7.1 — Cable television — Regulation of pole attachments.

Because the use of utility poles by cable

television operators limits the manner in which utilities may use, relocate, or remove the poles, the commission must control the terms and conditions of attachment agreements. [6] p.58.

Radio and Television, § 7.1 — Cable television — Regulation of pole attachments.

Although the Federal Communications Commission has set a nationwide formula for apportioning the costs of utility poles used by cable television operators, the state public utility commission has primary jurisdiction in setting rates for pole attachments because utility poles are property that must be recovered in the cost of service included in utility rates. [7] p.58.

Radio and Television, § 7.1 — Cable television — Regulation of pole attachments.

New Hampshire statutory and case law support the jurisdiction of the public utilities commission over the rates and charges for cable television attachments to utility poles. [8] p.58.

Radio and Television, § 7.1 — Cable television — Regulation of pole attachments.

The public utilities commission has jurisdiction to apportion the reasonable costs of utility poles among those served by them to avoid subsidization of cable television by utility customers and to protect cable television operators from being unfairly treated by the utility monopoly. [9] p.59.

Radio and Television, § 7.1 — Cable television — Regulation of pole attachments.

The undertaking by utilities in providing the space for pole attachments is an inherent part of the utility's regulated service and not a mere private undertaking which would be an activity outside the range of the commission's regulatory authority. [10] p.59.

Radio and Television, § 7.1 — Cable television — Regulation of pole attachments.

Previous state and federal decisions on state regulatory commission jurisdiction over cable television pole attachments were reviewed. [11] p.61.

Radio and Television, § 7.1 — Cable television — Regulation of pole attachments.

The commission compared the statutory and case law of other jurisdictions to the New Hampshire general regulatory scheme and concluded that it had the authority to regulate the rates, terms, and conditions of cable television pole attachments. [12] p.65.

Radio and Television, § 7.1 — Cable television — Regulation of pole attachments.

Statement, in dissenting opinion, that the public utilities commission does not have the requisite statutory authority to regulate cable television pole attachments. p.66.

(Aeschliman, commissioner, dissents, p.66.)

APPEARANCES: For the Petitioner, Concord Electric Company: Dom S. D'Ambruoso, Esquire and Joseph S. Ransmeier, Esquire; for the Exeter & Hampton Electric Company: Warren C. Nighswander, Esquire; for The New England Cable Television Association, Thomas D. Rath, Esquire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

By petition filed August 16, 1983, the Concord Electric Company ("Company") has sought a determination from this Commission confirming its jurisdiction over cable television attachments to utility poles. The New England Cable Television Association ("Association") filed an Objection to the petition on September 14, 1983 contending that the Commission had no such jurisdiction. On September 23, 1983, the Company filed a Response to the Association's Objection. The Commission issued an Order of Notice on September 28, 1983 and established a hearing date for November 21, 1983 to determine the objection of the Association as well as procedural matters. Prior to the hearing date, the Association filed a Further Objection on October 7, 1983 and a memorandum of Law on November 18, 1983. Also Exeter and Hampton Electric Company ("Exeter") filed a Petition to

Intervene on November 8, 1983 which was granted by the Commission at hearing (T. p. 5.). At the duly noticed hearing on November 21, 1983, the parties presented oral argument and submitted exhibits which are discussed infra and after hearing the parties filed Memoranda of Law. The foregoing constitutes the record to be reviewed by the Commission in confirming its jurisdiction over attachments by cable television companies to utility poles.

II. THE FEDERAL LAW

In 1978, the U.S. Congress amended Title II of the Communications Act of 1934 (the "Act") providing for federal jurisdiction over cable attachments to utility poles in the Federal Communications Commission ("FCC"), but leaving such jurisdiction with individual State Commissions if those State Commissions assert jurisdiction by certifying to the FCC the Commission (1) regulates the rates, terms and conditions of cable attachments to utility poles and (2) that in so regulating, the Commission has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services. 47 U.S.C. § 244(c)(2)(A and B). In its petition, the Company requests that the Commission determine that under existing New Hampshire law it has such jurisdiction and that it therefore certify this jurisdiction to the FCC in proper form.

III.THE COMPANY POSITION

In oral argument and on brief, the Company contends that the provision of space on utility poles for cable television attachments is in the nature of a service to the cable television company, and that as a service the Commission has service jurisdiction over such attachments under RSA 374:1 (to see that the furnishing of such service and facilities are reasonably safe and adequate and in all other respects just and reasonable) and under RSA 374:2 and RSA 378:7 (to see that the rates and charges for such service and facilities are just and reasonable). Without conceding that the provision of cable attachments on utility poles is not a traditional utility

service, the Company contends that if the Commission were to determine that such provision is something other than a traditional public utility service the Commission would nevertheless have jurisdiction as to the rates, terms and conditions of cable television pole attachments in order to make effective its primary jurisdiction over the related traditional utility service.

In essence, it is the Company's position that the costs of utility poles must be fairly apportioned to those who are served by that property. The Company contends that existing statutes give the Commission the requisite jurisdiction to allocate the cost burden of utility poles which are of common benefit to the Company's utility customers and to the proprietors of cable television attachments which have been affixed to the Company's utility poles. Such jurisdiction, the Company contends, derives from its comprehensive service jurisdiction over the service and facilities of a utility (RSA 374:1), over the plant of the utility (RSA 374:3), over the plant of the utility (RSA 374:3), over the utility's management of its property (RSA 374:4) and from its plenary authority over rates charged by a utility for such service. RSA 374:2, 378:7, and New Hampshire v New England Teleph. & Teleg. Co. (1961) 103 NH 394, 40 PUR3d 525, 173 A2d 728. And, if the Commission finds the provision of cable attachments to utility poles to be something other than a traditional utility service, the Company contends that such provision is nonetheless a "regulation or practice" of the utility which affects rates for other services and consequently is within the Commission's rate jurisdiction under RSA 378:7.

With respect to the Commission's jurisdiction to consider the interests of cable television subscribers, the Company contends that the provisions of RSA 378:10 extend its broad protections to all interests affected by utility rates and charges. The Company states that the utility's duty under RSA 378:10 is a balanced one: i.e. that it may neither favor nor disfavor any individual or group, and that the protections enumerated in Section 10 do not restrict the Commission to considerations of "rates" charged for traditional utility "services" so that if the Commission finds that if the provision of space on utility poles for cable television attachments is something other than a traditional utility service, it may, nevertheless, consider the interests of cable television subscribers under the protective provision of RSA 378:10 which extend to "any" affected interests "in any respect whatever."

Finally, the Company contends that the provision of pole space for cable attachments is a transfer of an interest in part of the utility's property and that such transfers are subject to the Commission's jurisdiction under RSA 374:30 and to which the Commission should apply the public good test as enunciated by the New Hampshire Supreme Court.

IV. THE ASSOCIATION POSITION

The Association, in oral argument and in its November 18, 1983 Memorandum of Law and its December 20, 1983 Supplementary Memorandum of Law argues that the provision of cable attachments to utility poles is not a service in the commonly accepted meaning of that word in a utility context and consequently outside of the Commission's service and rate jurisdiction. It argues that the provision of space for cable attachments to utility poles is not the type of transfer or lease of public utility company property the legislature contemplated under the provisions of RSA 374:30 and consequently outside the scope of RSA 374:30, thereby making the public good test inapplicable to these proceedings. The Association relies heavily upon two failed amendments to the Commission's existing statutory authority in the 1979 and 1981 sessions of

the Legislature as being determinative of the Commission's existing statutory authority under pre-existing statutory law. The Association also relies upon the informal opinion of the Attorney General and the Ellsworth opinion letter (Exhibit 5, Attachment B).

In support of its position, the Association reviews Title XXXIV, finds no explicit grant of authority over the subject matter of these proceedings, and concludes that no such authority can be fairly implied from those statutes. The Association position is, in essence, that since there is no explicit statutory provision giving the Commission jurisdiction over the rates, terms and conditions of cable television pole attachments and the interests of the subscribers affected thereby, and since the Legislature considered such express legislation twice denied both proposed amendments that the Commission is simply without authority to certify to the FCC that it has such jurisdiction.

V. COMMISSION ANALYSIS

[1] At the outset, we wish to make clear that there is no issue in these proceedings as to whether or not cable television is a public utility or should in any way be regulated by this Commission. We are

concerned here with an analysis of our statutes to determine the extent of our regulation over the activities and practices of public utilities specifically with respect to the provision of cable attachments to utility poles, the rates for such attachments, and the consideration of those interests affected by such attachments. The cable television industry is not a utility (1 N.H. Atty. Gen. 42 (1965); and, RSA 362:2), and by our determination here we do not exert any regulatory jurisdiction over any aspect of their business.

[2] We address the question before us on the belief that it is the Commission's fundamental mandate to ensure that service provided by the state's utilities is adequate and that the cost of that service is fair and reasonable (RSA 374:1, 2 and 3; RSA 378:7) and that in order to fill this mandate the Commission has been invested with broad administrative and supervisory powers. Re Boston & Maine Corp. (1964) 109 NH 324. We recognize that our authority is not unfettered, and that as a legislative creation we have only those powers expressly granted or fairly implied by existing statutes. Re Boston & Maine Railroad, 82 NH 116, PUR1925E 698, 129 Atl 350. The issue then becomes whether existing New Hampshire statutes authorizes this Commission to regulate the rates, terms and conditions of utility pole to accommodate cable television pole attachments and that in so regulating we have the authority to consider and do consider the interests of cable television subscribers as well as the interests of utility customers.

The Commission has never before formally determined the matter of its jurisdiction over cable television pole attachments either by rulemaking or in an adjudicative proceeding. This case represents the first time the Commission has taken a close and comprehensive look at its authority as it relates to the matter before us. In the context of this adjudicative proceeding, we now believe we have an appropriate record with adversarial interests represented upon which we may now consider the issues. Previous attempts to define the Commission's jurisdiction, both by informal memorandum opinion of the Attorney General (Exhibit 5, Attachment A) and by informal letter opinion of the Commission's Chief Engineer (Exhibit 5, Attachment B) are

inappropriate and did not formally address this issue. All parties in this proceeding have done considerable research and made a painstaking analysis of all existing statutes to put forth their positions on the issues. In this type of proceeding the Commission will render a proper decision in accordance with RSA 363:17B.

[3] On the basis of a thorough review of the fully developed analysis discussed above, it is our conclusion that the Commission does have the requisite jurisdiction to regulate Cable T.V. pole attachment charges.

[4] Utility interests in this State approached the Legislature twice to obtain an amendment to existing statutes to declare in explicit language the substance of the required certification the Commission would have to make to the FCC. Twice the utilities failed to obtain such a precise statement which would have placed this Commission's certification above question. We can only assume that in this process the legislation proposed was subjected to lobbying by utility and cable interests, and although we can review legislative history, we cannot know all of the circumstances surrounding the two failed attempts. Perhaps this is why our U.S. Supreme Court has consistently held that an amendment's failure to win approval is immaterial and irrelevant to

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the construction of existing statutes. The U.S. Supreme Court[1(16)] has addressed itself directly to this issue on numerous occasions with the consistent result that rejection of proposed legislation is inconclusive regarding the construction of existing legislation.

The Association cites three lower court decisions wherein legislative rejection of proposed legislation was considered in construing existing statutes. However, the weight of authority (and the higher authority) is to the contrary. We believe that there is a sound and legal basis for this Commission to analyze and consider its existing statutes without consideration of failed legislative amendments.

[5] This Commission's broad supervisory powers include the authority to control the utility practice of renting pole space for cable attachments to ensure safety and adequacy, the authority to apportion the costs of utility poles among those served by those poles, the authority to establish rates which are fair not only to the utility customer but also to cable interests.

[6] In Order for the Commission to ensure that service provided by the state's utilities is safe and adequate, the Commission must have jurisdiction over the terms and conditions of cable television attachments to utility poles to ensure such safety and adequacy. RSA 374:1. The provision of space for cable television attachments is a distinct and direct benefit to cable television proprietors and it serves the purpose for which they are in business. The use of pole space by cable television proprietors during the term of the agreement for such attachments is exclusive use which in some cases requires the provision of poles longer than would otherwise be needed and which also encumbers the pole in such a manner that the utility is limited in the further use of the pole space as well as in removal or relocation of the pole. The Commission recognizes the necessity for periodic inspections of utility plant for safety reasons and in fact PUC Rule 306.08 requires such inspections. Consequently, the Commission must control the terms and conditions of attachment agreements.

[7] In order for this Commission to set just and reasonable rates for a utility service to utility customers, it must have the power to regulate the rates of cable television pole attachments. RSA 374:2 and 388:7). The utility pole is public utility property the cost of which is in the Company's total cost of service which must be recovered from those served by the utility's property. This Commission should be the determiner of the apportionment of those costs between and among the various groups served by utility property. To the extent that cable interests bear an unreasonably low portion of the utility's costs in using the utility's property, then the consumers of utility service are subsidizing cable interests. While the FCC attempts through its nationwide rate formula to apportion these costs fairly, it acknowledges that local regulation, which can account for local variations in cost, is the superior policy when it is possible. In this context, we believe that in the exercise of our primary jurisdiction and in the protection of utility consumers of this state, we must be the final arbiter of the rates for such use.

[8] Our authority to establish such rates is firmly rooted in statute (RSA 374:2, RSA 378:7) and supported by the New Hampshire Supreme Court which has

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stated that our rate jurisdiction is plenary except in a few specifically excepted instances. New Hampshire v New England Teleph. & Teleg. Co. (1961) 103 NH 394, 40 PUR3d 525, 173 A2d 728; and Bacher v Public Service Co. of New Hampshire (1979) 119 NH 356, 402 A2d 642. A review of our statutes and of New Hampshire case law reveals no such specifically excepted instances regarding the rental rates for cable television pole attachments. Thus, we believe we have firmly rooted rate jurisdiction over the rates and charges for cable television attachments to utility poles.

The capital investment in a utility pole is supplied by investors and included in rate base for rate-making purposes, thus utility customers provide a percentage rate of return on such investments through rates approved by this Commission. The reasonable operating costs associated with utility pole are allowable expenses for rate-making purposes and are chargeable dollar for dollar to utility ratepayers through Commission-approved rates. Thus, all the costs associated with a utility pole comprise on part of the company's total cost of service for which ratepayers are responsible.

On the revenue side, the pole rental revenues are recorded in the Uniform Classification of Accounts, Account 454 "Rent from Electric Property" and reported to the Commission annually. (Exhibit 3). In the context of a rate proceeding, these revenues are factored into the equation used to determine the magnitude of a utility's revenue deficiency and, thus, the magnitude of rate relief in any given circumstance. To the extent that revenues derived from pole attachment rentals do not recover their fair portion of the pole costs of the utility, such costs must be recovered from utility customers generally.

[9] The Commission finds that it has jurisdiction to apportion the reasonable costs of utility poles among those served by utility poles to ensure that those who are so served bear reasonable shares of those costs incurred by the utility in constructing, maintaining and operating its poles. In this way, the Commission can protect utility customers from subsidizing cable interests and can simultaneously protect cable interests from being unfairly treated by the utility monopoly.

We also find that the revenue from cable attachments to utility poles has a significant and growing impact on intrastate revenues, expenses and plant investment and this Commission has the responsibility to ensure that this impact is not in any detrimental to the utility customer. Three out of our six investorowned electric utilities report rental revenues of approximately $350,000. When other electrics and all of the telephone utilities are added, the number is clearly a significant one. And, as the cable industry grows and more attachments are requested, this Commission is concerned with the possible impairment of utility service, increased utility costs due to higher capital expenditures to accommodate cable television lines and higher expense levels due to increased maintenance. All of these issues impact rates to utility customers and the impact is a growing one. The Commission is empowered by its broad and plenary authority over utility rates to regulate these aspects of a utility's pole attachment practices.

[10] Based on the record before us, our understanding of utility plant and the uses thereof, we find that the provision of cable television attachments on utility poles is a service within the meaning of RSA 374:1. The undertaking by utilities in providing the space for pole attachments is an inherent part of the

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Company's regulated utility service and not a mere private undertaking which would be an activity outside the range of the Commission's regulatory authority. Thus, with regard to rates charged on the pole attachments, it is also clear that it is the responsibility of the Commission to ensure that the rates charged are reasonable and non-discriminatory. The value of the facilities involved is included in the rate base of the utilities that own the poles. Further, even though cable companies are not regulated by the Public Utility Law, since the telephone and electric companies which own the poles are regulated, it would appear that cable companies as well as other parties could still file a complaint under RSA 363 if the owners of the utility poles were charging discriminatory rates or enforcing safety conditions on a discriminatory basis. Moreover, the Commission has authority to act upon its own motion or upon the complaint in behalf of the public in any situation where service or rates may be directly affected by its order. Granite State Transmission Co. v New Hampshire (1964) 105 NH 454, 456, 54 PUR3d 491, 492, 202 A2d 236.

The FCC certification requires this Commission to state that it has the authority to consider and does consider the interests of cable television subscribers in setting the rates, terms and conditions of cable television pole attachments. It is interesting to note that while the federal law requires state commissions to so certify, there is no explicit requirement that the FCC consider those interests. In addition, the federal law only requires this Commission to "consider" the interests of cable television subscribers. The word consider indicates little more than "to think about or reflect on something with a degree of care or caution" (Webster's International Dictionary). The word "consider" does not mandate that this Commission do any particular thing to protect the interests of cable television subscribers, it simply requires that the Commission reflect upon and be aware of (i.e. "consider") their interests in a proceeding regarding the rates, terms and conditions of cable television pole attachments.

Even if we did not consider the provision of space for cable attachments to be a service, we

would consider that we still have the requisite jurisdiction over such attachments both as to the terms and conditions of the attachments and the rates of those attachments. If the providing of such space by a utility is not a service, it is clearly a "regulation[s] or" practice[s] which affects the safety and adequacy of utility service because to the extent costs are unfairly apportioned the rates to consumers of electric service would be unfairly affected.

We believe that our existing statutes permit us to do even more than the federal law requires us to do. Our mandate under RSA 378:10 is to do precisely what the statute requires of us, and that is to neither favor nor disfavor any person or class of service "in any respect whatever." This statute is all-inclusive and all-encompassing and, therefore, includes consideration of cable television subscriber interests as well as utility customers, most of whom will be one and the same. Under this provision of the statutes we can balance the relative benefits and burdens of all those interests served by utility property and apportion to them a fair share of the costs of the utility property to ensure that no class of persons so served will be unfairly treated.

The matter of cable attachments to utility poles is essentially local in nature and this Commission, which regulates other practices of the utilities, is better

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equipped to regulate the rates, terms and conditions of cable attachments to utility poles than is the FCC. Congress clearly recognized this in expressly preserving the opportunity for individual states to so regulate. (42 U.S.C. § 224(c); Senate Report No. 95-580, 95th Congress, first Session, Calendar No. 534, November 2, 1977, pages 16-18; Congressional Record Section 967, Daily Ed. July 31, 1978, remarks of Senator Hollings.)

VI. JUDICIAL AND COMMISSION DECISIONS

[11] The Commission is well aware of the split of authority in the various commissions and courts throughout the Country that have addressed the issue, i.e. regulating the use of utility pole space by cable television companies. We have reviewed the cases and have focused on jurisdictions which have no "express" statutory provisions in their enabling statutes. We also reviewed and considered the agreements regarding whether or not the use of space by a cable television company was a regulated "service" provided by the utility company.

Prior to the passage of 47 U.S.C.A. § 224 by Congress in 1978, the New York Court of Appeals was confronted with the issue of whether or not its Public Service Commission ("PSC") had authority to assume jurisdiction to regulate the use of utility pole space by cable televisions companies. In General Teleph. Co. of Upstate New York, Inc. v New York Pub. Service Commission (1978) — AD2d —, 406 NYS2d 909, the Court held, after a consideration of the PSC's statutory authority, that the PSC did in fact have jurisdiction over cable television pole attachments.

In support of its decision, the Court cited New York statutes, common to most jurisdictions, providing generally that (1) the PSC jurisdiction extends to electric plants and telephone lines, which necessarily includes poles, and to corporations owning, leasing or operating the same; (2) the services and facilities provided by the companies must be adequate and the rates and charges for any service rendered must be just and reasonable; (3) the companies may not grant any person or locality undue preference, nor subject them to any unreasonable disadvantage; and (4)

every unjust or unreasonable charge or that in excess of that allowed by law or the commission is prohibited and unlawful. (406 NYS2d at p. 911.) The Court held that this statutory authority, in addition to N.Y. case law providing for limited PSC jurisdiction over nonservice telephone company activities, were sufficient, despite a lack of express statutory authority, to confer jurisdiction upon the PSC in this matter.[2(17)]

In construing this statutory authority as conferring jurisdiction, the Court held that in providing for "just and reasonable" rates by the utility companies, the PSC must necessarily take into account the revenues a utility receives from cable television operators in order to "ensure that both cable television operators and utility customers bear reasonable shares of the cost incurred by utilities in constructing, maintaining and owning pole facilities." (406 NYS2d at p. 912.)

In addition, the Court held that PSC jurisdiction over cable television

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attachments was necessary for it to carry out its mandate to require the utilities' facilities be safe and adequate, and to avoid a potential disruption of service.

Utility poles clearly are an essential part of the physical plant required to provide the utility service under regulation, the cost of which, must therefore, be recovered from charges for that service. Because cable television operators use the same poles that are used to deliver essential electric and telephone service, abuses by cable television operators could potentially disrupt such service. The Public Service Commission's obligation to assure that the State's citizens receive safe and adequate telephone and electric service must necessarily extend to oversight of the growing use of utility poles of CATV cables in order that this auxiliary use does not interfere with the primary purpose of utility poles, the provision of electric and telephone service. (406 NYS2d at p. 912.)

Lastly, the Court found jurisdiction under the PSC's statutory obligation to prevent discrimination. Because the utilities have a virtual monopoly over the pole space, often a necessity for cable television operators, the potential for undue discrimination and other monopoly abuses is ever present. In order to prevent against these abuses, the Court held that the PSC had jurisdiction in this matter.

Despite the General Telephone Co. decision being handed down prior to the enactment of the federal statute in 1978, consideration of the case is important to a discussion of this issue. As will be seen, the rationale employed therein to find PSC jurisdiction implied from a general regulatory scheme has been adopted by other jurisdictions likewise faced with a lack of express statutory authority.

In Cable Television Co. of Illinois v Illinois Commerce Commission (1980) 82 Ill App 3d 814, 403 NE2d 287, a case handed down after the passage of 47 U.S.C. § 244 in 1978, the Appellate Court of Illinois for the Second District held that despite a lack of express statutory authority, the Illinois Commerce Commission ("ICC") had jurisdiction to regulate the rates, terms and conditions of the pole attachment "agreements" between a utility company and cable TV operators and that in doing so, it may consider the interests of cable TV subscribers together

with the interests of utility consumers.

In Cable Television Company of Illinois, petitioners, some 24 cable television companies, brought an action seeking to enjoin the ICC from exercising jurisdiction over pole attachment agreements entered into by petitioners and various public utilities. The ICC had previously issued a certification to the Federal Commerce Commission ("FCC") pursuant to 47 U.S.C. § 224. Both sides moved for judgment on the pleadings and after the trial judge found that the ICC did in fact have authority and denied the injunctive relief sought, petitioners appealed.

The Court, after examination of the Illinois Public Utilities Act, found ICC jurisdiction by relying on a provision common to most jurisdictions. Section 27 of the act provides that no public utility may lease any part of its equipment without a finding by the ICC after a hearing that the "public will be convenienced." (403 NE2d at p. 289.) With jurisdiction thus established, the court went on to construe this provision requiring the ICC to consider the public convenience "as embracing all considerations of public convenience including the interests of Cable TV subscribers." (403 NE2d at p. 289.)

To support this specific finding, the Court went on to state that other sections of that act likewise do not restrict the reference to the public convenience merely to the patrons of the utility. (403 NE2d at p. 289.)

Like the N.Y. Court of Appeals in General Teleph. Co. of Upstate New York, Inc. v New York Pub. Service Commission, supra, the Illinois court also relied on the ICC's statutory duty to provide that rates charged for services are just, reasonable and do not discriminate, in finding jurisdiction.

In light of its basic duty to be fair and to protect the utility, its employees, its patrons and the general public, it is reasonable that the Commission is given jurisdiction over pole attachment rates and polices in order to insure that all persons desiring to use any part of the facilities bear reasonable shares of the costs incurred by the utilities in constructing, maintaining and owning them. (403 NE2d at p. 289.)

The provision cited above pertaining to the lease of utility equipment exempted from ICC approval utility property not necessary or useful by the utility in the performance of its duties to the public. The petitioners argued that the excess space used on utility poles was not used for service to customers and thus was not necessary or useful to the utilities in the performance of their duties. The Court however, rejected this argument, finding no basis for "`carving up' jurisdiction as to a single item of tangible personal property such as a pole for jurisdictional purposes." (403 NE2d at p. 289.)

In concluding, the Court quoted with approval much of the reasoning contained in General Teleph. Co. of Upstate New York v New York Pub. Service Commission, supra, referred to in the above discussion of the case and upheld the trial judge's ruling.

Utah is another jurisdiction that has grappled with this issue. In the case of Utah Cable Television Operators Asso., Inc. v Utah Pub. Service Commission (Utah Sup 1982) 656 P2d 398, the plaintiff association and other cable television companies appealed from the defendant

commission's (PSC) order certifying its own jurisdiction to the FCC in accordance with 47 U.S.C. § 244(c), contending that the PSC possessed insufficient statutory authority over utility pole attachments to meet the 47 U.S.C. § 224(c) exception. As in the cases discussed above, "no Utah statute uses the prices terminology `rates, terms and conditions' in defining defendant's authority over such contracts." (656 P2d at p. 340.)

The existence of a specific statute in the Utah Public Utilities Act, however, enumerating five conditions which must be met in order for a cable television company to share any easement of a public utility company, distinguishes Utah from the above-discussed jurisdictions. Therefore, unlike New York and Illinois, Utah, at the time of the decision, possessed a statute governing in some manner cable television pole attachments, albeit not the rates, terms and conditions. One of the five conditions, U.C.A., 1953, § 54-4-13(2), specifically subparagraph (b), required a finding by the PSC that under the terms and conditions of the pole attachment contract the use of the utility poles and facilities by the cable television company "will not interfere with the primary utility function or render its facilities unsafe, and that the contract is in the public interest." (Emphasis added.) Despite this statute's seemingly narrow focus on the use of existing utility easements by cable companies and the absence of any

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express reference to the PSC's regulating rates, terms and conditions of cable television pole attachments, the Court held this to be "express statutory authorization over pole attachment contracts" (656 P2d at p. 401.)

In addition, the Court cited other provisions of the Utah Public Utilities Act to support its finding of PSC jurisdiction. Provisions giving the PSC jurisdiction to supervise "all the business of every utility in this state ... whether herein specifically designated or in addition thereto ..." (§54-4-1); the power to fix rates, tolls, fares, etc. relating to any service of a public utility "or in connection therewith" (§ 54-4-4(1)) and; the authorization to regulate and adequate (§ 54-4-7) were all cited by the Court as demonstrating authority over public utility operations in order to protect the public interest." (656 P2d at p. 400.)

With the issue of jurisdiction thus settled, the Court went on to hold that the PSC had the authority to consider the interests of cable subscribers as well as the interests of public utility customers. The Court stated (656 P2d at pp. 401, 402):

As noted previously, 54-4-13(2) specifically directs defendant, in determining the validity of pole attachment agreements to ensure that such contracts "are in the public interest." Such consideration of the public interest necessarily involves the balancing of opposing interests held by various segments of the public, including customers of both public utilities and cable television companies. (Emphasis added.)

In addition, the Court also cited the language in Cable Television Co. of Illinois, supra, quoted above regarding consideration of "public convenience" to include the interests of cable television subscribers.

Thus, finding the appropriate jurisdiction, the Court upheld the PSC's action in issuing its 47 U.S.C. § 244(c) certification to the FCC.

Other jurisdictions however, have not construed their statutes so broadly. In Teleprompter Corp. v Hawkins (Fla Sup 1980) 384 So 2d 648, the Supreme Court of Florida, in reviewing an order of the Public Service Commission ("PSC") certifying its jurisdiction to the FCC, strictly construed the relevant Florida statute in holding that the PSC is without jurisdiction to regulate cable television pole attachments.

Strict statutory construction was likewise employed by the Indiana Court of Appeals, First District, in Illinois-Indiana Cable Television Asso., Inc. v Indiana Pub. Service Commission (1981) — Ind App —, 427 NE2d 1100. In this case, like those discussed above, plaintiffs appealed an order of the Indiana Public Service Commission ("PSC") certifying its jurisdiction to the FCC, contending that in doing so the PSC had exceeded its legislated authority.

The arguments employed by the PSC and utility companies were similar in nature to those in the cases discussed above. Again, there was no explicit statutory provision of the Indiana Public Service Commission Act conferring jurisdiction upon the PSC to regulate "ancillary or miscellaneous business activities that are not related, directly or indirectly, to the protection and delivery of the services the utilities were created to supply." (427 NE2d at p. 1106.) The question therefore was whether or not such jurisdiction could be implied therefrom.

Unlike the New York, Illinois, and Utah courts, the Indiana Court rejected the argument that the PSC's general

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regulatory scheme provided jurisdiction. The statutory sections relied on were those common to most jurisdictions, namely PSC's mandate to ensure safe and adequate service, its rate-making authority and the requirement of PSC approval of any transfer, lease, etc. of utility property.

Because the employment of utility poles in the suspension of cable television cables "is not a use devoted to the purposes in which electric and telephone utilities are engaged" (427 NE2d at (a)), the Court held that it was not "service" within the statutory definition and that this statute therefore did not establish PSC jurisdiction.[3(18)]

VII. INTERPRETING THE N.H. GENERAL UTILITY REGULATORY SCHEME

[12] What becomes evident from a consideration of the above cases is that different jurisdictions have interpreted same or similar provisions to have opposite meanings. The provisions cited as conferring jurisdiction upon the state utility regulatory board to regulate the rates, terms and conditions of cable television pole attachments are common to most jurisdictions' general utility regulatory schemes. Indeed, the language employed by different jurisdictions is often identical. Yet despite this, these identical revisions have been construed differently.

As noted earlier, like the jurisdictions cited herein, N.H. has no express statutory authority on this issue. N.H. law however, does contain many of the same statutory provisions discussed above: all just and reasonable (RSA 374:2); the PUC has the general supervision of all public utilities and their plants (RSA 374:3); a utility may not transfer or lease any part of its franchise, works or system unless the PUC determines that it is in the "public good" (RSA 384:30); rates must be just and reasonable (RSA 378:7); and the PUC is mandated to prevent discrimination in

rates (RSA 378:10).

Like the New York, Illinois and Utah courts, this Commission relies on these provisions to find that it has jurisdiction. Because of the similar statutory provisions, the rationale employed by the Courts in these cases are adopted by the Commission in asserting jurisdiction.

It is appropriate at this time to comment on the Ellsworth letters. Our reading of the correspondence indicates that the letters support jurisdiction and that Mr. Ellsworth in the second letter stated that the Commission clearly regulates the former, i.e., rates, terms and conditions of pole attachments and it (can) has jurisdiction over the latter, i.e., considers the interest of the subscribers of cable television services as well as the interest of the customers of electric service. We find that his use of the word "current" in the sentence following the above, wherein he stated "we have no current authority to specifically consider the intent of the subscribers of cable television service," could only accurately mean that the Commission had no "express" statutory authority.

Based upon the foregoing findings, we conclude that this Commission has the authority to regulate the rates, terms and conditions of cable television pole attachments and that in so regulating it has the authority to consider and does consider the interests of cable television subscribers as well as the interests of utility

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customers. Having the requisite jurisdiction, we shall make a certification of this jurisdiction to the FCC in accordance with the requirements of such certifications set forth in 44 CFR 1.1414(d).

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Executive Director and Secretary of the Commission make certification to the Federal Communications Commission in accordance with 44 CFR 1.1414(d).

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of January, 1984.

Dissenting Opinion of Commissioner Aeschliman

The instant petition of Concord Electric Company requesting that the Public Utilities Commission exert jurisdiction over cable television attachments must be considered in view of the long chronology of events relative to this issue which has occurred since Congress amended Title II of the Communications Act in 1978. In light of this past history, it is not reasonable for the Public Utilities Commission to make certification to the Federal Communications Commission in accordance with 44 CFR 1.1414(d).

The Public Utilities Commission (PUC) on February 2, 1979 certified that New Hampshire had jurisdiction over the rates, terms and conditions of cable television pole attachments. The Federal Communications Commission (FCC) accordingly certified New Hampshire by public notice on March 6, 1979. Following the FCC public notice, the General Counsel for the New

England Cable Television Association communicated with the FCC querying the authority of the New Hampshire PUC to consider the interests of the subscribers of CATV and querying whether the PUC actually had intended to request certification. Subsequently on March 29, 1979 the FCC wrote to the Commission seeking clarification. Mr. Ellsworth, Chief Engineer, responded for the Commission on April 24, 1979 (Exhibit B). A careful reading of Mr. Ellsworth's letter indicates the following: (1) the PUC believed that it had jurisdiction under its general statutory authority; (2) the PUC had no specific authority to consider the interests of the subscribers of cable television service; (3) legislation was pending to give the Commission specific authority; and (4) the PUC was relying on the FCC to decide whether or not the Commission met the standard for certification. Following this correspondence, the FCC removed New Hampshire from the certified list on May 9, 1979.

The legislature defeated HB610 which would have granted the PUC explicit authority to regulate pole attachments. The Commission following this event requested an opinion from the Attorney General relative to the Commission's authority and also asked how the Commission could obtain authority. In an informal opinion, dated January 1, 1981, (Exhibit A) the Attorney General advised the Commission that it did not have jurisdiction and provided a draft of legislation which would grant the Commission such authority.

In 1981 HB531 was introduced in the legislature and rejected by the House. The Science and Technology Committee in reporting the bill to the full House stated:

The majority of the Committee

indicated there was no need to start a new regulatory process in New Hampshire on pole attachments and rate setting for cable television to utility property. It was established in public hearing and extended executive hearings that current Federal Communications Commission regulations are well-established and adequate. A new regulatory process could be complicated, time consuming and expensive. House Record Volume 4, No. 77, April 21, 1981.

Given this historical background it simply is not reasonable for the Commission to assert jurisdiction. The record of past events documents the Commission's uncertainty over its jurisdiction. Furthermore, the Commission must consider the legislature's action to be an expression of clear intent that this Commission does not have jurisdiction to regulate the rates of CATV attachments under the general statutes of the public utility law.

FOOTNOTES

[1]United States v Wise (1962) 370 US 405, 8 L Ed 2d 590, 82 S Ct 1354; American Trucking Associations, Inc. v Atchison T. & S.F.R. Co. (1967) 387 US 397, 69 PUR3d 230, 18 L Ed 2d 847, 87 S Ct 1608; Girouard v United States (1946) 328 US 61, 90 L Ed 1084, 66 S Ct 826.

[2]A short time after this case was handed down, the New York legislature amended its Public Service Law to expressly provide its PSC with authority to prescribe just and reasonable rates, terms and conditions for attachments to utility poles and the use of utility ducts, trenches and conduits. Section 199-a, Public Service Law; 1978 N.Y. Laws, Ch. 703.

[3]See, however, Re Regulation of Rates, Terms, and Conditions for the Provision of Pole Attachment Space to Cable Television Systems by Telephone Companies and by Electric Utilities, Case Nos. 8040, 8090, Aug. 26, 1981, C.C.H. Utility Law Reports, No. 23,456, in which the Kentucky Public Service Commission found that providing space on utility poles regulated by it for cable television pole attachments is a "service" within the meaning of the definition of service contained in Kentucky statutes.

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NH.PUC*01/30/84*[61336]*69 NH PUC 67*Public Service Company of New Hampshire

[Go to End of 61336]

69 NH PUC 67

Re Public Service Company of New Hampshire

Intervenors: Business and Industry Association of New Hampshire, Community Action Program, Campaign for Ratepayers' Rights, Office of Consumer Advocate, and Volunteers Organized in Community Education

DR 82-333,
Eighth Supplemental Order No. 16,885

57 PUR4th 563

New Hampshire Public Utilities Commission

January 30, 1984

Application for authority to increase electric rates; granted as modified, upon consideration of gain from sale of abandoned plant interest, scope of anti-CWIP statute, industrial rate discount, and other issues.

Valuation, § 213 — Plant held for future use — Standard for inclusion in rate base.

The commission disallowed an electric utility proposal to include plant held for future use in rate base since it did not meet the commission standard requiring demonstration of a definite plan for actual use of the property in a reasonable time; the commission allowed the utility to refile the adjustment along with the supporting data concerning alleged benefit to ratepayers of the acquisition when filing revised tariffs so that the commission could determine the proper degree of definiteness required by the established standard. [1] p.73.

Revenues, § 5 — Proceeds from sale of tax benefits — Zero-cost capital.

Proceeds from the sale of tax benefits associated with the renovation of a hydroelectric facility were characterized by the commission as zero-cost capital and excluded from an electric utility's rate base. [2] p.75.

Expenses, § 76 — Management — Amounts paid consultants — Maintenance management

system.

An amount paid by an electric utility to a

consultant for design and implementation of a maintenance management system was allowed as an expense for rate-making purposes because the commission characterized that type of expense as ongoing and therefore recurring and properly includable. [3] p.79.

Expenses, § 76 — Administration — Amounts paid to personnel consultants — Employee recruitment.

The commission allowed the amount paid by an electric utility to personnel consultants for services regarding employee recruitment as an expense for rate-making purposes. [4] p.80.

Valuation, § 211 — Excess capacity — Transmission line — Financing costs.

An electric utility can recover through current rates the carrying costs associated with a transmission line even though the line is large enough to accept future generation from planned generating units. [5] p.80.

Return, § 26.1 — Cost of capital — Construction work in progress — Included in capital structure.

The commission included the cost of capital associated with construction work in progress in an electric utility's capital structure when determining the appropriate rate of return in a rate case even though inclusion of those costs in rate base or as a current expense was precluded by statute until construction is complete. [6] p.82.

Return, § 25 — Comparability with similar enterprises — Cost of securities.

The established rule that requires the commission to examine a proposed rate of return for comparability with rates of return for similar enterprises does not require the commission to reject a proposed rate as unreasonable solely because the cost of capital used to determine that rate is based on below investment grade securities not usually associated with regulated industries. [7] p.82.

Rates, § 143 — Rate structure — Marginal cost principles.

The commission accepted marginal cost principles as the basis for rate structure determinations in a proceeding to set rates for an electric utility. [8] p.87.

Rates, § 125 — Lifeline rates — Exemption from current standards — Marginal cost as a factor.

The commission denied a request by an electric utility for exemption from current lifeline standards, but permitted the utility to initiate a pilot targeted lifeline program recognizing that targeted rates more closely match the utility's projected pattern of marginal costs and that such a program could assist in the current effort by the commission to engage in the social rate making necessary to address rate shock issues associated with completion of a nuclear power plant. [9] p.88.

Rates, § 339 — Electricity — Industrial contract customers — Incremental pricing — Rates below average costs.

The commission approved a special industrial contract policy proposed by an electric utility that provides rates for incremental customers that are below those based on average total cost and approved by the commission but above the marginal cost to the utility. [10] p.91.

Expenses, § 114 — Income tax liability — Gain on sale of abandoned power plant.

Statement, by commission, that federal income tax expense associated with the gain on the sale of a nuclear power plant under construction is a nonrecurring expense and as such should be excluded from utility's revenue requirement, but the utility should be allowed to amortize the tax expense associated with the sale if applicable statute does not prohibit recovery, through rates, of amounts invested in abandoned plant. p.77.

Return, § 36 — Management inefficiency — Reduction in rate of return on common equity.

Statement, in dissenting opinion to a commission rate order, that management efficiency is a factor that should be considered when setting an appropriate rate of return, and sound regulatory principles support a reduction of the equity component of return when management inefficiency is evident. p.98.

Commissions, § 44 — Management decision making — Authority of commission.

Statement, in dissenting opinion to a commission rate order, that upon proper notice and hearing, the commission could require an electric utility to make financial planning studies and generate other data necessary for sound decision making. p.101.

Expenses, § 114 — Income tax liability — Gain on sale of abandoned power plant.

Statement, in dissenting opinion, that taxes

associated with the gain on the sale of a nuclear power plant by an electric utility should not be included in cost of service where the utility had a negative tax year when the sale was made and did not actually pay any tax as a result of the liability created by the sale. p.102.

Rates, § 125 — Lifeline rates — Exemption from current standards — Expected rate shock as a factor.

Statement, in dissenting opinion, that the commission should not grant an electric utility an exemption to current lifeline standards where the exemption would be based on expected rate shock associated with completion of a nuclear power plant because it is premature to structure current rates on a situation that will exist in the future. p.103.

(Aeschliman, commissioner, dissents, p.93.)

APPEARANCES: Stella Shively, Esquire and Sulloway, Hollis and Soden by Martin L. Gross, Esquire for Public Service Company of New Hampshire; Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire for Business and Industry Association of New Hampshire; Gerald M. Eaton, Esquire for Community Action Program; Larry S. Eckhaus, Esquire for Campaign for Ratepayers Rights; New Hampshire Legal Assistance by Alan Linder, Esquire for Volunteers

Organized in Community Education; Michael W. Holmes, Esquire as Consumer Advocate for residential ratepayers; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On December 29, 1982, Public Service Company of New Hampshire ("PSNH" or "Company") filed with the Public Utilities Commission of New Hampshire ("Commission") Tariff No. 28 - Electricity, which was designed to increase nonenergy revenues by approximately $33 million. The data supporting the increase was based on a test year ending September 30, 1982. By Supplemental Order No. 16,144 (January 17, 1983), the tariff was suspended pending investigation by the Commission. Public hearings on the Company's proposed rate increase were held in Newmarket on January 18, 1983; Portsmouth on January 20, 1983; Milford on January 25, 1983; Bow on January 26, 1983, Nashua on January 27, 1983; Keene on January 31, 1983; Laconia on February 1, 1983; Franklin on February 3, 1983; Manchester on February 8, 1983; Derry on February 10, 1983; Concord on February 11, 1983; and Whitefield on March 3, 1983.

On June 1, 1983, a procedural hearing was held which addressed inter alia matters of intervention and scheduling. In Report and Fourth Supplemental Order No. 16,471 (June 10, 1983) ("Procedural Order"), the Commission granted full intervenor status to the Business and Industry Association of New Hampshire ("BIA"), the Community Action Program ("CAP"), Campaign for Ratepayers Rights ("CRR"), and the Consumer Advocate. The Procedural Order also established a schedule for the remainder of the proceedings.

Subsequent to the Procedural Order, PSNH filed a Motion to Include Implementation of Lifeline Rates as an issue in Part B of this docket. By Report and Fifth Supplemental Order No. 16,543 ([1983] 68 NH PUC 489), PSNH's Motion was granted to the extent that it requested inclusion of the lifeline issue in this docket and denied to the extent that it requested a delay in the effective

date of compliance filings required by the Orders in Docket No. DP 80-260. As a result, the Commission received a latefiled Motion to Intervene from Volunteers Organized in Community Education ("VOICE"). By Report and Sixth Supplemental Order No. 16,602 ([1983] 68 NH PUC 515), the Commission provided inter alia that VOICE may participate in this docket as an intervenor on the issue of lifeline implementation.

On June 30, 1983, the Commission filed new testimony and exhibits which supported a rate increase of approximately $42 million. The new testimony was based on data for the test year ending March 31, 1983. In spite of the fact that the data supported a revenue increase of approximately $42 million, the Company did not file new tariffs, thus, in effect, limiting its request to the $33 million implied by the tariffs filed December 29, 1982. Since we will find in this Order that, even if the updated information is considered, the Company has only justified a

rate increase of $24.7 million, we need not address here the propriety of submitting new evidence in the middle of the reviewing process. However, it should be noted that this rate increase has been evaluated on the basis of the March 31, 1983 data; thus, the Company has been granted a $24.7 million increase on the basis of data it believed supported an increase of $42 million.

On August 1, 1983, PSNH put its proposed $33 million tariffs into effect under Bond pursuant to RSA 378:6.

Evidentiary hearings on the tariffs commenced on October 17, 1983 and continued until November 3, 1983. At those hearings, the Commission heard testimony presented by witnesses for the Company, the Staff of the Commission ("Staff"), VOICE and the BIA. The evidentiary record developed in the course of the hearings consists of twelve days of testimony and thirty-nine exhibits.

Pursuant to the Procedural Order, as amended by secretarial letter, briefs were filed on December 22, 1983 by PSNH, the Staff and all intervenors. In addition, PSNH filed a Motion for Approval and Adoption of Stipulations. This Report and Order will address inter alia the PSNH Motion and all issues raised in the Briefs.

II. REVENUE SETTLEMENT AGREEMENT

In accordance with the Procedural Order, prior to the commencement of hearings, the parties met on a number of occasions in an effort to narrow the issues to be litigated. Those meetings resulted in full or partial agreement on many of the issues involved in this case. The agreement of the parties, submitted in writing during the course of the hearings, is contained in the Report Of The Parties Regarding Narrowing Of Issues To Be Litigated In This Proceeding ("Report") (Exhibit 5) and Supplement To Report Of The Parties Regarding Narrowing Of Issues ("Supplement") (Exhibit 5-A). As stated above, after the completion of the hearings, PSNH filed a Motion For Approval and Adoption of Stipulations, requesting the Commission to approve and adopt the agreements of the parties as contained in the Report and Supplement.

Section I of the Report contains the agreed recommendations of the parties regarding the matter of attrition. To resolve this issue, the parties agreed to a series of rate base and expense adjustments as described below. In addition, PSNH withdrew its claim for an attrition adjustment to the cost of common equity.

With regard to rate base, PSNH withdrew its claim for a year end rate base as of March 31, 1983 and agreed that it be

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calculated on the basis of a 13-month average on and prior to March 31, 1983 with such forward looking proforma adjustments for the period subsequent thereto as approved by the Commission. In return, the parties agreed that as of July 1, 1984, PSNH shall be entitled to a step increase in revenues as may be justified by including in its rate base additions to plant, other than those constructed to serve new load, as have been placed in service during the 12-month period subsequent to March 31, 1983, or will be placed in service prior to July 1, 1984. In addition, PSNH will also be entitled to associated increased depreciation expense, provided that it also

reduce its rate base by the accumulated deferred taxes associated with such additional depreciation expense.

Concerning income statement issues, PSNH withdrew its claim to calculation of forward-looking proforma adjustment of Operation and Maintenance expense items for the 12-month period subsequent to August 1, 1983 and agreed that such expense items be calculated on the basis of per books data for the period ended March 31, 1983, adjusted for the 12-month period subsequent to that date. In return, the parties agreed that, as above, PSNH shall be entitled to a step adjustment in revenues as of July 1, 1984, as may be justified to meet changed costs in certain items of expense as compared to expenses calculated as above-stated. The parties further agreed that calculation of these changed items of expense shall be made on the basis of per books data as of March 31, 1984 adjusted for the 12-month period subsequent to that date.

In connection with the step increases for both rate base and expense items, the parties agreed that PSNH shall file appropriate revised tariff pages and supporting data on or before June 1, 1984, for effect July 1, 1984, which shall be subject to audit and verification by the Commission.

Section II sets forth the agreement of the parties on additional rate base and expense issues including association dues, deferred compensation, payroll expense, federal income tax expense and the Daniel Street Steam Station.

Section II also contains the parties' recommended capital structure and cost of capital. The parties agreed that the following "target ratios" for PSNH's capital structure are appropriate and reasonable for ratemaking purposes in this case:

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

Long-term debt — .43
Short-term debt — .00
Preferred stock — .16
Common equity — .41
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With regard to the cost of these various components, the parties agreed the cost of long-term debt to be 12.71%, preferred stock to be 13.12% and common equity to be 16.1%, the midpoint of Staff's recommendation. It also provides that the agreements on these issues are without prejudice to the right of the Consumer Advocate and CRR to raise certain objections which are set forth below.

Lastly, Section II sets forth the agreement of the parties regarding the Timber Swamp Substation, Transmission Termination Yard and Seabrook Scobie 345 KV Line. Staff's position that an adjustment should be made to PSNH's claims to reflect that these items of plant have been sized to accept future generation from the Seabrook Station were resolved as follows:

1. Staff withdrew its proposed adjustments to rate base and operating expense for these items for the test year ending March 31, 1983, and

PSNH agreed to accept an adjustment to rate base and operating expense for the same test year to reflect a one-third reduction in amounts attributable to Transmission Termination Yard.

2. PSNH agreed to a pro forma adjustment to the test year ending March 31, 1983, to

recognize in- creased revenues from new wheeling contracts made possible by these facilities, in the amount of $958,512, company-wide.

3. The parties agreed that 100% of the benefit from reduction of line losses resulting from these facilities will be flowed through to customers through ECRM.

4. In connection with the above-mentioned increase, PSNH agreed to review and update its jurisdictional transmission allocators with respect to these facilities.

The Consumer Advocate's limited objection to the foregoing is discussed infra.

The Supplement contains a further agreement of the parties regarding the Timber Swamp Substation, Transmission Termination Yard and Seabrook Scobie 345 KV line. The parties agreed to treat these items as plant in service for the purposes of determining permanent rates, as forward-looking proforma adjustments to the test year ended March 31, 1983, consistent with the methodologies referred to above regrading the rate base and income statement issues. In addition, to reflect the fact that the Seabrook Scobie 345 KV line was not placed in service until December 12, 1983 and that the transmission termination yard was not useful to interconnect that facility until that time, the parties agreed that refunds payable by PSNH upon determination of permanent rates shall be increased to return to customers the appropriate revenue requirement associated with the cost of Seabrook Scobie 345 KV line, and the appropriate revenue requirement associated with one-half of the cost of the transmission termination year, July, 1983 portion.

The parties were unable to reach agreement on a number of issues. These issues, as listed in Section III, are as follows:

1. Staff-proposed adjustments to rate base and operating expense for the test year ended March 31, 1983, relating to plant held for future use.

2. Staff-proposed adjustment to rate base for the test year ended March 31, 1983, to reflect Garvin's Falls tax lease.

3. Staff-proposed adjustment to operating expense for the test year ended March 31, 1983, relating to Account 500, ASIST Corporation.

4. CAP objection to operating expense for the test year ending March 31, 1983 for personnel consultants in connection with employee recruitment.

5. Objection of Consumer Advocate and CRR to the above-stated capital structure and capital costs to the extent they may relate to or reflect, or were incurred in connection with Construction Work in Progress, contrary to RSA 378:30-a. It is the position of the Consumer Advocate and CRR that the revenue requirement in this proceeding should not in any way reflect financing associated with construction work in progress. It is the position of PSNH that a similar objection was considered and rejected by the Commission in DR 79-187.

6. CAP objection to allowance of fixed

capital cost rates in excess of investment grade securities.

7. Objection of Consumer Advocate to inclusion in rate base of total amount, rather than some part of Seabrook/ Scobie 345 KV Line.

8. Objection of Staff to inclusion in operating expense for the test year ending March 31, 1983, of federal tax expense relating to the gain on the sale of PSNH's interest in Millstone III.

After a complete review of the testimony and evidence, the Commission finds that the record supports the settlement of the parties as represented in the Report and Supplement and that these will produce a level of revenues which are just and reasonable. We therefore will grant PSNH's Motion For Approval and Adoption of Stipulations and adopt the terms of the Report and Supplement as the findings of the Commission. The Commission's findings as to the litigated issues are stated below.

It should also be noted at this point that because the Report and Supplement postulates a lower level of revenues than that currently being collected under bond, in accordance with RSA 378:6 PSNH will make refunds to customers to reflect the difference between revenue collected under the bonded rates and those authorized by the permanent rates. While not contained in the Report and Supplement, the parties have reached an agreement regarding the calculation of interest PSNH must pay on these refunds. The methodology employed by the parties reflects actual savings of financing costs by the Company resulting from the overcollection by basing the interest on PSNH's cost of short-term debt. We have reviewed this methodology and find it to be just and reasonable. We therefore will adopt the terms of that agreement as the findings of the Commission.

III. RATE BASE

A. Plant Held For Future Use

[1] In its initial filing on December 29, 1982, PSNH included plant held for future use in the amount of $198,881 in its actual test year rate base.[1(19)] In its supplementary filing of June 30, 1983, PSNH proposed a proforma adjustment reflecting additional properties to be included in plant held for future use in the amount of $1,694,881. During the hearings, PSNH amended its proposal by removing the Newington Construction Office Building from this proforma adjustment (Transcript, Volume 6, pp. 11-12), thereby reducing the above-stated amount by $88,259. In addition, by letter dated November 23, 1983, PSNH notified the Commission that a portion of one of the properties originally included, the site of future generating station at Newington (Exhibit 10, Item (m)), is currently in the process of being sold. Once the sale is completed, PSNH will reduce the amount booked for the asset by $34,605 and adjust its request accordingly. Assuming this sale is consummated, these subsequent revisions result in an amended proforma adjustment of $1,572,017.

In Re Public Service Co. of New Hampshire (1980) 65 NH PUC 251, 269-271, the Commission articulated the standard to be applied regarding inclusion of plant held for future use in rate base. After

analyzing the various standards employed in other jurisdictions, the Commission determined that it would utilize a caseby-case, parcel-by-parcel approach, requiring a utility to "demonstrate

a definite plan for actual use within a reasonable time." (65 NH PUC at p. 271.)

PSNH does not contend that the items sought to be included in rate base as plant held for future use (Exhibit 10) meet this standard. Rather, PSNH argues that instead of this standard the Commission should consider other factors in addition to specific plans for use "even though no definite plans for actual use within a reasonable time can be currently demonstrated by the company." (PSNH Brief, p. 11) It cites decisions by other regulatory commissions which have taken into account such factors as the longrange acquisition of potential plant sites, the relative scarcity of property and rapid growth in certain areas. In addition, other factors cited by PSNH are the uniqueness of site and the need to provide for contingency planning. PSNH submits that if these factors are given due consideration in the Commission's evaluation of the individual properties, "most if not all" should be included in plant held for future use.

The Staff takes the position that none of the property included by PSNH in the proformed adjustment to plant held for future use meets the Commission standard. In addition, it also argues that PSNH has failed to meet even its own relaxed standard. The Staff argues that the record does not support PSNH's assertion that consideration of the aboveenumerated factors leads to a conclusion that the ratepayer will benefit by PSNH's retaining ownership of the assets. According to the Staff, PSNH did not provide the data necessary to make such a determination. In support thereof, the Staff cites PSNH's failure to conduct either a comparative cost analysis or an engineering study to justify its position. Thus, the Staff argues that PSNH has not met either standard and seeks to have the entire proforma adjustment excluded from PSNH's rate base.

Both the Consumer Advocate and CRR reach the same conclusion. Like the Staff, the Consumer Advocate argues that in failing to provide sufficient data, i.e., a cost/benefit analysis as to each of the properties, PSNH has not established that these properties are being held for the benefit of the ratepayer. CRR takes the position that property which is not now serving the public should not be included in rate base. Thus, it proposes that the Commission disallow the inclusion of the entire proformed adjustment from PSNH's rate base. As an alternative, CRR suggests that the Commission allow PSNH to accrue the carrying costs, including property taxes, until the properties are placed in service. At that time, the original plant cost plus the accrued costs would be included in rate base. CRR contends that this is a more equitable method because customers who actually receive services from the properties will bear the cost and further, PSNH will be allowed to include in rate base (when the property is placed in service) a more reasonable current value as opposed to only the original cost.

We have reviewed the arguments of the parties and conclude that the standard set forth in Re Public Service Co. of New Hampshire, 65 NH PUC at pp. 269-271 embodies sound regulatory principles. We are therefore not inclined to reverse our prior ruling. Thus, because the standard has not been met, we will disallow PSNH's proforma adjustment to plant held for future use.

While we decline to adopt the more

relaxed standard put forth by PSNH, the Commission recognizes that the factors cited by PSNH are indeed relevant to the Commission's standard, the primary purpose of which is to ensure that retaining property today for future use benefits the ratepayer. The degree of

definiteness a plan must possess is not specified by the standard and therefore must be determined by the Commission on a case-by-case basis. In making this determination the Commission will consider in each case whether such factors as the uniqueness of site, the need for contingency planning, the increased scarcity of available land in rapidly growing areas, comparative cost data and engineering studies justify retaining an individual property now (and requiring the ratepayer to pay a return thereon) instead of purchasing it at some point in the future. To the extent that these factors establish a clear and present benefit to the consumer, a lesser degree of definiteness will be required. Conversely, if an analysis of these factors indicates that present benefits are of a more marginal nature, a much greater degree of definiteness will be necessary to meet the Commission standard.

While PSNH presented no such data in this case with regard to the individual parcels in the proforma adjustment, we note that after the conclusion of the hearings it developed and submitted a plan to review and evaluate each asset in light of these factors on an annual basis (Exhibit 37). This process appears to be designed to yield the data necessary to determine whether the Commission standard has been met. The Commission is supportive of PSNH's efforts to develop an appropriate planning process and while we cannot allow ratemaking treatment for assets prior to the time the Company meets its burden of proof, we wish to take concrete steps to encourage the implementation of this procedure.

Thus, in recognition of the proposal developed by PSNH in this docket, the Commission will allow it to resubmit the proforma adjustment to plant held for future use along with supporting data at the time it files revised tariff pages in connection with the above-described step increases. At that time the Commission will review the properties contained therein to determine whether the standard has been met. Our denial of the entire proforma adjustment to plant held for future use at this time is therefore without prejudice.

B. Sale of Garvin Falls Tax Benefits

[2] In March of 1982, PSNH sold the tax benefits associated with the renovation of the Garvins Falls hydroelectric project. Those tax benefits were the 10% Investment Tax Credits (ITC), 11% Energy Tax Credits (ETC) and the tax benefits associated with accelerated depreciation (ACRS). The net proceeds of the sale were $1,921,500. The portion of the proceeds associated with the ACRS is $598,000, with the remaining $1,323,500 attributable to the tax credits. The Company proposed to flow the proceeds from the sale of tax benefits to the ratepayers over the 38 year life of the asset. The Staff believes that the Company's proposal is inappropriate and has recommended that the Company's rate base be reduced for ratemaking purposes by an amount equivalent to the proceeds received by the Company from the sale of tax benefits because they are a source of zero cost capital.

PSNH disagrees with Staff's position. It argues that Staff's proposal represents an artificial rate base reduction which merely adds unduly to benefits otherwise being received by customers. The

Company submits that by reducing the rate base on which the Company can earn a return, Staff's proposal in effect penalizes the Company and its investors for having entered into a

transaction sanctioned and encouraged by the federal tax policy.

The primary function of the Commission in this instance is to compensate investors for their cost in providing capital. The Commission has on numerous occasions denied any return on funds that were supplied to the utility companies at zero cost. We do not deem it relevant where the funds originated. All funds that are invested in a utility system to some degree improve the utility system. A good utility system will benefit investor as well as customer. A prime question to be addressed is whether or not Staff's position in some way constitutes a burden on the investor of the Company or confiscates the property.

Staff's position that the proceeds of the sale of Garvin Falls tax lease not be included in rate base is consistent with our prior treatment of other zero cost capital and that such treatment is not confiscatory. This capital was not supplied by the investors of the Company and therefore they should not earn a return on it. Utility managers are obligated to utilize all of their skills to operate their companies efficiently at the lowest possible cost. The Staff's methodology would have allowed investor compensation for the zero cost capital as an incentive to engage in these types of investments. The Commission does not agree with Staff that some incentive compensation is needed to promote alternate sources of power or conservation. A proper incentive is to approve good management practices and a sufficient overall rate of return to the Company's investors to compensate them for their investment in the system. The Commission concludes that the benefits of the sale of the Garvin Falls tax lease in the sum of $1,921,500 shall not be included in the rate base calculation.2(20)

It should be noted that an alternative treatment was used by the Commission in 65 NH PUC at p. 272 wherein the Commission, upon finding that accumulated deferred income tax benefits were the same as zero cost capital, placed the full amount of same in the capital structure at zero cost. Since none of the parties in this proceeding suggest such treatment of zero cost capital in that manner, we will not impose such treatment at this time. However, in the future consideration will be given to a uniform treatment of all zero cost capital.

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

TOTAL COMPANY AVERAGE RATE BASE
MARCH 31, 1983

Gross Plant in Service $586,167,109
Plant Held for Future Use 198,881
  TOTAL 585,365,990
Less Accumulated Depreciation 182,448,136
Net Plant in Service $402,917,854
Less: Customer Deposits and Interest 1,061,426
Accumulated Investment Tax
Credit 1,713,308
Accumulated Deferred Income
Taxes 20,295,206
Customer Advances for
Construction 57,136
Garvins Falls Tax Lease 1,921,500
Net Investment in Plant $377,869,278
Plus Working Capital:
 Expense Allowance 25,243,202
 Materials & Supplies 25,661,977
 Prepayments 1,270,896
  TOTAL 52,176,076
Approved Rate Base $430,045,354

IV. EXPENSES

A. Sale of Interest in Millstone III

PSNH has included in its cost of service an expense associated with the tax on capital gains associated with the sale of Millstone III, a nuclear power plant now under construction. The Company sold a portion of its ownership interest in Millstone Unit No. III in the year 1982 at a price that equalled its book cost. The book cost equals the cash cost of the facility plus accumulated Allowance for Funds Used During Construction ("AFUDC"). The issue of taxation arose because the book basis differs from the tax basis in that the IRS does not recognize AFUDC as a part of tax basis for tax calculation purposes. Thus, for tax purposes the gain was approximately $4,966,991 resulting in an increase in New Hampshire jurisdictional taxable income of $2,406,428. The result is that the Company is seeking to recover from its ratepayers the annual sum of $1,106,957 (i.e., $2,406,428 152 46%) in the federal income tax expenses associated with the sale.

The Staff recommends that this expense be disallowed from the Company's cost of service. The reason for the recommendation is that it is an expense associated with a non-recurring transaction.

The Staff does recognize that in certain instances a utility may be permitted to amortize a non-recurring expense over a defined period of years. Such amortization permits recovery of the expense of the unique transaction while preventing the multiple recovery on an ongoing basis implied by base rate treatment.

The Staff takes the position, however, that PSNH should be denied the opportunity to amortize this expense due to the historic treatment of Millstone expenses as being "below-the-line." Belowthe-line treatment delays direct Commission review of management decisionmaking until the utility requests ratepayer compensation for expenses upon completion of the project. According to Staff, in this instance the sale of the asset has obviated the need for the Commission to review this expense. Staff takes the position that PSNH's decisions have already been evaluated by the appropriate regulator: the market for electric generating facilities. Staff argues that to the extent that the market price in a below-the-line item is insufficient to cover expenses, an unregulated judgment has been made. Staff contends that if this unregulated judgment of management results in a loss, the cost should not be allocated to ratepayers.

CRR also opposes inclusion of this expense but for different reasons. It argues that RSA 378:30-a, the so-called antiCWIP statute, precludes recovery of any federal income tax expense associated with the sale of Millstone III. RSA 378:30-a provides:

378:30-a Public Utility Rate Base: Exclusions. Public utility rates or charges shall not in any manner be based on the cost of construction work in progress. At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed. All costs of construction work in progress, including, but not limited to, any costs associated with constructing, owning, maintaining or financing construction work in progress, shall not be included in a utility's rate base nor be allowed as an expense for rate making

purposes until, and not before, said construction project is actually providing service to consumers.

This statute prohibits inclusion as an

expense for ratemaking purposes any costs associated with construction work in progress until the project is actually providing service to consumers. CRR argues that because PSNH has sold its interest in Millstone III, a plant currently under construction, it cannot be providing service to consumers. Thus, it contends that recovery of the federal income tax expense associated with the sale of its interest is precluded by RSA 378:30-a.

The Commission accepts Staff's analysis that the tax expense associated with the sale of PSNH's interest in Millstone III is a non-recurring expense and should not be included in the Company's cost of service. The rule applicable to nonrecurring expenses is clear and unambiguous: they are to be excluded from a utility's revenue requirement because they are not reflective of its ongoing cost of providing service. See e.g., Public Service Co. v New Hampshire (1959) 120 NH 150, 162, 163, 30 PUR3d 61, 153 A2d 801; Re Public Service Co. of New Hampshire (1980) 65 NH PUC 251, 259, 260. Test year expenses, as adjusted for known and measurable changes, are deemed indicative of a utility's revenue requirement over the period when the new rates are to be effective. Non-recurring expenses are known and measurable changes (Id., 65 NH PUC at pp 259-261). Thus, unless such expenses are excluded, ratepayers will be required to pay such expenses on an annual basis in spite of the fact that they are no longer being incurred by the Company.

However, the Commission rejects Staff's recommendation that the non-recurring tax expense not be amortized or recovered. PSNH's divestiture of its interest in Millstone III benefited ratepayers in that it permitted PSNH to improve its cash flow thereby reducing the Company's borrowing needs. These cash flow advantages were recognized by the Commission when it encouraged the transaction. Thus, the Commission is of the opinion that if recovery is not barred by statute, PSNH should be allowed to amortize the tax expenses associated with the sale of Millstone III over a period of time. However, we decline to permit PSNH to do so at this time.

It is clear from the record that, by virtue of its sale of a portion of its interest, PSNH has in effect abandoned at least a portion of this construction project. CRR contends that because this plant cannot now and, indeed with respect to PSNH, never will provide service to customers, RSA 378:30-a precludes PSNH from ever recovering this expense.

Whether RSA 378:30-a prohibits public utilities from recovering through rates amounts invested in abandoned plant is an issue that was not fully addressed in the context of this case. Indeed, it is a substantial question which has heretofore not been presented to the Commission. We note however that this specific issue is currently before the Commission in another matter involving PSNH in DR 83-398, wherein PSNH has filed a petition seeking to recover costs incurred as a result of its investment in the cancelled Pilgrim II nuclear power plant. The petition contains a request that prior to considering its merits, the Commission reserve, certify and transfer this issue to the New Hampshire Supreme Court for decision. It is clear therefore that a resolution of this issue by either the Commission or the Court will be forthcoming in the near

future. Since resolution of the underlying legal question is imminent, it is reasonable to defer a decision at this time.

Until this issue is resolved, we therefore decline to allow PSNH to amortize this expense. If upon a final

determination in the Pilgrim II docket, RSA 378:30-a is found not to preclude recovery of costs associated with abandoned plant, PSNH will at that time be allowed to present a plan to amortize this expense.

B. Account 500 — Expense for ASIST Corporation

[3] PSNH seeks to include as an expense for ratemaking purposes the amount of $127,325 paid to ASIST Corporation for design and implementation of a maintenance management system at PSNH's Merrimack, Newington and Schiller facilities in order to reduce outages and increase operating efficiency. The Staff does not dispute that this expense was actually incurred in the test year, or that it was for a proper purpose. Rather, as with the expense associated with the sale of PSNH's interest in Millstone III, the Staff argues that this is a non-recurring expense and that it should therefore not be included in PSNH's cost of service.

The proper regulatory treatment of non-recurring expenses is not in dispute in this proceeding. As stated above, nonrecurring expenses are excluded from a utility's revenue requirement because they are not reflective of its ongoing cost of providing service. Rather, the dispute here concerns whether or not this particular expense is recurring. In order to justify an expense as factually recurring, a utility must establish either that 1) the particular expense is ongoing, or 2) the type of expense is ongoing.

PSNH argues that while ASIST Corporation might not specifically be reemployed to provide similar services, PSNH will continue to incur expenses relating to improving efficiency in the period that rates established in this case will be in effect. Thus, because the same type of expense will be recurring in the future, PSNH argues that the ASIST expense should be included in its cost of service for ratemaking purposes.

Staff takes the position that these expenses are not recurring because the problems solved by the ASIST Corporation will not need to be addressed any further. In addition, Staff contends that PSNH is already compensated for this type of expense through certain energy incentive mechanisms. According to Staff, these incentives are provided through the Estimated Net Unscheduled Outage Adjustment of the Energy Cost Recovery Mechanism ("ECRM"). The Staff argues that to allow recovery of this expense both in this case and in ECRM would be to allow a double recovery. Staff takes the position that the efficiency incentive cannot be carried that far.

The Commission rejects Staff's position that this expense is nonrecurring. The record clearly establishes that PSNH will continue to incur expenses relating to improving the efficiency of its operations in the future and that these expenses will be in the same class or category as the expense incurred for improving generation plant maintenance systems through the contract with ASIST Corporation (Transcript, Volume 4, page 38). Thus, because this type of expense is ongoing, we find it to be a recurring expense.

Nor do we accept the Staff's contention that the existence of an efficiency incentive in ECRM precludes us from allowing this expense as part of PSNH's cost of service. Allowing inclusion of this expense in PSNH's cost of service and receiving possible compensation through ECRM does not, as Staff contends, constitute a double recovery. In addition to containing an incentive which awards compensation for efficiency improvement, the Estimated Net Unscheduled Outage Adjustment of ECRM also contains a

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penalty provision. To the extent PSNH fails to meet certain efficiency targets, it is penalized. Receiving compensation is therefore by no means assured.

Thus, because the expense was actually incurred for a proper utility purpose and is of a recurring nature, we will allow it to be included in PSNH's cost of service for expenses related to Account 500.

C. Expense for Personnel Consultants in Connection with Employee Recruitment

[4] PSNH has included as an expense in its cost of service $145,566 paid to personnel consultants during the test year in connection with employee recruitment. With the exception of CAP, all parties agree that this is a proper expense for ratemaking purposes. CAP take the position that PSNH should use in-house staff to recruit its employees and this expense is therefore improper and should be disallowed.

In order for the Commission to disallow an expense it must find that it represents inefficiency, improvidence, economic waste, abuse of managerial discretion or other arbitrary action inimical to the public interest. Public Service Co. of New Hampshire v New Hampshire (1973) 113 NH 497, 510, 2 PUR4th 59, 311 A2d 513; Re Public Service Co. of New Hampshire (1977) 62 NH PUC 83, 92.

We do not agree with CAP's contention that this expense is an abuse of managerial discretion. The record clearly establishes that it is reasonable for PSNH to utilize personnel consultants in connection with the recruitment of certain classifications of employees. It is in the interest of all parties that PSNH be able to identify and employ highly skilled and experienced employees. There is no dispute that the consultants aided PSNH in this endeavor. The funds paid to the consultants are consistent with the reasonable cost for such services. We therefore find this to be a proper utility expense and will allow it for ratemaking purposes.

D. Allowance for Expense Associated with Entire Seabrook Scobie 345 KV Line.

[5] PSNH has included as a pro forma expense adjustment the amount of $638,890 which represents its share of the carrying costs associated with the Seabrook Scobie 345 KV Line ("Line"), a transmission line to have been energized November 1, 1983. In the Report and Supplement, the parties agreed to a series of rate base, expense and other adjustments to reflect that the Line and the Transmission Termination Yard have been sized to accept future generation from the Seabrook Station.[3](21) As noted in the Report, the Consumer Advocate objected to these adjustments only insofar as they permitted recognition for ratemaking purposes of the Seabrook Scobie Line in its entirety. The Consumer Advocate contends that the Commission should instead delete some portion of the Line from PSNH's cost of service to reflect its capacity

to transmit Seabrook power in the future.

The Seabrook Scobie Line is by nature a rate base item. However, for purposes of convenience, PSNH has presented the cost of service of the Line as an operating expense instead of dividing it between expense and return components. This resulted in a single pro forma adjustment instead of the numerous adjustments that would have been required if all rate base and expense items had been proformed individually. While the Commission agrees that either procedure results in the same cost of service, it is

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proper to characterize the Line as a rate base item for analytical purposes because it is a capital asset. Thus, in determining whether or not this item should be included in PSNH's cost of service in its entirety, we will employ customary regulatory rate base principles.

In order to include an asset in rate base, a utility must show that the asset is "used and useful" in providing service to the ratepayer. There is no dispute that the entire Line, energized in late 1983, is in fact being used by PSNH. The parties do disagree however on whether or not the entire Line is useful at this time.

The Consumer Advocate takes the position that because the Line is sized to accept future generation from the Seabrook Units, it is not useful in its entirety at the present time and that therefore a portion of the Line's costs should not be allowed for ratemaking purposes prior to Seabrook's operational date. In accordance therewith, the Consumer Advocate sets forth a number of alternatives for calculating a reduction of the amount attributable to the Line in PSNH's cost of service.

PSNH contends the entire Line is in fact useful without regard to its future capability to transmit Seabrook power. In support thereof, PSNH cites the fact that the Line completes a major transmission loop in PSNH's integrated system, in that the Line ties the 345 KV line coming into the Termination Yard from Newington into the rest of PSNH's system. In addition, PSNH cites the Line's function in enhancing reliability, reducing line losses and enhancing the ability to provide wheeling services as further evidence of the Line's usefulness in its entirety.

The uncontroverted testimony of PSNH witnesses Cannata and Long clearly establish that the Line indeed performs these functions. We agree with PSNH that these functions establish the usefulness of the entire line. We therefore find that PSNH has met the "useful" standard.

In addition to being used and useful, a utility must also establish the prudency of its decision to invest in that asset in order to include it in rate base. We are satisfied that PSNH's decision to invest in the Line was a prudent one. It is appropriate to size a capital addition so that it will meet system needs over its useful life. Here, the Line is larger than necessary to carry existing loads. However, Seabrook related loads will be carried by the Line within the next several years. Thus, if the Line has a useful life of approximately 40 years, it will probably carry the loads it was designed to carry for at least 37[4(22)] of those 40 years or for 92.5% of its useful life. We believe that this is a preferable planning philosophy to one which would have employed a small line for pre-Seabrook years and then constructed a second larger facility for Seabrook transmission purposes. Accordingly, we believe that management's investment was prudent and

we will allow recovery.

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

TOTAL COMPANY
NET OPERATING INCOME
FOR TWELVE MONTHS ENDED MARCH 31, 1983

	Report of Parties	Adjusted Adjustments	Total
Operating Revenues	$434,973,743	$ (50,566)[1]	$434,923,377
Operating Expenses	316,788,762	1,096[1]	316,789,858
Depreciation	19,983,642	(50,565)[1]	19,933,077
Investment Tax Credits	(1,391,804)	-0-	(1,391,804)
Federal Income Taxes	23,672,043	(1,234,883)[2]	22,437,160
N.H. Franchise Tax	3,600,701	-0-	3,600,701
N.H. Business Profits Tax	1,029,674	(268,098)[2]	761,576
Other Tax	20,317,177	-0-	20,317,177
Deferred Federal Income Tax	5,965,000	-0-	5,965,000
Total Operating Expenses	389,965,195	(1,552,450)	388,412,745
Net Operating Income	$ 45,008,748	$(1,501,884)	$ 46,510,632
Less Adjustments:			
Depreciation	1,620	1,620	
Donations	47,644	47,644	
Return on Deposits	61,780	61,780	
Adjusted Net Operating Income	$ 44,897,704	$(1,501,884)[1]	$46,399,588

[1]Adjustment to reflect proper ratemaking treatment of Garvins Falls Tax Lease.

[2]Adjustment to reflect proper ratemaking treatment of Garvins Falls Tax Lease and Millstone III Tax Expense.

V. COST OF CAPITAL

[6,7] As noted above, many of the cost of capital issues were resolved as part of the settlement agreement. Thus, the parties have agreed[5(23)] that the appropriate capital structure and cost rates are as follows:

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

Percent of Total	Cost Rate	Weighted Cost
Long Term Debt	43%	12.71%	5.47%
Preferred Stock	16	13.12	2.10
Common Equity	41	16.10	6.60
Total	100%		14.17%

We have reviewed the record, including the testimony and exhibits of Professor Williamson, Mr. Meyer and Dr. Voll, and we have concluded that the agreed rate of return is just and reasonable. We also find that the proposed rate of return is consistent with the principles of Federal Power Commission v Hope Nat. Gas Co. (1944) 320 US 591, 51 PUR NS 193, 88 L Ed 333, 64 S Ct 281; and Bluefield Water Works & Improv. Co. v West Virginia Pub. Service Commission, 262 US 689, PUR1923D 11, 67 L Ed 1176, 43 S Ct 675. Those principles have long been accepted

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by this Commission and the New Hampshire Court. See e.g., Legislative Utility Consumers' Council v Public Service Co. of New Hampshire (1979) 119 NH 332, 31 PUR4th 333, 402 A2d 626.

The agreed upon rate of return is a starting place in this docket. Several parties have proposed adjustments to the rate of return. Specifically, the Consumer Advocate and CRR have objected to the capital structure and capital costs as being violative of RSA 378:30-a, the so-called anti-CWIP statute. In addition, CAP has objected to the allowance of fixed capital cost rates in excess of investment grade securities. Finally, Staff has recommended that we make certain findings regarding the existence and effect of including certain Seabrook related costs in the capital structure, although no adjustment is proposed at this time. After due consideration, we have decided to accept the Staff recommendations and to deny the objections of the Consumer Advocate, CRR and CAP.

We shall initially review the Staff analysis because the objection of the Consumer Advocate and CRR rests on the facts developed by that analysis. The purpose of the Staff analysis was to identify and quantify the rate of return revenues associated with the construction of Seabrook. The Staff employed a methodology which examined PSNH's capital structure as it existed in each year from 1975 (just prior to significant construction related expenditures) to the present. For each year after 1975, the Staff excluded specific issues of long term debt and equity plus AFUDC commitments which could be attributed to Seabrook construction and recalculated the cost of capital on the basis of the reformed capital structure (Exh. 17 at 8). The standard used to identify specific excludable issues of long term debt and equity was whether the Company could support its non-construction activities without that issue. As a result of this analysis, the Staff was able to calculate what the Company's revenue requirement would be if it was not compensated for its Seabrook securities. That calculation revealed that approximately $25 million of rate of return revenues are attributable to Seabrook.

PSNH did not directly challenge the validity of the Staff methodology. Its position was that since the costs of all Seabrook securities were consistent with prevailing market rates, the revenue requirement is more properly attributed to market rates than the Company's construction program.

In essence, the Company focuses on the factors that determined the level of a particular cost while the Staff focuses on the factors which caused the cost to be incurred in the first place. After consideration, we conclude that the PSNH analysis does not undercut the Staff methodology. The PSNH analysis of whether the cost rate for a particular security is reasonable

is one which must be undertaken in the context of a financing hearing held pursuant to RSA 369. Our function in such proceedings is limited to a review of precisely the focus of the PSNH analysis; i.e., whether the terms of a particular financing are reasonable in light of current market factors. See Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 51 PUR4th 298, 454 A2d 435. In the context of a rate case, however, we must be concerned with more than whether a particular financing is consistent with other financings in the market. When the Company seeks to recover costs from ratepayers, we must also examine the circumstances which caused the Company to be in the capital markets at a particular time. In this instance, it was the Company's Seabrook project which required the Company to enter

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the capital markets at a time of particularly high costs. The Staff methodology quantifies the cost impact of that requirement on ratepayers and such an analysis is certainly appropriate.

In accepting the Staff methodology, we have found that the Company's Seabrook project has a direct effect upon rates through the recovery of capital costs in the rate of return component of the rate formula. We must now determine the proper ratemaking treatment of the Seabrook revenue requirement. The Staff's position is that we should assert jurisdiction over management's conduct of Seabrook construction to the extent of the Company's Seabrook revenue requirement. The Consumer Advocate and CRR argue that recovery of Seabrook related revenue is precluded by statute.

In resolving the treatment of the Seabrook revenue requirement, it is important to articulate initially the extent of our ratemaking authority. It is clear that this Commission has full and plenary authority to examine the propriety of every dollar which a public utility seeks to recover from ratepayers. See e.g., New Hampshire v New England Teleph. & Teleg. Co. (1961) 103 NH 394, 40 PUR3d 525, 173 A2d 728; New Hampshire v New Hampshire Gas & E. Co. 86 NH 16, PUR1932E 369, 163 Atl 724; Lorenz v Stearns, 85 NH 494, PUR1933A 322, 161 Atl 205. The Commission is not required to abide by any particular ratemaking formula, e.g., Legislative Utility Consumers' Council v Public Service Co. of New Hampshire, supra; New England Teleph. & Teleg. Co. v New Hampshire (1953) 98 NH 211, 99 PUR NS 111, 97 A2d 213. Its ratemaking authority is only subject to certain constitutional limitations, e.g., Federal Power Commission v Hope Nat. Gas Co., supra. Re Public Service Co. of New Hampshire, supra; and certain statutory limitations, e.g., RSA 378:30-a. Any vested rights to pursue Seabrook construction arising out of PSNH's Certificate of Site and Facility, Re Public Service Co. of New Hampshire (1974) 59 NH PUC 127, cannot supersede the Commission's ratemaking authority in this instance. "A vested right to build is not a vested right to have customers pay." (122 NH at p. 1076, 51 PUR4th at p. 306.)

The definition of our ratemaking authority accurately frames the issue here. CRR and the Consumer Advocate are arguing that we are precluded from allowing recovery by statute. If CRR and the Consumer Advocate are correct, we may not allow recovery and, therefore, we will not have full regulatory authority to review all elements of the costs upon which the recovery would have been based until such recovery is properly requested. If we reject the arguments of CRR and the Consumer Advocate, we must accept the position of the Staff. To do otherwise would be to allow recovery of nonreviewable costs; such nonreviewable recoveries are clearly

contrary to law.[6(24)]

As noted, CRR and the Consumer Advocate contend that recovery of the identified Seabrook costs is precluded by statute (RSA 378:30-a which has been quoted in full supra at p. 77, 57 PUR4th at p. 573). It is the position of CRR and the

Consumer Advocate that this statute must be read to preclude recovery of any Seabrook related costs in rates until construction is completed.

PSNH relies on prior Commission Orders which interpreted the statute as only precluding recovery through inclusion of construction associated costs in rate base or as a current expense. Those Orders found that the statute does not address the methodology used to determine an appropriate rate of return. See, PSNH Brief at 62; See also Re Public Service Co. of New Hampshire (1980) 65 NH PUC 251; Re Public Service Co. of New Hampshire (1980) 65 NH PUC 45. PSNH further argues that no evidence has been presented to justify departure from those Orders and from previous Commission practice.

After due consideration, we find that we are in agreement with the PSNH position. PSNH has accurately characterized our previous orders and correctly pointed out that those orders rejected arguments which are identical to those raised by CRR and the Consumer Advocate. While CRR and the Consumer Advocate acknowledge, to some extent, that the issues are identical, they argue that there is sufficient reason to depart from those Orders in the instant docket. We disagree.

The most significant reason presented by CRR and the Consumer Advocate is that the factual circumstances have changed since the Commission's prior Orders. The intervenors argue that the previous record, unlike the current record, did not contain evidence which identified and quantified the Seabrook related costs in the return component. After reviewing our previous rulings, we cannot conclude that those decisions rested on a lack of factual evidence. Rather, those decisions rested on the Commission's interpretation of RSA 378:30-a. While the Commission did note that there was no factual support for the intervenors' contention, 65 NH PUC at p. 276, we do not believe that the results dictated by the Commission's interpretation of RSA 378:30-a would have changed even if the witnesses in the previous case could trace dollars. If RSA 378:30-a does not apply to the Commission's determination of an appropriate overall rate of return, evidentiary support for the proposition that a portion of the return is associated with construction does not trigger the statutory barrier to recovery.

Another reason to depart from past findings is that the law may have changed. Since there have been no amendments to RSA 378:30-a, the only changes could come from judicial or regulatory opinions construing the statute. CRR and the Consumer Advocate have presented no such support for their interpretation whatsoever. The Staff, in its memorandum of October 19, 1983, correctly observed that the Court raised questions about the interpretation of RSA 378:30-a in Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 51 PUR4th 298, 454 A2d 435. However, the Court did not provide any answers to the questions raised and, inasmuch as it was not directly addressing itself to the proper construction of RSA 378:30-a, we cannot construe its opinion as a change in the law. Accordingly, we conclude that there is no legal

reason to depart from the previous Commission interpretation.

We therefore conclude that RSA 378:30-a does not act as a barrier to recovery of Seabrook related costs as a part of a utility's rate of return. The effect of this conclusion is that the propriety of those costs must be reviewed by the Commission. We have previously determined that the return recommended by the parties in

the settlement agreement (Exh. 5) is just and reasonable and supported by the record. That record support, consisting of inter alia the testimony of Professor Williamson, Mr. Meyer and Dr. Voll, includes a prima facie showing that the Company is entitled to recover a return which includes the Seabrook related revenues. Since the intervenors chose to rest their arguments on the proper interpretation of RSA 378:30-a, we are left with no evidence in this docket to rebut the prima facie showing. Accordingly, we will allow recovery of the Seabrook related revenues. However, we have accepted the Staff analysis of the effect of inclusion of these revenues on our jurisdiction over the project. Thus, we will not hesitate to open a new docket pursuant to inter alia RSA 365:5 and RSA 378:7 if we have reason to believe that such recovery is not warranted due to management's conduct of the Seabrook construction program.

The remaining issue to be addressed here is CAP's objection. That objection was based on the consequences that CAP believed should flow from the fact that PSNH securities are rated by Moodys and Standard and Poors at levels that are below investment grade. Since this is the first rate case where PSNH has presented us with a cost of capital based on below investment grade securities, it is appropriate to address the issue here.

CAP's argument is based on its reading of the cases of Federal Power Commission v Hope Nat. Gas Co., supra, and Bluefield Water Works & Improv. Co. v West Virginia Pub. Service Commission, supra. In essence, CAP contends that Hope and Bluefield limit the Commission's ability to allow a rate of return which is higher than that earned by similar regulated enterprises. The fact that PSNH must pay the cost of non-investment grade securities is per se evidence that those costs are higher than those allowable for regulated industries. CAP points out that such costs are comparable to highly profitable and speculative ventures and thus exceed the limit of a just and reasonable return for a public utility. CAP also notes that this Commission has the authority to employ a hypothetical capital structure in appropriate circumstances. New England Teleph. & Teleg. Co. v New Hampshire (1962) 104 NH 229, 44 PUR3d 498, 183 A2d 237. Thus, CAP requests that the Commission employ such a hypothetical structure in this case to set a rate of return calculated as if all PSNH securities were of investment grade.

PSNH in brief argues that the CAP position lacks factual or legal support. PSNH contends that the evidence of record in this docket demonstrates that the actual cost of senior capital is just and reasonable for ratemaking purposes. PSNH also disagrees with CAP's reading of the Bluefield and Hope cases. The Company argues that those cases do not require comparability with investment grade securities, but rather focus on comparability with enterprises of similar risk as a factor in evaluating whether the allowed return on equity capital falls within constitutional limitations.

After review, we will reject the CAP objection. We do not believe that Hope and Bluefield

can be read to establish a per se rule on when an allowed return is unreasonable. Rather, the cases are directed to the establishment of criteria to evaluate whether an allowed return is too high or too low for constitutional purposes. See e.g., Re Public Service Co. of New Hampshire (1980) 65 NH PUC 45, 48-51. In this context, we read Hope and Bluefield as requiring us to allow an opportunity to earn a rate of return which is: "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." (PUR1923D at p. 21.) Thus, in evaluating a utility's return, we must examine such factors as management efficiency and comparability with similar enterprises. These factors often involve the Commission in a complex factual and theoretical analysis.

When these criteria are applied to the CAP argument, it is apparent that a per se rule cannot be adopted. Securities may fall below investment grade for any number of reasons, including, perhaps, an error on the part of the rating agencies. We cannot find that the cause of a poor investment rating is always management inefficiency, nor can we find that the class of comparable enterprises is always restricted to utilities with ratings above investment grade. It is our responsibility to evaluate those and many other factors in the course of determining a reasonable return. Because CAP was arguing in favor of a per se rule, it did not deem it necessary to present evidence that would show why, in this instance, a return incorporating recovery for securities with a below investment grade rating exceeds constitutional limitations. Thus, PSNH is correct when it asserts that CAP's argument lacks the requisite factual support to merit further consideration.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE Computation of Revenue Deficiency

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

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Total Company
 Rate Base 430,045,354
 Rate of Return 14.16%
 Required Net Operating Income 60,894,422
 Net Operating Income Applicable
  to Rate Base 46,399,588
 Required Increase in Net Operating
  Income 14,494,834
 Tax Effect (° .490968) 29,522,970
 N.H. Jurisdictional Allocation 83.80%
 N.H. Retail Revenue Requirement 24,740,249
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VI. RATE STRUCTURE

A. Settlement Agreement

[8] Pursuant to the Commission's Procedural Order, the parties in this docket entered into settlement discussions on the issues of Rate Structure, Conservation and Load Management. These discussions were continuations of the consultative process under Docket No. DR 82-61. See e.g., Report and Order No. 16,120 ([1982] 67 NH PUC 991); Report and Third Supplemental Order No. 16,227 ([1983] 68 NH PUC 76). As a result of the discussions, the parties reached

agreement on all but two of the issues which arose in this part of the docket. That settlement agreement was presented to the Commission as Exhibit 23 and was supported by record evidence in this docket.

As described by PSNH Witness Rodier and Exhibit 23, the settlement resolves a number of issues inherent in any rate structure determinations. Specifically, the agreement provides, inter alia:

1) that marginal cost principles set forth in Exhibit 23, Attachment 2 will form the basis of rate structure determinations in this docket;

2) that marginal cost be reconciled with the Commission established revenue requirement by making appropriate adjustments to the non-energy components of marginal cost;

3) that the revenue increase approved by the Commission in this docket will be allocated as follows:

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

Residential (D) 46.86%
General (G) 13.06%
Primary (GV) 16.40%
Transmission (TR) 22.56%
Outdoor Lighting (ML) 1.12%
Total 100.0%;
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4) that any refund of the appropriate portion of bonded rates will be allocated to the various customer classes in the same manner as those rates were collected under Tariff NHPUC 28;

5) that such refunds of bonded rates will be accomplished through a negative surcharge applicable on a uniform basis by classes to all customers taking service during the period the refund is being made;

6) that PSNH will expand and refine the marginal cost methodology by calculating time-differentiated costs under certain defined scenarios for the purpose of providing a basis for further subsequent activity on these issues;

7) that PSNH's rate schedules will be restructured and time of use rates will be implemented on January 1, 1985 as defined in Exhibit 23, Tab B Article V and Attachment 6;

8) that certain rate structure changes contained in Exhibit 23, Attachment 8 will be adopted on the basis of recent cost information, the circumstances of this docket and certain stipulations reached in previous dockets;

9) that the Company will engage in certain defined energy efficiency (i.e., conservation) programs; and 10) that certain provisions be adopted to ensure that recipients of the elderly customer discount do not lose the benefits.

We have reviewed the terms of the agreement and the supporting technical attachments. We believe that the terms of the settlement

7(25) are just and reasonable and amply supported by the record. We wish to commend the

parties for their willingness to engage in the consultative process. We are convinced that in this case the process worked to develop a rate structure that is innovative, grounded in sound economic theory and a reasonable balance of the often conflicting rate setting standards utilized by this Commission. See e.g., Bonbright, Principles of Public Utility Rates, 1961, Part Three. Accordingly, we will accept the agreement and the accompanying attachments as set forth in Exhibit 23 and we will adopt it as a part of this Order.

The agreement left two rate structure issues to be litigated: 1) Implementation of Lifeline Rates; and 2) Special Industrial Contract Policy. In addition, several parties and the Staff recommended that the Commission examine certain "rate shock" issues in a coordinated docket. We shall now address ourselves to the resolution of those litigated issues.

B. Implementation of Lifeline Rates

[9] On April 20, 1983, the Commission issued Report and Seventeenth Supplemental Order No. 16,356 (68 NH PUC 216) establishing standards for electric utility lifeline rates. PSNH filed a timely Motion for Rehearing which was denied in Report and Eighteenth Supplemental Order No. 16,460 ([1983] 68 NH PUC 389) ("18th Order"). In its 18th Order, the Commission distinguished between its adoption of lifeline standards and a subsequent request for a waiver or exemption from the implementation of those standards by PSNH. The Commission defined the factors applicable to such a request for a waiver or exemption when it stated (68 NH PUC at p. 391):

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The issue of implementation is not ripe for consideration until compliance tariffs are filed. Thus, the proper avenue is a subsequent proceeding to review PSNH's compliance tariff filing. The issue in such a subsequent proceeding would not be the propriety of the standards adopted by the Commission; rather, it would be whether particular factors applicable to PSNH justify a waiver or exemption from Commission standards. (Footnote omitted.)

Subsequently, PSNH filed a Motion to inter alia incorporate its implementation of Commission standards into the instant docket. That Motion was granted by Report and Fifth Supplemental Order No. 16,543 ([1983] 68 NH PUC 489).

In the course of the instant proceedings, PSNH proposed an alternative lifeline rate structure which narrowed the eligible group of ratepayers by "targeting" the program to those who fall within defined criteria of need. See generally, Exh 24. PSNH justified this approach as a method of ensuring that it will not suffer revenue erosion during a time when increased sales would benefit all ratepayers due to the effect of including fixed Seabrook costs in PSNH's revenue requirement (Tr. at 9-119). PSNH also stated that is has a working understanding with CAP under which CAP will perform the function of identifying those individuals who meet the eligibility criteria for the targeted rate.

In support of its proposal, PSNH presented the testimony and exhibits of witnesses Rodier, Ambrose and Brown (Exhibit 24). Mr. Rodier summarized the Company position and identified specific grounds which he believed justify exemption from the Commission's nontargeted lifeline standard. Those grounds were that the targeted rate more closely matches the pattern of PSNH's marginal costs as those costs occur over the coming years. In addition, the targeted rate will

ensure that the benefits flow to those customers who need it the most. Mr. Ambrose testified that the Company's proposal is based on sound economic principles. In particular, it is more consistent with the economic definition of "conservation" in that it provides proper price signals to discourage the wasteful use of energy and to encourage efficient use. Mr. Brown offered factual support showing the projected pattern of various Company costs in the coming years.

PSNH's proposal was supported by CAP and the Consumer Advocate. The proposal was opposed by VOICE and the Staff.

VOICE's position was that the current non-targeted lifeline standards are performing as designed and that PSNH has failed to meet its burden of justifying a change. Moreover, VOICE contended that PSNH's economic justification contained significant theoretical deficiencies. VOICE supported its position with the testimony of Mr. Sterzinger (Exhibit 27). Specifically, Mr. Sterzinger testified that PSNH has applied a theoretically incorrect relationship between marginal and average costs and that the marginal cost methodology adopted by the parties contained significant theoretical deficiencies.

The Staff's position was that the Company had not met its burden of showing that special circumstances justified an exemption from Commission standards. The Staff argued that the Company's case rested on the impact of Seabrook on costs, a factor that will have impact on all New Hampshire utilities. The Staff also argued that changes to the lifeline rate should be examined as a part of a coordinated effort to address Seabrook "rate shock" issues in the time remaining

before the first unit becomes operational.

After review, we have decided to accept PSNH's cost projections as a basis for the lifeline analysis in this docket. We recognize, as does PSNH, that changes in assumptions, theory and data may require corresponding changes in the estimation of costs. However, the assumptions, theories and data utilized in this record appear to be reasonable for present purposes.

The problem with Mr. Sterzinger's alternative analysis is that it cannot be applied to the instant situation. For example, Mr. Sterzinger testified that PSNH's cost curves (e.g., Exhibit 24, Testimony of Brown, Attachment 1) are inconsistent with the theoretical relationship of marginal costs and average costs. While Mr. Sterzinger's definition of the theory is correct, he has applied that theory incorrectly to the PSNH data. That data was designed to depict the relationship of PSNH's average revenue requirement (to be determined by this Commission) over time with certain marginal costs also over time. This should be distinguished from the usual theoretical relationship of average cost and marginal cost which compares those costs over the quantity of output. Since PSNH will be incorporating the costs of a significantly "lumpy" capital addition (i.e., Seabrook), its curves, which compare the costs over time rather than quantity of output, are not inconsistent with economic theory.

Mr. Sterzinger also argued that the marginal cost theory employed is deficient in that it fails to adequately recognize fixed costs in its estimate of marginal capacity costs. We believe that Mr. Sterzinger's testimony raises important questions that should continue to be a part of the dialogue as we move further into marginal cost pricing methodologies. However, given the

limited scope of our decision here as it pertains to implementation of lifeline rates, we do not believe it is necessary to resolve this issue in this Order. We will certainly be mindful of the alternative methodologies of calculating marginal capacity costs in future dockets.

The acceptance of PSNH's cost projections for the purposes of this docket does not mean that we will automatically accept its proposal to implement immediately a system-wide targeted lifeline program. The evidence clearly indicates that PSNH's proposal is addressed to the cost situation which will exist when Seabrook becomes operational. The time period before the Seabrook operational dates is one that can appropriately be used for developing further data and planning. In addition, we have concerns about the targeted lifeline program as proposed by PSNH. Thus, we will articulate our concerns here and allow PSNH to develop a pilot targeted program which will address those concerns, develop data and aid us in planning a system-wide approach to be implemented at the appropriate time.

We are convinced that there are good reasons to consider seriously a targeted lifeline program. We believe that such a program can mitigate the hardship of electric utility rates for certain needy customers. We believe it is proper to state plainly that we will be engaging in a program of "social" ratemaking which may vary from traditional concepts in recognition of the proposed costs that will soon confront consumers. Having made this statement, the reason for our caution is clear. We are embarking in a new area and, since we are not confronted with a need for immediate action, we have a "grace" period to ensure that our decisions are properly rooted in theory, fact and law. Thus, our first and largest

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concern is that we act on the basis of data generated by experience. A pilot program will address that concern.

Our second concern is that we are troubled by the delegation of the function of identifying eligible recipients to CAP. Lest we be misunderstood, we will state outright that this concern has nothing to do with the quality of CAP programs or CAP participation in our proceedings, both of which are exemplary. Rather, our concern is that the identification function appears to be one which is best performed by a government agency instead of a private organization. We will therefore direct PSNH to contact the appropriate government agencies, such as the Division of Human Resources, to attempt to enlist their aid in the development and administration of the pilot program. If, after such contacts, the Company still believes that CAP can best perform the identification function, PSNH should be prepared to address our concern in the presentation of its program.

Accordingly, we will deny PSNH's request for a system-wide exemption from our current lifeline standards at this time. PSNH has leave to develop a pilot program. After that pilot program is formally presented to us, we will allow it to be implemented if our concerns are adequately addressed.

C. Special Industrial Contract Policy

[10] As a part of the settlement agreement presented in Exhibit 23, all parties, with the exception of CRR, recommended the adoption of a Special Industrial Contract Policy ("SICP"). As described in Article VII of the settlement (Exhibit 23), SICP will involve special contracts

between PSNH and certain customers which will provide for rates which will be below the otherwise applicable tariff rates. Only those customers with new or expanded loads of 300 KW or above will be eligible for SICP and no special contract may have a term in excess of ten years. The pricing provisions of such a special contract will establish a rate which, over the life of the contract, falls between the Company's marginal cost at the low end and the Company's approved tariff rate (based on average total cost) at the high end in present value terms. Each contract will be submitted to the Commission for approval.

In support of SICP, PSNH presented the testimony of Mr. Rodier, Mr. Ambrose and Mr. Brown (Exhibit 29). The BIA also favored the adoption of SICP and presented the testimony of Mr. King in support of its position.

The PSNH witnesses stressed the benefits of the SICP policy to the Company and its ratepayers. The benefits will occur because the policy will allow the Company to increase sales to incremental customers at a price which will lower the costs for the remaining customers. The cause of this benefit can be traced to the cost of service for the Company once Seabrook becomes operational. As noted above, the Company's average total costs, which form the basis of its rates, will exceed its marginal costs. This is because the average total costs include recovery for fixed capital costs while the marginal costs are those costs which vary by output. To the extent that an incremental customer pays a price that is above marginal cost, he is sharing the fixed costs with the Company's non-incremental customers, thus reducing the responsibility of the non-incremental customer to pay those fixed costs.

BIA witness King stressed that approval of SICP will produce benefits to the New Hampshire economy by encouraging business to either locate or expand in the State and by mitigating the upcoming

Seabrook effect on rates by spreading the fixed costs over a greater number of KWH sales.

CRR objected to SICP for three reasons. First, CRR argued that the record does not establish that SICP is necessary to bring new or expanded industry into New Hampshire or to ameliorate rate shock. Second, consideration of this issue should be coordinated with a variety of approaches to address rate shock. In this context, CRR notes that it is not necessary to approve SICP now if it is meant to address problems which will not be felt until Seabrook becomes operational. Third, CRR argued that SICP can unfairly influence competition by giving one competitor the advantage of lower electric rates. Established New Hampshire businesses will pay higher rates while new businesses are given advantages.

We share many of CRR's concerns. However, we are convinced that the record supports the approval of the overall policy. We believe that our concerns can be addressed when we review the individual contract filings. In that context, we can ensure that the new SICP load is truly incremental. If we relax that standard, we risk allowing non-incremental customers to benefit, causing revenue erosion and adverse effects for all PSNH ratepayers. We can also monitor the terms of special contracts to ensure that all benefits can be attributed to a mitigation of Seabrook costs rather than to pre-Seabrook costs. Finally, we will be able to examine the effect of each contract on competition. The BIA's position is sufficient to allow us to approve a general policy

now since, to a large extent, it speaks for the established New Hampshire business community. However, there may be individual instances of unfairness. Thus, we will require that notices of individual SICP applications be served on all competitors in PSNH's service territory. Any competitor protests will be seriously considered by the Commission.

The Commission has one additional concern. We would be more comfortable if the eligibility threshold was higher so that we only had to consider the application of the SICP to more significant incremental loads. Since the parties agreed to a 300 KW threshold and the record accordingly supports that threshold, we will not disturb the 300 KW requirement. However, we hereby provide notice that we will scrutinize closely any contract for incremental load which falls between 300 KW and 400 KW and will not approve such contracts unless we are satisfied, under a strict application of the policy, that the load will be incremental and beneficial to all ratepayers.

Accordingly, the recommendations of the parties, as contained in Article VII of the settlement agreement (Exhibit 23), are accepted and adopted by the Commission.

D. Rate Shock

As noted in our previous discussion, the Staff, the Consumer Advocate and CRR recommended that the Commission engage in a coordinated approach to the issue of "rate shock." We believe that the record supports such Staff and Intervenor arguments. It is appropriate to utilize the time remaining before Seabrook Unit I becomes operational to plan coordinated methods to mitigate the economic effect on ratepayers of including the costs of that Unit in PSNH's revenue requirement.

We note, however, that an undertaking of this magnitude requires planning on the part of the Commission and the Staff. Since Docket No. DE 83-152 (Impact of Rate Shock Due to Inclusion of Seabrook in Rate Base) has been opened, we have been amassing information about how

other regulatory authorities have addressed this issue. In addition, we have been reviewing the literature and examining solicitations from various consulting groups. We believe that the time to issue an Order of Notice is near. However, we do not believe that it will be useful to set a procedural schedule until the new Seabrook cost and completion estimates are released. At that time, the Commission will have better information to assess the full magnitude of the problem.

Accordingly, we decline to issue an Order of Notice in conjunction with this docket. Such an Order will be issued for DE 83-152 in the near future.

Our Order will issue accordingly.

DISSENTING OPINION OF COMMISSIONER AESCHLIMAN

I. Revenue Requirement Issues

Public Service Company should be granted a rate increase of $5,240,686 less than that provided for in the majority opinion.

A thorough review of the evidence in this proceeding and consideration of this Commission's previous decisions supports this decision as set forth below.

A. Rate of Return

During the course of this proceeding (Trans. Vol. 9, p. 14-16, and Exhibit 38) the Company was placed on notice that it needed to show why the Commission should not find the management of the Company deficient in its planning relative to the Seabrook project and in adequately informing the Commission relative to the Seabrook project. The Company's response and the record of this proceeding has demonstrated that the Company's management has been seriously deficient in these respects.

The record is compelling in supporting the conclusion that PSNH has not developed adequate information to properly assess the economic and financial risks of the Seabrook project as they relate to both the Company and the ratepayers. The Company has continually refused to evaluate the project, particularly Seabrook Unit II, using assumptions the Commission judges to be realistic or possible. Furthermore, the Company has not developed information about the Seabrook project's cost and schedule which it had led the Commission to believe it would develop and which is clearly necessary for responsible decision-making. Finally, the Company has not undertaken contingency planning which sound business practice would dictate given the extremely high risk exposure of the Company. The appropriate response in this situation is to award the Company a lower return on equity than the Commission would otherwise allow.

Public Service Company Has Not Analyzed the Seabrook Project Using Realistic Assumptions Nor Has It Adequately Assessed the Downside Risks

In its Report and Order in Docket DE 81-312 (68 NH PUC 257) the Commission made the following major findings based upon thirty-six days of evidentiary hearings, testimony and evidence presented by twenty-five direct witnesses, twelve rebuttal witnesses and the consideration of 150 exhibits.

1. The Commission concludes that Seabrook I is likely to become operational around March of 1986, although we recognize anytime within 1986 as a possibility. Seabrook II is not going to be operational until at least 1990. (68 NH PUC at p. 280.)

2. The combined result of this

schedule change results in a cost estimate of at least $8 billion for the entire project. If the first unit drifts until the latter part of 1986, the Commission cannot rule out costs in excess of $9 billion. (Id., 68 NH PUC at p. 280.)

3. Given the Commission findings relative to Seabrook cost and schedule, demand growth, conservation and small power production, the Commission believes that Seabrook II is not needed in the time period to the year 2000.

4. The Commission believes that PSNH's planning emphasizes small future benefits (if any) against very substantial near term risks and negative economic impacts both for ratepayers and the New Hampshire economy. (Id., 68 NH PUC at p. 305.)

Based upon these findings as well as the other key findings summarized in Appendix I, the Commission concluded:

However, the Commission can and does find that PSNH needs to expand its planning analysis to capture what the Commission believes are the substantially greater downside risks of Seabrook and the greater potential of alternative supply options. The Commission believes that the models and analytical approach used by Mrs. Hadley and Mr. Staszowski are appropriate. However, the assumptions incorporated in the analyses do not cover all supply side options; and of greatest importance, the analyses do not assess the impacts of Seabrook cost above $7 billion. In particular, the Commission believes that PSNH needs to undertake the following analyses:

(1) sensitivity analysis should be done in incorporating (a) higher cost assumptions for Seabrook; (b) lower demand growth; (c) greater variance in fuel prices; (d) lower performance factors for Seabrook.

(2) the financial analysis should be performed using (a) the more pessimistic assumptions in (1) above; and (b) alternate supply scenarios incorporating more conservation and renewable resource development.

The Commission urges the Company to undertake this analysis and to reevaluate Seabrook II in light of this analysis. (Id., 68 NH PUC at p. 307.)

These findings clearly put PSNH on notice that the Commission found its planning practices to be inadequate. However, despite these findings and the urging of the Commission both in this decision and by letter of September 9, 1983 (Exhibit 38), PSNH has continued to assert that its planning is adequate and does not need to be expanded at the present time. (Exhibits 22 and 35).

Since the Commission findings in Docket DE 81-312 were made PSNH has voted along with its other partners to reduce construction activity on Unit II to its lowest possible level until such time as fuel is loaded for Unit I unless Unit II is cancelled prior to that time. The reasons stated for this decision were the need to reduce the financing requirements and the need to concentrate efforts on Unit I. If PSNH had made this decision in recognition of the concerns articulated by the Commission and as part of a reevaluation of Unit II, the decision would have been responsive to the Commission's concerns. However, to the contrary, the Company has steadfastly maintained that its previous evaluation continues to be

correct, that there is no need to consider cancellation of Unit II and that it only voted for the delay because it was forced into it by its partners. In fact, even after the delay vote which the Company admits will substantially increase the cost of Unit II, the Company maintained that there was no need to expand its analysis as presented in DE 81-312. — "... we believe the range of sensitivity studies presented in our testimony in DE 81-312 is adequate for proper consideration at this time." (Exhibit 22, p.3)

PSNH has been deficient in developing cost and schedule information for Seabrook Station

At the present time Public Service Company has no valid cost and schedule estimate for Seabrook Station. For official purposes PSNH has retained its cost and schedule estimate of December 1982 which sets the total project cost at $5.24 billion and sets the on line dates for Seabrook Units I and II at December 1984 and July 1987 respectively. For financial planning purposes PSNH estimates a $5.8 billion cost and on line dates of July 1985 and February 1988.

By PSNH's own admission the official estimate does not reflect significant schedule delays for Unit I, and neither estimate reflects the delay of Unit II voted by the Joint Owners on September 8, 1983.

The lack of information about the Seabrook cost and schedule is especially troublesome in light of earlier representations by the Company. Following the $5.12 billion cost estimate in November 1982, revised to $5.24 billion by December 1982, the Commission was assured that the Company would have a "living" cost estimate that would be revised monthly and would prevent future "surprises" in cost increases. Mr. Bayless told the Commission on December 23, 1982 that:

Every single month we are going to want new estimates from UE&C. We don't want an update of an old estimate, we want a completely new cost estimate and scheduled estimate monthly. (DF 82-306, combined in Tr. with DF 82-331 at p. 59; Dissenting Opinion of Commissioner Aeschliman, 68 NH PUC 668, 671.)

All of the areas at the plant were to be reviewed with respect to cost and schedule every three months on a rotating basis.

So every three months, I want to emphasize, it is not just how are we doing with respect to the old estimate it is looking ahead for schedule, cost and new things they found. ... (DF 82-306, combined in Tr. with DF 82-331 at p. 62; Dissenting Opinion of Commissioner Aeschliman, 68 NH PUC 668, 671.)

And, Mr. Bayles assured the Commission that it would be advised of these changes. (Id. at p. 63)

In March the Commission was also assured by Dr. Ebner, the United Engineers and Constructors' Seabrook Project Manager, that the new UE&C tracking system would identify potential changes. (DE 81-312, trans. Vol 25 p. 38.) Dr. Ebner explained to the Commission at length how the new system was vastly superior to the old "early warning system" which he admitted had not worked. Id. p. 37.

In April the Commission first learned that Management Analysis Company estimated that Unit I would not be operational until December 1985 at the earliest. Subsequently, PSNH presented two sets of estimates at its June financing hearings, the offical December 1982 $5.2 billion estimate with Seabrook I operational December 1984 and a new financial

planning estimate which split the difference between UE&C's on-line date and the consultant's date. (DF 83-172, June 9, 1983 Tr. at 31.) This $5.8 billion estimate put Unit I operational in July 1985. The Commission was assured that following the summer construction season more would be known particularly about the progress on piping and that no decisions needed to be made until fall.

On September 8, the Joint Owners voted to delay Unit II, reducing work to its lowest possible level. In the financing hearing on September 27, 1983, the Commission was told that information on the cost and schedule of Unit II would be ready by the end of October. (DF 83-254, Tr. at 8-9) At the November 9th hearing, this information was not available and PSNH

indicated that it probably will not be available until January 1984. Now we are informed that the new cost and schedule estimates will be ready by March 1st.[1](26)

In evaluating the performance of PSNH's management in this respect it is important to consider two other factors: (1) the contract provisions with UE&C relating to cost estimates; and (2) the development of financial planning estimates.

As noted in the Commission findings in docket DE 81-312, PSNH has the ability to obtain cost estimates every six months under the contract with UE&C. The evidence in that proceeding also clearly indicated that it is PSNH that decides when a new cost estimate is required (68 NH PUC 429, 430.)

However, even setting aside the contract consideration, PSNH could have developed better financial planning estimates. For the first time the Company did present the Commission with a financial planning estimate in June of 1983. While this was a step in the right direction, the Company could have done a better job in developing a financial planning estimate. As was noted above, the Company merely split the difference between its contractor's estimate and its consultant's estimate. For comparison, in the spring of 1983 New England Electric Systems had adopted a financial planning estimate of $6.9 billion. (DE 81-312, Transcript Volume 34, page 127.) In addition, PSNH could have updated its financial planning estimate to reflect subsequent events, especially the delay of Seabrook II, and it has not.

It is common practice with other utilities to develop financial planning estimates. The Commission in its July 1982 decision in DF 82-141, pointed out that two of PSNH's own Seabrook partners had developed their own estimates for financial planning purposes. ([1982] 67 NH PUC 490, 505, 506, 47 PUR4th 167, 180, 182.) It seems legitimate to ask why PSNH's partners can develop more accurate planning estimates than the project's lead owner.[2](27) The Nuclear Regulatory Commission also develops its own schedule estimates for planning purposes. (Id., 67 NH PUC at p. 506, 47 PUR4th at p. 181.)

Successful planning is not conducted in a vacuum and the Company's decision making is severely limited if it has not developed the necessary information.

PSNH has been deficient in developing adequate contingency plans.

Sound business planning clearly involves preparation for adverse

contingencies. The need for contingency planning in PSNH's case is particularly apparent because of the riskiness of the Company's financial situation and the uncertainties incumbent with the Seabrook project. Events since the time of the decision in DE 81-312 — particularly the delay decision, the work schedule slippage and the negative developments in the financial markets — have all increased the need for contingency planning. Under the circumstances PSNH should be planning courses of action for the possibility of such events as (1) cancellation of Unit II; (2) inability to finance; (3) delays in licensing; (4) lawsuits by one or more Seabrook partners; or (5) the inability by a partner to meet contractual payments.

In its response of September 30 the Company stated that it "does not now intend to, nor can it realistically, proceed with the development of contingency plans on the bases which have been

suggested." (Exhibit 22, p. 4) The Company cites manpower constraints, public availability and disclosure requirements as reasons for this position. While there are indeed problems to be overcome in developing contingency plans, this does not mean that the Company is therefore excused from doing necessary planning. To date the Company has devoted its efforts to denying the possibility that any of these events will occur. However, the Commission cannot reasonably find any comfort in this posture. Unfortunately, it was less than two years ago that PSNH witnesses were asserting in testimony before the Commission that they had a confidence level as to the accuracy of the completion dates of 90% for Unit I and 95% for Unit II. (67 NH PUC at p. 507, 47 PUR4th at p. 182.) The completion dates at that time were February 1984 and May 1986 respectively for Units I and II.

The Commission should find in this case that the management of Public Service Company is deficient for failing to undertake adequate planning.

It is PSNH's contention (Exhibit 35 and Brief p. 86) that since the Commission has not ordered the Company to undertake specific planning studies that the Commission can not find the management of the Company deficient. It was made clear to the Company (Exhibit 38) that the issue is not a question of whether the Company has complied with a Commission order. The issue is whether the Company's strategic planning is adequate. Whether or not the Commission orders the Company to undertake certain analyses is irrelevant to determining whether the Company's planning practices are inadequate. The management of the Company can hardly escape its responsibility to perform a basic management function because the Commission has not ordered them to do it. The management of the Company is clearly responsible for undertaking adequate planning even in the absence of any Commission findings or directives. When it continues to be remiss in undertaking adequate planning after extensive findings by the Commission, the degree of management deficiency increases. A Commission order would only have added a further deficiency — that of ignoring a Commission order.

PSNH's position is entirely unpersuasive when viewed in light of their continuing assertions of management perogatives. The Company can hardly have it both ways. Yet it attempts to do so by arguing first that the Commission has no authority to order the Company to undertake planning studies because this is solely a management function; then contending that the Company is not

negligent in its planning because the Commission has not ordered them to do it. Planning is clearly a management function for which the Company is responsible.

However, PSNH's protestations to the contrary, planning is obviously a management function which the Commission in its regulatory role must review as it reviews other Company practices. As PSNH's own witness Ambrose[3(28)] testified, the Commission must be involved in the planning process because of the magnitude of the consequences.

Question (Commissioner Aeschliman):

Do you think it is proper for the Commission to be looking at their planning and encouraging them to be asking questions and doing analysis that you think is proper?

Answer (Ambrose):

I have to answer yes. In the day when new plant was relatively inexpensive, I think Commissions could kind of let things go on as they did, but I think you find more and more Commissions are getting themselves involved with the whole planning aspect. Because frankly, several have been astonished when large plants came into rate base and the fact that at that point there is not very much they can do. ...Now, we are not dealing with trivial dollars anymore ... we are dealing with very large sums of money. (Trans. Vol. 11, p. 28, 29.)

Planning by its nature is future oriented. Neither the Company nor the Commission can prepare themselves to respond to the issues or events that may arise from the uncertainties and risks attendant to the Seabrook project without adequate planning. The consequences for PSNH ratepayers, stockholders and management are too enormous to ignore until "surprises" occur. Ignoring problems or refusing to acknowledge the possibility of adverse events is simply not responsible.

The Commission must consider management deficiency in setting just and reasonable rates.

The Commission is required to consider the performance of management in the carrying out of its corporate functions in order to set just and reasonable rates. RSA 378:7 relative to the fixing of rates by the Commission states:

Whenever the Commission shall be of the opinion ... that the regulations or practices of such public utility affecting such rates are unjust or unreasonable ... the Commission shall determine the just and reasonable or lawful rates. ...

Planning is clearly a practice of a public utility which affects rates.

The record in this proceeding conclusively demonstrates that the Seabrook project has affected the rates proposed to be collected by Public Service Company in this proceeding.[4](29) The existence of a Seabrook related revenue impact establishes the Commission's authority to evaluate management's conduct relative to Seabrook and to determine whether just and reasonable rates pursuant to RSA 378:7 should include all or part of the Seabrook costs requested in this proceeding. Upon a finding that management conduct is or has been imprudent, the Commission may disallow recovery of all

or part of the costs included in the Company's "above the line" revenue requirement.

The appropriate Commission response in this case is a reduction in the allowed rate of return on common equity.

Having concluded that we must evaluate a utility's management and that PSNH's management has not been efficient in that it has not taken steps to ensure rational decisionmaking, it remains to determine an appropriate Commission response. In this regard, Mr. Ambrose was very helpful in defining the alternative actions regulators may pursue to require management to minimize costs. Those alternatives include disallowance of imprudent expenses, management audits for the purpose of making structural improvements and imposing rate of return penalties for inefficient management. (Transcript, Vol. 11, pp. 24-25)

In the present situation, where management inefficiency has not only adversely affected all present Company operations, but has also clouded the utility's future ability to provide service at just and reasonable rates, the disallowance of an expense is an inadequate and inappropriate response. A management audit has the potential of bringing about positive structural changes, but such an approach has been tried in the past and it did not enable management to avoid the current situation. Re Public Service Co. of New Hampshire (1977) 62 NH PUC 137. The method of addressing managerial inefficiency which is most soundly rooted in proper regulatory principles and is most appropriate to the instant situation is a reduction in the allowed rate of return on common equity.

The discussion of RSA 378:7 clearly establishes the Commission's statutory authority to evaluate management conduct. There can also be no question that the Commission has the constitutional authority to evaluate management efficiency when it sets an allowed return. The constitutional authority was clearly articulated by the United States Supreme Court in Bluefield Water Works & Improv. Co. v West Virginia Pub. Service Commission, 262 US 679, 683, PUR1923D 11 21, 67 L Ed 1176, 43 S Ct 675, when it stated:

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. (Emphasis supplied.)

The significance of the Court's "efficient and economic management" language cannot be overemphasized. As stated in Priest:

The Bluefield decision refers to adequacy of return "under efficient and economic management" and managerial efficiency plainly is expected. Priest, Principles of Public Utility Regulation at 206 (Footnotes omitted).

The same principle is a part of New Hampshire law. In New England Teleph. & Teleg. Co. v New Hampshire (1962) 104 NH 229, 44 PUR3d 498, 183 A2d 237, the Court approved an adjustment of two tenths of one percent in excess of capital costs as a proper reward for management's ability to ensure high standards of service. Although that case addressed the issue of an incentive rather than a penalty, the rationale is the same: management efficiency is a factor to be considered is setting an appropriate rate of

return. See also, Providence Gas Co. v Burman (1977) 119 RI 178, 22 PUR4th 103, 113, 376 A2d 687; Re New England Teleph. & Teleg. Co. (1949) 115 Vt 494, 79 PUR NS 508, 525, 66 A2d 135.

The propriety of reducing return on equity for management inefficiency is reinforced by an examination of the decisions of other commissions. The use of this tool by our sister Regulatory Authorities is not uncommon. See e.g., Re Kansas City Power & Light Co. (Mo 1983) 55 PUR4th 468, 504; Re Otter Tail Power Co. (ND 1983) 53 PUR4th 296, 309, 310; Re Southern California Edison Co. (Cal 1982) 50 PUR4th 317, 374-376; Re Carolina Power & Light Co. (NC 1982) 49 PUR4th 188, 248. See also, cases listed at PUR DIG 3d Series, Return, § 36. In fact, it

is tool which has been historically applied by this Commission. See e.g. New England Teleph. & Teleg. Co. v New Hampshire (1962) 104 NH 229, 44 PUR3d 498, 183 A2d 237; Re Granite State Electric Co. (1982) 67 NH PUC 117.

It can therefore be concluded that sound regulatory principles support a reduction of the equity component of return when management inefficiency is found. It remains to determine the extent of the reduction. Obviously, the Commission should not set a rate which is so low that it is confiscatory. In this instance, the Commission should exercise its discretion to set the equity return at the low end of the range of reasonableness, rather than at the mid-point. This approach was adopted by the Rhode Island Commission in Re South County Gas Co. (RI 1983) 53 PUR4th 525, 536, 537, and it is appropriate to this docket. Utilization of this approach ensures that management is given a correct signal consistent with constitutional constraints.

A rate of return on equity of 14.54% is appropriate for this case, and the revenue requirement should be reduced by $4,709,743

In this case PSNH should be awarded the lowest rate of return on equity that is supported by the expert testimony in the record. That rate is 14.54%.

As set forth in Exhibit 18, Dr. Voll has testified to a reasonable range for the cost of common equity of 15.37% to 16.82% including a quarterly dividend adjustment factor. Excluding this quarterly dividend adjustment factor, Dr. Voll's testimony supports a range of 14.54% to 15.89%. (Exhibit 18) During cross-examination Dr. Voll indicated that the dividend adjustment is not an adjustment that is commonly used in discounted cash flow (DCF) analysis. (Trans. Vol. 8, p. 113) The dividend adjustment should not be allowed in this case.

The Commission should have initiated a formal investigation regarding the Seabrook cost and schedule estimates and PSNH's planning relative to Seabrook in September.

When it became clear that PSNH did not intend to undertake the planning analyses outlined in the DE 81-312 (68 NH PUC 429) decision, that PSNH did not intend to reconsider cancellation of Unit II and that PSNH had not developed updated cost and schedule estimates for Seabrook, the Commission should have opened a formal inquiry into these matters. Unless PSNH showed cause why it should not be obliged to undertake these analyses and to provide the Commission with the information, the Commission should have ordered the Company to do it. This Commissioner has continually pressed the other Commissioners to support this action since August.

The other Commissioners did agree in November that the ``data maintained by PSNH is not adequate to keep the

Commission apprised of the construction costs and schedules of the Seabrook project. ..." ([1983] 68 NH PUC 668, 669) and did agree to open a separate docket to address this concern. (Id., 68 NH PUC at p. 670.) However, to date the Commission has addressed only the form in which PSNH is to present information to the Commission and has not addressed the substantive inadequacy nor has any order of notice been issued in this docket. The Commission's response to this situation is seriously inadequate.

Upon proper notice and hearing the Commission can require PSNH to undertake planning studies and to develop information which it deems necessary for sound decision-making.

The Commission's authority to require PSNH to provide the information which it has requested in DE 81-312 ([1983] 68 NH PUC 257) and by letter of September 9, 1983 (Exhibit 38) is very clear. Three statutes give the Commission authority:

RSA 365:5. Independent Inquiry The Commission of its own motion ... may investigate or make inquiry in a manner to be determined by it ... as to any act or thing done, or omitted to be done or proposed by any public utility ... emphasis added.

RSA 365:15 Specific Answers The Commission may also require any public utility to make specific answers to questions upon which the Commission may need information.

RSA 365:19 Independent Investigation In any case in which the Commission may hold a hearing it may, before or after such hearing, make such independent investigation as in its judgment the public good may require.

In fact, the Supreme Court cited these statutes and the Commission's authority in this regard in its December 1982 opinion. In that decision the Court stated:

Nor should we be misunderstood to suggest that, prior to any request by PSNH to include Seabrook construction costs in the rate base, the PUC is precluded from fully exercising its statutory authority consistent with this opinion. For instance, in a properly noticed manner, the PUC has full authority to commence an inquiry under RSA 365:5, to require PSNH to provide information under RSA 365:15, to make investigation and disclosure under RSA 365:19, and ultimately within constitutional restraints to reach whatever result the record of such proceedings discloses and supports. (Emphasis added.) (Re Public Service Co. of New Hampshire [1982] 122 NH 1062, 1076, 1077, 51 PUR4th 298, 306, 307, 454 A2d 435.)

The Commission has failed to exercise its statutory authority referred to by the Court.

B. Operating Expenses

Payments for consultant services to ASIST in the amount of $127,325 should not be included in cost of service.

The services provided by ASIST, a consultant, were for the purpose of designing a maintenance management system for the Company's Merrimack, Schiller and Newington stations. (Trans. Vol. 4, p. 36) In order to be included as an expense in cost of service for the test year the Company must demonstrate that these particular expenses are recurring. The

Company has failed to meet its burden of proof in this instance.

Furthermore, the Commission has already provided the Company with an efficiency incentive in the Energy Cost Recovery Mechanism (ECRM), through the Estimated Net Unscheduled Outage Adjustment. As Staff has pointed out, the Company witness was not aware of this mechanism when he testified that recovery of ASIST expenses was a necessary incentive. (Trans. Vol. 4, pp. 36, 120-121.) To the extent that the maintenance management system

improves the efficiency of PSNH's plants, compensation for the Company is already provided and further compensation in cost of service would result in a double recovery.

PSNH's voluntary contribution and membership payments are unreasonable given the Company's financial situation. $506,259 should be disallowed as a ratepayer expense.

During the test year PSNH lists $1,701,378 in voluntary contributions which it proposes to charge to ratepayers. (Exhibit 4, Vol. II, Tab 18, Request 11.) The largest item is $1,597,081 to the Edison Electric Institute, which includes over $1 million in support for the Electric Power Research Institute (EPRI). While the quality of research undertaken by EPRI is not a question of dispute, the reasonableness of the Company's decision to resume full support payments in 1982 is questioned.

PSNH suspended its support of EPRI in 1979 because of severe financial constraints. No payments were made in 1980 or 1981 for the same reason. (Trans. Vol. 6, p. 87) However, in 1982 PSNH decided to resume full payments to EPRI. The Company's testimony indicates that this decision was made because of Federal cutbacks in energy research financing and because of a change in EPRI policy requiring full payment in order to receive benefits. (Trans. Vol. 6, p. 87, Exhibit 3, Tab 5, p. 2).

A review of the responses of the Company indicates that a decision to resume EPRI support was made in June 1982 (Data Request 10, Attachment B). Although the Company's Board of Directors authorized support for EPRI, the actual level of support was left to PSNH management to determine (Id.) The letter from EPRI indicating a change in payment policy is, however, dated September 24, 1982 and indicates that utilities paying less than full dues in 1982 would have three years to reach full dues payment. (Witness Brown, Attachment 1 Supplemental, pp. 1 and 3.) In light of this evidence PSNH could have retained its membership without resuming full dues payment. Under the circumstances the management's decision to resume full dues payment in 1982 is not reasonable.[5(30)] Since some allowance for research and development is reasonable, inclusion of half of the test year expense, $506,259, should be allowed.

A tax liability associated with the gain on the sale of Millstone III should not be included as a ratepayer expense. The tax liability has not actually been paid by the Company.

The staff witness recommended that the taxes included in the pro forma cost of service due to the gain in the sale of Millstone be disallowed because the cost is non-recurring and not a transaction which is accounted for as part of utility operations. Furthermore, since the Company had a negative taxable income for the year 1982 in which the sale took place,

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the Company never actually incurred any taxes as a result of the sale.

The Staff position that PSNH should be denied the opportunity to amortize this expense due to the historic treatment of Millstone expenses as being "below-the-line" is also correct. Belowthe-line treatment delays direct Commission review of management decisionmaking until the project is complete and ratepayer compensation is requested. In this instance, the sale of the asset has removed the need for the Commission to review this expense. Staff takes the correct position in maintaining that PSNH's decisions have already been evaluated by the appropriate

regulator: the market for electric generating facilities.

II. Rate Structure Issues — Rate Shock

PSNH's lifeline proposal and the BIA's Special Industrial Contract Policy (SICP) are methods for addressing the upcoming Seabrook "rate shock". This docket is not the place to address selected proposals by the parties to deal with rate shock.

Lifeline

PSNH has not met its burden of proof in justifying a waiver or exemption from the Commission's standards for lifeline rates.

PSNH is attempting in this proceeding to reverse the Commission's previous lifeline orders through a request for a waiver or exemption. On April 20, 1983 the Commission issued Report and Seventeenth Supplemental Order No. 16,365 establishing standards for electric utility lifeline rates. PSNH filed a Motion for Rehearing which was denied in Report and Eighteenth Supplemental Order No. 16,460 on June 3, 1983 (68 NH PUC 389). In denying PSNH's motion the Commission recognized PSNH's right to request a waiver if the Company could demonstrate that particular factors applicable to PSNH justified an exemption. However, the Commission made it clear that the issue in such a waiver proceeding would not be the propriety of the lifeline standards adopted by the Commission.

In this case PSNH is relying on the cost effect of Seabrook as its grounds for uniqueness. (Trans., Vol. 9, p. 124) However, the rate shock from Seabrook will not come about until Seabrook I is placed in rate base, an event which may be nearly three years away. It is clearly premature to structure rates today on a situation which will exist in the future.

In justifying an exemption from the current lifeline standard, PSNH relies upon a relationship between marginal costs and average costs where marginal costs are significantly below average system costs. (Exhibit 24, Rodier, p. 6; Ambrose, p. 22; Brown, pp. 2, 3, and Attachments.) However, as the PSNH witnesses admitted, this situation does not exist now. At present the Company's marginal costs and average costs are relatively equal. (Trans. Vol. 10, pp. 8, 10.) Thus, a change in rate structure now is not justified and may in fact send improper price signals to consumers.

In the course of these proceedings, PSNH proposed to replace the present lifeline rate structure with a targeted program directed at those customers who fall within the defined criteria of need. See generally Exh. 24. This targeted program is not yet developed to the stage where it can be implemented. PSNH's plan calls for payments to the Community Action Programs for their services in certifying qualified customers. The appropriateness of this arrangement bears further examination by the Commission.

Clearly, PSNH has two objectives in desiring to replace the present lifeline rate structure with a targeted structure.

The first objective is to provide greater assistance to the most needy customers to offset the effects of the Seabrook rate shock. This is indeed a legitimate concern, particularly in view of the

potential size of the Seabrook rate shock.

PSNH's second objective is to eliminate the conservation effect in the present lifeline rate structure so that the Company will not experience revenue erosion. It is PSNH's position that increased sales will benefit all ratepayers due to the effect of including fixed Seabrook costs in PSNH's revenue requirement. (Trans. Vol. 9, p. 119)

However, the conclusion that PSNH ratepayers will benefit by increased sales within the PSNH service area depends upon the assumption that PSNH's customers will be required to pay for all of the excess capacity costs of the Company. As the testimony indicates, the real problem is the huge excess capacity in the PSNH system when Seabrook I goes on line. PSNH's own witness Ambrose testified that the PSNH system will be far from optimality due to excess capacity. (Trans. Vol. 11, pp. 13, 28.)

Increasing sales within the PSNH service territory is only one way to deal with excess capacity. Furthermore, some strategies to increase sales may be in the Company's and customers best interests and some strategies may not be in their best interests in the long run. Policies which increase sales on peak, for instance, would be counter to the Company's long term goal of minimizing load growth and the need to build additional generating plants. A pricing policy which is aimed at increasing residential consumption may be particularly adverse to the long range goal of minimizing load growth. (Trans. Vol. 11, p. 30-32.)

The Commission should not be adopting policies to market Seabrook power which are inconsistent with the long term conservation goals which are recognized as beneficial by all parties. The Commission undertook its original lifeline investigation because the mandate of the Pub10lic Utility Regulatory Policies Act (PURPA) of 1978. One of the main goals of PURPA is conservation and the Commission's present lifeline tariff was specifically designed to further both the goals of affordability and conservation.

In conclusion, it is not in the public interest to waive the lifeline standards for PSNH at this time. The Commission should examine the proposal for a targeted lifeline rate along with other proposals and programs designed to deal with "rate shock".

Special Industrial Contract Policy

The Seabrook Project is damaging the business climate of the State.

This conclusion is clear from the testimony of Mr. King, the Business and Industry Association's expert witness. In Mr. King's words,

There may be a large number of reasons for a new industry or an existing industry to expand in New Hampshire ... but there is one reason for them not to do so, and that is the electric rate outlook ... As we all know, that electric rate level will be the result of the institution of the Seabrook nuclear units. But in addition to the electric rate level, there is the uncertainty as to the timing and the degree of the increases associated with the Seabrook units and that is probably as much damaging as the absolute level of rates five to ten years hence. Trans. Vol. 11, p. 90. This particular incipient increase is so

very damaging because it focuses right on New Hampshire and nobody else. Trans. Vol. 11, p. 133.

The BIA, with the support of PSNH, has proposed the Special Industrial Contract Policy as a means of dealing with the negative effect of Seabrook on the business climate.

However, cross-examination of Mr. King also clearly brought out the point that the negative effect on the business climate does not rest with the effect on the electric rates of businesses alone, but also with the negative effect of impending residential increases.

Q. Mr. Eckhaus: Would you expect those employees might not be so willing to move to New Hampshire because of the very high residential electric rates?

A. Mr. King: ... that is a disadvantage, a further disadvantage to the present rate outlook that I think would be in their spread of problems. (Trans. Vol. 11, p. 124.)

Q. Commissioner Aeschliman: But I think as a larger point don't they also look at cost of living for their employees so that they might expect the rate increases that the employees will experience to show up in increased wage demands?

A. Mr. King: Oh, yes. I mean that is part of the calculus of making the location decision. And Mr. Eckhaus was correct in pointing out that a negative effect of New Hampshire would be the impending residential increases. I don't, I just don't see how that negative effect would be avoidable except through what I hope will be or will evolve into a phased phase-in program. Trans. Vol. 11, p. 134.

Although Mr. King and the BIA feel that it is appropriate to deal with the direct impact on the employer now, it is clear that the residential and business rate shock effects can not be separated.

The Commission should not adopt SICP before considering other Seabrook rate shock options.

This Commissioner would have less difficulty adopting the SICP now, if it was clear that the bigger picture would be addressed. However, the danger is that particular policies such as the SICP will be held out as solutions to the overall problem, while in fact the over-all problem of rate shock is not addressed. Mr. King's testimony as to the the damaging effect of Seabrook on the State's business climate only serves to underscore the need to expedite an investigation of "rate shock" and means to alleviate it.

Implementation of SICP in a fair way will be very difficult.

The SICP is intended for new businesses that would not locate in New Hampshire without the special contract or businesses that would not expand here without it. How is the Commission to determine when this situation applies? Logic dictates that all new businesses locating here or expanding here that meet the load size criteria will apply for the special rate.

In addition, testimony indicates that it is possible that an existing New Hampshire Company will wind up paying a higher rate for electricity than would a new competitor who qualified for SICP. (Trans. Vol. 12, p. 70.)

As has been noted in relation to lifeline, existing New Hampshire ratepayers only benefit

from these new sales under the assumption that the costs of the

Seabrook excess capacity will be borne by ratepayers. Under the circumstances, it is unwise for the Commission to approve a single mechanism which serves to relieve the impact of rate shock on customers or loads which are not now served by the Company.

The problem of rate shock should not be dealt with on a piecemeal basis. Such an approach may result in policies which conflict with other policies that the Commission may wish to implement in the future. The Commission should be addressing the rate shock problem in a separate investigation and in a coordinated way.

A unified approach to dealing with rate shock is required.

Several of the parties in this case have recognized both during the proceeding and in their briefs the need to plan an approach to rate shock in a coordinated fashion. Staff, the Consumer Advocate and the Campaign for Ratepayers Rights all support a rate shock investigation by the Commission and stress the need to begin that planning now.

PSNH's own witness Ambrose also endorsed a coordinated approach to addressing rate shock.

Q. Can I infer from that, that when the Commission does evaluate these kinds of mechanisms that it should be concerned about whether or not they might conflict with other possible mechanisms?

A. I would certainly say so, yes. Somebody has to stand back and look at the forest and make sure we are all marching in the right direction. (Trans. Vol. 11, pp. 50-51.)

Development of a coordinated plan to deal with rate shock can only be accomplished if the Commission proceeds with examining various approaches and developing the appropriate data. This work should already have begun.

The ratepayers deserve to have an open investigation by the Commission, on the public record, of the potential rate shock of Seabrook and of the potential methods to lessen rate shock.

Based upon the information developed in the DE 81-312 proceeding, and particularly in view of the Staff's estimate that absent the adoption of rate moderation measures, rate shock would approach 70 - 80%[6(31)] (DE 81-312, Staff Brief, p. 66) the Commission determined that a further investigation of the rate shock issue was required. Docket DE 83-152 was opened for this purpose in April 1983. Since then no order of notice has been issued in that proceeding and the Commission has taken no action in that docket.

Despite the fact that the Commission has not pursued the rate shock investigation, Chairman McQuade has announced that PSNH will request a 49% rate increase when Seabrook I comes on line.

Chairman McQuade's rate shock estimate of 49% seriously understates the potential rate shock from Seabrook I.

The validity of Chairman McQuade's 49% estimate should be questioned for the following

reasons:

(1) The 49% estimate is not based upon an investigation of this Commission.

(2) The 49% estimate adopts an online date for Seabrook I of December 1985. This Commission has previously indicated that Unit I will not be completed before March of

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1986 and that anytime in 1986 is a possibility. (Appendix I, No. 1) A later completion date will result in a higher cost and greater rate shock.

(3) The 49% estimate is based upon PSNH assumptions which this Commission has previously rejected.[7](32)

(a) PSNH's capacity factor assumptions are too high. (Appendix I, No. 4) Using a lower capacity factor will increase the estimate of rate shock.

(b) PSNH's sales estimates are too high. (Appendix I, No. 9-11) A lower sales estimate will increase the revenue requirement and the estimate of rate shock.

(4) The 49% estimate is based upon PSNH's assumption that its cost of common equity will drop from 17% to 12% when Seabrook I comes on line. This is a new assumption which PSNH has adopted since the DE 81-312 proceeding. This assumption has not been analyzed by this Commission nor has PSNH supported this assumption with testimony or evidence. While an adjustment in the cost of common equity from 17% to 12% may appear to be a technical concern, the effect on the potential rate increase is dramatic. A 5% drop in the cost of equity reduces the revenue requirement (rate increase) by roughly $100 million.[8](33)

Seabrook is so large relative to PSNH's rate base that a cost containment plan can not solve the problem of rate shock.

PSNH's rate base in this proceeding is roughly $430 million. PSNH's investment in Seabrook I by the end of 1985 will amount to roughly $1.5 billion.[9](34) This is the equivalent of more than a 300% increase, and results in a quadrupling of rate base. Given the sheer magnitude of the Seabrook investment, it is clear that a cap agreement — however meritorious — can not hope to solve the problem of rate shock. The Commission can not reasonably rely on a cost containment agreement to protect consumers and must pursue other rate making options.

Ratemaking methodologies to lessen rate shock involve technically complex issues which require considerable time and expertise to properly evaluate.

There are a large number of rate making proposals before Commissions across the country which address the problem of rate shock. These methodologies involve the gradual implementation of rate increases and elimination from current rates of the effects of new generating capacity which is in excess of current needs. It is a very substantial task to review these various methodologies in terms of their merit and their feasibility in the Seabrook case.

Initially the Commission needs to direct its Staff to make an assessment of the work required to accomplish this analysis. This assessment would determine the time and resources required, including the possible need for consultant(s). If consultants are required, then the Commission must prepare requests for proposals, must solicit and review consultant

proposals, and must obtain approval from the Executive Council to hire the consultant(s). This whole process is obviously very time consuming. One need only recall that the supply and demand investigation required a year and a half to complete to realize that the Commission must begin its investigation of rate shock now. The worst thing the Commission can do is to ignore the potential size of the Seabrook rate shock and fail to make plans for dealing with it.

Appendix I

Major Commission Findings in Docket DE 81-312

1. The Commission concludes that Seabrook I is likely to become operational around March of 1986, although we recognize anytime within 1986 as a possibility. Seabrook II is not going to be operational until at least 1990. ([1983] 68 NH PUC 257, 280.)

2. The combined result of this schedule change results in a cost estimate of at least $8 billion for the entire project. If the first unit drifts until the latter part of 1986, the Commission cannot rule out costs in excess of $9 billion. (Id., 68 NH PUC at p. 280.)

3. It is likely that future financing problems will arise for a utility with one of the worse set of financial ratios in the industry. (Id., 68 NH PUC at p. 280.)

4. The Commission adopts the testimony of Staff as to capacity factors. For planning purposes a reasonable estimate for a mature capacity factor is 60%; a much lower estimate is appropriate for the first year of operation.

5. The Commission notes that one of the most disturbing pieces of information that came out of this docket was the fact that pursuant to the United Engineers contract, PSNH has a contractual right to have a revised cost estimate every six months. (Id., 68 NH PUC at p. 280.)

6. The question of PSNH's ability to finance a construction program of increasing magnitude has been raised in three dockets during the 1981-82 time period. We found as early as January of 1982 that PSNH was grossly underestimating the costs of the plant and was overly optimistic about completion dates. (Id., 68 NH PUC at p. 280.)

7. In pursuing its construction program without alteration despite three downgradings by rating agencies, PSNH has followed a course that is different from other utilities in the industry. (Id., 68 NH PUC at p. 280.)

8. PSNH's decision not to alter its construction program has been demonstrated to be directly contrary to action taken by other members of the electric utility industry. (Id., 68 NH PUC at p. 281.)

9. The Commission finds that the 1983 long term load forecast does not realistically reflect the price impact of Seabrook. (Id., 68 NH PUC at p. 284.)

10. The Commission finds 1.5% load growth over the next decade to be an acceptable planning measure with the caveat that considerable downside risk exists unless the price effects of Seabrook can be significantly lessened. (Id., 68 NH PUC at p. 286.)

11. The Commission believes that the single most important weakness in earlier forecasts

was the severe

underestimation of the effect of real price increases upon demand. The Commission believes that PSNH continues to underestimate the effect of real price increases. (Id., 68 NH PUC at p. 286.)

12. The Commission finds PSNH's position in regard to the potential for energy conservation to be contradictory. On the one hand PSNH rejects energy reduction programs and assumes that such programs will be detrimental, while on the other hand PSNH adopts the peak load growth goal of 1.5% and finds that it is achievable to reduce the natural load growth of 2.2% to 1.5% on average for the period 1982-2000. (Id., 68 NH PUC at p. 292.)

13. The Commission is concerned that PSNH's definition of conservation and its near term strategy of increasing sales are not consistent with the Company's long-term goal of curtailing load growth. (Id., 68 NH PUC at p. 293.)

14. The Commission believes that PSNH underestimates the development of small power production. The Company's analysis does not adequately capture the dramatic changes which have occurred due to the passage of PURPA and LEEPA, nor does it attempt to capture the effects of future sharp increases in PSNH prices. (Id., 68 NH PUC at p. 298.)

15. Given the Commission findings relative to Seabrook cost and schedule, demand growth, conservation and small power production, the Commission believes that Seabrook II is not needed in the time period to the year 2000.

16. The Commission believes that it is clear that secondary sales will not recover the full capital costs of Seabrook II that PSNH will be selling at a loss, and that other New England utilities will be purchasing Seabrook power for less than New Hampshire ratepayers will be paying. (Id., 68 NH PUC at p. 303.)

17. The Commission believes that PSNH emphasizes small future benefits (if any) against very substantial near term risks and negative economic impacts both for ratepayers and the New Hampshire economy. (Id., 68 NH PUC at p. 305.)

18. The Commission also believes that while PSNH emphasizes the longterm benefits of Seabrook, it fails to adequately consider the longterm risks of poor Seabrook performance. (Id., 68 NH PUC at p. 306.)

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire's Tariff No. 28 Electricity be, and hereby is, rejected; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire file revised tariff sheets to collect additional revenues of $24,740,249 in accordance with the rate design approved in the foregoing Report; and it is

FURTHER ORDERED, that the effect of this revenue change is to be applied to all bills

rendered on or after February 1, 1984; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire file a refund plan for the difference between permanent and bonded rates in accordance with the terms approved in the foregoing Report; and it is

FURTHER ORDERED, that the refund of the difference between permanent and bonded rates shall take place in the one-month period following the date the permanent rates are placed in effect; and it is

FURTHER ORDERED, that the refund of the difference between permanent and temporary rates shall be depicted as a separate line item on customer bills; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire has leave to file requests for step adjustments and other adjustments in accordance with the terms of the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 1984.

FOOTNOTES

[1]This amount is consistent with the Commission findings in Re Public Service Co. of New Hampshire (1980) 65 NH PUC 251, 269-271, wherein the Commission allowed the properties represented by this amount to be included in rate base as plant held for future use. None of the parties to this proceeding contest the inclusion of this amount.

[2]Corresponding adjustments will be made in expense calculations to reflect changes in depreciation basis and to ensure the Company full recovery for the expenses of the sale of the tax lease. Since the expenses of the sale are non-recurring, we will only allow the Company to amortize them over the 15-year life of the tax lease.

[3]See Section II above for a list of these adjustments.

[4]This reflects a conservative assumption that the first Seabrook Unit will not be operational until 1987. If Seabrook Unit 1 becomes operational earlier, the Line will be used to its full capability for a higher percentage of its useful life.

[5]The record indicates that at the time the settlement was filed, the Consumer Advocate did not accept the cost of equity stipulated by the other parties. The Consumer Advocate did not argue this point in his brief and, thus, we assume that he is now satisfied with the agreed upon rate of return. In any event, we have found that the stipulated rate is just, reasonable and supported by the record. To the extent that the Consumer Advocate's objection still stands, it is rejected.

[6]Because reviewability of costs is a prerequisite to inclusion of those costs in rates, we would be forced to deny recovery if the costs were nonreviewable. Contrary to PSNH's argument in brief, such denial of recovery would be consistent with constitutional limitations. This is because

the nonrecoverable costs could be capitalized and would thus be recoverable if and when construction is complete and plant costs are reflected in rates. Such deferred recovery, which is consistent with the methodology of capitalizing AFUDC historically employed by this Commission, cannot be deemed to be confiscatory.

[7]This discussion pertains only to the terms which were agreed to by all parties. Those terms which were reserved for litigation by one or more parties (i.e., Special Industrial Contract Policy and Lifeline Rates) will be the subject of separate discussion.

DISSENTING OPINION OF
COMMISSIONER AESCHLIMAN

[1]"Seabrook Project Overview", Management Analysis Company report to the Seabrook Joint Owners Group, December 29, 1983, p. PC-1.1.

[2]At the present time, Massachusetts Municipal Wholesale Electric Company is using December 1986 as the operational date for Unit 1 for its planning purpose.

[3]Bruce J. Ambrose, Vice President of National Economic Research Associates (NERA) in Los Angeles.

[4]This point is discussed at pp. 83-85, in the majority decision, and is incorporated here by reference.

[5]It is interesting to note that Central Maine Power, which is rated at investment grade, did not join EPRI in 1983 due to its financial difficulties. Re Central Maine Power Co. (Me 1983) 57 PUR4th 488.

[6]The 70-80% estimate assumed an on line date for Unit I of July 1985 and a project cost of $7 billion.

[7]Chairman McQuade declined to reconsider the Commission's findings in DE 81-312 when he joined with me in denying PSNH's motion for rehearing in June 1983.

[8]A 5% drop in the cost of common equity lowers the weighted equity portion in the cost of capital by about 2.5%. When this is multiplied by a $2 billion rate base, the effect is a $50 million reduction, which must then be doubled because of the tax effects.

[9]These are round numbers for illustration purposes. The $1.5 billion is likely to be understated because it is based on a December 1985 on line date for Seabrook I.

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NH.PUC*01/31/84*[61337]*69 NH PUC 110*New Hampshire Electric Cooperative, Inc.

[Go to End of 61337]

69 NH PUC 110

Re New Hampshire Electric Cooperative, Inc.

DC 83-376, Order No. 16,886

New Hampshire Public Utilities Commission

January 31, 1984

Order directing rural electric cooperative to extend service to an outlying customer and interpreting tariff provisions on the assessment of construction costs.

Service, § 198 — Extensions — Electric utilities — Rural cooperatives.

Because rural electric cooperatives have a special obligation to serve outlying districts, the commission concluded that, under its statutory obligation to ensure that utilities furnish service that is just and reasonable, it was reasonable to require a cooperative to construct a 6,600-foot line extension to serve a customer. [1] p.113.

Service, § 188 — Extensions — Burden of cost — Terms of assessment.

A road was found to be a public way, within the meaning of utility tariffs on assessment of line extension construction costs, where the local town had undertaken maintenance of the road. [2] p.114.

By the COMMISSION:

REPORT

On December 5, 1983, Mr. David Gazzola, a resident of Deerfield, New Hampshire requested by letter that the Commission intercede in a matter regarding his request for electric service.

On December 9, 1983 the Commission issued a notice of hearing on December 20, 1983 at 10:00 a.m. at the offices of the Commission. The notice was forwarded to Mr. David Gazzola, 11 Reservation Road, Deerfield, New Hampshire, and Mr. John Pillsbury, Manager, New Hampshire Electric Cooperative, Inc.

The hearing was held as scheduled. The Gazzola's were represented by Mr. Joseph Dubiansky, Esquire. The

Cooperative was represented by Mayland F. Morse, Jr., Esquire.

Mrs. Gazzola testified that her family resides on Reservation-Mountain Road approximately 6600 feet from the end of the Cooperative's existing distribution system. The Reservation-Mountain Road traverses state-owned land of the Pawtuckaway State Park. There are no other buildings or residences along the 6600 foot roadway in question. Mrs. Gazzola testified that they have owned the property in question for seven years and that their home has been served electricity by their own 10KW generator. Electric heat has been installed as a secondary heat source — the primary heat source is wood. The road is maintained to the gate of the Gazzola property by the Town of Nottingham, as attested to by letter of the Nottingham

Board of Selectmen dated December 12, 1983. The Gazzola's permanent residence is provided telephone service by the New England Telephone and Telegraph Company on lines which are attached to trees adjacent to the Reservation-Mountain Road.

Mrs. Gazzola testified that she and her husband have offered to pay the tariff construction surcharge of four cents ($0.04) per foot for a period of sixty (60) consecutive months in support of the proposed construction. She is willing to pay a twenty-five percent (25%) deposit in advance of construction, and the balance on a monthly basis over sixty (60) months.

Counsel for the Cooperative advised that the Company was not required to run the line to this customer since the extension would be over one mile in length, and the tariff limits extensions to one mile. He indicated that the cost of installing such a line approached $4.50 per foot and that annual maintenance charges were estimated at nearly $400 per mile. No other customer additions are possible on this length of Class VI road.

Mr. Pillsbury testified that the project should be refused on the strength of that portion of the tariff which allows him to refuse service for economic business reasons. He testified that the average cost of like projects is approximately $25,000 and that there are indications that ledge removal will be even more costly. He noted that the state park might require that the construction be placed underground. He noted that the total electric load is unknown and that, in fact, the Company has had little contact with the Gazzolas regarding the details of the rejected project.

Mr. Pillsbury offered to install the line under the provisions of a special contract which would assess to the customer the entire cost of construction and annual maintenance.

At the conclusion of the hearing Chairman McQuade advised the parties of his intent to conduct a viewing of the project. All parties accompanied him. A representative of New England Telephone Company was contacted and also attended the viewing. At the conclusion of the viewing the Gazzolas, the Cooperative, and the Telephone Company agreed to meet to discuss a possible agreement on the sharing of cost between the three parties.

On January 6, 1984 Counsel for the Gazzolas advised by letter that a meeting was held on January 4, 1984 at the offices of the Cooperative, and which was attended by John Pillsbury and Earl Hanson of the Coop., Al Mackey of New England Telephone, Mrs. Gazzola and Attorney Dubiansky. No agreement was reached as to the sharing of costs. The Commission was again requested to resume its involvement and issue an order in the matter.

Statutory Reference

Every public utility shall furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable (RSA 374:1 Service). The Public Utilities Commission shall have the general supervision of all public utilities and the plants owned, operated or controlled by the same so far as necessary to carry into effect the provisions of this title (RSA 374:3 Extent of Power). The Commission shall have power to investigate ... the methods employed by public utilities in ... transmitting ... electricity for light, heat, or power ... and after notice and hearing thereon shall have power to order all reasonable and just improvements and extensions in service or methods (RSA 374:7 Investigation of Other Utilities;

Orders).

Commission Analysis

The Cooperative's tariff NHPUC No. 11 — Electricity provides, in part, the following:

19. EXTENSIONS OF ELECTRIC DISTRIBUTION LINES

Subject to the provisions for underground service, the Cooperative will make extensions of its electric distribution lines to serve new customers within its service area in accordance with the following terms and conditions:

19.1 Extensions of Single-phase Lines Without Payments or Guarantee by Customer. The Cooperative will extend its existing distribution lines to domestic and small commercial customers without any payment or surcharge other than those contained in its rate schedules provided the total extension does not exceed 300 feet per customer excluding normal service drops and additionally, in the case of extensions on private property, does not require more than one pole per customer.

19.2 Payment by Customer for Single-phase Line Extensions Along Public Ways. Single-phase line extensions which exceed the maximum provided for in 19.1 above, but are less than 5,280 feet per customer, will be made with overhead construction along public ways provided the applicant satisfies the Cooperative as to his credit or furnishes reasonable security for the performance of an agreement which shall first be executed and which shall include the following provisions:

1. A monthly surcharge of $0.04 for each foot of such single-phase line extension along public ways in excess of three hundred feet to apply for a period of (60) sixty consecutive months unless sooner terminated because the average extension per customer served therefrom becomes equal to or less than 300 feet.

19.4 Payment by Customer for Extension on Private Property. Where the Cooperative's overhead lines must be extended less than three hundred feet along public ways but more than three hundred feet on private property or on a combination of public ways and private property, and a public way is not within reasonable proximity, such extensions will be

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made under the following conditions:

1. The customer shall be required to pay the Cooperative, in advance, the entire estimated cost of constructing the overhead line extension beyond the first three hundred feet, including clearing and tree trimming.

2. The Cooperative is furnished, without cost, the necessary permanent easements of rights of occupancy.

All extensions shall be and remain the property of the Cooperative and shall be maintained by the Cooperative.

19.5 Prepayment by Customer. The Cooperative shall not be required to commence the construction of extensions hereunder until the applicant has either furnished reasonable security

for the performance of his agreement or has satisfied the Cooperative as to his credit.

Before starting construction, the Cooperative may require a prepayment equal to the total 60 months' guarantee for any line construction to be done under the provision of 19.2 and 19.3 above and a prepayment equal to the estimated construction costs for any line construction to be done under the provisions of 19.4 above if either of the foregoing conditions have not been met. The Cooperative will require prepayment of total estimated line construction costs for any facilities that will be installed to supply temporary service.

19.6 Other Provisions. The Cooperative may waive all or any part of the foregoing surcharge and/or required advance payment if, in its opinion, the annual revenue to be derived by the Cooperative from the requested service is sufficient to justify undertaking the construction. In addition, where the Customer requests other than standard service or where extraordinary circumstances exist which indicate that the annual revenue to be derived by the Cooperative from the requested service is insufficient to justify undertaking the construction under the foregoing provisions, the Cooperative may require that the customer execute a special contract containing such provisions as it deems appropriate before it commences construction of any required overhead line extension.

The Cooperative will begin construction of a line extension upon the latter to occur (1) the completion of the wiring of the Customer's premises or (2) payment by the Customer of any advance required under the foregoing provision and execution by the Customer of a contract embodying the foregoing terms and containing such additional detailed provisions as may be appropriate.

[1] We first consider whether or not the Company is committed to install the line at all. We are mindful of our statutory responsibility to see that a utility

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furnishes such service as is just and reasonable. We find that the instant petition does not require an unreasonable effort on the part of the Company to provide electric service. We concede that 6600 feet is an unusually long distance to serve a single customer but one of the original purposes for the Cooperative's existence was to serve customers who are beyond the reach of the traditional electric utility. It was a known and accepted fact that not every customer of a cooperative's line would make a positive profit-making contribution under normal utility standards — it was with this fact in mind that lower cost REA loans were made available to the cooperatives in order to allow them to provide service to outlying districts. Although the low-cost loan philosophy may have less strength today than it did in past years, the standard upon which the Coop selects its customers remains unchanged. It retains its responsibility to make every effort to provide service to all who request it.

In the instant case we find no justification for denying the customer's request for service. We will direct the Company to install and maintain the line.

[2] The charges upon which any agreement is based are predicated initially on whether or not the line extension is to be placed on private property or public property. As the record has shown, if the line is considered to be a public way, then the monthly surcharge will be calculated

at $0.04 per foot, regardless of the total construction costs. If, on the other hand, the line is considered as being on private property, the customer will be required to pay the entire construction cost. The Commission interprets the Town of Nottingham's willingness to maintain the road as an acceptance that it is a public way and we therefore find that the Reservation-Mountain Road is a public way.

Having determined that the road was to be considered a public way, then there remains the issue of a proper customer contribution toward construction costs. We will follow the explicit terms of the Company's tariff (Original page 11 — Line Extensions) and require that a monthly surcharge of $0.04 per foot in excess of 300 feet shall apply for a period of sixty consecutive months, except that the Gazzolas will hold to their commitment to pay 25% in advance of any construction. The Gazzolas will further be required to either furnish reasonable security for the performance of their agreement or satisfy the Cooperative as to their credit, as required by the Company's tariff (Original page 12, paragraph 19.5). The Cooperative shall be authorized to extract an agreement which will assure that the Gazzolas fulfill their payment commitment in the event that they terminate their use of electricity before the end of the sixty month period.

The Commission will not address the issue of telephone service since it was not a part of this docket and since it was an issue only incidental to the Gazzolas' request for electric service.

The Company's tariff (Original page 13, paragraph 19.8 Construction Schedule) provides that except under unusual circumstances the construction of line extensions will be carried on between April 15 and November 15 of each year. The Commission finds no unusual circumstances in this instance. The Company may proceed in accordance with its normal construction schedule.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the New Hampshire

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Electric Cooperative install and maintain an electric distribution line on Reservation-Mountain Road, Deerfield, New Hampshire, to serve the premises presently occupied by Mr. and Mrs. David Gazzola; and it is

FURTHER ORDERED, that the Gazzolas pay a construction surcharge of four cents ($0.04) per foot for a period of sixty (60) consecutive months in support of the proposed construction, such payment to be made in the manner of a 25% deposit in advance of construction with the balance on a monthly basis over sixty (60) months; and it is

FURTHER ORDERED, that the Gazzolas will either furnish reasonable security for the performance of the agreement or satisfy the Cooperative as to their credit; and it is

FURTHER ORDERED, that the Gazzolas will fulfill their payment commitment in the event that they terminate the use of electricity before the end of the sixty (60) month period; and it is

FURTHER ORDERED, that construction of the line extension shall begin at the option of

the Cooperative, but in no case later than May 1, 1984.

By Order of the Public Utilities Commission of New Hampshire this thirtyfirst day of January, 1984.

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NH.PUC*01/31/84*[61338]*69 NH PUC 115*Concord Natural Gas Corporation

[Go to End of 61338]

69 NH PUC 115

Re Concord Natural Gas Corporation

DR 83-206,
Second Supplemental Order No. 16,887

New Hampshire Public Utilities Commission

January 31, 1984

Order permitting utility to renew its motion for rehearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Supplemental Order No. 16,862 ([1984] 69 NH PUC 27) rejected the arguments submitted by Concord Natural Gas Corporation in its Motion for Rehearing; and

WHEREAS, the aforementioned Order only established supplemental temporary rates and was not a final Order of the Commission; it is

ORDERED, that Concord Natural Gas Corporation may renew its Motion for Rehearing pursuant to RSA 541:3 after the permanent rate Order is issued in this docket.

By order of the Public Utilities Commission of New Hampshire this thirtyfirst day of January, 1984.

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NH.PUC*01/31/84*[61339]*69 NH PUC 116*Northern Utilities, Inc.

[Go to End of 61339]

69 NH PUC 116

Re Northern Utilities, Inc.

DR 84-18, Order No. 16,888

New Hampshire Public Utilities Commission

January 31, 1984

Order approving contract for the sale of gas.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a utility selling gas under the jurisdiction of this Commission, has filed with this Commission Special Contract No. 58 with New Hampshire Provisions, effective on approval by Commission order, for gas service at rates other than those fixed by its schedule of general application; and

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

ORDERED, that said contract may become effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtyfirst day of January, 1984.

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NH.PUC*01/31/84*[61340]*69 NH PUC 116*Fuel Adjustment Clause

[Go to End of 61340]

69 NH PUC 116

Re Fuel Adjustment Clause

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

DR 83-384, Order No. 16,893

New Hampshire Public Utilities Commission

January 31, 1984

Order implementing fuel adjustment clauses.

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 in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly or quarterly FAC requested a hearing be scheduled except for Concord Electric Company and Exeter & Hampton Electric Company, who are addressed in dockets DR 84-23 and DR 84-24 respectively; and

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

WHEREAS, that the Commission in DR 81-340, Third Supplemental Order No. 15,986, dated November 10, 1982 (67 NH PUC 784), of the New Hampshire Electric Cooperative, Inc. 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 is the subject of DR 83-352 in which a hearing was held on December 16, 1983, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in this month's FAC order; it is

ORDERED, that 8th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of 17.2 cents (0.172) per 100 KWH for the months of January, February, and March, 1984, be, and hereby is, permitted to remain in effect for February 1984; and it is

FURTHER ORDERED, that 10th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of January, February and March, 1984, of $1.401 per 100 KWH be, and hereby is, permitted to remain in effect for February, 1984; and it is

FURTHER ORDERED, that 37th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity, providing for a fuel surcharge of $3.07 per 100 KWH for the month of February, 1984, be, and hereby is, permitted to become effective February 1, 1984; and it is

FURTHER ORDERED, that 89th Revised Page 10-B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge credit of ($1.02) per 100 KWH for the month of February, 1984, be, and hereby is, permitted to become effective February 1, 1984; and it is

FURTHER ORDERED, that 86th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge credit of ($0.22) per 100 KWH for the month of February, 1984, be, and hereby is, permitted to become effective February 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax docket, DR 83-205 Order No. 16,524 ([1983] 68 NH PUC 461).

By order of the Public Utilities Commission of New Hampshire this thirtyfirst day of January, 1984.

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NH.PUC*02/02/84*[61341]*69 NH PUC 118*Wilton Telephone Company

[Go to End of 61341]

69 NH PUC 118

Re Wilton Telephone Company

DR 83-363, Order No. 16,896

New Hampshire Public Utilities Commission

February 2, 1984

Order imposing a fine on a telephone utility for failure to respond to commission directive.

APPEARANCES: For Wilton Telephone Company, Richard A. Samuels, Esquire.

By the COMMISSION:

REPORT

On July 13, 1983, this Commission issued its Order No. 16,542 (68 NH PUC 481) directing, among other things, that Wilton Telephone Company report in writing no later than September 30, 1983 the steps it had taken to ensure that its operations were in compliance with the approved Tariff No. 5.

On October 18, 1983, this Commission directed by letter that Wilton Telephone supply certain data pertaining to its operations no later than October 27, 1983.

No response to either had been received by November 23, 1983, so this Commission issued an Order of Notice establishing this docket directing Wilton Telephone Company to appear at a hearing at this Commission's Concord offices at 10:00 a.m. on January 3, 1984 at which it was to show cause why it should not be subjected to conditions of RSA 365:41 and RSA 374:17.

The hearing was convened at the scheduled date with Wilton Telephone Company represented by Attorney Richard A. Samuels. One witness was presented, Stuart S. Draper, President of Wilton Telephone.

COMPANY POSITION

Mr. Samuels initially introduced two exhibits. The first, a Wilton Telephone Company letter dated December 1, 1983, as the Company response to the Order No. 16,542 which had been due on September 30, 1983. The second exhibit was a Wilton letter dated December 2, the response which had been due on October 27, 1983. (The Commission's records show the date of receipt for both letters was December 5, 1983.)

Counsel acknowledged that both requests had been received by Wilton Telephone. Attorney

Samuels stated that the Company's actions were in compliance with the tariff, and failure to report was an oversight. He indicated the Company was recruiting an administrator part of whose duties would be the monitoring of regulatory matters. In regard to the failure to respond to the October 18 letter, Mr. Samuels indicated the Company could not accurately answer the questions involved, so then made no response at all.

Mr. Samuels stated the December responses were triggered by the Order of Notice which suggested such inaction could result in fines. He insisted all actions had been in compliance with the Tariff No. 5 and failure to report had been an oversight.

Stuart S. Draper, President of Wilton

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Telephone Company testified that he "... didn't read the complete Order to its fullest." (T-13) When questioned for failing to read Commission Orders, by Commissioner Iacopino, Mr. Draper stated, "I should be reading them along with the rest of the stuff that comes in." And I just didn't do it, that is all. I shortcutted." (T-15).

Mr. Samuels requested that, should a fine be levied, it be less than the statutory maximum. He stated he felt the period involved should run from October 1, 1983 to December 1 or 2.

COMMISSION ANALYSIS

By taking administrative notice of Commission records in DE 83-134 ([1983] 68 NH PUC 485) and DR 83-135, it appears that the Company has had previous problems responding. In DE 83-134 Wilton Telephone was required to appear at a hearing for similar reason. In that case, no penalties were levied. In Docket DR 83-135, Wilton was ordered to file tariff revisions to reflect the Commission decision in that case. That Order (No. 16,542, dated July 13, 1983) was not complied with until December 6, 1983. While not cited in the Order of Notice for this hearing and therefore not subject to penalty, it does demonstrate the severity of the problem.

The Commission hesitates to use its authority to impose monetary penalties against utilities. However, when a continuous course of action demonstrates that a utility is not diligent the Commission must exercise its authority to demonstrate to all utilities that the Commission expects its requirements to be complied with. If any utility determines that the Commission's requirements are beyond its authority, appropriate appeals are available. We don't accept the Company's explanation that the Commission's Orders were not completely read as a sufficient excuse for non-compliance with a Commission Order.

The Commission could impose a fine at $100 per day for the period between October 1 and December 5, 1983 for a total of $6,600. However, we find the Commission's primary obligation is to regulate utility companies and not to impose fines or penalties except when necessary to insure compliance with Commission requests. In this case we find that a fine of $500 should demonstrate to this utility that the Order of the Commission must be complied with. Any further problem will be dealt with more severely.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Wilton Telephone Company be, and hereby is, fined $500.00 for failure to respond to Commission Order according to the provisions of RSA 374:17; and it is

FURTHER ORDERED, that said amount be made payable to the Treasurer, State of New Hampshire and delivered to this Commission no later than February 21, 1984.

By order of the Public Utilities Commission of New Hampshire this second day of February, 1984.

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NH.PUC*02/06/84*[61342]*69 NH PUC 120*Concord Electric Company

[Go to End of 61342]

69 NH PUC 120

Re Concord Electric Company

Intervenor: Office of Consumer Advocate

DR 84-23, Order No. 16,900

New Hampshire Public Utilities Commission

February 6, 1984

Order approving a decrease in the fuel adjustment clause for an electric utility.

Automatic Adjustment Clauses, § 13 — Purchased power — Wholesale rate reduction — Overcollection by retail utility.

A fuel adjustment clause decrease was approved for an electric utility where, due to an unexpected change in wholesale rates, the utility experienced higher than expected overcollections during the first month of the threemonth FAC period. (Iacopino, commissioner, dissents in part, p.121.)

APPEARANCES: Margaret H. Nelson, Esquire for the Company; Michael Holmes, Esquire for the Consumer Advocate; Kenneth E. Traum for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

On December 30, 1983, in DR 83-374, Order No. 16,833 (68 NH PUC 743, 756), the Commission stated "... 15th Revised page 19A of Concord Electric Co. tariff NHPUC No. 8 - Electricity, providing for a fuel surcharge credit of $(0.24)/100 KWH for the months of January,

February, and March, 1984, be, and hereby is, permitted to go into effect for the month of January, 1984."

On January 30, 1984, the Company filed for a change in its FAC rate for effect as of February 1, 1984 as well as for a Deferred Purchased Power Expense Recoupment (DPPER) surcharge. Also on January 30, 1984, the Commission issued an Order of Notice waiving the notice requirements on the FAC, but not addressing the DPPER.

The Commission's hearing was also held on January 30, 1984.

The Company's combined request was for an overall decrease in customer rates of (13.4)/100 KWH, made up of a (24.6)/100 KWH decrease in the FAC partially offset by an (11.2)/100 KWH surcharge to recoup the DPPER.

The FAC decrease is primarily due to an approximately $200,000 higher than estimated overcollection as of December 31, 1983, due to the action by the Federal Energy Regulatory Commission for the Company's wholesale supplier, Public Service Company of New Hampshire, to pass through a Coal Inventory Adjustment as a decrease in the wholesale fuel rate in December, 1983.

The Company requested that the FAC rate be reduced for February and March, 1984, to leave the deferred fuel account balance at approximately $0 as of March 31, 1984.

The Company made the FAC aspect of

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the filing since it felt that the 10% trigger on fuel expense had been set off.

With regards to the DPPER, the Company had requested such at this time, partially under the argument of rate continuity. The Commission feels rate continuity is an important factor, as this Report will later reflect, but not in and of itself a sufficient reason to include herein.

Mr. Holmes, with partial support from Mr. Traum, objected to the inclusion of the DPPER at this time due to notice problems and lack of time to analyze that aspect of the filing. The DPPER was an extraordinary filing, as opposed to the normal monthly or quarterly FAC filing. There was only one substantial change from the FAC filing accepted previously by the Commission, versus a totally new filing for the DPPER.

By a 2 to 1 decision, with Commissioner Iacopino dissenting on the grounds of consistency, the Commission allowed the Company to proceed on the FAC filing, but dismissed the DPPER filing without prejudice.

The Company made its presentation accordingly. One witness, Mr. Steff, was presented with one exhibit.

As has been previously stated, the proposed FAC decrease of 24.6/100 KWH for February and March, 1983, was calculated to leave the deferred fuel account balance at approximately $0 as of March 31, 1984. Due to cross-examination, the Company witness expressed the thought that approval of the FAC proposal would probably result in an increase in the FAC rate as of April 1, 1984, due to no large expected FERC ordered refunds, which could be compounded by refiling and possible approval of the DPPER.

The Commission appreciates the Company's filing for a revised FAC due to its interpretation of the 10% trigger and its corresponding reduction to $0 of the deferred fuel account balance as of March 31, 1984. The Commission also recognizes the need for rate continuity within reasonable bounds and will thus reduce the FAC rate for February and March, 1983 by 20/100 KWH, or by $1.00/month for the 500 KWH user, to a credit of (22.4)/100 KWH.

This reduction will leave the Company below the 10% trigger. And recognizing that the FAC is a reconcilable clause, the Commission feels the smoothing approach adopted herein in the best interest of all parties and will reduce the sending of false pricing signals to consumers.

Our Order will issue accordingly.

Commissioner Iacopino dissents in part.

Commissioner Iacopino concurs in the result of the decision but dissents as to the procedures adopted by the parties and the majority of the Commission. The proceeding was initiated by a phone call on Friday from the Company indicating that the FAC was overcollected to the point that the trigger mechanism should go into effect and a credit was due to customers. At the same time the Company requested to adjust the Deferred Purchased Power Expense Recoupment (DPPER). Staff agreed that the FAC be adjusted but not the DPPER. The Commission's Executive Director set the matter for an expedited hearing for the following Monday. The Commission members were polled to waive notice of hearing requirements for the FAC but were not told of the DPPER request.

At the hearing on Monday the Consumer Advocate objected to going forward on the DPPER because of the Company's failure to provide adequate notice pursuant to Commission rules. The Commission granted that request but this Commissioner raised the question of fairness

and equity in not hearing the matters together. One of the major rate structure principles is rate stability and continuity. The Commission should prevent rates from changing frequently to the best of their ability.

Due process should provide that public notice be given for public hearings. The fact that customers are receiving a credit should be immaterial to the process. More importantly, one should ask if adequate notice was given would the credit be greater than it is. This Commission should have postponed both issues until adequate public notice was issued and sufficient time for a proper investigation was had.

ORDER

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

ORDERED, that the Company's filing for a Purchased Power Expense Surcharge is denied without prejudice; and it is

FURTHER ORDERED, that 16th Revised Page 19A of Concord Electric Company, Tariff No. 8 - Electricity, is denied; and it is

FURTHER ORDERED, that Concord Electric Company file revised tariff pages providing

for a FAC rate for effect February 1, 1984, for a credit of $(0.224)/100 KWH, after inclusion of the New Hampshire State Franchise Tax effect.

By Order of the Public Utilities Commission of New Hampshire this sixth day of February, 1984.

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NH.PUC*02/06/84*[61343]*69 NH PUC 122*Exeter and Hampton Electric Company

[Go to End of 61343]

69 NH PUC 122

Re Exeter and Hampton Electric Company

Intervenor: Office of Consumer Advocate

DR 84-24, Order No. 16,901

New Hampshire Public Utilities Commission

February 6, 1984

Order approving a fuel adjustment clause decrease for an electric utility.

Automatic Adjustment Clauses, § 13 — Purchased power — Wholesale rate reduction — Overcollection by retail utility.

A fuel adjustment clause decrease was approved for an electric utility where, due to an unexpected change in wholesale rates, the utility experienced higher than expected overcollection during the first month of the threemonth FAC period. (Iacopino, commissioner, dissents in part, p.124.)

APPEARANCES: Margaret H. Nelson, Esquire for the Company; Michael Holmes, Esquire for the Consumer Advocate; Kenneth E. Traum for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

On December 30, 1983, in DR 83-374, Order No. 16,833 (68 NH PUC 753, 756),

the Commission stated "... 15th Revised page 19A of Exeter and Hampton Electric Co. tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of $(0.081)/100 KWH for the months of January, February, and March, 1984, be, and hereby is, permitted to go into effect for

the month of January, 1984. ..."

On January 30, 1984, the Company filed for a change in its FAC rate for effect as of February 1, 1984 as well as for a Deferred Purchased Power Expense Recoupment (DPPER) surcharge. Also on January 30, 1984, the Commission issued an Order of Notice waiving the notice requirements on the FAC, but not addressing the DPPER.

The Commission's hearing was also held on January 30, 1984.

The Company's combined request was for an overall decrease in customer rates of (14.0)/100 KWH, made up of a (17.9)/100 KWH decrease in the FAC partially offset by an (3.9)/100 KWH surcharge to recoup the DPPER.

The FAC decrease is primarily due to an approximately $200,000 higher than estimated overcollection as of December 31, 1983, due to the action by the Federal Energy Regulatory Commission for the Company's wholesale supplier, Public Service Company of New Hampshire, to pass through a Coal Inventory Adjustment as a decrease in the wholesale fuel rate in December, 1983.

The Company requested that the FAC rate be reduced for February and March, 1984, to leave the deferred fuel account balance at approximately $0 as of March 31, 1984.

The Company made the FAC aspect of the filing since it felt that the 10% trigger on fuel expense had been set off.

With regards to the DPPER, the Company had requested such at this time, partially under the argument of rate continuity. The Commission feels rate continuity is an important factor, as this Report will later reflect, but not in and of itself a sufficient reason to include herein.

Mr. Holmes, with partial support from Mr. Traum, objected to the inclusion of the DPPER at this time due to notice problems and lack of time to analyze that aspect of the filing. The DPPER was an extraordinary filing, as opposed to the normal monthly or quarterly FAC filing. There was only one substantial change from the FAC filing accepted previously by the Commission, versus a totally new filing for the DPPER.

By a 2 to 1 decision, with Commissioner Iacopino dissenting on the grounds of consistency, the Commission allowed the Company to proceed on the FAC filing, but dismissed the DPPER filing without prejudice.

The Company made its presentation accordingly. One witness, Mr. Steff, was presented with one exhibit.

As has been previously stated, the proposed FAC decrease of 17.9/100 KWH for February and March, 1983, was calculated to leave the deferred fuel account balance at approximately $0 as of March 31, 1984. During cross-examination, the Company witness expressed the thought that approval of the FAC proposal would probably result in an increase in the FAC rate as of April 1, 1984, due to no large expected FERC ordered refunds, which could be compounded by refiling and possible approval of the DPPER.

The Commission appreciates the Company's filing for a revised FAC due to its interpretation of the 10% trigger and its corresponding reduction to $0 of the deferred fuel account balance as of March 31, 1984. The Commission also recognizes the need for rate continuity within

reasonable bounds and will thus reduce

the FAC rate for February and March, 1983 by 15/100 KWH, or by $1.00/month for the 500 KWH user, to a credit of (23.1)/200 KWH.

This reduction will leave the Company below the 10% trigger. And recognizing that the FAC is a reconciliable clause, the Commission feels the smoothing approach adopted herein is in the best interest of all parties and will reduce the sending of false pricing signals to consumers.

Our Order will issue accordingly.

Commissioner Iacopino dissents in part.

Commissioner Iacopino concurs in the result of the decision but dissents as to the procedures adopted by the parties and the majority of the Commission. The proceeding was initiated by a phone call on Friday from the Company indicating that the FAC was overcollected to the point that the trigger mechanism should go into effect and a credit was due to customers. At the same time the Company requested to adjust the Deferred Purchased Power Expense Recoupment (DPPER). Staff agreed that the FAC be adjusted but not the DPPER. The Commission's Executive Director set the matter for an expedited hearing for the following Monday. The Commission members were polled to waive notice of hearing requirements for the FAC but were not told of the DPPER request.

At the hearing on Monday the Consumer Advocate objected to going forward on the DPPER because of the Company's failure to provide adequate notice pursuant to Commission rules. The Commission granted that request but this Commissioner raised the question of a fairness and equity in not hearing the matters together. One of the major rate structure principles is rate stability and continuity. The Commission should prevent rates from changing frequently to the best of their ability.

Due process should provide that public notice be given for public hearings. The fact that customers are receiving a credit should be immaterial to the process. More importantly, one should ask if adequate notice was given would the credit be greater than it is. This Commission should have postponed both issues until adequate notice was issued and sufficient time for a proper investigation was had.

ORDER

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

ORDERED, that the Company's filing for a Purchased Power Expense Surcharge is denied without prejudice; and it is

FURTHER ORDERED, that 16th Revised Page 19A of Exeter and Hampton Electric Company tariff No. 8 - Electricity, is denied; and it is

FURTHER ORDERED, that Exeter and Hampton Electric Company file revised tariff pages providing for a FAC rate for effect February 1, 1984, for a credit of ($0.231)/100 KWH, after inclusion of the New Hampshire State Franchise Tax effect.

By Order of the Public Utilities Commission of New Hampshire this sixth day of February, 1984.

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NH.PUC*02/07/84*[61344]*69 NH PUC 125*Public Service Company of New Hampshire

[Go to End of 61344]

69 NH PUC 125

Re Public Service Company of New Hampshire

DR 82-333,
Ninth Supplemental Order No. 16,902

New Hampshire Public Utilities Commission

February 7, 1984

Order approving rates and credits.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No. 16,885 ([1984] 69 NH PUC 67) directed the Public Service Company of New Hampshire (PSNH) to file appropriate tariff revisions to glean the allowed increase in revenues of $24,740,249; and

WHEREAS, on February 7, 1984, the Company filed its Tariff No. 29, said tariff proposing rates to accomplish that goal; and

WHEREAS, this Commission is satisfied that Tariff No. 29 complies with its earlier order; and

WHEREAS, Order No. 16,885 also directed a refund plan be filed in which differences between bonded rates and permanent rates would be returned to consumers; and

WHEREAS, said plan has been filed and meets Commission requirements; it is

ORDERED, that Tariff No. 29 of the Public Service Company of New Hampshire be and hereby is, approved effective with all bills rendered on and after February 1, 1984; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire give one-time public notice of this approval via bill insert that fully explains the rates and credits.

By Order of the Public Utilities Commission of New Hampshire this seventh day of February, 1984.

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NH.PUC*02/15/84*[61345]*69 NH PUC 125*New England Power Company

[Go to End of 61345]

69 NH PUC 125

Re New England Power Company

DF 84-31, Order No. 16,906

New Hampshire Public Utilities Commission

February 15, 1984

Order authorizing utility to issue and renew notes, bonds, and other evidences of indebtedness.

By the COMMISSION:

ORDER

WHEREAS, By Order No. 16,269 (DF 83-71) of this Commission dated March 21, 1983 (68 NH PUC 132), New England Power Company was authorized to issue and renew, from time to time, its bonds, notes and other evidences of indebtedness payable less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any one time (not including any such indebtedness which is to be retired with the proceeds of any new borrowing) not in excess of $195,000,000; and

WHEREAS, the authorization granted by this Commission will expire March 31, 1984, unless extended by further order of this Commission; and

WHEREAS, New England Power Company on February 7, 1984, requested an extension of this authorization; and

WHEREAS, New England Power Company has submitted projected construction expenditures of approximately $296 million for the period January, 1984 through March, 1985; and

WHEREAS, New England Power Company estimates that the expenditures for construction and other purposes will exceed the amount of internally generated funds available for such purposes; and

WHEREAS, New England Power Company estimates the need to incur shortterm indebtedness will be greatest in early 1985, unless $60 million of planned longterm financing is completed, when funds needed could exceed available funds by $170 million cumulatively; and

WHEREAS, New England Power Company estimates that the maximum cumulative short-term indebtedness may exceed $170 million, by $25 million or more, should working capital requirements exceed current estimates or if $50 million of expected capital contributions are delayed; and

WHEREAS, New England Power Company seeks extension of this short-term borrowing authorization in order to have flexibility in the timing of long-term financings and to be prepared for contingencies; and

WHEREAS, this Commission, after investigation and consideration finds that such request is consistent with the public good; it is

ORDERED, that New England Power Company, without first obtaining the approval of the Commission, be and hereby is, authorized, from time to time, to issue and renew its notes, bonds, or other evidences of indebtedness payable in less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any time (not including any such indebtedness to be retired with the proceeds of any new borrowing) not in excess of $195,000,000; and it is

FURTHER ORDERED, that on or about January First and July First of each year said New England Power Company shall file with this Commission a detailed statement, duly sworn to by its treasurer, showing the disposition of said notes, bonds, or other evidence of indebtedness.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of February, 1984.

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NH.PUC*02/15/84*[61346]*69 NH PUC 127*Public Service Company of New Hampshire

[Go to End of 61346]

69 NH PUC 127

Re Public Service Company of New Hampshire

Intervenors: Conservation Law Foundation of New England, Inc., Community Action Program, Seacoast Anti-Pollution League, and Office of Consumer Advocate

DR 83-398, Order No. 16,908

New Hampshire Public Utilities Commission

February 15, 1984

Order setting tentative procedural schedule for an investigation to determine the appropriate rate-making method for recovery of abandoned plant costs by an electric utility.

APPEARANCES: Catherine Shively, Esquire and Sulloway, Hollis & Soden by Martin Gross, Esquire and Margaret Nelson, Esquire for Public Service Company of New Hampshire; Douglas Foy, Esquire for Conservation Law Foundation; Gerald Eaton, Esquire for Community Action Program; Robert Backus, Esquire for Seacoast Anti-Pollution League; Michael Holmes, Esquire for the Consumer Advocate; Larry M. Smukler, Esquire for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On December 30, 1983 Public Service Company of New Hampshire ("PSNH" or "Company") filed a Petition requesting the Public Utilities Commission of New Hampshire ("Commission") to investigate, determine and fix an appropriate ratemaking methodology to

enable PSNH to recover costs associated with the Company's investment in Pilgrim Unit No. 2. In addition, the Company requested that, prior to the consideration of the merits, the Commission pursuant to RSA 365:20 reserve, certify and transfer to the New Hampshire Supreme Court for decision the following question of law:

Does RSA 378:30-a, the so-called "anti-CWIP" statute, as a matter of law, prohibit the Public Utilities Commission from allowing public utilities to recover, through rates, amounts such utilities have invested in plant construction projects that have been abandoned?

An Order of Notice was issued on January 11, 1984 setting a procedural hearing for February 1, 1984. At the hearing, full party intervenor status was requested by the Conservation Law Foundation ("CLF"), the Community Action Program ("CAP"), the Seacoast Anti-Pollution League ("SAPL") and the Consumer Advocate. The Staff of the Commission ("Staff") also entered an appearance. Limited intervenor status was requested by the Campaign for Ratepayers Rights ("CRR"). The Commission, on the

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record, granted all Motions to Intervene and will so affirm in this Order.

The Commission also heard argument on whether or not the question of the applicability of RSA 378:30-a, if any, to the issues in this docket should be transferred to the New Hampshire Supreme Court pursuant to RSA 365:20. As a result of the argument, the Commission directed the parties to submit additional written information no later than February 24, 1984. That information is:

1) Responses to the PSNH memorandum of law on whether the Commission should transfer the legal issue of the applicability of RSA 378:30-a to the New Hampshire Supreme Court; and

2) A summary of the position of the parties on the merits of the legal issue of whether RSA 378:30-a is a barrier to recovery in this case.

In addition, the parties were given leave to submit proposals for information to be included in the document required by Supreme Court Rule 9. If the Commission decides to grant PSNH's Motion, that document will transfer the issue to the New Hampshire Supreme Court for a determination.

The Commission has committed itself to render the appropriate decision within 30 days of the February 24, 1984 filing of the above information. If the Commission decides that it will not transfer the issue to the New Hampshire Supreme Court and if a hearing on the merits remains appropriate, the following procedural schedule will be established:

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

February 24, 1984  Memoranda of law due.
March 24, 1984  Commission decision due.
April 9, 1984  Data requests due.
April 30, 1984  Responses due.
May 21, 1984  Staff and intervenor
   testimony due.
June 4, 1984  Data requests due.
June 18, 1984  Responses due.
July 10, 1984  Public hearing.
July 11, 12, 13,  Evidentiary hearings.
 16 & 17, 1984
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Our Order will issue accordingly.

ORDER

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

ORDERED, that all Motions to Intervene filed on or before February 1, 1984 be, and hereby are, granted; and it is

FURTHER ORDERED, that the parties submit the additional information described in the foregoing Report no later than February 24, 1984; and it is

FURTHER ORDERED, that if the Commission determines within 30 days of the February 24, 1984 filing date that evidentiary hearings are appropriate, the schedule will be as set forth in the foregoing Report.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of February, 1984.

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NH.PUC*02/15/84*[61347]*69 NH PUC 129*Gateway Village Water System

[Go to End of 61347]

69 NH PUC 129

Re Gateway Village Water System

DE 83-307,
Fourth Supplemental Order No. 16,909

New Hampshire Public Utilities Commission

February 15, 1984

Order for water system to show cause as to why it should not be penalized for operating as a utility without a franchise.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Order No. 16,795, dated December 7, 1983 (68 NH PUC 718), in this docket; and

WHEREAS, in said Order the Commission granted Gateway Village Water System (Gateway) a temporary franchise to operate as a public utility through January 31, 1984; and

WHEREAS, in said Order the Commission further directed Gateway to report to the Commission as to inter alia the status of system ownership, on or before January 31, 1984; and

WHEREAS, Gateway did not report to the Commission as ordered; and

WHEREAS, the temporary franchise referred to above has now expired; it is

ORDERED, that Gateway and Albert Moulton appear before the Commission on March 20, 1984 at 10:00 a.m. to show cause why they:

A. Should not forfeit to the state the sum of one hundred dollars for each day of noncompliance pursuant to RSA 374:17 and

B. Should not be prosecuted pursuant to RSA 365:41 and 365:42 for said noncompliance and for operating as a public utility without authority.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of February, 1984.

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NH.PUC*02/15/84*[61348]*69 NH PUC 129*Granite State Electric Company

[Go to End of 61348]

69 NH PUC 129

Re Granite State Electric Company

DF 84-32, Order No. 16,910

New Hampshire Public Utilities Commission

February 15, 1984

Order authorizing utility to issue and renew notes, bonds, and other evidences of indebtedness.

By the COMMISSION:

ORDER

WHEREAS, by Order No. 16,270 (DR 83-72) of this Commission dated March 21, 1983 (68 NH PUC 133), Granite State Electric Company was authorized from time to time, to issue and renew its notes, bonds, or other evidences of indebtedness payable less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any time (not including any such indebtedness to be retired with the proceeds of any new borrowings) not in excess of $6,000,000; and

WHEREAS, Granite State Electric Company, on February 7, 1984, requested that its authorization to incur indebtedness, payable in less than twelve (12) months after the date thereof, be increased to an aggregate amount thereof outstanding at any one time (not including any such indebtedness which is to be retired with the proceeds of any new borrowings) from not in excess of $6,000,000 to not in excess of $7,000,000; and

WHEREAS, Granite State Electric Company estimates that its construction expenditures and

sinking fund obligations on long-term notes will exceed internally generated funds and will require authorization to increase its short-term indebtedness to an aggregate amount not in excess of $7,000,000; and

WHEREAS, this Commission after investigation and consideration finds that such request is consistent with the public good; it is

ORDERED, that Granite State Electric Company, without first obtaining the approval of the Commission, be and hereby is, authorized, from time to time, to issue and renew its notes, bonds, or other evidences of indebtedness payable in less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any one time (not including any such indebtedness which is to be retired with the proceeds of any new borrowings) not in excess of $7,000,000; and it is

FURTHER ORDERED, That on or about January First and July First of each year, said Granite State Electric Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of said notes, bonds, or other evidences of indebtedness.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of February, 1984.

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NH.PUC*02/15/84*[79873]*69 NH PUC 130*Cheshire Bridge Corporation

[Go to End of 79873]

69 NH PUC 130

Re Cheshire Bridge Corporation

DR 83-70, Supplemental Order No. 16,911

New Hampshire Public Utilities Commission

February 15, 1984

Order denying motion for rehearing in toll bridge rate case.

Page 130

Rates, § 120 — Reasonableness.

The commission found that rates set for a toll bridge were not confiscatory where they were based on the company's weighted cost of capital, the cost of interest on debt had been allowed, and a margin of profit had been allowed.

APPEARANCES: Robert T. Clark, Esquire for the Petitioner; Eugene F. Sullivan, Finance Director for the Public Utilities Commission Staff.

By the COMMISSION:

SUPPLEMENTAL REPORT

The Cheshire Bridge Corporation (the "Company") on January 31, 1984 filed a motion for rehearing and reconsideration of the Commission's Order No. 16,852 which was issued on January 11, 1984 (69 NH PUC 18). The Company has based its motion upon certain grounds which will be addressed in the following report.

The first issue raised by the Company is one of a computational error in the revenue calculation. That assertion is correct. Upon recalculation it has been found that the revenue included other revenue of $4,800 twice. That is the only computational error in the Commission's report. The only other variance between the above figures and those included in the motion are due to the Company's incorrect calculation of the revenues related to three (3) axle trucks (the average per day is thirty-three [33] compared to thirty-two [32]).

The Company's second concern is related to the issue of an appropriate adjustment to revenues to reflect lower traffic flowed on legal holidays. The Commission has used the statistics from the traffic survey conducted from December 1, 1982 through December 7, 1982 on order to estimate annual revenues. It is the judgement of this Commission that the period used is an adequate surrogate upon which to base revenues. Records on file at this Commission indicate that revenues are higher during the months from May through September. Therefore, the use of statistics for a week in December results in a conservative estimate. Further, in its original report the Commission stated that even with a reduction of 8% due to unrecorded tolls that the revenue level would be adequate. The Commission is not persuaded that revenues lost due to unrecorded tolls should be a part of the revenue charge to paying customers. It is the Company's responsibility to provide adequate controls over its revenue collection and the loss due to the same should be borne by management.

The Company has stated previously that the cost of installation of automatic toll taking equipment would be made up by all tolls being recorded and all receipts being accounted for. In the original report, the Commission indicated that when proper controls are implemented revenues will increase by the reduction in lost revenues. In addition to the reasons stated above, the Cheshire Bridge operation is somewhat different than that of an ordinary utility under our jurisdiction, i.e., it is improper to change rates frequently or apply a surcharge to the toll rate for a short period.

Cheshire Bridge Corporation further argues that a fair and adequate return has not been allowed and "that in fact they border on the confiscatory." The Commission finds those arguments to be unfounded in fact. This Commission allows a rate of return based upon a utility's weighted cost of capital. In this case, the cost of interest for debt has been allowed. The Commission has also

allowed a margin of profit, over and above expenses plus interest, even though the common

equity reported by the Company is negative. It should be further noted that, based upon annual reports on file with this Commission, the retained earnings have decreased during years when a profit was recorded (1970-1979).

The Company further objects to the Commission's use of 1983 pro forma expenses and claims that the use of the same will cause revenue erosion. It has always been the policy of this Commission to use a test year and to pro form for known and measurable changes in expenses. In this case, the Commission staff required the Company to provide it with known changes in expenses. This was accomplished for some of the expenses although not all. Although some expense projections were used, they were accepted in order to complete this case. The Commission does not set rates based upon projected expenses for three years beyond the test year. It would also be contradictory to set rates based only on expenses, without considering revenue growth.

Finally, the Commission has been asked to provide the Company with funding for a maintenance program. As stated in our previous report in this case, the Commission finds that the description of some of the work that needs to be accomplished is capital in nature and should be capitalized. Ordinary maintenance expenses have been included in operating expenses to cover some of the work; such as, painting. In allowing $10,000 the Commission believes that annual maintenance can be performed. The Commission agrees that the Company's proposals do not have the specificity that is required of other utilities. The burden of proof is upon the Company and it has not been provided in this case.

The Company's motion will be 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 Cheshire Bridge Corporation's Motion for Rehearing and Reconsideration of Order No. 16,852 be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of February, 1984.

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NH.PUC*02/16/84*[61349]*69 NH PUC 132*New Hampshire Electric Cooperative, Inc.

[Go to End of 61349]

69 NH PUC 132

Re New Hampshire Electric Cooperative, Inc.

DF 84-11, Order No. 16,912

New Hampshire Public Utilities Commission

February 16, 1984

Order authorizing utility to borrow funds through federal agencies.

APPEARANCES: For the petitioner, Mayland H. Morse, Esquire; Kenneth E. Traum and Lark Kraemer for the NHPUC Staff.

By the COMMISSION:

REPORT

An unopposed petition was filed on January 12, 1984 by the New Hampshire Electric Cooperative, Inc., a public utility operating under the jurisdiction of this Commission. The duly noticed public hearing was accordingly held at the Commission's offices in Concord on February 14, 1984.

The New Hampshire Electric Cooperative, Inc. seeks authority pursuant to RSA 369 to borrow $11,503,000 through the Rural Electrification Administration (REA) and the National Rural Utilities Cooperative Finance Corporation (CFC) for system improvements and for additions and extensions to their existing system. The $11,503,000 is to be borrowed on a concurrent basis from the CFC ($3,576,000) and REA ($7,927,000). The CFC borrowing includes $178,000 for the purchase of Capital Term Certificates in CFC.

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 1983 and terminating in the middle of 1985.

The New Hampshire Electric Cooperative, Inc. represents that as of December 31, 1983, its long-term debt including interest thereon is as follows:

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

A. Long Term Debt to REA (Excluding Seabrook):
 39 Notes in the Face Amount of $62,543,179.59
 Less Unadvanced Funds at 12/31/83 341,000.00
 Net Amount Borrowed $62,202,179.59
 Repayment to Date Applicable to Said Notes $14,318,821.16
 Accrued and Deferred Interest (Not Due) 69,003.84
 Net Long Term Debt 12/31/83 $47,952,362.27

B. Long Term Debt to REA and FFB (Seabrook)
 2 Notes in Face Amount of $75,750,000.00
 Less Unadvanced Funds at 12/31/83 7,138,000.00
 Net Amount Borrowed 68,612,000.00
 Repayment to Date Applicable to Said Notes .00
 Net Long Term Debt 12/31/83 $68,612,000.00

C. Long Term Debt to National Rural Utilities
 Cooperative Finance Corporation
 2 Notes in Face Amount of $ 1,967,000.00
 Repayment to Date Applicable to Said Notes 31,178.93
 Net Long Term Debt 12/31/83 $ 1,935,821.07

D. Long Term Debt to Plymouth Guaranty Savings
 Bank, Plymouth, NH
 1 Note in the Face Amount of $  300,000.00
 Repayment to Date Applicable to Said Note 114,355.47
 Net Long Term Debt 12/31/83 $  185,644.53
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There are no short-term notes outstanding.

$7,927,000 will be borrowed from the Rural Electrification Administration at a 5% interest rate with a life of 35 years. The remainder will be borrowed through the CFC at 11.25% per annum initially with the flexibility to adapt other terms

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which may become available to the Cooperative at lower rates in the future.

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:

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

1.  Distribution
 A. New Lines $ 3,191,000
 B. New Tie Lines 275,075
 C. Conversion and Line Changes 4,270,200
 D. New Substation or meter points 520,000
 E. Increased Substation capacity 589,000
 F. Miscellaneous Distribution
  Equip. 1,945,725
 G. Security Lights 100,000
    Total for Distribution $10,891,000

2.  Transmission
 A. New Line $   40,500
 B. Line/Station Changes 371,000
    Total for Transmission $  411,500

3.  District Office $  200,000
  Grand Total $11,502,500
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The proposed expenditures are based upon a comprehensive survey made by an independent and reputable consulting firm, Dalton Associates, P.C., 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 for 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 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.

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 $11,503,000

of its mortgage notes to the United States government, acting through the Rural Electrification Administration and the National Rural Utilities Cooperative Finance Corporation; 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 of New Hampshire this sixteenth day of February, 1984.

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NH.PUC*02/17/84*[61350]*69 NH PUC 135*Fuel Adjustment Clause

[Go to End of 61350]

69 NH PUC 135

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 83-384,
Supplemental Order No. 16,913

New Hampshire Public Utilities Commission

February 17, 1984

Order permitting fuel adjustment clauses to become effective without a hearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Exeter & Hampton Electric Company, Connecticut Valley Electric Company, Inc., Granite State Electric Company, Municipal Electric 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 be scheduled; it is

ORDERED, that 122nd Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $2.28 per 100 KWH for the month of February, 1984, be, and hereby is, permitted to become effective February 1, 1984.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of February, 1984.

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NH.PUC*02/23/84*[61351]*69 NH PUC 135*Claremont Gas Light Company

[Go to End of 61351]

69 NH PUC 135

Re Claremont Gas Light Company

Intervenor: Office of Consumer Advocate

DR 83-215,
Supplemental Order No. 16,914

New Hampshire Public Utilities Commission

February 23, 1984

Order approving temporary rates.

APPEARANCES: Dom S. D'Ambruoso, Esquire for the Petitioner; Michael Holmes, Esquire for the Consumer Advocate; Larry Smukler, Esquire for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

On November 30, 1983, Claremont Gas Light Company of Claremont, New Hampshire filed a petition for temporary and permanent rates and revisions to its Tariff NHPUC No. 9 - Gas, providing for an aggregate annual increase in base revenues of $119,669 or 30% (net of the N.H. State Franchise Tax and Fuel Adjustment Clause).

Accordingly, said petition was set for hearing on temporary rates and procedural matters on February 7, 1984. A duly noticed public hearing was accordingly held on February 7, 1984 at 2 p.m. at the Commission's offices in Concord.

During the course of the hearing the Company presented one witness and twelve (12) prefiled exhibits. In addition, the participants outlined the following proposal to the Commission for approval:

(1) The Company would be entitled to increase its annual revenues by $119,669 (net of the N.H. State Franchise Tax), in compliance with the rate structures reflected in exhibits J and K on a temporary basis, subject to reconciliation once permanent rates are determined.

(2) The temporary rates would be effective with all service rendered on or after the date of the hearing, February 7, 1984.

(3) The procedural schedule calls for:

a.the 1983 Annual report to be filed by April 2, 1984

b.PUC Audit to be conducted in April, 1984

c.Data requests of the Company to be submitted by April 30, 1984

d.data responses by the Company to be submitted by June 15, 1984

e.public night hearing in Claremont on June 20, 1984

f.a conference to limit the issues on June 27 & 28, 1984, with the 28th set aside by the Commission for possible hearing of issues are resolved[1(35)]

g.staff and intervenor testimony to be filed by July 20, 1984

h.data requests to testimony filed on July 20, 1984, due by August 3, 1984

i.data responses to testimony filed on July 20, 1984, due by August 24, 1984

j.hearing dates set for September 11 and September 12, 1984

The Commission accepts the procedural schedule with our notation necessitating proper notice, the temporary rate level, and the effective date as being in the public good.

The temporary rate level is found appropriate based on the Company's filings which reflect a 1982 loss of $(108,773) and a projected 1983 loss in the same neighborhood. No one should interpret Commission acceptance of these figures for temporary purposes, as acceptance of them for permanent rate purposes. We will expect our Staff to carefully analyze 1983 results for permanent rate purposes.

The Commission accepts the effective date for temporary rates as being in the public good, as February 7, 1984 was the first date at which a hearing was held before the Commission on the subject of rate relief.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Claremont Gas Light Company may raise its annual revenues by $119,669 on a temporary basis effective with all service rendered on or after February 7, 1984, in accordance with the attached Report; and it is

FURTHER ORDERED, that the procedural schedule proposed in the report is accepted.

By Order of the Public Utilities Commission of New Hampshire this twentythird day of February, 1984.

FOOTNOTE

[1]The Commission notes that a hearing on the 28th would only be held if proper notice is made.

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NH.PUC*02/24/84*[61352]*69 NH PUC 137*New Hampshire Electric Cooperative, Inc.

[Go to End of 61352]

69 NH PUC 137

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Conservation Law Foundation of New England, Inc., and Office of Consumer Advocate et al.

DF 83-360,
Supplemental Order No. 16,915

New Hampshire Public Utilities Commission

February 24, 1984

Order approving a financing arrangement proposed by an electric cooperative to fund its share of a nuclear generating project.

Electricity, § 3 — Nuclear generating plant — Joint ownership agreement — Financing plans.

A financing arrangement proposed by an electric cooperative to fund its share in a nuclear power generating project by borrowing from the United States government was approved where the commission found that without the required financing the co-op could default on its obligations under the project's joint ownership agreement and such a default would have serious consequences for the co-op and its ratepayers; the financing was approved pending an evaluation of options available by the co-op's management and a commission review of that process.

(McQuade, chairman, separate position, p.141; Iacopino, commissioner, separate opinion, p.142; Aeschliman, commissioner, dissents, p.143.)

APPEARANCES: Hall, Morse, Gallagher & Anderson by Mayland H. Morse, Jr., Esquire for the New Hampshire Electric Cooperative, Inc.; Michael W. Holmes, Esquire for the Consumer Advocate; Douglas I. Foy, Esquire for the Conservation Law Foundation; Roger Easton, pro se; Gary McCool, pro se; Larry M. Smukler, Esquire for the Staff of the Public Utilities

Commission of New Hampshire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On November 18, 1983, the New Hampshire Electric Cooperative, Inc. ("Co-op") filed a petition with the Public Utilities Commission of New Hampshire ("Commission") which sought inter alia authority to borrow $111,000,000 from the United States Government acting through the Rural Electrification Administration ("REA") in conjunction with the Federal Financing Bank ("FFB"). An Order of Notice was issued on November 21, 1983 establishing a hearing date of January 12, 1984. Timely written Motions to Intervene by Roger Easton, Gary McCool and Lynn Chong were filed with the Commission pursuant to RSA 541-A:14.

At the January 12, 1984 hearing, appearances were entered by the Co-op, the Consumer Advocate, Roger Easton, Gary McCool and the Staff of the Commission ("Staff"). The Commission entertained a Motion by the Consumer Advocate to postpone the proceedings and heard argument on the Motions to Intervene and on the scope of the proceedings. As a result, the Commission made a series of procedural rulings, confirmed in Order No. 16,855 ([1984] 69 NH PUC 24), which included, inter alia, granting the Motion to Postpone of the Consumer Advocate, granting the Motions to Intervene of Roger Easton and Gary McCool, denying the Motion to Intervene of Lynn Chong and establishing a schedule for the remainder of the proceedings.

Pursuant to Order No. 16,855, the Commission held a hearing on February 8, 1983 at which argument was heard on the scope of the proceedings and evidence was taken.[1(36)] It became apparent that the proceedings could not go forward until the Commission ruled on the proper scope of the docket. Accordingly, the Commission suspended the hearing and directed the parties to file written memoranda on the scope of the proceedings. A further hearing was scheduled on February 16, 1984.

At the February 16, 1984 hearing, the Commission, after review of the written submissions, ruled on the scope of the proceedings. The majority determined that the scope should be limited to whether the proposed financing is in the public good. Specifically:

1) Whether the cost of the proposed financing is in the public good;

2) Whether the amount of the proposed financing is in the public good; and

3) Whether the terms and conditions of the proposed financing are in the public good.

The majority also determined that the prudency of the Co-op's investment in the Seabrook units is outside the scope of a finance proceeding, such as the instant one, being held pursuant to RSA Chapter 369.[2(37)] See, Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 51 PUR4th 298, 454 A2d 435.

After ruling on the scope of the proceedings, the Commission heard evidence at the February 16, 1984 hearing and a continuation of the hearing on February 17, 1984. A Motion to Strike evidence which fell outside the scope as defined by the Commission was filed by the Staff.

That Motion was granted subject to review of specific record references to be submitted by the Staff. Those references were submitted on February 22, 1983. After review, we will find that all referenced material was irrelevant and outside the scope of the proceedings. Accordingly, we will grant the Staff's Motion to Strike all material referenced in its February 22, 1984 memorandum.

II. POSITION OF THE PARTIES

The Co-op's position was that the proposed financing is reasonable and is in the public good. In support of its position, it presented four witnesses: Professor J. Peter Williamson, Stephen E. Kaminski, Frederick C. Anderson and John Pillsbury.

Professor Williamson testified to the reasonableness of the financing rate. He emphasized that the rate set is of 1% above the U.S. Treasury cost of borrowing. This rate, which may vary, should always be significantly more attractive than alternative borrowing rates. Professor Williamson's testimony was conclusive on the issue of the reasonableness of the financing rate.

Mr. Kaminski testified as to the basis of the amount of the financing. He stated that the REA must certify to the United States Office of Management and Budget that the financing will be sufficient to cover all of the obligations of the lender arising from its participation in the construction of a generating facility. In this instance, the Co-op presented a request to borrow $50 million based on a study by its consultant, Southern Engineering Company ("Southern"). The REA, in consultation with the Nuclear Regulatory Commission and Southern, revised that cost estimate so that it was large enough to cover any reasonable adverse contingency. Accordingly, the Co-op was asked to amend its request to the proposed $111 million to reflect the more conservative assumptions. On cross-examination, Mr. Kaminski indicated that the conservative estimate was based on data available no later than the spring of 1983 and that the new cost estimates due on March 1, 1984, might require reevaluation. However, Mr. Kaminski continued to maintain that the REA estimate was reasonable.

Mr. Anderson testified generally on the terms and conditions of the REA loan. He indicated that the $111 million amount is a line of credit that could not be drawn upon until the Co-op receives an invoice for its share of the cost from the Seabrook lead participant or for the financing cost of its previous loan from the FFB. Thus, no obligations would be incurred for either Seabrook unit until construction funds were expended. Mr. Anderson also indicated that principal would not be due until seven years after the date the particular portion of the line of credit is drawn down; a factor which enhances the attractiveness of the proposed financing.

Mr. Pillsbury testified generally on management's participation in the Seabrook project and its transactions with the REA.

The Consumer Advocate and the Intervenors opposed the instant financing. Witness McCool testified that the Co-op was not able to prove that the amount of the borrowing was reasonable in view of the staleness of the data. The Co-op should be allowed to borrow only enough money to prevent default in the near future, pending updated information. Further, the Consumer Advocate and the Intervenors requested that the Co-op be prohibited from applying any of the proceeds of

the borrowing to Seabrook Unit II pending a reevaluation of the future of the Unit. Finally, the Consumer

Advocate and the Intervenors requested that a separate docket be opened to investigate the prudency of the Co-op's continued participation in the Seabrook project.

The Staff analysis indicated that the financing rate of the proposed borrowing is reasonable. However, since the amount of the borrowing was based on the estimate of the cost of the Seabrook Units, it could not recommend Commission approval until after the new cost estimates are released. It was the Staff view that the record could not support a finding that the amount of the proposed financing is reasonable in the absence of the updated cost estimates; estimates which are to be released within the coming days. The Staff indicated its willingness to design interim measures to prevent default pending an evaluation of the updated cost estimates.

III. COMMISSION ANALYSIS

The issues presented to the Commission are difficult. We cannot help but recognize the legitimate interests and concerns of all the parties to this proceeding and the members of the public who cared enough to provide input into the Commission process. Unfortunately, while the legitimate interests and concerns of the parties and the public are similar — low cost reliable electricity — the are not consistent as applied to the choices confronting the Commission in the instant financing. The difficulty of reconciling the lack of updated information, which will be imminently available, with the risk of the severe adverse consequences of a default resulting from an inability to obtain financing has resulted in three separate opinions by three Commissioners. Two of the Commissioners are able to agree to the extent necessary to make the necessary findings to approve the proposed financing. However, since we have all arrived at our decision by different avenues, we have agreed to state our views in separate opinions which will be attached to this Report.

We have found that there is some common ground between the Commissioners. Accordingly, we will articulate here that analysis that can be read as being the opinions, findings and conclusions of the Commission for the purpose of ruling on the issues before us.

1. It is not in the interest of the Co-op or its members to default on the Co-op's obligations under the Seabrook Joint Ownership Agreement. Additional financings should be approved at least to the extent necessary to forestall default pending the Co-op management's evaluation of its options and Commission review thereof.

2. The Co-op's small ownership share, while limiting Co-op options, does not eliminate the Co-op management's responsibility to act in the best interest of the Co-op members. Even though the Co-op owns only an approximate 2% share of the project, it is not simply "along for the ride." We shall monitor closely the actions management takes in the course of joint owners meetings and other Seabrook activities and we will expect management to protect vigorously the interests of its members to the full extent of its limited ability to do so.

3. The Commission is very concerned about what upcoming cost estimates will mean with respect to the economics of both Seabrook Units and their impact on the financing plans of the

participants. Obviously, we cannot reach a conclusion in the absence of facts and it is therefore useless to speculate on the possible courses of Commission action until the data are available. However, approval of the instant financing is not to be taken as the Commission's last word on the continued

prudency of the Co-op's Seabrook participation. If the evidence warrants, we will not hesitate to open a separate docket under appropriate legal authority to review the Co-op's evaluation of the nature of its continued participation in the Seabrook project.

4. The financing rate of the proposed borrowing from the U.S. Government through the REA and the FFB is reasonable and in the public good.

5. The amount of the proposed borrowing is reasonable and in the public good.[3](38)

6. The terms and conditions of the proposed borrowing are reasonable and in the public good.[4](39)

Since the majority of the Commission concludes that the proposed financing is in the public good, we will approve the Co-op's authority to enter into the financing.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Staff's Motion to Strike certain testimony of Professor Williamson is granted; and it is

FURTHER ORDERED, that the request of the New Hampshire Electric Cooperative, Inc. for authority to borrow $111,000,000 is approved.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of February, 1984.

Position of Chairman Paul R. McQuade

The Commission having defined the scope of the instant proceedings must by statute, RSA 369:1, find that the proposed financing is just and reasonable and will serve the public good.

The record shows that the petitioner, New Hampshire Electric Cooperative, Inc., has met the burden of proof necessary to support the petition.

The authorization of the $111 million line of credit guarantees to the ratepayers the lowest possible interest rate for the full amount the Co-op may need to complete its share of Seabrook. This favorable rate may not be available to the Co-op in the future. By authorizing less than the full $111 million, the Commission could scuttle the entire financing along with its favorable terms or could force the Company to make future borrowings at much higher interest rates, and thus at much higher potential cost to the ratepayer.

Our authorization, while it locks in the line of credit at favorable rates, does not require that the Co-op actually borrow against the account. The Commission can at any time that it becomes

necessary and appropriate to do so, put the Co-op and the other joint owners on notice as to any concerns it may have regarding further Seabrook investments.

The concerns of the Consumer Advocate and the intervenors are legitimate concerns that are shared to some degree by all the Commissioners. However, if proceedings are to go forward in an orderly fashion, I must rely on the best information available at the time. To speculate and give credibility to rumor concerning cost overruns for Seabrook that are not fact at the time of deliberation is irresponsible.

The Commission has made it clear that

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concerns expressed by the intervenors are more appropriately addressed in a separate docket. I have encouraged the intervenors to adopt this method of expressing their views and concerns. As of this date there has been no response to my suggestion.

The Commission, as the responsible watchdog for all New Hampshire citizens regarding utility matters, is committed to a thorough review of the updated Seabrook costs when they are available in early March. Upon review of the updated cost projections, when available, it is reasonable to assume that the Public Utilities Commission will be opening dockets to address those areas of mutual concern expressed by the intervenors. At that time, the Commission will be working with factual information so that I may fully evaluate the impact of the new information on all New Hampshire ratepayers as well as the 2% ownership by the Cooperative.

In summary, this Commission must be concerned about the impact of any cost increases, should they occur, on all New Hampshire ratepayers; the 35% share to be paid by Public Service Company of New Hampshire ratepayers as well as the 2% share of the Co-op members. When that information is available, we will initiate action to the full extent of our authority to assure that the public interest is served.

Opinion of Commissioner Iacopino

The Commissioners have different concerns regarding the petition before them and therefore different conclusions. It is clear that the Cooperative is an owner of a small share of the Seabrook project which was purchased from Public Service Company of New Hampshire (See [1979] 64 NH PUC 485, 486). It is common knowledge that the construction of the entire project has caused great controversy among various segments of the population. This controversy has been demonstrated in almost every proceeding wherein the construction of Seabrook is mentioned.

The Commission has an obligation to require the utilities to meet the power needs of the State now and in the future. The Commission has previously concluded that the Cooperative's participation in the project is in the public good. See, 66 NH PUC 139, 140; 64 NH PUC at p. 486; and 54 NH PUC at p. 262.

The Cooperative, to meet its obligation to provide future power and its contractual obligations as a participant in the Seabrook project seeks authority in this proceeding to borrow $111,000,000.

RSA 369 authorizes the Commission to approve financing for utilities after a hearing. RSA 369:4 authorizes the Commission if in its judgment the issue of such securities upon the terms proposed is consistent with the public good, to authorize the same in an amount sufficient, at the price affixed in accordance with the law applicable thereto to provide funds for defraying the costs as so determined.

In the context of a finance hearing the public good has been defined by the Supreme Court in Appeal of Public Service Company of New Hampshire. A reasonable interpretation of that case is that the Commission may not, in a finance hearing, attempt to prevent the completion of a facility that has received RSA 162-F approval by disallowing the finance for reasons ground in RSA 162-F:8I.

In this proceeding the Commission is left with the narrow issue of whether the cost rate and the terms of the proposed financing that are at issue are in the public good. No party seriously disputes that the cost rate or the terms of the financing are will below what other utilities can

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obtain, therefore, I have no alternative but to approve the cost rate and the terms of the financing as being in the public good.

Some concerns have been expressed regarding RSA 369:3 which require the utility to file with its application a statement in reasonable detail showing the actual costs already incurred and the estimated cost to be incurred for any of the purposes for which the securities are to be issued.

The record sets forth that the Cooperative purchased a share of the Seabrook project (See 66 NH PUC at p. 140) and subsequently petitioned the Commission for approval of the financing associated therewith (See [1981] 66 NH PUC 208). The Commission approved financing in the sum of $75,000,000. The current petition seeks an additional $111,000,000 which represents a sum calculated by Southern Engineering Company (at the insistence of REA) needed to meet estimated increased costs and scheduled delays as of March 1983. A review of the report and the other factors considered support the conclusion that the amount is reasonable under the circumstances.

Others make much to do about the possibility that PSNH's new cost studies now scheduled for March 1, 1984 may be substantially different from the figures projected by Southern Engineering and REA. However, the accuracy of PSNH figures are consistently attacked by intervenors and regulatory bodies.

The Commission can not foresee the future any better than anyone else and it must rely on the record in the proceeding before it to determine whether the approval of the financing is within the public interest.

The Commission, however, can impose reasonable conditions on a financing (See RSA 369:1).

All of the Commissioners have indicated that the Cooperative should not be put in default on its contractual obligations. The methods to avoid this consequence vary. It does not appear

logical that a partial approval is warranted if one argues that the Cooperative had not met its burden of proof. Either they have or they have not. If they have, and I so find, then a reasonable course of action under the circumstances would dictate that the financing be approved subject to the following condition. Upon receipt of information that the new cost estimates exceed the range supported in this record, the Cooperative be ordered not to make any further draws on the loan until such time that it shows cause to the Commission that it is in the public interest to continue their participation in the project.

As much as I would like the above condition to be incorporated into an order I am informed that my fellow Commissioners will not join me therefore I am compelled to approve the financing as submitted.

Dissenting Opinion of Commissioner Aeschliman

The New Hampshire Electric Cooperative, Inc. has not met its burden of proof required by RSA 369 even given the narrowness of the scope as defined by the majority of the Commission. RSA 369 requires that the Company substantiate the reasonableness of the amount of indebtedness authorized:

Such approval shall extend to the amount of the issue authorized and the purpose or purposes to which the securities or the proceeds thereof are to be applied, and shall be subject to such reasonable terms and conditions as the commission may find to be necessary in the public interest; ... (RSA 369:1)

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RSA 369:3 requires that

Any such public utility which may apply to the Commission for authority to issue such securities shall file with its application a statement in reasonable detail, showing the actual cost already incurred and the estimated cost to be incurred for any of the purposes for which such securities are to be issued...

RSA 369:4 requires that

The Commission, after such hearing ... shall determine the actual or probable cost incurred or to be incurred; ... it shall authorize the same to an amount sufficient ... to provide funds for defraying the cost as so determined.

The record is simply not sufficient to satisfy the requirements of the law.

On the contrary, the record is very clear that evaluations supporting the $111 million amount were based on data that was available in the spring of 1983. While the Commission could conclude that the estimate was reasonable at that time, there is no evidence to support the reasonableness of the estimate now. Rather, the evidence would lead one in the opposite direction. Certainly, the data is stale and may be rendered inaccurate within a week when Public Service Company of New Hampshire issues its new cost estimates.

It is not reasonable for the Commission to approve the $111 million amount on the condition that if the new cost estimates exceed that amount it will be reviewed. The statute requires that the amount be justified, not that it be approved until proven wrong.

Furthermore, the Commission majority was in error in narrowly defining the scope to exclude testimony relative to the reasonableness of the Company's continued participation in Seabrook Unit II at the cost level requested in the loan.

In seeking approval for the financing of the total amount of the Cooperative's share in Seabrook Units I and II, the Cooperative must address the issues raised by the resolution adopted by the Joint Owners on September 8, 1983. That resolution (Exhibit 10) specifically indicates that all of the Seabrook owners are evaluating their power supply options with respect to Unit II and that there is a possibility of Unit II cancellation. The Commission can not reasonably ignore the events of September 8th. In order to meet its burden of proof the Cooperative should have submitted evidence showing that it had conducted a review consistent with the Joint Owners Resolution, that the conclusions reasonably followed from the data and the financing request was consistent with this review. The Cooperative has not done any such review.

The management of the Cooperative takes the position that because the Cooperative is a small owner, it does not have control of the project and in fact has less knowledge than the Commission. (Trans. Vol. 3, p. 204) The Commission should not accept this position. The management of the New Hampshire Electric Cooperative has a duty to its members independently to determine the reasonableness of its level of participation in Seabrook.

Since the record is clear on the adverse effects of default and the need for additional funds by April 16th, the reasonable course is to find a means to prevent the consequences of default while retaining the opportunity to properly review the amount of the borrowing authority requested. The Consumer Advocate, the intervenors and the Staff all suggest the option of approving a partial

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amount. The Consumer Advocate proposes approval of $9 million, an amount sufficient to meet anticipated payments though September 1984. (Exhibit 8, Trans. Vol. 4, p. 68)

The Company contends that the full amount must be approved or the REA will not advance any funds. While the Company refers to an REA "rule" requiring certification to the Office of Management and Budget that the funding authorization is sufficient to complete the project, the Cooperative has not provided a citation to the rule. A search by the Commission Staff of the Code of Federal Regulations and the Federal Register, the places where such a rule would have to appear, also failed to identify such a rule. It is simply not reasonable to conclude that the REA, after advancing $75 million to the Cooperative for its Seabrook investment, will not advance funds while the Commission completes its review. If the Commission accepts the Company's position, the effect is to allow an REA practice to negate the statutory authority and duty of this Commission. The fact of the matter is that the majority decision gives full and final approval to the New Hampshire Electric Cooperative's participation in Seabrook Units I and II up to a cost level exceeding $8 billion.

Finally, the record gives no assurance as to the Commission's ability to protect the Cooperative's members from paying for unreasonable costs should future proceedings determine imprudent expenditures. The Supreme Court has indicated that

While management in the first instance may be free generally to make its own decisions about the level of investment in new construction..., it must bear in mind that as a regulated company not all costs may be recovered from the public when the plant is completed. ...the day will come when a properly noticed hearing will be necessary to determine what costs associated with Seabrook are to be borne by the consumers through electric rates and what costs are to be borne by the stockholders and investors. Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 1076, 51 PUR4th 298, 306, 454 A2d 435 (emphasis in the original).

However, the difficulty in the Cooperative's case is that when that day comes there are no stockholders or investors to whom some of the costs could be apportioned. The Commission has not had adequate opportunity to assess its statutory authority under Re Public Service Co. of New Hampshire as it applies to the unique circumstances of the New Hampshire Electric Cooperative.

Given all of these factors the Commission should take the following actions:

(1) Approve authority to borrow $9,000,000 to meet contractual payments; (2) Require the New Hampshire Electric Cooperative to conduct an analysis of its supply options with respect to Seabrook Unit II consistent with the resolution adopted by the Joint Owners September 8, 1983; and (3) Open a new docket on its own motion to do the following: (a) review the New Hampshire Electric Cooperative's analysis described in (2); and (b) determine the legal authority of this Commission particularly with respect to Re Public Service Co. of New Hampshire.

FOOTNOTES

[1]In addition, a late filed Motion to Intervene was submitted by the Conservation Law Foundation ("CLF"). That Motion was granted and CLF was able to participate as a full party in this proceeding. Tr. February 8, 1984 at 52.

[2]A full articulation of the Commission's ruling may be found in the February 16, 1984 Transcript at 3-4 to 3-6 which is incorporated herein by reference. Commissioner Aeschliman dissented from the majority ruling. She would have ruled that a review of the Co-op's reevaluation of its participation in Seabrook Unit 2 pursuant to the Resolution of the Joint Owners (Exh. 10) is within the scope of a RSA Chapter 369 proceeding. See, Tr. at 3-6 to 3-9.

[3]Commissioner Iacopino concurs with this finding, although he would attach conditions as discussed more fully in his separate opinion. Commissioner Aeschliman dissents from this finding for the reasons set forth in her separate opinion.

[4]Id.

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NH.PUC*02/24/84*[61353]*69 NH PUC 146*Connecticut Valley Electric Company, Inc.

[Go to End of 61353]

Re Connecticut Valley Electric Company, Inc.

DR 83-372,
Second Supplemental Order No. 16,916

New Hampshire Public Utilities Commission

February 24, 1984

Motion for a rehearing of a purchased power cost adjustment allowing recovery of abandonment costs by an electric utility; approved in part denied in part.

Automatic Adjustment Clauses, § 17 — Indirect costs — Nuclear plant abandonment — Recovery of costs through power cost adjustment mechanism.

The commission upheld on review its inclusion, subject to refund, of abandonment costs in the purchase power cost adjustment for an electric utility; a complaint that such costs should not be included without a prior determination on the merits of the issue in a general rate case was dismissed where the utility advocating inclusion made a prima facie showing justifying recovery. [1] p.146.

Automatic Adjustment Clauses, § 51 — Effective date — "Bill rendered" date — Proration of bills.

Where a previous commission order had allowed an increase in purchased power cost adjustment rates for an electric utility to become effective for all bills rendered on or after a certain date, and that "bill rendered" date was equivalent to an earlier "service rendered" date, the commission modified the order requiring the utility to prorate bills so that only service rendered on or after the effective date of the PPCA would be billed at the higher rate. [2] p.147.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On January 24, 1984, the Commission issued Report and Supplemental Order No. 16,875 (69 NH PUC 37) which inter alia approved inclusion of certain abandonment costs in the Purchase Power Cost Adjustment ("PPCA") of Connecticut Valley Electric Company ("Company" or "CVEC") subject to refund if the Commission should determine in Docket No. DR 83-200 that RSA 378:30-a (the so-called "Anti-CWIP" statute) is applicable. On February 14, 1984, Sinclair Machine Products, Inc. et al. ("Intervenors"), full intervenors in this docket, filed a timely Motion for Rehearing ("Motion") pursuant to RSA 541:3. After due consideration, we will deny the Motion in part and grant the Motion in part.

In their Motion, the Intervenors aver that the Commission's Order was unlawful or unreasonable in two material respects: 1) The inclusion of certain abandonment costs is inconsistent with a settlement agreement previously approved by the Commission; and 2) The

effective date is discriminatory and based on an erroneous factual analysis. We shall address each of the Intervenors' contentions in turn.

Abandoned Plant Costs

[1] The Intervenors claimed that the Commission erred in allowing the inclusion of certain abandoned plant costs without having first made a determination on the merits of the issue in a general

rate case. According to the Intervenors, the Commission should have excluded all such costs subject to refund by the consumers rather than the Company. The basis for the claim is the settlement agreement approved by the Commission in Docket No. DR 82-67, Report and Seventh Supplemental Order No. 16,185 ([1983] 68 NH PUC 40).

Our review of the material in that docket convinced us that it was appropriate to include abandonment costs in the PPCA subject to refund. In particular, the Commission noted in Report and Seventh Supplemental Order No. 16,185 that (68 NH PUC at p. 41):

... abandoned nuclear plant costs of the Company for the twelve (12) months ended December 31, 1982, are excluded from this rate increase, and shall not be included in any future PPCA unless previously approved in a general rate case. (Emphasis supplied.)

In the instant PPCA proceeding, it is clear that the Company has continued to exclude the abandoned plant costs for the twelve months ended December 31, 1982. The costs included are all applicable to the time period subsequent to that date. Thus, the Commission's Order was consistent with the terms of its previous decision in DR 82-67.

We are not unmindful that the included costs could arguably be excluded under the same rationale as that adopted in DR 82-67. However, in this instance, where a determination on the merits of the issue is pending before the Commission, we do not believe that any party will be materially prejudiced by the inclusion of the disputed costs subject to a refund Order.[1(40)] As noted in the Commission's Order, the Company has made a prima facie showing which justifies recovery under this Commission's decision in Re Granite State Electric Co. (1984) 69 NH PUC 1. This, in combination with the fact that all abandonment costs had been previously excluded, indicates that the fairest course for the Commission to follow is to allow recovery subject to refund.

Effective Date

[2] The Commission's Order allowed the PPCA rates to be effective for all bills rendered on or after January 16, 1984 for monthly customers and January 31, 1984 for bi-monthly customers. The Order further provided that the above "bills rendered" effective date is equivalent to a "service rendered" effective date of January 1, 1984. The Intervenors claim that the effective date provisions in the Commission's Order were factually and legally erroneous.

The Intervenors base their assertion of factual error on the Commission's assertion that the dates are equivalent to a "service rendered" date of January 1, 1984. The Intervenors claim that, under the Commission's Order, some customers will be billed at the higher PPCA for service

rendered in December of 1983. The Intervenors are correct in their analysis of the effect of the Commission's Order on customers. A review of the record reveals that the Company did not propose to prorate bills so that only service rendered on or after January 1, 1984 would be billed at the higher PPCA rate. Rather, the Company rested on an assertion that its methodology would generate an equivalent level of overall PPCA revenues from all customers as a January 1, 1984 "service rendered" effective date. See e.g., Tr. at 23 to 27.

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Our review of the record leads us to conclude that we did err in our previous Order.[2(41)] CVEC did not have to pay the higher RS-2 wholesale rate for service rendered prior to January 1, 1984. It is unfair to require its customers to pay a higher rate when the underlying cost increase has not yet occurred. Insofar as the Commission Order approved billing at the higher PPCA rate for service rendered in December of 1983, it was unfair, discriminatory and unequivalent to a January 1, 1984 "service rendered" effective date. Accordingly we must amend our Order.

The amendment to the Order will require the Company to prorate its bills so that all customers will be billed at the higher rate only for service rendered on or after January 1, 1984. The prorating will be reflected as a credit or a debit in subsequent customer bills. We recognize that this task will require recomputation by the Company of bills already rendered. To the extent that the administrative burden can be eased, we will approve measures designed to streamline the process. One such measure would be to defer reflecting the appropriate credits and debits on customer bills until after the Commission has issued its Order in Docket No. DR 83-200. Such a deferral will allow the Company to accomplish all bill adjustments at the same time.

Because we have concluded that our previous Order was factually erroneous, it is unnecessary to address the Intervenors' contention that the Order was legally erroneous under Re Pennichuck Water Works (1980) 120 NH 562.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion for Rehearing of Sinclair Machine Products, Inc. et al. is granted to the extent that it applies to the effective date of the rates approved in Report and Supplemental Order No. 16,875 (69 NH PUC 37) and it is

FURTHER ORDERED, that Connecticut Valley Electric Company shall recalculate customer bills in accordance with the terms of the foregoing Report; and it is

FURTHER ORDERED, that the Motion for Rehearing of Sinclair Machine Products, Inc. et al. is denied in all other respects.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of February, 1984.

FOOTNOTES

[1]We are currently reviewing the written submissions of the parties on the merits and expect to issue an Order in DR 83-200 within the next several weeks.

[2]This error is one of the hazards of attempting to meet the needs of the parties for an expeditious Order. The Commission understood that CVEC was holding up its billing pending the PPCA Order and we were attempting to be responsive. The result was that the Order was issued on January 24, 1984 (seven days after the January 17, 1984 hearing) which was the same day as the transcript in this docket was filed. Obviously, a more thorough review of the transcript would have delayed the Order, but, at the same time, would have resulted in a more accurate Order.

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NH.PUC*02/27/84*[61354]*69 NH PUC 149*Sunapee Hills Water Company

[Go to End of 61354]

69 NH PUC 149

Re Sunapee Hills Water Company

DE 83-235, Order No. 16,919

New Hampshire Public Utilities Commission

February 27, 1984

Petition for authority to discontinue water service as a public utility; rejected.

Service, § 277 — Abandonments — Water service — Burden on consumers — Operator's financial condition.

A petition by the owner of a water company for authority to discontinue service as a public utility due to poor health was rejected where no evidence was submitted that the owner was financially unable to support the employment of outside help to continue operations and where at least four customers would in all likelihood have no reasonable alternative water supply and the remaining customers would have to dig wells at considerable expense.

By the COMMISSION:

REPORT

Sunapee Hills Water Company (Sunapee), by and through its President and sole owner, Donald Seymour, petitioned this Commission for authority to discontinue service as a public utility. Sunapee was granted authority to operate in a limited area in Newbury as a water utility in docket DE 81-165, Order No. 15,039 effective July 31, 1981 (66 NH PUC 288).

Donald Seymour now represents that because of poor health he is unable to continue the

physical operation of the water system. He further contends that because of inadequate earnings he has been unable to obtain financing and, as a result, has been unable to discharge debts incurred on the water system.

Mr. Seymour's health and financing problems were the subject of Commission hearings in DE 82-268 at which an agreement was reached between the parties whereby the customers, members of the Association of Sunapee Hills, Inc. (Association) were authorized[1(42)] to collect revenues from the third and fourth quarter billings of 1982 and the first quarter billings of 1983, and to operate the water system using said revenues. During this period negotiations were to continue between Sunapee and the Association for the possible sale of the system by Seymour to the Association.

By letter of May 3, 1983, Mr. Seymour notified the Commission that no progress had been made in his efforts to sell and by Order No. 16,500 ([1983] 68 NH PUC 440), authority to operate the system was returned to him. The instant petition is that Sunapee now be allowed to discontinue operations altogether.

Mr. Seymour alleges that his health does not allow him to operate the system alone, and that Sunapee has insufficient revenues to hire another qualified individual to monitor and operate this system. However, Sunapee submitted no documentation of this claim and in fact has failed to file any of the required annual

financial reports since the system was franchised in 1981.

We have authorized discontinuance of utility service when the public good was so served as in Re Northern View Water Co. (1980) 65 NH PUC 357, and Re Columbia Water Co., Inc. (1983) 68 NH PUC 72.

In the instant case, however, we find that the public good would not be served by allowing Sunapee Hills Water Company to discontinue operations at this time. Mr. Seymour represents that he is financially and physically unable to operate the system. However, no evidence has been submitted in the way of financial statements or Commission reports that the financial health of the system cannot support the employment of outside help to continue operations. Nor has Sunapee requested a rate increase to provide it with additional revenues.

A public utility has not only rights but also has obligations. To grant this petition at this time would be to deprive Sunapee customers of a reasonable water supply. The record indicates that at least four customers would in all likelihood have no reasonable alternate water supply. Their lot sizes are too small to safely or lawfully install private wells due to local setback requirements and the location of septic systems on their own and neighbors' property. The remaining customers would have to dig wells at considerable expense, assuming there is underground water at an attainable depth.

Accordingly, the Commission finds that it would not be in the public interest to grant the petition. Mr. Seymour is still free to sell the Company, subject to Commission approval, or to petition the Commission for appropriate rate increases.

As long as Sunapee is operating, however, it must provide water to its customers in a safe

and efficient manner in accordance with its public trust and the laws of this State.

Sunapee advised the Commission that on December 27, 1983, it hired a qualified individual to operate and maintain the water system. A copy of the contract entered into between Sunapee and this employee was filed recently with this Commission. Sunapee should not stop there but must ensure that the water system continues to be properly maintained and operated. Specific remedial action which Sunapee must take to address past problem areas include:

1. The chlorinator shall be maintained and inspected daily to ensure purity of the water supply.

2. The operator shall obtain periodic samples and ensure that they are submitted to the state laboratory for analysis in accordance with state law.

3. The operator shall maintain the general operation of the system in a safe and efficient manner in accordance with the laws and regulations of this State.

Failure to comply with this directives may result in sanctions against Sunapee and Mr. Seymour pursuant to, inter alia, RSA 374:28, 374:41, 365:41, or 365:42.

In a related matter in this docket, Sunapee was called before the Commission to show cause why it should not be fined for failing to file with the Commission the required financial reports for the years 1981 and 1982. Sunapee failed to appear at the first duly noticed hearing on this matter which was scheduled for September 28, 1983.[2(43)] At a subsequent hearing on October 11, 1983,[3(44)] Sunapee

again failed to furnish the required reports. To date, the reports have still not been receive by the Commission. Sunapee must now file their reports forthwith or be ordered to pay a fine of one hundred dollars for each day of noncompliance. RSA 374.17.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Sunapee Hills Water Company monitor, operate, and maintain the water system as specified in the Report accompanying this Order and as required by the laws and regulations of this State; and it is

FURTHER ORDERED, that pursuant to RSA 374:15 and PUC 607.06 and PUC 609.05, Sunapee Hills Water Company submit to the Commission the required financial reports for the years 1981 and 1982 by February 29, 1984 and for the year 1983 by March 31, 1984 or be subjected to sanctions pursuant to inter alia RSA 374:17.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of February, 1984.

FOOTNOTES

[1]By Order No. 16,189 dated January 31, 1983 (68 NH PUC 42).

[2]This docket was originally opened as DE 83-260 on August 9, 1983. For administrative reasons, the docket was later consolidated with the discontinuance docket, No. DE 83-235 so both issues are being addressed in this Report and Order.

[3]In docket No. DE 83-235.

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[Go to End of 61355]

69 NH PUC 151

Re Public Service Company of New Hampshire

DR 82-333,
Tenth Supplemental Order No. 16,921

New Hampshire Public Utilities Commission

February 27, 1984

Order accepting an electric utility's filings revised to include previously omitted data.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, complying with Commission Order No. 16,885 ([1984] 69 NH PUC 67), Public Service Company of New Hampshire issued its Tariff No. 29; and

WHEREAS, it now appears that said tariff inadvertently omitted certain data required by said order and its associated settlement; and

WHEREAS, the Company has filed revised pages to correct such omissions; and

WHEREAS, the Commission finds the revised pages to be in conformity with its earlier decision; it is

ORDERED, that 1st Revised Pages 24-26, 28-30, 42-45, and 50 of Public Service Company of New Hampshire tariff NHPUC No. 29 - Electricity, be, and hereby are, approved for effect on February 1, 1984.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of February, 1984.

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[Go to End of 61356]

69 NH PUC 152

Re Northern Utilities, Inc.

DR 83-90,
Fifth Supplemental Order No. 16,922

New Hampshire Public Utilities Commission

February 27, 1984

Order approving tariff revisions to reflect a roll-in of gas costs.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order Nos. 16,481 ([1983] 68 NH PUC 419) and 16,870 [1984] 69 NH PUC 30) approved rates for Northern Utilities, Inc. which also included a roll-in of gas cost in the amount of $0.5211 per therm; and

WHEREAS, Northern Utilities, Inc. has filed revisions of its tariff NHPUC No. 6 - Gas, reflecting said roll-in; and

WHEREAS, the Commission finds such revisions to be in accord with its earlier orders; it is

ORDERED, that 4th Revised Pages 21 and 22 of Northern Utilities, Inc. tariff, NHPUC No. 6 - Gas, be, and hereby are, approved for effect as of June 20, 1983.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of February, 1984.

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NH.PUC*02/29/84*[61357]*69 NH PUC 152*Fuel Adjustment Clause

[Go to End of 61357]

69 NH PUC 152

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, and Woodsville Power and Light Department

DR 84-21, Order No. 16,923

New Hampshire Public Utilities Commission

February 29, 1984

Order rolling fuel costs into base rates in lieu of formal hearings on fuel adjustment clauses.

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

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Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly or quarterly FAC requested a hearing be 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 New Hampshire Electric Cooperative, Inc. 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 was the subject of DR 83-352 in which a hearing was held on December 16, 1983, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in this month's FAC order; and it is

FURTHER ORDERED, that 17th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 - Electricity, providing for a fuel surcharge credit of $(0.224) per 100 KWH for the months of February, and March, 1984, be, and hereby is, permitted to remain in effect for the month of March, 1984; and it is

FURTHER ORDERED, that 17th Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of $(0.231) per 100 KWH for the months of February, and March, 1984, be, and hereby is, permitted to remain in effect for the month of March, 1984; and it is

FURTHER ORDERED, that 8th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of 17.2 cents ($0.172) per 100 KWH for the months of January, February, and March, 1984, be, and hereby is, permitted to remain in effect for March, 1984; and it is

FURTHER ORDERED, that 10th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of January, February, and March, 1984 of $1.401 per 100 KWH be, and hereby is, permitted to remain in effect for March, 1984; and it is

FURTHER ORDERED, that 38th Revised Page 11B of Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity providing for a fuel surcharge of $3.24 per 100 KWH for the month of March, 1984, be, and hereby is, permitted to become effective March 1, 1984; and it is

FURTHER ORDERED, that 90th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge credit of $(0.21) per 100 KWH for the month of March, 1984, be, and hereby is, permitted to become effective March 1, 1984; and it is

FURTHER ORDERED, that 87th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge of $0.45 per 100 KWH for the month of March, 1984, be, and hereby is, permitted to become effective March 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1%

depending upon the utility's classification in the Franchise Tax docket, DR 83-205, Order No. 16,524 ([1983] 68 NH PUC 461).

By order of the Public Utilties Commission of New Hampshire this twentyninth day of February, 1984.

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NH.PUC*03/01/84*[61358]*69 NH PUC 154*Public Service Company of New Hampshire

[Go to End of 61358]

69 NH PUC 154

Re Public Service Company of New Hampshire

DR 84-42, Order No. 16,924

New Hampshire Public Utilities Commission

March 1, 1984

Petition for approval of a streetlighting contract; granted.

By the COMMISSION:

ORDER

WHEREAS, following long negotiations between the Public Service Company of New Hampshire and the City of Nashua regarding High-Pressure SodiumVapor (HPS) Street Lighting, periodic status of which was made available to this Commission, both parties have arrived at a unique system for the provision of HPS; and

WHEREAS, said system has been documented by the filing of the PSNH Special Contract

No. NHPUC - 44, executed by the parties on February 22, 1984 and proposed for effect on March 1, 1984; and

WHEREAS, the Commission finds the terms of said contract in the public interest; it is hereby

ORDERED, that the Special Contract No. NHPUC - 44 of the Public Service Company of New Hampshire be, and hereby is, approved for effect on March 1, 1984.

By order of the Public Utilities Commission of New Hampshire this first day of March, 1984.

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NH.PUC*03/05/84*[61359]*69 NH PUC 154*Public Service Company of New Hampshire

[Go to End of 61359]

69 NH PUC 154

Re Public Service Company of New Hampshire

DR 82-333,
11th Supplemental Order No. 16,928

New Hampshire Public Utilities Commission

March 5, 1984

Motion for rehearing on tax benefit and revenue requirement issues in an electric rate case; granted in part and denied in part.

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Revenues, § 5 — Tax lease proceeds — Zerocost capital — Credit against construction costs.

Proceeds from an electric utility's tax lease may properly be labeled zero-cost capital and should be credited against any costs of construction the utility might have. [1] p.155.

Revenues, § 5 — Tax benefits sales — Pending clarification of tax code.

Pending clarification by the Internal Revenue Service on the sale of tax benefits and indemnification of the buyer of such benefits, any commission rate decision relying upon a certain interpretation of the tax code will only be considered to be temporary. [2] p.156.

Valuation, § 213 — Property included or excluded — Plant held for future use — Construction work in progress.

Plant held for future use is an established account which has been recognized as being separate and distinct from construction work in progress. [3] p.157.

(Aeschliman, commissioner, dissents, p. xxx.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On January 30, 1984, the Commission issued Report and Eighth Supplemental Order No. 16,885 (69 NH PUC 67) ("Decision") which, inter alia, approved an increase of $24.7 million in permanent rates for Public Service Company of New Hampshire ("PSNH" or "Company"). On February 21, 1984, timely Motions for Rehearing were filed by the Campaign for Ratepayers' Rights ("CRR") and PSNH. We shall address each of the Motions for Rehearing in turn.

PSNH MOTION

PSNH's Motion claimed that the Commission's Decision was unlawful or unreasonable with respect to its findings and conclusions on the Garvins Falls tax lease and the Seabrook revenue requirement. For the reasons set forth below, we will conditionally grant PSNH's Motion as it pertains to the Garvins Falls tax lease and deny its Motion in all other respects.

Garvins Falls Tax Lease

[1] PSNH's Motion requests the Commission to suspend that part of the Decision which requires a rate base reduction to reflect the proceeds of the Garvins Falls tax lease. As grounds for the request, PSNH asserts that: 1) the Commission incorrectly characterized the proceeds as "zero cost capital"; and 2) the Commission's treatment of the item could result in the loss of tax benefits, thus ultimately causing PSNH and its ratepayers to incur higher costs.

PSNH's Motion will be denied to the extent that it argues that the Commission incorrectly characterized the proceeds as "zero cost capital". We believe that the proper valuation of original cost in this instance must net the tax lease proceeds against the construction expenses. As the Federal Regulatory Commission ("FERC") stated in a recent decision:

Electric Plant Instruction 7 requires that the net profits from sales of goods or services arising from construction activities, e.g., timber, gravel, rights of way, etc., should be credited to the cost of construction. The rationale behind this rule is simply to insure that, to the extent possible, all expenses incurred in constructing a facility are offset by revenues received by the utility as a consequence of that construction. ...

Under the original cost concept of rate base valuation, VEPCO is entitled to earn a return only on the actual cost

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incurred during the construction of the property placed in rate base. We believe that the actual cost is the net cost of the project after all transactions related to the project are completed and either credited or debited to the plant in service account.[1(45)]

The FERC rationale, while not determinative, is consistent with the findings of this Commission and indicates that those findings are grounded in sound regulatory principles. At this time, we therefore decline to disturb our findings on the effect of the Garvins Falls tax lease

on rate base valuation.

[2] PSNH also alleged that it has discovered an "obscure" provision of the Technical Corrections Act of 1982, P.L. 97-448[2(46)] , which may result in the loss of the conveyed tax benefits, thus triggering an indemnification clause of the tax lease. If PSNH's reading of the amended tax code is correct, the Commission's determination could result in significantly increased costs for the Company and, perhaps, its ratepayers. This Commission must factor in the possibility that its treatment of a particular item may itself result in significant overall increased costs. If that is the case, our function of ensuring that rates are as low as possible consistent with the long term goal of providing safe reliable service must prevail over the application of a less fundamental principle. Here, the loss of the tax benefits, with PSNH's concommitant responsibility to indemnify the buyer of those tax benefits, would be a significant overall increased cost resulting solely from the regulatory treatment of the tax benefits for ratemaking purposes. Thus, if PSNH's reading of the tax code is correct (albeit untimely), we have additional information that will cause us to reevaluate our decision.

It therefore becomes necessary to allow PSNH an opportunity to determine whether the amended tax code should be read in a manner which restricts Commission discretion. Accordingly we will conditionally grant PSNH's request that we suspend the applicable portion of our Decision in order to allow PSNH the opportunity to obtain a definitive ruling by the Internal Revenue Service ("IRS"). The effect of this suspension is that PSNH's existing rates as they pertain to the treatment of the Garvins Falls tax lease shall be designated as temporary rates. If PSNH should ultimately obtain an adverse ruling from the IRS, we will reconsider our ratemaking treatment of the Garvins Falls tax lease and allow any approved changes to be retroactive to August 1, 1983.

As noted above, the granting of PSNH's request is conditional. We have conditioned the request because PSNH will find itself in an unusual position when it seeks clarification from the IRS. Generally, a taxpayer will suffer overall increased costs if it receives an adverse IRS ruling. In this instance, PSNH will be in a position to increase both its cash flow and its overall return to investors as a result of an adverse ruling. While we are confident that PSNH will in fact pursue

its IRS remedies vigorously and in good faith, the circumstances result in an appearance which does not lend itself to public confidence in PSNH's ability to act in the interest of its ratepayers. Thus, we are conditioning our grant of PSNH's request on its willingness to work with our Staff and, to the extent feasible, the other parties in this docket in pursuing its remedies with the IRS. In this way, the public can be assured that PSNH will vigorously pursue a remedy which is the interest of its ratepayers. Thus, the Decision will be suspended as described above as of the effective date of this Order. If our Staff reports to us that PSNH will not adhere to the condition set forth herein, we will evaluate that information and any response thereto and act accordingly.

Seabrook Revenue Requirement

PSNH's Motion requests the Commission to reconsider its finding that the Seabrook project "has a direct effect upon rates through the recovery of capital costs in the rate of return

component of the rate formula" (69 NH PUC at p. 84). PSNH did not present any new information in its Motion; rather it repeated arguments which were fully considered and rejected in the Decision. (See, 69 NH PUC at pp. 83, 84.) Accordingly, PSNH's Motion on this ground will be denied.

CRR MOTION

CRR's Motion claimed that the Commission's Decision was unlawful or unreasonable with respect to its findings and conclusions on the Seabrook capitalization issue, Plant Held for Future Use and the tax benefits from the sale of PSNH's interest in Millstone III. For the reasons set forth below, we will deny CRR's Motion.

Seabrook Capitalization

CRR claimed that the rate of return allowed in the decision was inconsistent with our finding that the Seabrook project affects the cost of capital. CRR further claimed that such a rate of return may not be allowed as a matter of law because of the restriction in RSA 378:30-a and the absence of a prudency finding.

CRR's Motion did not contain any evidence or argument which was not fully considered and rejected by the Commission in the Decision. We addressed the prudency issue on the basis of the record information which was available. (69 NH PUC at pp. 85, 86.) While such record information was not plentiful, it was sufficient for the purposes of determining an adequate rate of return.[3](47) The rate of return fell within a zone of reasonableness found by the Commission on the basis of record evidence supported by many of the parties. We have not been presented with sufficient reason to reopen the issue. CRR's further claim that the Commission failed to discuss adequately its reasons for rejecting CRR's arguments on the meaning of RSA 378:30-a must also be rejected. As noted in the Decision, the Commission relied upon previous Orders which ruled on the identical issue. (69 NH PUC at pp. 85, 86.) CRR had not presented us with sufficient reason to depart from our prior reading of the law. It is not necessary for us to repeat in minute detail our interpretation of a statute contained in a previous Commission Order if that previous Order is adequately referenced.

Plant Held For Future Use

[3] CRR argues that it is unlawful to allow recovery for Plant Held for Future

Use ("PHFU") because such plant has been or will become Construction Work in Progress. PHFU is an established account which has been recognized as separate and distinguishable from Construction Work in Progress in the Uniform Classification of Accounts. See, New Hampshire Code of Administrative Rules, PUC 307.04 adopting the FERC uniform classification of accounts and the definitions of Accounts 105 (Property Held for Future Use) and 107 (Construction Work in Progress) contained therein. CRR has not alleged that PSNH has improperly accounted for the disputed assets within the chart of accounts; rather the dispute has revolved around the proper ratemaking treatment of certain assets in Account 105. The fact that those assets may once have been, or may one day be, properly booked to Account 107 is not sufficient to make them subject to the terms of RSA 378:30-a. Accordingly, CRR's argument

was rejected in the Decision and we have not been presented with sufficient reason here to disturb those findings.

Millstone

CRR argued that the Decision was improper because it allowed recovery of certain Millstone expenses in violation of RSA 378:30-a. Further, CRR complains that we did not address its argument that inclusion of the expense would constitute double recovery. Upon review, we have decided to deny CRR's Motion on both grounds.

With respect to the claim of double recovery, we implicitly found in our Decision that there was no double recovery. The cause of the tax liability was fully described. As discussed, the tax liability was caused by the system of accounting which capitalizes financing costs during construction for ratemaking purposes. Those capitalized financing costs are called Allowance for Funds Used During Construction ("AFUDC"). The record clearly demonstrates that PSNH utilized the Net AFUDC method of accounting which deducts any tax benefits from the financing costs to be capitalized. Thus, the tax liability addressed in the Decision has already been reduced to reflect the corresponding tax benefits. In this instance, there is no double recovery.

We must also reject CRR's argument that the recovery allowed in the Decision violates RSA 378:30-a. Our Decision clearly did not allow recovery of the Millstone III tax expense pending clarification in a related docket[4(48)] of the issue raised by CRR. Thus, the Decision already granted CRR the relief it requested in its Motion for Rehearing.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire's Motion for Rehearing is conditionally granted as described in the foregoing Report on the issue of the proper ratemaking treatment of the proceeds of the sale of Garvins Falls tax lease; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire's Motion for Rehearing is denied in all other respects; and it is

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FURTHER ORDERED, that the Campaign for Ratepayers' Rights' Motion for Rehearing is denied.

By order of the Public Utilities Commission of New Hampshire this fifth day of March, 1984.

Separate Opinion of Commissioner Aeschliman Concurring in Part and Dissenting in Part

My dissent to Report and Eighth Supplemental Order No. 16,885 ([1984] 69 NH PUC 67) adequately set forth my views on the issues decided by the Commission. The Motions for Rehearing did not present me with sufficient reason to alter any of my analysis. Accordingly, I would grant the Motion of the Campaign for Ratepayers' Rights to the extent that it presents

argument in support of the analysis I employed in my dissent. In all other respects, I concur with the majority ruling on the Motions for Rehearing.

FOOTNOTES

[1]Virginia Electric & Power Co. Docket No. EL83-11-000, 26 FERC {{ 61,057, 61,160, 61,161, Jan. 20, 1984. (Where a utility sells a portion of a plant during construction, the net profits of the sale are to be credited against the cost of construction for rate base valuation purposes.)

[2]PSNH is referring to Section 102(a)(10)(A) of the Technical Corrections Act of 1982 which amended Section 168(f)(8)(d) of the Internal Revenue Code. The effective date of the provision was January 12, 1983; approximately 9 months after the tax benefits were sold. PSNH did not bring this "obscure" provision of the tax code to the Commission's attention until it filed its Motion for Rehearing; it is apparent that PSNH was not aware of this provision at the time it presented evidence and legal argument.

[3]CRR as a full party intervenor certainly could have presented additional direct evidence on Seabrook prudency.

[4]See, Docket No. DR 83-398 wherein PSNH is seeking to recover from ratepayers its share of the cost of the abandoned Pilgrim II project. We are currently deliberating on a PSNH Motion that the question of the applicability of RSA 378:30-a to the issue of abandoned plant be certified and transferred pursuant to RSA 365:20.

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NH.PUC*03/06/84*[61360]*69 NH PUC 159*Concord Electric Company

[Go to End of 61360]

69 NH PUC 159

Re Concord Electric Company

DE 83-303,
Supplemental Order No. 16,930

New Hampshire Public Utilities Commission

March 6, 1984

ORDER affirming the commission's jurisdiction over cable television pole attachments.

Commissions, § 11 — Jurisdiction and powers — Express versus implied — Cable television.

Despite the lack of express statutory authority given the commission over cable television pole attachments, the commission said it could still assert authority over such attachments because of its broad, if implied, statutory powers. [1] p.160.

Commissions, § 28 — Jurisdiction — Legal questions — Reliance on out-of-state court decisions.

It is proper for the commission to rely on court decisions from other jurisdictions where those decisions are premised on enabling statutes similar to those in New Hampshire. [2] p.161.

Commissions, § 8 — Jurisdiction — Statutory enlargement of powers — Legislature's rejection of jurisdictional amendment.

The fact that the state legislature has rejected statutory amendments that would have expressly conferred authority in the commission over cable television pole attachments is of no relevance in determining the scope of the commission's implied powers as there is no way of knowing all the circumstances surrounding, and the reasons for, the legislature's rejection. [3] p.161.

(Aeschliman, commissioner, dissents, p. 163.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On January 27, 1984, in response to a petition filed by Concord Electric Company ("Company") and after an appropriately noticed hearing, the Commission issued Report and Order No. 16,884

(69 NH PUC 53) ("Report") wherein it was found that the Commission has jurisdiction to regulate the rates, terms and conditions of cable television pole attachments and that in so regulating it has the authority to consider and does consider the interests of cable television subscribers. Thereafter, on February 16, 1984, the New England Cable Television Association ("Association"), an intervenor in this docket, filed a timely Motion For Rehearing pursuant to RSA 541:3. In addition, on February 21, 1984, the Association filed a Motion For Stay Of Order Pending Final Judicial Resolution ("Motion For Stay"). In response thereto, on February 23, 1984, the Company filed both an Objection to the Motion ("Objection") and a Response to the Motion For Stay ("Response"). After due consideration, we will deny the Motion For Rehearing and grant the Motion For Stay.

In their Motion For Rehearing, the Association contends that the Commission's Order was unlawful or unreasonable and in support thereof cites the following reasons:

1.) commission jurisdiction to regulate the rates, terms and conditions of cable television pole attachments and in so doing to consider the interests of cable television subscribers exists nowhere in any statute of the State of New Hampshire; 2.) the Commission erred in not finding the New Hampshire Legislature's rejection on two occasions of legislation which would have expressly conferred this jurisdiction which would have expressly conferred this jurisdiction on the Commission as relevant, pertinent and persuasive in determining the scope of its jurisdiction;

3.) the Commission's claim that RSA 378:10 provides authority that is "all inclusive and all-encompassing" is an unsupported, unreasonable and overbroad interpretation of the scope of the Commission's authority; 4.) the Commission erred in relying on court decisions from other jurisdictions; 5.) the Commission is estopped from asserting its ability to make the appropriate certification to the F.C.C. because of its acquiesence in the decision of the F.C.C. to delist New Hampshire at the time of the Ellsworth letters and its failure to have the decision reversed or altered; 6.) the Commission erred in citing RSA 363 as support for its assertion of jurisdiction; 7.) the Commission erred in finding jurisdiction based upon its conclusion that it is "better equipped to regulate the rates, terms and conditions of cable attachments to utility poles than is the F.C.C."; 8.) the Commission erred in going beyond the record evidence to arrive at its decision; and 9.) the Commission erred in its interpretation of the Ellsworth letters.

We shall address each of the Association's contentions in turn.

[1] The Association argues that under existing New Hampshire law, the Commission has no jurisdiction to regulate the rates, terms and conditions of cable television pole attachments or to consider the interests of cable television subscribers. In support thereof, the Association cites the lack of any express statutory authority and the New Hampshire Legislature's rejection on two previous occasions of legislation which would have expressly and precisely conferred such jurisdiction on the Commission. With

regard to the latter, the Association contends the Commission erred in ignoring the significance of the legislative rejection.

After a complete review of the record and parties' briefs, we remain convinced that the Commission's existing statutory authority confers jurisdiction over cable television pole attachments. As we stated in the Report, this Commission is vested by the legislature with broad administrative and supervisory powers either expressly granted or fairly implied by existing statutes (69 NH PUC at p. 57). While we recognize that there exists no statute which expressly confers jurisdiction over cable television attachments, such authority can be fairly implied by our existing statutory scheme. In support thereof, we cited numerous statutory provisions from which jurisdiction can be implied. These provisions and the Commission's analysis thereof are set forth in great detail in the Report and are hereby incorporated by reference. They need not be repeated here. Nothing in the Association's Motion For Rehearing has convinced us that our reliance on these provisions is incorrect as a matter of law.[1(49)]

[2] In addition, we reject the Association's contention that our reliance on court decisions from other jurisdictions in this regard is misplaced and in error. The Association argues that these decisions are "readily and obviously" distinguishable from this case because those states have given their commissions "far broader" enabling statutes than New Hampshire. We do not agree. As we stated in the Report, this Commission's statutory scheme contains many of the "same" provisions as the enabling statutes discussed in those cases. (69 NH PUC at p. 65.) Thus, the enabling statutes of New Hampshire and these other jurisdictions are in fact quite similar. Because of this similarity, these cases are therefore a useful tool in interpreting this Commission's comprehensive general statutory scheme. In considering these cases, we found the

rationale employed therein to be persuasive and thus relied upon it in reaching our decision.

[3] We also disagree with the Association's contention that the Commission erred in ignoring the significance of the legislative rejection of two amendments which would have expressly conferred jurisdiction on the Commission. In support thereof, the Association cites the case of Re Omni Communications, Inc. (1982) 122 NH 860 for the proposition that the legislative rejection of an amendment is relevant, pertinent and persuasive in determining the scope of the Commission's authority.

We have reviewed the Omni decision and do not agree with the Association's characterization of the Court's holding therein. The Court nowhere expressly stated that "legislative rejection of an amendment is relevant, pertinent and persuasive" in determining this Commission's authority. Rather, in determining whether this Commission had jurisdiction to regulate radiopaging services, the Court cited as one factor to be considered the legislature's rejection of a bill which would have expressly conferred such jurisdiction. Other factors considered by the Court were the statutory and constitutional history. Indeed, these factors constituted the greater part of the Court's analysis.

We have likewise considered the legislature's prior rejections of a bill which would expressly confer jurisdiction over cable television pole attachments upon

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this Commission as one factor in our attempt to determine the scope of our jurisdiction. However, we have not found this legislative rejection to be persuasive. As we stated in the Report, while "we can review legislative history, we cannot know all the circumstances surrounding the two failed attempts" (69 NH PUC at p. 57). In light thereof, we find the legislature's rejection of proposed legislation in this instance to be inconclusive.

The Association also asserts that the Commission based all or part of its decision that it possesses jurisdiction over cable television pole attachments on the Commission's conclusion that it is "better equipped to regulate the rates, terms and conditions of cable attachments to utility poles than is the F.C.C." (Order, at p. 14, Motion For Rehearing, at p. 4.) Such an assertion cannot be found in the Order. The Commission nowhere stated that its jurisdiction was, in essence, a matter of discretion. The Order clearly sets forth the statutory base upon which the Commission relies in reaching its decision. Even a cursory review of the Commission's Order would reveal that the Association's utilization of this statement is clearly out of context. The statement was made in the course of a discussion on Congress' enactment of the statute in 1978 which gave the Federal Communications Commission (F.C.C.) jurisdiction over cable television pole attachments where individual states did not so regulate.

As additional error, the Association asserts that the Commission has gone "beyond the record in evidence" and relied upon extraneous "facts" in reaching its decision. The Association cites five (5) such facts, the consideration of which it contends constitutes a violation of its due process rights. We disagree with this assertion. Our decision in this matter in no way consisted of factual findings. The scope of the proceeding was limited to a matter of law: the issue of this Commission's jurisdiction. To the extent that facts were placed on the record or cited in the report, they were inconsequential and irrelevant to the Commission's legal determination. Their

inclusion therein was purely for illustrative and informational purposes.

Lastly, we turn our attention to the Ellsworth letters. The Association disagrees with the Commission's interpretation of these letters as set forth on page 24 of the Report (69 NH PUC at p. 65).[2](50) In addition, it asserts that the Commission, "despite its protestations," is now "estopped" from asserting its ability to certify since it acquiesced in the decision of the F.C.C. to delist New Hampshire and failed to have that decision reversed or altered.

With respect to the matter of interpretation, our Report addresses this issue quite clearly. We continue to stand by the reasoning employed in our interpretation. Neither do we agree that we are somehow estopped to certify our jurisdiction to the F.C.C. because of the Ellsworth letters. As we stated in the Report, these letters, along with the informal

memorandum opinion of the Attorney General, are inappropriate and did not formally address this issue. Thus, this is our first formal decision regarding this issue. These earlier occurrences are thus non-binding.

In its Motion For Stay, the Association represents that in the event its Motion For Rehearing is denied, as we have done, it will appeal the decision to the Supreme Court. It states that to proceed to set the actual rates in the interim will require the parties and the Commission to expend a great amount of time and resources which will be wasted in the event the Supreme Court overturns the Commission decision. The Association asserts that the public interest would best be served by conserving the resources of the parties and waiting until a final judicial resolution of this issue.

We agree. The Commission will therefore stay Order No. 16,884 until such time as the New Hampshire Supreme Court takes action on this matter.

Our Order will issue accordingly.*(51)

SUPPLEMENTAL ORDER

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

ORDERED, that the New England Cable Television Association's Motion For Rehearing be, and hereby is, denied; and it is

FURTHER ORDERED, that the New England Cable Television Association's Motion For Stay of Order Pending Final Judicial Resolution be, and hereby is, granted; and it is

FURTHER ORDERED, that Order No. 16,884 (69 NH PUC 53) is hereby stayed pending a final resolution of the issue of this Commission's jurisdiction by the New Hampshire Supreme Court.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1984.

FOOTNOTES

[1]In accord with RSA 363:17-b, this paragraph sets forth the Commission's decision with

regard to the Association's reasons numbered 1, 2, 3 and 6 as above-stated.

[2]The Commission wishes to express its displeasure with the content and tenor of the Association's comments regarding the Commission's reasoning. The effective advocacy of all the participants has contributed to a full exposition of the issues in this case. As evidenced by our lengthy opinion and this report, we have given extensive consideration to these issues. While the Association's arguments are indeed persuasive, we have not found them to be determinative. We recognize the parties have strong feelings as to the correctness of their respective positions. However, arguments by the Association that the Commission's interpretation of the Ellsworth letters is the "purest form of sophistry" detract from what would have otherwise have been strong advocacy. They are unnecessary and contribute nothing to the decision-making process.

[*]Aeschliman, commissioner: My dissent to Report and Order No. 16,884 (69 NH PUC at p. 53) adequately set forth my views on the issues decided by the Commission.

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NH.PUC*03/07/84*[61361]*69 NH PUC 163*Comex, Inc.

[Go to End of 61361]

69 NH PUC 163

Re Comex, Inc.

Petitioner: Metromedia Telecommunications, Inc.

DE 84-22, Order No. 16,932

New Hampshire Public Utilities Commission

March 7, 1984

Petition for authority to transfer control and ownership of a land mobile radio service to a telecommunications company; granted.

APPEARANCES: George Michaels, Esquire, Metromedia Telecommunications, Inc.; Richard Wiebusch, Esquire for Comex, Inc.

By the COMMISSION:

REPORT

On January 25, 1984 Metromedia Telecommunications, Inc. filed a petition with this Commission requesting approval of the transfer of control of Comex, Inc., a public utility offering domestic public land mobile radio service in the State of New Hampshire, to Metromedia Telecommunications, Inc.

On February 3, 1984 an Order of Notice was issued setting a hearing for February 29, 1984 at 10:00 a.m. Notices were sent to Alan J. Bouffard, Esquire, Metromedia Telecommunications,

Inc. (MTI) for publication; Comex, Inc.; New England Telephone Company; Union Telephone Company; Wilton Telephone Company; Merrimack County Telephone Company; Kearsarge Telephone Company; Chester Telephone Company d/b/a Granite State Telephone Company; Dunbarton Telephone Company; Dixville Telephone Company; Continental Telephone Company of New Hampshire; Continental Telephone Company of Maine; Chichester Telephone Company, Bretton Woods Telephone Company; and the Office of the Attorney General.

On February 21, 1984 an affidavit was received confirming publication in the Union Leader on February 11, 1984.

Counsel for both Metromedia and Comex contend that the petition is submitted jointly by the two companies, and that exhibits in the case are also to be considered to be joint offerings.

Attorney Wiebusch advised the Commission that Comex will become a wholly owned subsidiary of Metromedia Telecommunications, Inc. Gary Wallen testified on behalf of Comex, Inc. that Comex provides both one-way paging and twoway radio telephone communications in portions of New Hampshire. One-way paging service extends from Nashua northerly to Berlin and from Portsmouth westerly to Lebanon and constitutes 95% of the Company's business. Two-way mobile telephone service extends from Nashua northerly to Laconia and from Portsmouth westerly to Keene and comprises approximately 5% of the Company's business. The present state of the art of radio telephone service is changing in favor of cellular radio service. In order for the Company to prepare for this new type of service, investments in the range of three to four million dollars will be necessary. Comex would be unable to meet the commitments alone but it will be able to do so under the direction of Metromedia Telecommunications, Inc.

Mr. Sherman Wolf testified on behalf of Metromedia Telecommunications, Inc. as the manager of Zip Call, a regulated Massachusetts entity which has recently become a subsidiary of Metromedia Telecommunications, Inc. He reviewed the benefits to Zip Call and its Massachusetts customers which were gained from the ownership transfer and projected the benefits which would similarly accrue the New Hampshire customers and to Comex, Inc. Comex's offices will be retained in Manchester, New Hampshire and emergency contacts and management assistance will continue to be available to both customers and the Commission. There are no present plans to change the franchise boundaries. There are no anticipated changes to the Comex tariff or to their published rates.

The petitioners offered exhbits which included:

1. Application to the Federal Communications Commission for consent to transfer control of domestic public land mobile radio service stations

of Comex, Inc. to Metromedia Telecommunications, Inc.

2. Stock purchase agreement between Metromedia, Inc. and Gary P. Wallen.

3. Comex consolidated financial statements.

4. Metromedia, Inc. secretarial certificate.

5. Metromedia, Inc. fourth quarter report.

Upon review of the evidence and testimony the Commission finds the proposed petition to be in the public interest. We will approve the petition. We will require that the Company upon receipt of FCC confirmation of approval of the proposed transaction. We will further require that the Company advise us of any changes in their management structure and of the means by which the Commission should communicate with the Company in regard to their regulatory responsibility.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition for approval of transfer of control of Comex, Inc. to Metromedia Telecommunications, Inc. is approved.

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1984.

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NH.PUC*03/08/84*[61362]*69 NH PUC 165*New England Telephone and Telegraph Company

[Go to End of 61362]

69 NH PUC 165

Re New England Telephone and Telegraph Company

DE 84-27, Order No. 16,933

New Hampshire Public Utilities Commission

March 8, 1984

Application by a telephone utility for authority to install a glass fiber cable across state waters; granted.

APPEARANCES: For the Petitioner: David Richardson, Engineer.

By the COMMISSION:

REPORT

On January 31, 1984, New England Telephone and Telegraph Company (NET) filed with this Commission a petition seeking license for the installation and maintenance of an aerial 60-pair glass fiber cable across the Merrimack River in Concord, New Hampshire.

The Commission issued an Order of Notice on February 3, 1984 setting the matter for public hearing on February 28, 1984 at 10:00 a.m. It further directed public notice of the proposal and copies

were directed to the Department of Resources and Economic Development, Safety Services, the Aeronautics Commission and the Attorney General. The petitioner filed the required affidavit of publication with the Commission on February 17, 1984, indicating that the notice was published in the Union Leader on February 11, 1984.

The duly noticed hearing was convened at the appointed time at the Commission's Concord offices. NET was represented by David Richardson, an engineer with the Company. There were no intervenors and there were no objections to the petition.

Mr. Richardson presented three exhibits. The first was the NET Petition of January 31, 1984; the second was a map indicating the location of the proposed crossing and the third exhibit was the Company's Drawing No. 42-10, dated January 12, 1984, depicting the vertical view of the crossing.

Mr. Richardson described the crossing as part of a fiber toll network planned between Concord and Nashua. The sixtypair fiber cable would originate at the Concord Central Office and would connect to the Nashua Central Office via Manchester. Where that route is to cross the Merrimack River the cable would extend from Pole No. 127/5-2 on the westerly bank of the river to Pole 127/5-1 on the easterly side, both about 50 feet downstream of the so-called South End Bridge, which is a part of Route 3 - South (Manchester Street).

The crossing extends about 433 feet between cited poles, with the cable 39 feet above the water and a minimum of 14 feet higher than the bottom of the bridge. Mr. Richardson indicated all construction would be according to applicable codes.

With the construction as described and no intervention, the Commission finds such license 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 New England Telephone and Telegraph Company be, and hereby is, granted license under RSA 371:17 for the installation and maintenance of aerial plant over the public waters of the Merrimack River in Concord, New Hampshire; described as extending from Pole 127/5-2 on the westerly bank of the river to Pole 127/5-1 on the easterly bank, a distance of approximately 433 feet and located about 50 feet downstream of the so-called South End Bridge.

By order of the Public Utilities Commission of New Hampshire this eighth day of March, 1984.

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NH.PUC*03/09/84*[61363]*69 NH PUC 167*Shady Brook Water System

[Go to End of 61363]

69 NH PUC 167

Re Shady Brook Water System

DE 83-197,

Supplemental Order No. 16,934

New Hampshire Public Utilities Commission

March 9, 1984

Order finding the operator and manager of a small water utility to be a public utility within the meaning of state statutes.

Public Utilities, § 55 — Individuals — Operators versus owners.

An individual person may be considered a public utility if he operates or manages any utility plant or equipment, even if the actual ownership of that plant or equipment is in question.

APPEARANCES: Gary Armstrong on behalf of Shady Brook Water System and Gananoque Water System; Edwin S. Cunha, Pro Se; Larry Smukler, Esquire and Robert Lessels on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On June 17, 1983, the Commission issued an Order of Notice requiring Shady Brook Water System (Shady Brook) to appear at a hearing on July 29, 1983 to show cause why it should not be regulated as a public utility.

Prior to the scheduled hearing, the Commission received a customer complaint from Mr. Edwin Cunha of Salem, New Hampshire regarding the Gananoque Water System (Gananoque), a water company allegedly owned and operated by the owner of Shady Brook. Mr. Cunha complained of constant inadequate water pressure and requested the Commission to take appropriate action. Accordingly, his complaint was consolidated for hearing purposes with Shady Brook's show cause proceeding.

No representative of Shady Brook appeared at the July 29, 1983 hearing.

Thereafter, on August 22, 1983, the Commission issued Order No. 16,605 which found on the basis of evidence presented at the hearing that Shady Brook is a public utility as defined in RSA 362:2 and RSA 362:4 and that as a utility it had not complied with the requirements of RSA 374 and RSA 378. It therefore ordered that the matter be referred to the Attorney General for appropriate action pursuant to RSA 365:40, 41, and 42.

In response thereto, the Attorney General recommended that Order No. 16,605 be revoked and that the Commission issue a subpoena duces tecum against the operator of the alleged utility, Mr. Gary Armstrong of Armstrong Road, Windham, New Hampshire, pursuant to RSA 365:10. Accordingly, on December 28, 1983 the Commission issued Order No. 16,828 which revoked Order No. 16,605 and expanded the docket to include all water systems allegedly owned by Mr. Gary Armstrong and set a hearing for January 26, 1984 at which Mr. Armstrong would be

required to show cause why the

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subject water systems should not be regulated by the Commission as a public utility. In addition, the Commission ordered a subpoena duces tecum to issue against Mr. Armstrong to appear at the scheduled hearing with any relevant documents.[1(52)]

Mr. Armstrong appeared at the scheduled hearing. In addition, the Commission also allowed Mr. Cunha to appear and present his complaint for the record.

II. TESTIMONY

Testimony regarding the current status of Gananoque was offered by Gary Armstrong. In addition thereto, regarding Gananoque's formation, he submitted a letter dated September 1, 1983 from Lewis Soule, Esquire, an attorney in Salem, N.H., to the Salem Town Manager concerning the town's obligation to Gananoque. Mr. Soule, the current town counsel for Salem, was involved in the formation of Gananoque. In the letter, Mr. Soule details the series of events surrounding the formation of Gananoque. This letter and Mr. Armstrong's testimony set forth the following factual scenario.

During 1965 and 1966, George and Marion Dinsmore began to subdivide land they owned north of Lake Street in Salem, New Hampshire, now known as Gananoque Park. The Dinsmores retained George Armstrong to drill a well and establish a community water system for certain of the lots. The Dinsmores' initial intent was for George Armstrong to own and operate the system for the benefit of the customers. However, before an agreement to that effect was executed, the homeowners in the subdivision expressed a desire to own the water system themselves.

Accordingly, on January 3, 1967, an agreement (Exhibit S-3)[2(53)] was entered into between the Dinsmores and George Armstrong, in which George Armstrong agreed inter alia to construct, operate and maintain a water system to provide water for 29 lots in Gananoque Park in return for the Dinsmores' promise to convey the water system (including the artesian well, the lot on which it is located — Parcel A — and the pipes and water lines installed in the streets) to a trust or corporation to be formed on behalf of the lot owners. (Exhibit S-3, p. 2). Under the terms of the agreement, upon the death or physical or mental incapacity of George Armstrong, the agreement would terminate and the equipment and facilities of Mr. Armstrong not already part of the real estate would thereafter be so considered. In addition, the agreement provided that the Dinsmores' responsibilities were to terminate when they had conveyed all of the twenty-nine (29) lots to future purchasers. The agreement also contained a mechanism to set the rates and charges the customers would be required to pay to Mr. Armstrong for operating the system.

Thereafter, certain of the lot owners formed the "Gananoque Association" (Association) and on February 14, 1967, the Association was chartered by the New Hampshire Secretary of State's office.[3(54)] In accord with the terms of the agreement, by deed dated October 2, 1967, the Dinsmores conveyed the water system,

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including the lot and well located thereon, the pipes and water lines, and the water storage

and distribution facilities to the Association.[4](55)

On April 26, 1977, the New Hampshire Secretary of State's office cancelled the Association's charter for failure to file a decennial return. Despite this cancellation, by deed dated January 13, 1978 and recorded in the Rockingham County Registry of Deeds at Book 2306, Page 792, the Dinsmores conveyed another parcel to the Association.

From the time the Gananoque Water System was constructed in the late 1960's until his death in 1979, George Armstrong operated and maintained the system. Over the years, lots were gradually added to the system so that as provided in the agreement, the water system now services a total of twenty-nine customers.

Upon George Armstrong's death in 1979, the agreement, per its provisions, was to have terminated. At that point, the operation and maintenance of the Gananoque System should then have become the responsibility of the owner of the system, the then and still defunct Association. However, since Mr. Armstrong's death, his son Gary Armstrong has operated and maintained the system until this day without any apparent legal right. Like his father, he pays the electric bills and general repair expenses, sends out bills in his name and collects the revenues supplied by the twenty-nine (29) customers.[5](56)

To further complicate matters, in 1981, the Town of Salem sold Lot 12W (Parcel A) for nonpayment of taxes. From 1979 to 1981, in addition to paying maintenance and repair expenses, Gary Armstrong also paid the property taxes assessed on this parcel and Parcel B by the town of Salem. In 1981, however, Salem underwent a reevaluation and as a result the water system's tax bill rose dramatically. Gary Armstrong refused to pay the increased taxes and the town therefore took the land for nonpayment of taxes. It appears the town therefore now holds title to the water system's land and physical plant.

Mr. Cunha's customer complaint concerns the inadequacy of the water service provided by Gananoque.[6](57) Since June, 1983, the water pressure at Mr. Cunha's residence has consistently been very low, often below 20 p.s.i., thereby causing him and his family extreme difficulty and hardship.[7](58) In addition to not having sufficient water for washing and bathing purposes, Mr. Cunha has at times been unable to flush his toilet. The Salem Health Officer advised Mr. Cunha that this problem is severe enough to warrant being classified as a health problem. Mr. Cunha first contacted the Water Supply and Pollution Control Commission and now this Commission in an effort to alleviate his problem.[8](59)

Finally, it should be noted that Gary Armstrong also operates another water system, Shady Brook, which services

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twenty-nine (29) customers in Windham, New Hampshire. He testified that like Gananoque, Shady Brook was originally constructed, operated and maintained by George Armstrong under a similar agreement with the Dinsmores. Upon George Armstrong's death, he continued the operations in the same manner as with Gananoque: he collects the revenues, pays the expenses (including property taxes) and maintains the system. Gary Armstrong did not offer any further testimony as to Shady Brook, such as whether or not a similar association was formed, and if so,

whether the Dinsmores conveyed the water system to the association. The greater part of the hearing was devoted to Gananoque.

III. ANALYSIS

The Commission upon its own motion scheduled this proceeding in order to determine whether under RSA 362:2 Shady Brook and Gananoque are public utilities and therefore under RSA 362:2 Shady Brook and Gananoque are public utilities and therefore under the jurisdiction of this Commission. Gary Armstrong, the operator of both these systems, takes the position that he is not the owner of either system and therefore not subject to this Commission's jurisdiction.

We disagree. Under RSA 362:2, a public utility is defined inter alia as "every corporation, company, 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 plant or equipment or any part of the same ... for the manufacture or furnishing of ... water for the public ..." (Emphasis added.) By his own admission, Gary Armstrong is operating and managing both these systems. He sends bills and collects the revenues supplied by the customers, pays the expenses and makes the necessary repairs. Thus, in accord with RSA 362:2, Gary Armstrong is a public utility subject to this Commission's jurisdiction.

The status of water companies as public utilities is addressed by RSA 362:4. It provides inter alia that corporations, companies, associations, ... or persons "shall be deemed to be a public utility by reason of the ownership or operation of any water system or a part thereof" unless exempted by the Commission. The statute further provides that the Commission may exempt water systems which supply "a less number of consumers than ten" whenever consistent with the public good. Both of the subject systems serve more than ten (10) customers and thus Mr. Armstrong, as operator thereof, is not exempt from our jurisdiction.

In addition, the Commission generally exempts both incorporated and unincorporated associations of landowners who have bound together for the purposes of owning and operating a water system for the provision of water only to themselves.[9(60)] The evidence in this proceeding does not support the existence of such an association which either owns or operates either of the water systems. With respect to Gananoque, an association was originally formed at the inception of the Dinsmores' subdividing of their land. However, it apparently disbanded in subsequent years. Its charter was revoked in 1977 for failure to file a decennial return and there was no evidence offered as to its organization, structure and activity after its formation. Therefore, on the record before us, we cannot conclude that either system is entitled to an exemption of this nature.

We acknowledge that the record is unclear as to the ownership of these systems. With respect to Gananoque, the situation is further complicated by Salem's taking of the property due to unpaid property taxes. However, because of the above-stated statute, it is not necessary for us to reach a determination as to who actually owns the system.

As the operator of a public utility, Mr. Armstrong has an obligation to pay its expenses and

to provide adequate service. With respect to Gananoque's property taxes, Mr. Armstrong has failed to meet this obligation. This failure directly resulted in Salem's taking the land for nonpayment of taxes. The Town of Salem apparently now has title to the land on which the water system is located. By refusing to pay the taxes and allowing the tax sale to take place, Mr. Armstrong has created a situation whereby the continued operation of the water system could be jeopardized. The town could theoretically sell the land to a third party which could potentially disrupt services.

We therefore will order Mr. Armstrong to initiate discussions with the town and representatives of the Association who purportedly owned the system prior to the tax sale in an effort to resolve this situation and to inform this Commission on a regular basis as to the status of these discussions. There are a number of possible solutions to this problem, one of which was mentioned at the hearing. The town could convey the property back to a duly-formed association of landowners. In the even this took place, the Commission would then have to determine this new association's status as a public utility consistent with the principles regarding exemption set forth above on page 7. Another alternative would be for the town to convey the property to Mr. Armstrong.

Therefore, in addition to remedying the ownership situation, we will order him to accomplish the following:

1. File a petition, pursuant to RSA 374:22, for a franchise to operate as a water public utility in the areas serviced by Gananoque and Shady Brook;

2. File a tariff of rates and charges for both Gananoque and Shady Brook as required by RSA 378:1; and

3. Furnish the Commission with the installation date and installed cost of the water plant and associated facilities utilized in supplying water to the customers of Gananoque and Shady Brook. This data shall be furnished in such detail and description as prescribed by the Commission staff by April 15, 1984.

In addition, we hereby direct the Commission staff to commence an audit of both water systems within thirty (30) days. The staff will contact Mr. Armstrong to arrange an appropriate time.

Lastly, we will address Mr. Cunha's consumer complaint. RSA 374:1 imposes upon every utility an obligation to furnish reasonably safe and adequate service and facilities. With respect to water utilities, this necessarily includes insuring the existence of sufficient water pressure. Mr. Armstrong does not dispute the inadequacy of the pressure problem on the Gananoque system. Thus, it is clear that Mr. Armstrong is in violation of this statutory requirement.

According to Mr. Armstrong, a second artesian well and pump are needed to alleviate the pressure problem and provide more water to the system. In accord with RSA 374:1, we therefore order Mr. Armstrong to immediately investigate the cost of making these improvements and the availability and cost of financing, if necessary. This information shall be

submitted to the Commission no later than April 9, 1984. At that time the Commission will

make a determination as to what further action will be required.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that pursuant to RSA 374:22, Gary Armstrong file a petition for a franchise to operate as a water public utility in the areas serviced by Gananoque and Shady Brook; and it is

FURTHER ORDERED, that Gary Armstrong file a tariff of rates and charges for both Gananoque and Shady Brook as required by RSA 378:1; and it is

FURTHER ORDERED, that Gary Armstrong furnish the Commission with the installation date and installed cost of the water plant and associated facilities of both the Shady Brook and Gananoque water systems in such detail and description as prescribed by the Commission staff by April 15, 1984; and it is

FURTHER ORDERED, that Gary Armstrong investigate the cost of making the improvements specified in the foregoing Report and the availability and cost of financing therefore, if necessary, and submit this information to the Commission no later than April 1, 1984; and it is

FURTHER ORDERED, that Gary Armstrong initiate discussions with the Town of Salem and other landowners who previously were members of the Gananoque Association in an effort to resolve the ownership problems and to inform the Commission on a regular basis as to the status of these discussions.

By Order of the Public Utilities Commission of New Hampshire this ninth day of March, 1984.

FOOTNOTES

[1]The Order of Notice and subpoena were delivered in hand to Gary Armstrong on January 3, 1984.

[2]In addition to being signed by the parties, the agreement, recorded in the Rockingham County Registry of Deeds, Book 1886, page 151, was also signed by the then owners of ten lots in the development. Their signature to the agreement signifies their assent to it and their acceptance of the rights and obligations contained therein. The signatories were owners of ten lots numbered 49 through 58.

[3]The Association's By-Laws were submitted as Exhibit 3.

[4]The deed is recorded in the Rockingham County Registry of Deeds, Book 1886, Page 151.

[5]Gananoque's current charges are $46.75 per quarter or $187.00 per year.

[6]By warranty deed stated January 12, 1973 (Exhibit 1), the Dinsmores conveyed Lot #24 of their subdivision to Mr. Cunha. Sometime thereafter, the residence constructed by Mr. Cunha on the lot obtained water service from the system constructed by Mr. George Armstrong.

[7]NHPUC 604:03 requires that each water utility maintain normal operating pressures of not

less than 20 psig nor more than 125 psig at the service connection.

[8]Mr. Gary Armstrong confirmed the existence of Mr. Cunha's low pressure problem. In his opinion, a second artesian well and pump are needed to alleviate the pressure problem and provide water to the system.

[9]Re Francestown Village Water Co. (1983) 68 NH PUC 364, and Re Eastman Water Co. (1981) 66 NH PUC 115.

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NH.PUC*03/09/84*[61364]*69 NH PUC 172*Public Service Company of New Hampshire

[Go to End of 61364]

69 NH PUC 172

Re Public Service Company of New Hampshire

DF 84-52, Order No. 16,935

New Hampshire Public Utilities Commission

March 9, 1984

Order opening a docket for establishing a mechanism for determining the confidentiality of records in the course of a nuclear plant audit.

By the COMMISSION:

ORDER

WHEREAS, Public Service Company of New Hampshire ("PSNH") is a public utility operating in the State of New Hampshire (see e.g., RSA 362:2); and

WHEREAS, RSA 374:4 provides, inter alia, that the Commission has the power and the duty to keep informed as to all public utilities in the State; and

WHEREAS, RSA 374:2 and RSA 378:7 provide, inter alia, that all rates charged by public utilities must be approved by

the Commission after a finding that such rates are just and reasonable; and

WHEREAS, RSA 374:3 provides, inter alia, that the Commission has general supervisory authority over all public utilities; and

WHEREAS, RSA 365:5, RSA 365:6 and RSA 365:7 provide, inter alia, that the Commission may conduct an investigation and, in the course thereof, require public utilities to produce books and records; and

WHEREAS, PSNH's Seabrook project has and will continue to have an effect upon PSNH's rates, and its ability to operate as a public utility, see e.g., Re Public Service Co. of New

Hampshire (1984) 69 NH PUC 67, and

WHEREAS, the Commission's Finance Department has initiated an audit of PSNH's Seabrook project; and

WHEREAS, in the course of the audit, the auditors will be reviewing the books and records of PSNH; and

WHEREAS, PSNH may have cause to request that certain books and records be kept confidential; and

WHEREAS, it is necessary to establish a mechanism by which this and other similar issues may be resolved by the Commission; it is

ORDERED, that Docket No. DF 84-52 be, and hereby is, opened for the purpose of resolving issues that arise in the course of the Seabrook audit; and it is

FURTHER ORDERED, that PSNH produce for the auditors all books, records, papers or other documents requested by the auditors; and it is

FURTHER ORDERED, that upon request by PSNH, the Commission's Finance Director or Assistant Finance Director are hereby authorized to designate specific documents as confidential; and it is

FURTHER ORDERED, that all documents designated as confidential shall not be disclosed outside the Commission unless and until the Commission, upon its own motion, or upon petition, issues an Order authorizing disclosure after appropriate notice to PSNH and an opportunity to be heard; and it is

FURTHER ORDERED, that a list identifying all documents which have been designated as confidential shall be maintained in this docket; and it is

FURTHER ORDERED, that the Staff may bring additional issues that may arise in the course of the audit to the Commission's attention for resolution in this docket.

By order of the Public Utilities Commission of New Hampshire this ninth day of March, 1984.

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NH.PUC*03/09/84*[61365]*69 NH PUC 174*Public Service Company of New Hampshire

[Go to End of 61365]

69 NH PUC 174

Re Public Service Company of New Hampshire

Intervenors: Conservation Law Foundation of New England, Inc., Community Action Program, Seacoast Anti-Pollution League, and Office of Consumer Advocate

DR 83-398,
Supplemental Order No. 16,936

New Hampshire Public Utilities Commission

March 9, 1984

Order certifying to the state supreme court the issue of the applicability of an anti-construction work in progress statute to abandoned projects.

Procedure, § 1 — Constitutional versus statutory construction issues — Transfer of issues to supreme court.

Faced with a question on the applicability of an anti-construction work in progress statute to recovery of investments in abandoned plant, the commission decided to certify and transfer the issue to the state supreme court in light of the interrelationship of constitutional issues with those of statutory construction and the public need for an expeditious resolution of the issue.

APPEARANCES: Catherine Shively, Esquire and Sulloway, Hollis & Soden by Martin L. Gross, Esquire and Margaret H. Nelson, Esquire for Public Service Company of New Hampshire; Douglas I. Foy, Esquire for the Conservation Law Foundation; Gerald M. Eaton, Esquire for the Community Action Program; Robert A. Backus, Esquire for the Seacoast Anti-Pollution League; Michael W. Holmes, Esquire for the Consumer Advocate; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket was initiated by a Petition filed by Public Service Company of New Hampshire ("PSNH" or "Company") requesting that the Public Utilities Commission of New Hampshire ("Commission") investigate, determine and fix an appropriate ratemaking methodology to enable PSNH to recover from ratepayers the costs associated with its investment in Pilgrim Unit No. 2. In addition, the Company requested that, prior to the consideration of the merits, the Commission, pursuant to RSA 365:20, reserve, certify and transfer to the New Hampshire Supreme Court for decision, the following question of law:

Does RSA 378:30-a, the so-called "antiCWIP" statute, as a matter of law, prohibit the Public Utilities Commission from allowing public utilities to recover, through rates, amounts such

utilities have invested in plant construction projects that have been abandoned?

An appropriately noticed procedural hearing was held on February 1, 1984 at which Motions to Intervene were considered and argument was heard on whether the Commission should grant PSNH's request to transfer and certify the above question. As a result, the Commission issued Report and Order No. 16,908 ([1984] 69 NH PUC 127) ("Procedural Order") which, inter alia: 1) granted certain Motions to Intervene; 2) directed the parties to submit written memoranda on the issue of the applicability, if any, of RSA 378:30-a to the instant docket and the advisability of

transferring and certifying the issue as requested by PSNH; and 3) established a procedural schedule.

Pursuant to the Procedural Order, written memoranda were submitted on February 24, 1984 by PSNH, the Conservation Law Foundation ("CLF"), the Seacoast Anti-Pollution League ("SAPL"), the Community Action Program ("CAP") and the Consumer Advocate. This Order is the result of our review of the written submissions.

II. POSITIONS OF THE PARTIES

In its Procedural Order, (69 NH PUC at p. 128), the Commission directed the parties to submit written memoranda on the following issues: 1) whether RSA 378:30-a is a barrier to recovery in this instance; and 2) whether the Commission should certify and transfer the above question to the New Hampshire Supreme Court. A review of the written submissions indicates that the parties have diverse positions on both issues. Accordingly, we will set forth the positions of the parties on an issue-by-issue basis.

The Applicability of RSA 378:30-a

With respect to the applicability of RSA 378:30-a, PSNH and CLF both argue that the statute is not applicable to the instant situation. The remaining parties, SAPL, CAP and the Consumer Advocate argue that the statute is an absolute bar to recovery.

The argument of the parties who claim that the statute is a barrier to recovery is that the clear and unambiguous language of RSA 378:30-a prohibits recovery for all plant prior to the time that such plant is providing service to consumers. Since abandoned construction is not and will not provide service to consumers, recovery from ratepayers is prohibited under the terms of the statute. The Consumer Advocate adds that in framing the statute as it did, the Legislature allocated all of the risk of construction to the investor. Since the investor has already been compensated for this risk in the return allowed by the Commission, it is unconstitutionally confiscatory to ratepayers retroactively to reallocate the risk and allow recovery of the cost of abandoned plant.

The parties who claim that RSA 378:30-a does not act as a barrier to recovery have a different view. PSNH argues that the language and the legislative history of the statute show that it was designed to control the timing of recovery, rather than to act as an absolute barrier to recovery. PSNH's argument is based in part on standard public utility accounting practices which control the method of recovery of financing costs from ratepayers: costs allocated to the Construction Work in Progress ("CWIP") account are either included in rate base, which results in recovery during construction, or capitalized as Allowance For Funds Used During Construction ("AFUDC"), which results in recovery after construction is completed. If construction is abandoned, the timing question is no longer material

and the issue becomes the standard regulatory question of how to recover prudently incurred expenses from ratepayers. PSNH goes on to argue that any alternative interpretation of the statute would render it unconstitutional in two respects: 1) prohibition of recovery of prudently incurred costs would be confiscation of public utility property without due process; and 2)

prohibition of recovery of costs incurred prior to the effective date of the statute is impermissible retroactive legislation. CLF's argument is based on a policy discussion of the proper regulatory model of reviewing utility construction. CLF points out that it is preferable for the Commission to be able to review utility decisionmaking throughout a project; thus allowing it to allocate costs between ratepayer and investor if conditions change and construction is no longer warranted. RSA 378:30-a should be read to be consistent with sound regulatory policy.

Certification and Transfer

The parties who favored certifying and transferring the issue to the New Hampshire Supreme Court were PSNH, CLF and CAP. The Consumer Advocate and SAPL opposed certification and transfer. Those parties who favored transferring the issue to the Court stressed the need for an expeditious resolution. The parties who did not favor transferring the issue stressed that the Commission decisionmaking process ensures a full development of the issue.

III. COMMISSION ANALYSIS

After a review of all the arguments and all of our alternatives, we have decided that the proper course of action is pursuant to RSA 365:20 to reserve, certify and transfer to the New Hampshire Supreme Court for decision the question of law presented to the Commission in this docket. Our decision is based on our conclusion that a substantial basis exists for resolution by the Court; the public need for an expeditious resolution of the issue; the lack of finality of a Commission decision; and the interrelationship of the constitutional issues with those of statutory construction. Each of the above conclusions will be developed in turn.

We have set forth the position of the parties on the threshold issue of the applicability of RSA 378:30-a. Our review of those arguments convinces that there is a substantial basis for the difference of opinion on that issue in this instance.

We have also examined the factual foundation upon which the resolution of the legal issue will rest. In the instant docket, PSNH's Petition contained sufficient facts of a precise nature to present the legal issue squarely. Put simply, we must ask ourselves whether we have the statutory authority to grant PSNH the relief it requested if we accept all facts averred in the Petition in the light most favorable to PSNH. We cannot resolve that question until we resolve the issue of whether RSA 378:30-a applies to abandoned construction projects. Thus, the court can be presented with facts and inferences taken therefrom which, even when construed in the light most favorable to the Petitioner, squarely raise the legal issue. A Commission hearing for the purpose of additional factual development will not crystalize the issue any further.[1](61)

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Even though the legal issue can be squarely presented to the Court without additional factual development, we would hesitate to transfer the question were it not for the critical public need for an expeditious resolution. To put it directly, we would not be seriously considering a transfer if the implications of a decision went no further than the Company's recovery, if any, of the $16.5 million in Pilgrim Unit II. PSNH certainly was not in a hurry to present the question to us[2](62) and, accordingly, we do not believe that the establishment of an appropriate mechanism of recovery of Pilgrim II costs within the next year is critical to PSNH.

However, we believe that we must be forthright about our decisionmaking and, in this instance, we cannot ignore information available to us which underscores the importance of resolving the Pilgrim issue on the Company's evaluation of the future of the Seabrook project.[3](63) Although not on record in this docket, we cannot help but be aware of the Seabrook cost estimates of March 1, 1984 which indicate a probable cost in the range of $9 10 billion for both units; a significant jump from the Company's previous official estimate of $5.2 billion. We must also be cognizant of Company disclosures of possible effects of cancellation. For example, a Company prospectus dated November 14, 1983 filed with this Commission in the corresponding financing docket (DF 83-337) states at 7:

Cancellation of Unit 2 would pose a particular problem for the Company because there is a question as to whether in the event of such cancellation the New Hampshire anti-CWIP statute might prevent recovery through rates of any part of the Company's investment. If such recovery were determined to be precluded by the statute or if such recovery were denied by the NHPUC, the Company would be required to charge the nonrecoverable portion of the costs against earnings in the period in which such determination or denial became final. At September 30, 1983 the Company's investment in Unit 2 was $279,700,000, including AFUDC and uranium fuel. While the Company believes that in the event of cancellation it would be entitled to allocate some part of this investment to the cost of Unit 1, the amount of the charge against earnings would probably eliminate the Company's retained earnings, thereby effectively precluding the Company from paying dividends on its common and preferred stocks and threatening the continuance of the Company's construction program and business operations.

As regulators with expertise in reviewing the prudence of utility decisionmaking, we must be cognizant that a substantial uncertainty that threatens "the continuance of the Company's construction program and business operations" will constrain responsible decisionmaking. In this instance, the new cost estimates may (or may not) indicate to the company that one or both Seabrook Units

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are not economic. If that is the case, an economically rational decision, cancellation, could threaten "the continuance of the Company's construction program and business operations." While we can question the utility decision not to include Pilgrim costs in rates for two years, thereby delaying the resolution of the legal issue, we must confront the situation that is presented to us now. That situation demands that a substantial uncertainty be resolved before too many more dollars are expended on the Company's construction program.

This leads to the fourth basis for our decision to transfer, the lack of finality of a Commission decision in this instance. We believe that it is inevitable that any Commission decision construing the statute would be appealed. Thus, even if the Commission concluded that RSA 378:30-a is not a barrier to relief in this instance, Company decisionmaking would be constrained by the possibility of an adverse judicial ruling on appeal.[4](64) Since the issue can be squarely presented to the Court now, it is not rational to wait until at least the Fall of 1984, the probable time when a Commission Order on the merits would be appealed.[5](65)

We come now to the final ground upon which we rest our decision: the issue of

constitutionality. We agree with the argument of PSNH and our Staff that, as an administrative agency created by the legislature, the Commission must follow the clear language of our enabling legislation and the inferences that can reasonably be drawn therefrom. It is not our function to tell the legislature that its statutes either meet or do not meet constitutional tests. Therefore, we must assume that all applicable statutes are constitutional. In this case, PSNH has submitted colorable arguments that, if accepted, demonstrate that constitutional standards have a significant effect upon the meaning of RSA 378:30-a. Although this factor in itself would not necessarily justify a decision to transfer the question to the Court, the combination of the constitutional questions with the factors discussed above convinces us that such a transfer is in the public interest.

Since we have determined that we will utilize the statutory mechanism in RSA 365:20 to reserve, certify and transfer the legal issue to the Supreme Court, it is unnecessary and improper for us to offer an opinion on how RSA 378:30-a should be construed. The only mechanism in the Supreme Court Rules for such a transfer from an administrative agency can be found in Rule 9, which provides for an interlocutory transfer without ruling. We shall therefore submit to the Court an interlocutory transfer statement pursuant to Rule 9 along with the factual record prefiled to date. That statement is attached to this Order as Appendix A.

IV. CONCLUSION

We are aware of the critical importance of this issue to PSNH, the Intervenors and the public. The decisions made in this case could have a direct bearing on New Hampshire's energy future and the billions of dollars of cost associated therewith. A time will come when those costs will have to be allocated among the various interested parties, see e.g., RSA 363:17-a; Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 1076, 51 PUR4th 298, 454 A2d 435. We are

convinced that an expeditious decision on the meaning of RSA 378:30-a could result in a substantial reduction of the overall level of costs to be allocated. It is in the spirit of attempting to reduce costs and prevent what could be more adverse consequences that we submit this question to the Court so that the rules under which we all must operate may be expeditiously clarified.

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 365:20, the Commission will reserve, certify and transfer to the New Hampshire Supreme Court the following question of law:

Does RSA 378:30-a, as a matter of law, prohibit the Public Utilities Commission from allowing public utilities to recover, through rates, amounts such utilities have invested in plant construction projects that have been abandoned?

and it is

FURTHER ORDERED, that the factual record be transmitted to the Court under cover of an interlocutory transfer statement, submitted pursuant to Supreme Court Rule 9, and attached hereto as "Appendix A"; and it is

FURTHER ORDERED, that the procedural schedule set forth in Report and Order No. 16,908 (69 NH PUC 127) is hereby suspended pending a further Order of the Commission.

By order of the Public Utilities Commission of New Hampshire this ninth day of March, 1984.

APPENDIX A

THE STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DR 83-398

Public Service Company of New Hampshire — Pilgrim II Recovery

INTERLOCUTORY TRANSFER WITHOUT RULING

I. Statement of the Case.

The petitioner, Public Service Company of New Hampshire (PSNH) has requested the Public Utilities Commission (Commission) to investigate, determine and fix an appropriate ratemaking methodology to enable PSNH to recover costs associated with the Company's investment in Pilgrim Unit II. In addition, PSNH has requested that prior to consideration of the merits, the Commission reserve, certify and transfer to the New Hampshire Supreme Court a preliminary question of law, pursuant to RSA 365:20. In Report and Supplemental Order No. 16,936 ([1984] 69 NH PUC 174, supra) the Commission granted PSNH's request.

II. Statement of Facts.

For the purpose of this transfer, the following facts apply.

1. PSNH is a corporation duly authorized to conduct the business of a public utility in New Hampshire. In 1972, PSNH became the owner of a 3.47% ownership interest in a proposed nuclear electric generating facility known as Pilgrim Unit No. 2, which was to be located in Plymouth, Massachusetts. Pilgrim Unit No. 2 was owned by a consortium of New England utilities with Boston Edison Company as lead participant. PSNH's ownership interest in Pilgrim Unit No. 2 was

governed by the terms of a Joint Ownership Agreement executed October 13, 1972, pursuant to which each owner agreed to pay its pro rata share of capital, operating and other costs associated with construction, to Boston Edison Company on a monthly basis. PSNH thereupon commenced making payments in accordance with the Joint Ownership Agreement.

2. In 1978, the Commission permitted PSNH to include in rate base a portion of Construction Work in Progress (CWIP) associated with Pilgrim Unit No. 2, for ratemaking purposes. Re Public Service Co. of New Hampshire (1978) 63 NH PUC 127. In 1979, following passage of RSA 378:30-a, CWIP associated with Pilgrim Unit No. 2 was removed from PSNH's rate base, along with CWIP associated with other elements of PSNH's construction program. PSNH

attempted to divest itself of its ownership interest in Pilgrim Unit No. 2 by offering its ownership interest for sale. However, PSNH was unable to sell its ownership interest and under the terms of the Joint Ownership Agreement, remained bound to continue making monthly payments to Boston Edison for its share of the cost of Pilgrim Unit II.

3. On September 24, 1981, PSNH received a notification directed to all the joint owners by Boston Edison Company, stating that pursuant to the Joint Ownership Agreement, Boston Edison Company had determined that Pilgrim Unit No. 2 was to be cancelled and all further work on the project would accordingly cease. Boston Edison cited regulatory delays and increased costs as the reasons for its action. The cancellation decision was deemed final as of October 22, 1981.

4. PSNH has alleged that its investment in the abandoned Pilgrim Unit No. 2 project amounts to $15,926,729. PSNH has also alleged that it incurred these costs prudently in the course of meeting its statutory obligations to provide safe and adequate service and in fulfillment of its contractual undertakings. PSNH has estimated that in order to recover the portion of its Pilgrim Unit No. 2 investment attributable to the New Hampshire jurisdiction in a one-year period, the associated revenue requirement, including provision for taxes, would be $16,558,037. PSNH has petitioned the Commission to allow recovery of the investment through an appropriate ratemaking methodology.

5. In establishing rates, the Commission generally employs the following cost based formula: R = O + B(r). In that formula:

R = the level of revenues which the utility is permitted to recover from ratepayers.

O = the utility's Operating Expenses (e.g., salaries and wages, mainte nance costs and taxes).

B = the utility's Rate Base (e.g., the cost of plant in service, working capital and materials and supplies which have been supplied by the utility's debt and equity investors).

r = the rate of return allowed by the Commission established on the basis of the utility's cost of debt and equity capital.

6. Prior to the time the Pilgrim Unit 2 project was cancelled, PSNH booked its Pilgrim Unit 2 costs to Account No. 107. Under the Federal Energy Regulatory Commission ("FERC") Uniform Classification of Accounts adopted by the Commission at NHPUC Rule 307.04, Account No. 107 is defined in pertinent part, as follows:

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107 Construction work in progress — Electric.

A. This account shall include the total of the balances of work orders for electric plant in process of construction. 18 C.F.R. Part 101, § 107.

7. When Pilgrim Unit 2 was cancelled, PSNH transferred the cost from Account No. 107 to Account No. 186. Under the FERC Uniform Classification of Accounts adopted by the Commission at NHPUC Rule 307.04, Account No. 186 is defined as follows:

186 Miscellaneous deferred debits.

A. This account shall include all debits not elsewhere provided for, such as miscellaneous work in progress, and unusual or extraordinary expenses, not included in other accounts, which are in process of amortization and items the proper final disposition of which is uncertain.

B. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to each deferred debit. 18 CFR Part 101, § 186.

8. PSNH's accounting for its Pilgrim Unit No. 2 costs is and has always been in conformance with accepted accounting practices as approved by the Commission.

III. Question of Law.

The following controlling question of law is transferred in accordance with RSA 365:20.

RSA 378:30-a reads as follows:

378:30-a Public Utility Rate Base; Exclusions. Public Utility rates or charges shall not in any manner be based on the cost of construction work in progress. At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed. All costs of construction work in progress, including, but not limited to, any costs associated with constructing, owning, maintaining or financing construction work in progress, shall not be included in a utility's rate base nor be allowed as an expense for rate making purposes until, and not before, said construction project is actually providing service to customers.

Does RSA 378:30-a, as a matter of law, prohibit the Public Utilities Commission from allowing public utilities to recover, through rates, amounts such utilities have invested in plant construction projects that have been abandoned?

IV. Reasons for Interlocutory Transfer.

Three of the Intervenors admitted to full party status in this proceeding have asserted that RSA 378:30-a prohibits the Commission from granting the relief requested by PSNH as a matter of law. PSNH and a fourth intervenor have submitted that, properly construed and applied, RSA 378:30-a does not deprive the Commission of authority to grant the relief requested. PSNH further urges that proper construction and application of the statute involves Constitutional considerations. Accordingly, proper construction and application of RSA 378:30-a involves a dispositive, threshold issue determinative of the Commission's authority to grant the requested relief. A substantial basis ex

ists for a difference of opinion on that question and determination of that question through an

interlocutory transfer will be determinative of whether the Commission possesses authority to proceed to hear and determine the Petition, on the merits. The issue is one of general importance in the administration of the public utility laws of the State of New Hampshire and requires advance determination, in the interests of administrative economy.

Copies of the Petition, the prefiled testimony and exhibits of PSNH, Commission Report and Order No. 16,908 and Commission Report and Supplemental Order No. 16,936 are attached to

this Interlocutory Transfer.

V. Counsel.

The name, address and telephone number of each lawyer in the case and the name of the respective clients are:

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

Lawyer		
Martin L. Gross, Esq. Margaret H. Nelson, Atty.	PO Box 1256 9 Capitol St. Concord, NH 03301	224-2341 	Public Service Company of New Hampshire
Douglas I. Foy, Esquire	3 Joy Street Boston, MA 02108	617-472-2540	Conservation Law Foundation of New England, Inc.
Gerald M. Eaton, Esquire	2 Industrial Park Drive Concord, NH 03301	225-3295	Belknap-Merrimack Community Action Program
Robert A. Backus, Esquire	116 Lowell St. Box 516 Manchester, NH 03105	668-7272	Seacoast Anti-Pollution League
Michael W. Holmes, Esquire	8 Old Suncook Road Concord, NH 03301	271-2431	Consumer Advocate
Larry M. Smukler, Esquire	8 Old Suncook Road Concord, NH 03301	271-2431	Public Utilities Commission Staff

FOOTNOTES

[1]Since for the purposes of framing the legal issue, the facts are to be construed in the light most favorable to PSNH, it is unnecessary for us to hold hearings to put the gloss of our regulatory expertise on those facts. Our reading of the various Memoranda submitted by the parties convinces us that they are quite capable of presenting the proper arguments to the Court. Should the Court ultimately determine that the statute is not a barrier to recovery, we would expect on remand to apply our regulatory expertise to the issue of how the facts should be construed to determine the amount of recovery, if any.

[2]The Project was cancelled in September of 1981. PSNH did not request recovery until December of 1983. It is noteworthy that in the interim period PSNH had the opportunity to seek recovery by including the cost as an element of a PSNH rate case.

[3]In its February 24, 1984 Memorandum of Law, PSNH stated at 12-13: "Furthermore, an absolute ban on the recovery of the costs of Pilgrim 2 would have a serious effect on PSNH's financial integrity. While the write-off of some $16 million dollars would not, in and of itself, eliminate PSNH's retained earning, it would send a critical signal to the investment community regarding PSNH's ability to recover for other assets, principally Seabrook Unit 2 if a decision were ever made to cancel that Unit."

[4]We note PSNH's interpretation of RSA 541:13 which leads it to conclude that the Court will not defer to the Commission in matters of law. See, Memorandum of Law in Support of PSNH's Request to Certify a Question of Law to the Supreme Court, dated January 31, 1984 at 4.

[5]See procedural schedule set forth in the Procedural Order (69 NH PUC at p. 128). t in the interim period PSNH had the opportunity to seek recovery by including the cost as an element of a PSNH rate case.

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[Go to End of 61366]

69 NH PUC 183

Re New England Telephone and Telegraph Company

DR 83-186,
Second Supplemental Order No. 16,938

New Hampshire Public Utilities Commission

March 15, 1984

Order accepting a telephone company's compliance filing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No. 16,868 ([1984] 69 NH PUC 33) directed the filing of tariff revisions to reflect the decision therein; and

WHEREAS, New England Telephone has filed such pages and the Commission finds them in full compliance; it is

ORDERED, that the following revisions to the NET Tariff No. 75 be, and hereby are, approved for effect on January 16, 1984;

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

Supplement No. 8 — Title Page
— Page 1, Original
Part A — Section 5 — Table of Contents, Page 1,
Second Revision
— Table of Contents, Page 2,
Second Revision
— Page 2, First Revision
— Page 8, Second Revision
— Page 9, Second Revision
— Page 19, Second Revision
— Page 20, Second Revision
— Page 29.1, First Revision
— Page 29.2, First Revision
— Page 29.3, First Revision

and it is

FURTHER ORDERED, that subscribers affected by such tariff revisions be notified of their impact via bill insert issued in a timely manner as such services become available in varied

exchanges.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of March, 1984.

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NH.PUC*03/16/84*[61367]*69 NH PUC 184*New England Telephone and Telegraph Company

[Go to End of 61367]

69 NH PUC 184

Re New England Telephone and Telegraph Company

DR 83-342,
Supplemental Order No. 16,941

New Hampshire Public Utilities Commission

March 16, 1984

Petition for authority to replace multielement telephone service connection charges with dual element charges; granted.

Rates, § 309 — Installation and connection charges — Telephone — Cost-based elements.

In an effort to move from averaged pricing schemes to cost-based charges, the commission authorized a telephone company to replace its multielement service connection charges with dual-element charges reflecting actual service and equipment charges and premises work charges where it was assumed that other work that had been included in the multielement charges would now be done by subscribers themselves.

APPEARANCES: For New England Telephone and Telegraph Company, Jeanne S. Conroy, Esquire.

By the COMMISSION:

REPORT

On November 3, 1983, the New England Telephone and Telegraph Company (NET) filed with this Commission certain revisions to its tariffs nos. 75 and 76 proposing to change its multi-element service connection charge system to one of dual-elements comprising a `Service and Equipment Charge' and a `Premises Work Charge'. Pending investigation and decision, the filing was suspended by Commission Order No. 16,783 issued on November 29, 1983. The following day an Order of Notice was issued setting the matter for public hearing to be held at the Commission's Concord offices on January 12, 1984 at 2:00 p.m. That Order was subsequently amended to December 19, 1983 at 10:00 a.m. Public notice was directed and NET filed an affidavit attesting to same on December 15, 1983.

The duly noticed hearing was convened as rescheduled with NET represented by Jeanne S. Conroy, Esquire. No intervenors were present. Mrs. Conroy presented one witness, Thomas S. DeSisto, District Manager, Revenue Matters Department of NET.

COMPANY POSITION

The Company states that the multielement service connection charge structure is no longer viable in the deregulated/divested environment. Customers now have the ability to do much of the installation work themselves or contract with others. NET feels that this will lead to it becoming the "installer of last resort" where only the more difficult tasks are left to the telephone company installer.

This situation, the Company contends, could lead to higher multi-element charges since these are based upon average costs and that average would be ever rising if the Company performed only those more difficult tasks. As an alternative, NET is proposing the dual-element service connection structure under which there are

Page 184

the Service and Equipment Charge and the Premises Work Charge. Each of these is job-related, based on equipment supplied and labor time required and therefore reflects more accurately the costs.

Witness DeSisto indicated the current multi-element charges are not compensatory and that raising them could have adverse effects. He cited the Element 1 charge of $12.00, indicating this would have to [be] raised to $21.00 to be compensatory. Under the proposed system, the Company indicates no increase in revenue, with some charges for certain tasks higher, others lower. The revised structure, while allegedly still below costs, provides the vehicle for future job-related charges which would be compensatory.

COMMISSION ANALYSIS

The Commission recognizes the inequities of a price scheme based upon averages and finds cost-based charges far superior. We will accept the proposed dual-element structure as a step toward eliminating such inequities. We acknowledge the fact that, now that installation tasks are no longer restricted to the telephone utility, many of the simpler jobs will be done by the subscriber or his agent, leaving the more difficult to the utility. Surely, as indicated by NET, this would have an impact on the average charges now in effect, possibly resulting in continual increases in the multi-element charges. Accordingly, the Commission will accept the revised structure.

Of concern, however, is the ability of the Company to present accurate estimates to the customer when he orders services. While the Service and Equipment Charges are outlined clearly in the tariff, it is extremely important that the customer be given accurate estimates of the Premises Work Charges. Understandably, the Company representative taking an order by telephone or in person cannot envision abnormal circumstances which an installer may face at the premises. It is imperative that such conditions be brought to the customer's attention by the installer at the outset to preclude inordinate costs which the customer neither expected nor wanted. The Commission will monitor the accuracy of any estimates which are brought to its

attention by its Consumer Assistance Department.

Also of concern are the rates specified for the Premises Work Charge. These appear rather high; but, considering the facts that some materials are included and that the customer has a choice of seeking services elsewhere, we are confident that the competition will regulate the price.

The Company asserted that there would be no impact from this filing. While we see examples where charges will be decreased for certain services, other charges will increase. To verify the neutral impact on revenues, the Commission directs that appropriate records be maintained for a period of six months following implementation of this order, following which a report will be made to the Commission comparing all service charges levied versus what these would have been under the multi-element system. We will expect the report within 60 days following the end of that period.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the tariff revisions listed on the attachment of this Order be, and hereby are, rejected; and it is

FURTHER ORDERED, that New England Telephone and Telegraph file

Page 185

appropriate revised pages in lieu of those rejected, said pages to implement the dual-element service connection charges and to bear the notation that they are issued according to this Order; and it is

FURTHER ORDERED, that said revised pages become effective upon issue of an approval Order; and it is

FURTHER ORDERED, that one-time public notice of this Order be given via comprehensive bill insert explaining the impact of the filing.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of March, 1984.

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

NHPUC — No. 75
 Supplement No. 5 — Title Page
 — Original Pages 1 through 13
Part A — Section 1 — First Revision of TOC Page 1
 — First Revision of Pages 4, 5, and 8 through 20
 — Original Pages 21 through 30
— Section 2 — First Revision of Pages 7 through 10
— Section 3 — First Revision of TOC Page 1
 — First Revision of Pages 1 through 10 and 15
— Section 4 — First Revision of Pages 2, 20 and 31 through 41
— Section 5 — Second Revision of Page 10
 — Third Revision of Page 21
 — First Revision of Pages 29, 30, 33, 39 and 41
— Section 6 — First Revision of TOC Page 1
 — First Revision of Pages 2, 3 and 5 through 8

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— Section 7  — First Revision of TOC Page 1
 — Second Revision of TOC Page 3
 — First Revision of Pages 2, 7 through 9, 11 through 13, 17, 18,
  30, 33 through 35, 40 and 41
 — Second Revision of Page 42
 — First Revision of Page 43
 — Seciond Revision of Page 44
 — First Revision of Page 45, 46, 52, 54 through 63, 66 and 67
 — Second Revision of Pages 68 and 69
 — First Revision of Page 80
 — Original Pages 81 through 83
— Section 8  — Second Revision of Pages 3 and 4
— Section 9  — First Revision of TOC Page 2
 — First Revision of Page 4
 — Second Revision of Page 5
 — First Revision of Pages 15, 51 and 68
— Section 10  — Second Revision of Pages 5 and 6
Part B — Section  1  — First Revision of Pages 1, 12, 14 through 17, 21 through 23, 26
  through 29, 31, 33, 35 through 38, 40, 41 and 43
— Section 2  — First Revision of TOC Pages 1 and 2
 — First Revision of Pages 6, 7, 24, 29 and 32
 — Original Pages 32.1 and 32.2
 — First Revision of Page 35
 — Original Page 35.1
 — First Revision of Pages 37 and 38
 — Original Page 38.1
 — First Revision of Pages 40 and 42 through 44
 — Original Page 44.1
 — First Revision of Page 48
— Section 3  — First Revision of Pages 3, 4, 8 and 9
NHPUC — No. 76
  Mobile — First Revision of TOC Page 1
 — First Revision of Pages 6, 7, 11, 12 and 13
                                    ==========
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NH.PUC*03/16/84*[61368]*69 NH PUC 187*Public Service Company of New Hampshire

[Go to End of 61368]

69 NH PUC 187

Re Public Service Company of New Hampshire

DF 84-19, Order No. 16,942

New Hampshire Public Utilities Commission

March 16, 1984

Motion to amend a petition for authorization to issue bonds; granted.

By the COMMISSION:

ORDER

WHEREAS, Public Service Company of New Hampshire (PSNH) filed on March 15, 1984 a Motion to Amend Petition in Docket No. DF 84-19 as follows:

1. To amend the title and paragraph 3(c) of its Petition filed January 18, 1984 so as to strike out the figure $100,000,000 and substitute in place thereof the figure $200,000,000, in reference to aggregate principal amount of general and refunding mortgage bonds or unsecured debentures.

2. To amend the petition to conform to certain details of the prefiled testimony filed March 7, 1984; and

WHEREAS, further public notice of such an amendment to the petition would be in the public interest; it is hereby

ORDERED, that said Motion is granted on the condition that a copy of this order is published in a newspaper of State-wide circulation noting that the hearing on the petition which was originally scheduled for March 15, 1984 has been continued until March 27, 1984 at 2:00 P.M., such publication to be no later than March 23, 1984, said publication to be designated in an affidavit to be made on a copy of this order of notice and filed with this office.

By Order of the Public Service Commission of New Hampshire this sixteenth day of March, 1984.

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NH.PUC*03/16/84*[61369]*69 NH PUC 187*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 61369]

69 NH PUC 187

Re Continental Telephone Company of New Hampshire, Inc.

DR 84-53, Order No. 16,943

New Hampshire Public Utilities Commission

March 16, 1984

Petition for approval of certain intrastate telephone tariffs; granted.

By the COMMISSION:

ORDER

WHEREAS, Continental Telephone Company of New Hampshire, Inc. has filed with this Commission certain tariff pages instituting Granite State Calling Service in its New Hampshire exchanges; and

WHEREAS, said filing is consistent with rates and terms approved previously for other New Hampshire telephone utilities; and

WHEREAS, the Commission finds said filing in the public interest; it is

ORDERED, that Section 14, 2nd Revised Contents, and Original Sheets 9 and 10, Continental Telephone Company of New Hampshire, Inc. tariff, NHPUC No. 11 - Telephone, be, and hereby are, approved for effect on March 17, 1984.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of March,

1984.

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[Go to End of 61370]

69 NH PUC 188

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 84-21,
Supplemental Order No. 16,944

New Hampshire Public Utilities Commission

March 19, 1984

Order permitting a fuel surcharge to take effect without formal fuel adjustment clause hearings.

By the COMMISSION:

SUPPLEMENTAL 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 ([1982] 67 NH PUC 268), 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 a hearing be scheduled; and

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

ORDERED, that 123rd Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $1.64

per 100 KWH for the month of March, 1984, be, and hereby is, permitted to become effective March 1, 1984.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of March, 1984.

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NH.PUC*03/19/84*[61371]*69 NH PUC 189*Connecticut Valley Electric Company, Inc.

[Go to End of 61371]

69 NH PUC 189

Re Connecticut Valley Electric Company, Inc.

DR 83-372,
Third Supplemental Order No. 16,945

New Hampshire Public Utilities Commission

March 19, 1984

Order approving plan for changes in the purchase power cost adjustment.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Report and Second Supplemental Order No. 16,916 ([1984] 69 NH PUC 146) granted in part a Motion for Rehearing which applied to the effective date of an approved change in Connecticut Valley Electric Company's ("CVEC") Purchase Power Cost Adjustment ("PPCA"); and

WHEREAS, by letter dated March 12, 1984 CVEC has submitted a plan to comply with the provisions of Report and Second Supplemental Order No. 16,916; and

WHEREAS, such compliance plan is just and reasonable and in the public interest; it is

ORDERED, that CVEC's compliance plan as set forth in its letter of March 12, 1984 be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of March, 1984.

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NH.PUC*03/19/84*[61372]*69 NH PUC 189*New Hampshire Electric Cooperative, Inc.

[Go to End of 61372]

69 NH PUC 189

Re New Hampshire Electric Cooperative, Inc.

DR 83-352, Order No. 16,946

New Hampshire Public Utilities Commission

March 19, 1984

Order approving continuation of roll-in and interest accruals for fuel adjustment clause.

APPEARANCES: Thomas W. Morse, Esquire for the Company; Eugene F. Sullivan and Kenneth E. Traum for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

The Commission in DR 81-340, 3rd Supplemental Order No. 15,986 ([1982] 67 NH PUC 781), permitted the Cooperative to fold-in to base rates an amount for fuel charges, for a one year trial period. Said folded-in fuel charge rate was $0.030 per KWH effective November 15, 1982, later reduced to $0.02822 as of July 1, 1983, per NHPUC Order No. 16,527 in DR 83-143 (68 NH PUC 468).

On November 7, 1983, the Cooperative petitioned for a continuation of the current rate as it "has proven to be most satisfactory and has been beneficial to its customers by reason of having maintained a level rate that has permitted Cooperative customers to plan and budget accordingly. It eliminates the great variations in billed amounts that occurred as a result of the previous method of changing fuel charges rates from month to month."

Per Order of Notice dated November 21, 1983, the Commission set the matter for hearing on December 16, 1983, at its offices in Concord. A duly noticed hearing was accordingly held.

During the course of the hearing the parties reached several agreements on the issue, which were stated on the record for the Commission's consideration.

1. The current fuel roll-in is reasonable and should not be revised at this time.

2. The recoupment of the under recovery from the old two month lagging fuel clause will continue, so as not to double collect through base rates and so as not to put extraneous items into the fuel clause.

3. An interest factor of 8% shall be booked monthly to the average cumulative over/under collection recovery of the fuel clause. For explanative purposes this figure was a $495,806 over recovery as of November 30, 1983.

4. The Cooperative will closely monitor the clause and provide the parties with estimates in a regular timely manner.

The Commission feels these agreements are in the public good and resolve the issue for now. The continuation of the current roll-in rate maintains rate continuity at a reasonable level, while close monitoring of over/under collections and their estimates plus the interest accruals will provide improved financial protection to all parties.

In order to give all parties some guidance, the Commission will review the annual FAC rate before November 1, 1984, or at an earlier date if the staff or other parties to the settlement agreement claim that the actual or projected fuel costs will vary significantly from the current fuel roll-in. In addition to its monthly reconciliation the Cooperative will file a projection of its fuel costs for review by the Commission staff.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the New Hampshire Electric Cooperative, Inc. shall maintain its current fuel roll-in of $0.02822 per KWH; and it is

FURTHER ORDERED, that interest at a rate of 8% per annum shall be booked

Page 190

monthly to the average cumulative over/ under collection recovery of the fuel clause, beginning with the date of this Order; and it is

FURTHER ORDERED, that said rate shall remain in effect until changed by the Commission.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of March, 1984.

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NH.PUC*03/21/84*[61373]*69 NH PUC 191*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 61373]

69 NH PUC 191

Re Continental Telephone Company of New Hampshire, Inc.

DR 83-290,
Supplemental Order No. 16,948

New Hampshire Public Utilities Commission

March 21, 1984

Order approving plan to sell customer premises equipment.

Service, § 435 — Telephone — Equipment and facilities — Customer premises equipment — Sales plan.

The commission found that a telephone utility's policy of transferring customer premises equipment to customers benefited customers by giving them an opportunity to purchase high-quality sets at reasonable prices without changing the payment amount of their telephone bill, and benefited the company by providing it with an opportunity to sell inplace sets. [1] p.193.

Service, § 435 — Telephone — Equipment and facilities — Customer premises equipment — Sales plan.

The commission held that purchases of customer premises equipment by customers would be considered "merchandising" and that the commission's rules and regulations would not allow termination of service for nonpayment of that portion of the bill. [2] p.193.

APPEARANCES: For the Petitioner, Thomas Platt, Esquire.

By the COMMISSION:

REPORT

On September 1, 1983 Continental Telephone Company of New Hampshire, Inc. filed proposed revisions to its General Exchange Tariff PUC - New Hampshire - Number 11 which would provide for a plan to divest itself of certain customer premise equipment (CPE) through sale to subscribers, and to deregulate all customer premise inside wiring (CPIW) and transfer maintenance responsibility of existing wiring to customers.

On January 31, 1984 an Order of Notice was issued setting hearing for February 21, 1984 at 10:00 a.m.

Notices were sent to Donald Barnes, Continental Telephone Company, for publication; Gerald Eaton, Esquire, CAP; Michael Holmes, Consumer Advocate; and the Office of the Attorney General.

On February 10, 1984 an affidavit was filed with this Commission attesting to a notice in the Union Leader on February 4, 1984.

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The Company presented Brian W. McCormick, Revenue Requirements Manager, as its witness. Mr. McCormick offered the filing as two separate plans which, he contended, must be viewed as one since the effectiveness of each cannot be achieved without both being approved.

The Company proposes a specific sales plan for certain single-line instruments, or Qualified Station Equipment, the category comprising all single-line residential and business station equipment leased from the Company excluding inside wire, single-line station equipment associated with PBX or multi-line equipment, telemergency, municipal services, coin, data, paging, Ericofone's, impaired hearing equipment, outdoor equipment, or official Company station equipment. The plan provides that after a thirty (30) day notification period the Company will transfer ownership of all qualified station equipment to the subscriber. The subscriber will then pay for that equipment through installment payments equal to their existing lease rate until the purchase price of the equipment has been recovered. The purchase price will be based on net book value at the time the plan is approved. At any time within thirty (30) days of the notice a customer may elect to return all or a portion of the qualified station equipment, but equipment may not be returned and will not be accepted for return after the thirty (30) day notice period. A thirty (30) day warranty will be provided from the date of transfer of ownership. If a customer terminates service subsequent to the date of transfer of ownership, he will be billed the full net book value less any payments made to date.

The witness testified that the reason for this portion of the filing is to minimize the impact of customer migration away from Company owned equipment. The FCC's decision to open the terminal equipment market to competitive supply has given customers an opportunity to make a decision as to whether to continue to use Company provided equipment or to replace it with alternatives from the marketplace. If the latter option is selected, then the equipment which was formally at the customer premises is returned to the Company and the Company is effectively precluded from any further revenue gain from that portion of its investment. The instant filing establishes a reduced rate at which a customer may elect to retain his present equipment, and then sets a payment plan which is equivalent to the current disaggregated set cost to be followed until the net book value of the set is reached.

In regard to the deregulation of customer premise inside wiring, the Company proposes to turn the responsibility for the maintenance of any existing inside wiring over to the customer and to further cease to accept responsibility for Company installation of inside wiring on a regulated basis. It proposes to install and repair wiring only on a non-regulated time and material basis.

The Company refers to the FCC first report and order in CC Docket 79-105, released March 31, 1981, which said in part that its objective was "to place the burden of all costs associated with station connections on the causative ratepayer rather than on all ratepayers both present and future."

The Company contends that it favors the deregulation and detariffing of inside wiring so long as the Company can recover its imbedded investment in inside wiring placed into service prior to October 1, 1981. The Company was allowed "flash-cut" its imbedded investment in account 232 from a capitalized account to an expense by Commission Order No.

Page 192

15,258 in Docket DR 81-251 issued November 3, 1981 (66 NH PUC 452).

Commission Analysis

[1] In regard to the sale of inplace sets, the Commission concurs in the Company's concept to transfer its customer premises equipment into the hands of its customers. The plan gives their customers an opportunity to get a high-quality set at a reasonable price and allows them to pay for them without changing the payment amount of their telephone bill.

We find that the policy provides equal benefit to the Company in that they are assured of maximizing the opportunity of selling their inplace sets. Failure to do so would result in the return of undepreciated assets which would clearly not retain a salvage value which was equal to its net book value.

We find that a thirty (30) day notice period is insufficient. Therefore, in recognition of the fact that some New Hampshire residents are absent from the state for periods in excess of thirty (30) days, we will require that the Company extend its notice period to ninety (90) days wherein a customer may consider their ownership option, and return all or portions of their equipment. We are satisfied that the subsequent thirty (30) day warranty is adequate.

[2] We caution the Company that the sales of this equipment will be considered

"merchandising" sales and as such will not have the protection of this Commission's Rules and Regulations in allowing service termination for non-payment of that portion of the bill. In other words, the Company may not terminate telephone service for non-payment of that portion of the bill which relates to the purchase of their telephone equipment.

With regard to the Company's proposal to deregulate inside wire, the Commission is not yet prepared to accept the filing as proposed. We favor the concept as being a logical way in which a demarcation point can be established to determine where the Company's responsibility ends and the customer's responsibility begins, both insofar as maintenance of old wiring and construction of new wiring is concerned. It is the Commission's desire, however, to establish an inside wiring program which can be accepted for use by all or our regulated telephone utilities. Toward that end, we will delay further action on that portion of Continental's petition and will establish a generic docket on the issue. At that time we will consider, inter alia, the appropriateness of a reduction of the basic rate reflecting the reduction in service and cost of service.

It is timely at this point to speak to the issue of customer installation of inside wiring. We have recognized, accepted and encouraged the concept of customer installation of inside wiring and, in fact, directed the New England Telephone Company to allow such customer installation in Docket DR 82-70 in our Order No. 15,752 dated July 9, 1982 (67 NH PUC 469). We have not given such specific direction to any independent company. Continental has, in this docket, recorded itself as favoring the installation of customer inside wiring. We will take this opportunity to formalize their policy by directing them to allow customers the opportunity of installing their own inside wire.

SUPPLEMENTAL ORDER

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

ORDERED, that the plan of Continental Telephone Company of New Hampshire to sell certain single-line telephone

instruments, comprising all single-residential and business station equipment leased from the company excluding inside wire, single-line station equipment associated with PBX or or [sic] multi-line equipment, telemergency, municipal service, coin, data, paging, Ericofone, impaired hearing equipment, outdoor equipment, or official Company station equipment be, and hereby is, approved. And, it is

FURTHER ORDERED, that the Company shall provide a notice period of ninety (90) days wherein a customer may consider their ownership options and return all or portions of their equipment; and it is

FURTHER ORDERED, that the Company's proposal to provide a thirty (30) day warranty on its transferred equipment is approved; and it is

FURTHER ORDERED, that the Company will not have the protection of this Commission's Rules and Regulations in allowing service termination for nonpayment of any portion of the bills relative to the transfer of this equipment; and it is

FURTHER ORDERED, that that portion of the Company's proposal relative to the deregulation and transfer of inside wire is disapproved at this time; however, the Company is encouraged to introduce its proposal in an upcoming generic docket on this issue; and it is

FURTHER ORDERED, that the Company shall continue its policy of allowing customers the opportunity of installing their own inside wire; and it is

FURTHER ORDERED, that the Company shall develop a notification procedure which will reasonably assure that customers are made aware of their instrument sales program.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of March, 1984.

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NH.PUC*03/23/84*[61374]*69 NH PUC 194*Kearsarge Telephone Company

[Go to End of 61374]

69 NH PUC 194

Re Kearsarge Telephone Company

DR 84-57, Order No. 16,949

New Hampshire Public Utilities Commission

March 23, 1984

Order approving revisions to tariffs with regard to the sale of customer premises equipment.

By the COMMISSION:

ORDER

WHEREAS, Kearsarge Telephone Company has filed with this Commission certain revisions to its tariff proposing terms under which in-place customer premises equipment would be sold; and

WHEREAS, the Commission finds such terms require investigation before rendering a decision; it is

ORDERED, that Section 3, Original Sheets 77-79, Kearsarge Telephone Company tariff, NHPUC No. 5 - Telephone, be, and hereby are, suspended pending investigation and decision thereon.

By order of the Public Utilities Commission of New Hampshire this twentythird day of March, 1984.

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NH.PUC*03/23/84*[61375]*69 NH PUC 195*Northern Utilities, Inc.

[Go to End of 61375]

69 NH PUC 195

Re Northern Utilities, Inc.

DR 84-60, Order No. 16,951

New Hampshire Public Utilities Commission

March 23, 1984

Order approving contract for sale of gas at rates other than those fixed by the schedule of general application.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a utility selling gas under the jurisdiction of this Commission, has filed with this Commission Special Contract No. 59 with Elliott & Williams Roses, effective on approval by Commission order, for gas service at rates other than those fixed by its schedule of general application; and

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

ORDERED, that said contract may become effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twentythird day of March, 1984.

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NH.PUC*03/23/84*[61376]*69 NH PUC 195*Northern Utilities, Inc.

[Go to End of 61376]

69 NH PUC 195

Re Northern Utilities, Inc.

DR 84-61, Order No. 16,952

New Hampshire Public Utilities Commission

March 23, 1984

Order approving contract for the sale of gas at rates other than those fixed by the schedule of general application.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a utility selling gas under the jurisdiction of this Commission, has filed with this Commission Special Contract No. 60 with Phillips Exeter Academy, effective on

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approval by Commission order, for gas service at rates other than those fixed by its schedule of general application; and

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

ORDERED, that said contract may become effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twentythird day of March, 1984.

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NH.PUC*03/28/84*[61377]*69 NH PUC 196*Manchester Water Works

[Go to End of 61377]

69 NH PUC 196

Re Manchester Water Works

Intervenor: Four Town Water Study Committee

DE 84-4,
Second Supplemental Order No. 16,954

New Hampshire Public Utilities Commission

March 28, 1984

Order approving quarterly billing for fire protection service.

Payment, § 20 — Billing periods — Quarterly bills for fire protection service.

Quarterly billing by a water company for municipal fire protection service was approved as being in the public good where the billing had previously been in arrears.

APPEARANCES: For the Petitioner: Alice Briggs, Esquire; for the Four Town Water Study Committee: Armand A. Dugas; for the Commission Staff: Kenneth E. Traum, Assistant Finance

Director and Robert B. Lessels, Water Engineer.

By the COMMISSION:

REPORT

On January 3, 1984, Manchester Water Works (Manchester) filed certain revisions to its tariff NHPUC No. 3 reflecting language changes, general updating of tariff provisions, and a change to quarterly billing for municipal fire protection charges billed to surrounding towns. The changes proposed in this filing were suspended by Order No. 16,869. The changes proposed will not produce any significant revenue increase over those authorized in the most recent rate case DR 81-388 ([1983] 68 NH PUC 583).

On January 27, 1984, Manchester filed certain additional changes to its tariff NHPUC No. 3 Water, which were incorporated into this docket and suspended by Order No. 16,903.

Informal discussions of the proposed changes were conducted culminating in a meeting between Manchester, the Four Town Water Study Committee and the Commission Staff on March 8, 1984, in an effort to resolve all issues, except billing for municipal fire protection services, prior to a public hearing. Consensus was reached on all issues, with the exception noted above, except as to the effective date.

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On March 13, 1984, a hearing was held to inform the Commission of consensus reached, to consider a change to quarterly billing and to establish effective dates.

The tariff changes discussed and agreed to by Manchester, the Four Town Water Study Committee, and Commission Staff, and filed as Exhibit 2 are accepted. The Four Town Water Study Committee requested that the effective date of these changes be set at April 1, 1984 in an effort to have them effective as close as possible to the effective date of similar changes to rules applied within the City of Manchester. Manchester stated that it would experience no difficulty with this date, and we shall so order.

In a previous docket, DR 81-388, we considered the issue of Manchester's billing for municipal fire protection and determined in our Report and Order No. 16,674 that billing is and has been in arrears for service that has previously been provided. It was also stated (68 NH PUC at p. 584) that any change to more frequent billing than the annual then provided, would be a subject of discussion at a future proceeding. From the evidence presented in this proceeding and the proposed delay in implementation which will allow for town budgeting considerations, we concur that quarterly billing for municipal fire protection service will be in the public good as will the other changes proposed.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that 1st Rev. Pages 16 and 19; 2nd Rev. Page 11; 4th Rev. Page 30; and 5th Rev. Page 23 of Manchester tariff NHPUC No. 3 Water, suspended by Order No. 16,869, are hereby rejected; and it is

FURTHER ORDERED, that 5th Rev. Page 30 of Manchester tariff NHPUC No. 3 Water, suspended by Order No. 16,903 is hereby rejected; and it is

FURTHER ORDERED, that 1st Rev. Pages 12 and 15; 2nd Rev. Pages 9, 13, 16, 19, 20 and 21; 3rd Rev. Pages 4, 5, 7 and 11; 4th Rev. Page 6; 5th Rev. Pages 24, 26, 27; and 6th Rev. Pages 23, 28, 29, and 30 are accepted and shall bear the effective date of April 1, 1984; and it is

FURTHER ORDERED, that 6th Rev. Page 25 of Manchester tariff NHPUC No. 3 Water is accepted and shall bear the effective date of January 1, 1985.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of March, 1984.

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NH.PUC*03/28/84*[61378]*69 NH PUC 197*New England Alternate Fuels, Inc.

[Go to End of 61378]

69 NH PUC 197

Re New England Alternate Fuels, Inc.

DR 84-74, Order No. 16,955

New Hampshire Public Utilities Commission

March 28, 1984

Order nisi approving long-term rate filing.

By the COMMISSION:

ORDER

WHEREAS, on March 20, 1984, New England Alternate Fuels, Inc. ("NEAF") filed a long-term rate filing pursuant to Docket No. DE 83-62, Report and Fourth Supplemental Order No. 16,619 ([1983] 68 NH PUC 531) and Report and Fifth Supplemental Order No. 16,664 ([1983] 68 NH PUC 375); and

WHEREAS, NEAF's filing appears to be consistent with the aforementioned Orders; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire the opportunity to file comments or exceptions; and

WHEREAS, it is in the public interest to approve long-term rate filings expeditiously; it is therefore

ORDERED NISI, that the long-term rate filing of NEAF including the Interconnection Agreement and the rates set forth on the long term rate worksheet are approved; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire may file comments and exceptions no later than 14 days from the date of this Order; and it is

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

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of March, 1984.

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NH.PUC*03/28/84*[61379]*69 NH PUC 198*Concord Electric Company

[Go to End of 61379]

69 NH PUC 198

Re Concord Electric Company

DR 84-28,
Supplemental Order No. 16,957

New Hampshire Public Utilities Commission

March 28, 1984

Order nisi rejecting proposed tariff revisions to replace mercury vapor fixtures with high-pressure sodium vapor fixtures.

Rates, § 362 — Electric — Streetlighting — Revenue impact of revised tariffs.

A proposed tariff revision that would introduce high-pressure sodium vapor fixtures as alternatives to mercury vapor fixtures was rejected where the utility failed to make a prima facie showing with respect to revenue impact.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire for Concord Electric Company; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On January 31, 1984, Concord Electric Company ("Company") filed certain tariff revisions, effective March 1, 1984, which expand the Company's offerings of high pressure sodium lighting. By Order No. 16,904 (February 10, 1984) the

Commission suspended the proposed tariff pending the completion of an investigation. A duly noticed hearing was held on March 8, 1984 at which evidence was presented in support of the proposed rate.

The purpose of the Company's filing was inter alia to introduce two new High Pressure Sodium Vapor Fixtures ("HPS") as alternatives to the Mercury Vapor Fixtures ("MV") currently in use. The HPS service is one that had not previously been offered by the Company. Since the HPS technology is significantly more efficient than the MV technology, the Company is proposing to close its existing MV class and benefit its customers by encouraging the use of more efficient fixtures.

In support of its filing, the Company presented a cost of service study (Exh. 1) which indicated that the proposed HPS service will be based on cost.[1(66)] In addition, the Company presented evidence which showed that HPS service offers significant efficiency advantages to customers both in terms of lumens per watt and dollar cost per 1000 lumens output (Exhs. 2 and 3).

Cross-examination of the Company's witness, Mr. Gantz, reinforced the evidence that the proposed service is based on cost and would offer efficiency advantages. However, Mr. Gantz was not able to offer any evidence with respect to the revenue impact to the Company of the proposed tariff revision. The existing evidence (Exh. 1, page 2), shows that, since there are no proposed changes in existing rates, there will be no changes in the revenue derived from existing rates. Even if this evidence is accurate,[2(67)] it is undisputed that the proposed offering of the new service will have an effect on the Company's overall level of revenues. Even though the question was raised in the course of the hearing, the record is silent on this point.

After due consideration, we find that the proposed HPS rate is cost based. In addition, we find that it is in the public interest to offer this new more efficient service. However, we are not able at this time to approve the tariff as filed because we have not been presented with evidence which will enable us to assess the impact of the proposed rates on overall Company revenues. This is important because, in order to approve the tariff, we must be able to evaluate how successful the new offering will be and how it will affect the financial position of the Company.

Accordingly, we will deny the Company's Petition for approval of the proposed tariff revisions because the Company failed to make a prima facie showing with respect to the revenue impact. However, this denial will be issued Nisi to allow

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the Company the opportunity to file any additional information it believes is necessary[3(68)] for our consideration. If, after review of any additional information which may be filed, we determine that the provisions of this Order are no longer applicable, an appropriate Supplemental Order will be issued.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, NISI, that 1st Rev. Pages 34 and 25, [sic] 2nd Rev. Page 19B and 3rd Rev. Pages 12 and 13, Concord Electric Company Tariff, NHPUC No. 8 Electricity, be, and hereby are, rejected effective 30 days from the date of this Order; and it is

FURTHER ORDERED, that Concord Electric Company may file exceptions or such additional information as it believes appropriate no later than 20 days from the date of this Order; and it is

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

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of March, 1984.

FOOTNOTES

[1]The cost of service study also indicated that the pricing for the existing MV service is considerably below cost. Thus, the function of encouraging a shift to more efficient HPS service is, to some extent, undermined because the two rates are roughly comparable. If the MV rates were to be cost based, the correct price signals would be in place and, presumably, customers would move to the lower cost, more efficient HPS lighting. However the lack of cost based pricing for MV service is not sufficient, in and of itself, to reject the proposed tariff. This is because: 1) the MV class will be closed which has the effect of requiring new customers to take HPS service; and 2) in order to allow the company to offer the new more efficient service it is necessary to ensure that the rates of the new service are cost based, rather than to adjust all existing rate schedules. The Company is hereby placed on notice that the Commission will expect an appropriate adjustment for this class of customers when the Company files its next general rate case.

[2]In order for this evidence to be accurate, the Commission would have to accept the assumption that there is no cross-elasticity between MV and HPS customers. In view of the comparability of the HPS and MV rates described supra at n.1, this is not an unreasonable assumption.

[3]We suggest that such additional information should contain a reasonable estimate of the impact of the proposed tariffs on revenues. We do not believe that such an estimate would be burdensome in view of the fact that the Company's affiliate, Exeter and Hampton Electric Company ("Exeter & Hampton") offers the same HPS service. Thus, it would be reasonable to use Exeter and Hampton data as a basis for an estimate of the impact of the HPS rate on Concord Electric Company revenues.

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NH.PUC*03/29/84*[61380]*69 NH PUC 200*Northern Utilities, Inc.

[Go to End of 61380]

69 NH PUC 200

Re Northern Utilities, Inc.

DR 84-62, Order No. 16,961

New Hampshire Public Utilities Commission

March 29, 1984

Order approving contract for the sale of gas at rates other than those fixed by the schedule of general application.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a utility selling gas under the jurisdiction of this Commission has filed with this Commission Special Contract No. 61 with Exeter Hospital, effective on approval by Commission order, for gas service at rates other than those fixed by its schedule of general application; and

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

ORDERED, that said contract may

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become effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twentyninth day of March, 1984.

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NH.PUC*03/30/84*[61381]*69 NH PUC 201*New Hampshire Electric Cooperative, Inc.

[Go to End of 61381]

69 NH PUC 201

Re New Hampshire Electric Cooperative, Inc.

DF 83-360,
Second Supplemental Order No. 16,965

New Hampshire Public Utilities Commission

March 30, 1984

Order denying motion for rehearing on prudency of utility financing.

Procedure, § 15 — Scope of proceedings — Enlargement of scope by commission.

It is within the commission's discretion to limit the scope of issues to be addressed in its proceedings. [1] p.202.

Procedure, § 33 — Rehearings and reopenings — Grounds for granting — Changed circumstances.

The commission found that it was unnecessary to reopen proceedings to hear evidence of changed circumstances where the changed circumstances were updated cost estimates that had not affected a lender's willingness to enter into a transaction with the utility. [2] p.202.

Procedure, § 33 — Rehearings and reopenings — Grounds for granting — Benefits to ratepayers.

The commission held that ratepayers would not benefit in the long run by reopening a financing docket to incorporate broader questions of prudency where the delays caused by reopening the docket could have led to a risk that a utility would default on its obligations. [3] p.202.

(Aeschliman, commissioner, dissents, p.203.)

APPEARANCES: As noted previously.

By the COMMISSION:

REPORT

On November 18, 1983, the New Hampshire Electric Cooperative, Inc. ("Co-op") filed a petition with the Public Utilities Commission of New Hampshire ("Commission") which sought inter alia authority to borrow $111,000,000 from the United States Government acting through the Rural Electrification Administration ("REA"). After due notice and hearing, the Commission issued Report and Supplemental Order No. 16,915 ([1984] 69 NH PUC 137) ("Decision") which inter alia approved the Co-op's request. Timely Motions for Rehearing were filed by the Consumer Advocate, Roger Easton and Gary McCool. On March 20, 1984, the Co-op filed an objection to the Motions for Rehearing. After due consideration, we will in the instant Order sustain the Co-op's objection and deny the Motion for Rehearing.

MOTIONS FOR REHEARING

The Motions for Rehearing aver a number of procedural and substantive deficiencies in the Decision and the record which support the Decision. We shall

address each of the alleged deficiencies in turn.

Procedural Objections

The Motions for Rehearing aver that the Commission erred by unduly narrowing the scope of the proceedings thereby excluding pertinent evidence and by not treating the intervenors fairly in certain procedural rulings.

[1] With respect to the issue of scope, we note that the intervenors have not presented us with any argument that was not presented in the course of the hearings. Those arguments were fully considered and we have not been presented with any convincing reason to alter our findings and conclusions. The issue of scope is one which, to some extent, falls within the discretion of the Commission. We believe that we reasonably exercised that discretion by limiting the scope to the issues raised in the Co-op's Petition and the concomitant findings required by RSA Chapter 369.

With respect to the issue of fairness, we again do not believe that we have been presented with any reason to change our rulings. The Consumer Advocate argued that many of the Commission's rulings raise an appearance of unfairness. Our examination of the record reveals that we ruled on the basis of the merits of each issue presented. We are required to apply even-handed standards; not to ensure that each party receives the same number of favorable rulings. We are satisfied that even-handed standards, consistent with proper Commission rulings on scope, were applied in all material instances.

Substantive Objections

[2] The Motions for Rehearing aver that since subsequent events have rendered the evidence presented inaccurate, the Commission should reopen the proceedings to hear evidence of changed circumstances. Specifically, the Motions aver that Public Service Company of New Hampshire's March 1, 1984 Seabrook cost and schedule estimates fall outside the range relied upon by the Co-op to justify the reasonableness of the financing.

The Commission is aware of the updated cost estimates and was concerned about the effect of those estimates on the proposed financing. By letter dated March 26, 1984, which was circulated to all parties, the Commission asked [the] Co-op whether the updated estimates adversely affected the proposed financing. The response, dated the same day, indicated that the updated estimates have not changed the lender's willingness to engage in the transaction under the terms submitted on the record in this docket. Since there has been no change in the proposal already reviewed we see no need to reopen the proceedings for a reexamination.

CONCLUSION

[3] We have in this Order addressed the procedural and substantive objections raised in the Motions for Rehearing. Those Motions have not convinced us that we were incorrect in examining the Co-op's Petition for what it was - a request for approval of a financing. We remain deeply concerned about the cost and completion schedule of the Seabrook Units and committed to a full review at the appropriate time of the prudency of the management of all involved New Hampshire utilities as it relates to Seabrook. However, we remain convinced that we would not be helping ratepayers if we required the Co-op to risk default by reopening a financing docket to incorporate the broader questions of prudency.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motions for Rehearing of the Consumer Advocate, Gary McCool and Roger Easton be, and hereby are, denied.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of March, 1984. Dissenting Opinion of Commissioner Aeschliman

I dissented from Report and Supplemental Order No. 16,915 (69 NH PUC 137) for the reasons set forth in my written opinion of the same date. I have reviewed the Motions for Rehearing, the Cooperative's objection and the written correspondence of March 26, 1984. Nothing contained in the Cooperative's objection or in the correspondence of March 26, 1984 has presented me with sufficient reason to change my thinking. Inasmuch as many of the arguments contained in the Motions for Rehearing are consistent with the analysis of my dissent, I would grant those Motions.

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NH.PUC*03/30/84*[61382]*69 NH PUC 203*Fuel Adjustment Clause

[Go to End of 61382]

69 NH PUC 203

Re Fuel Adjustment Clause

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

DR 84-38, Order No. 16,967

New Hampshire Public Utilities Commission

March 30, 1984

Order implementing fuel adjustment clauses and approving recovery of replacement power costs subject to refund.

Automatic Adjustment Clauses, § 13 — Purchased power — Recovery subject to refund.

Recovery of replacement power costs for a plant that was removed from service after a fire and explosion were approved subject to refund if an investigation of the accident showed that the damage had been caused by the utility's negligence or error.

APPEARANCES: For Concord Electric Company and Exeter & Hampton Electric Company, Warren Nighswander, Esquire; for Granite State Electric Company, Michael Flynn, Esquire; for the PUC Staff, Kenneth E. Traum.

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 second quarter of 1984 at its office in Concord on March 21, 1984.

Concord Electric Company and Exeter & Hampton Electric Company were represented by one witness, William H. Steff. Concord had a FAC rate credit of ($0.224)/ 100 KWH approved for February and March, 1984, while Exeter & Hampton Company had a rate credit of ($0.231)/100 KWH.

In developing the second quarter of 1984 estimates, the most significant inputs were based on estimates provided by the companies' sole electricity supplier, PSNH, of $0.03271/KWH for April, 1984, $0.03541/KWH for May, 1984, and $0.03386/KWH for June, 1984.

Based on this and taking the amount of fuel expense rolled into base rates and the effect of the State Franchise Tax into account, Concord's proposed rate for the second quarter of 1984 was a credit of ($0.037)/100 KWh while Exeter & Hampton's was a credit of ($0.048)/KWH. These will result in higher bills to customers in both cases of 90 to 95/month for an average 500 KWH/month customer.

The increases are attributable to smaller overcollections in the first quarter of 1984 than the prior quarter, which by the mechanism of the Fuel Adjustment Clause are deducted from the cost estimates for the 2nd quarter of 1984. This is due to the utilities sole supplier of electricity, Public Service Company of New Hampshire, not anticipating a refund of similar magnitude to the coal pile adjustment which occurred in December, 1983.

During the course of the March 21, 1984 hearing the Commission Finance Staff brought up the subjects of the Company's estimates of lost and unaccounted for electricity, load factors, the prior Commission actions which acted to smooth out the rate changes, overcollection for the 1st quarter of 1984. Based on these lines of cross and the direct testimony, the commission believes the rates as filed for both companies are in the public good and our Order will issue accordingly.

Granite State Electirc Company (GSEC) made its filing for a fuel Adjustment Clause Rate (FAC) and an Oil Conservation Adjustment Rate (OCA) on March 13, 1984 for the second quarter of 1984.

The rates requested were $1.202/100 KWH for the FAC, and $0.142/100 KWH for the OCA. For comparative purposes the respective rates for the first quarter were $1.401/100 KWH and $0.172/100 KWH (OCA). A combined decrease of $1.15/month for a typical 500 KWH/ month customer.

During the course of the duly noticed hearing on March 21, 1984, twelve exhibits were submitted by the Company through one witness.

First, addressing the FAC request, the Commission is again pleased with the decrease and the reasons for such; namely lower fuel costs, a smaller prior period adjustment, more hydroelectric generation, and the return to service of Brayton Point III.

The GSEC rate for the 4th quarter of 1983 had increased dramatically due to an extremely costly outage which occurred on August 26, 1983. On that date GSEC's sole electricity supplier and affiliate, New England Power Company (NEPCo.), saw its largest and most efficient generating unit, Brayton Point III, suffer a fire, explosion and very extensive damage. Even with all the measures NEPCo. took to expedite repairs, the unit was down for approximately six months.

The cause continues under

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investigation by various entities and until the unit returned to service, NEPCo. was forced to buy or generate replacement power from other more expensive sources.

The NHPUC feels unable to automatically approve inclusion of the replacement power costs in GSEC's New Hampshire FAC rate prior to completion of the investigations of the accident and reports. If an act of negligence or Company error is found to have been the cause of the outage, the Company can be rightfully held accountable.

With that understanding the Commission will approve the increased replacement power costs due to the Brayton Point III outage, subject to refund if negligence or company error is found to have caused the damage. Beyond this, the Commission applauds the company for expediting repairs to the Unit, and its continuing cost cutting measures; i.e. making direct short-term purchases.

With the aforementioned caveat, and bearing in mind the record in this docket regarding fuel costs, FERC actions, berge operations, load factors, etc. the Commission will accept GSEC's proposed second quarter FAC rate of $1.202/100 KWH.

Our order will issue accordingly.

GSEC's OCA rate as proposed also reflects a decrease from the first quarter rate due to less anticipated generation from Salem Harbour and a prior period overcollection.

Based on the record, the New Hampshire PUC will accept GSEC's proposal for the second quarter OCA rate of $0.142/100 KWH.

Correspondingly, the Commission will continue to accept GSEC's proposed Qualifying Facility Power Purchase Rates for the second quarter of 1984.

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 and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and 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 hearing for those utilities which file monthly unless requested or needed by one of those utilities; and the Commission would not automatically schedule FAC rate hearings.

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

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

FURTHER ORDERED, that 18th Revised page 19A of Concord Electric Co. tariff NHPUC No. 8 - Electricity, providing for a fuel surcharge credit of $(0.037)/100 KWH for the months of April, May, and June, 1984, be, and

hereby is, permitted to go into effect for the month of April, 1984; and it is

FURTHER ORDERED, that 18th Revised page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of $(0.048)/100 KWH for the months of April, May, and June, 1984, be, and hereby is, permitted to go into effect for the month of April, 1984; and it is

FURTHER ORDERED, that 9th Revised page 57 of Granite State Electric Co. tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of 14.2 cents $(0.142)/100 KWH for the months of April, May, and June, 1984, be, and hereby is, permitted to go into effect for April, 1984; and it is

FURTHER ORDERED, that 11th Revised page 30 of Granite State Electric Co. tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of April, May, June, 1984, of $1.202/100 KWH be, and hereby is, permitted to go into effect for April, 1984; and it is

FURTHER ORDERED, that 1st Revised page 11C of Granite State Electric Co. tariff, NHPUC No. 10 - Electricity, providing for a Qualifying Facility Power Purchase Rate for January, February, and March, 1984 of $0.05614/KWH and $0.05562/KWH be, and hereby is, permitted to remain in effect for April, May, and June, 1984; and it is

FURTHER ORDERED, that 39th Revised page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity, providing for a fuel surcharge of $3.26 per 100 KWH for the month of April, 1984, be, and hereby is, permitted to become effective April 1,

1984; and it is

FURTHER ORDERED, that 91st Revised page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge credit of $(0.99)/100 KWH for the month of April, 1984, be, and hereby is, permitted to become effective April 1, 1984; and it is

FURTHER ORDERED, that 88th Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge credit of $(0.78)/100 KWH for the month of April, 1984, be, and hereby is, permitted to become effective April 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax docket DR 83-205, Order No. 16,524 ([1983] 68 NH PUC 461).

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of March, 1984.

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NH.PUC*04/04/84*[61383]*69 NH PUC 207*New England Telephone and Telegraph Company

[Go to End of 61383]

69 NH PUC 207

Re New England Telephone and Telegraph Company

DR 83-342,
Second Supplemental Order No. 16,968

New Hampshire Public Utilities Commission

April 4, 1984

Order approving revised tariff pages incorporating rates and conditions approved in a previous order.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No. 16,941 ([1984] 69 NH PUC 184) directed New England Telephone and Telegraph Company to file revised tariff pages documenting rates and conditions approved by said order; and

WHEREAS, on March 28, 1984, the Company filed such tariff revisions; and

WHEREAS, the Commission finds the revisions in compliance with its earlier order; it is

ORDERED, that the attached list of revised pages of New England Telephone and Telegraph Company tariffs Nos. 75 and 76 be, and hereby are, approved for effect on March 28, 1984.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1984.

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

Supplement No. 10 — Title Page Original Pages 1 through 3
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— Second Revision of Pages 4, 5 and 8 through 20
— First Revision of Pages 21 through 30
— Section 2 — Third Revision of Table of Contents Page 1
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— Second Revision of Pages 35, 40 and 41

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— Section 2 — Second Revision of Table of Contents Pages 1 and 2
— Second Revision of Pages 6, 7, 24, 29 and 32
— First Revision of Pages 32.1 and 32.2
— Second Revision of Page 35
— First Revision of Page 35.1
— Second Revision of Pages 37 and 38
— First Revision of Page 38.1
— Second Revision of Pages 40, 42 through 44 and 48
— Section 3 — Second Revision of Pages 3, 4, 8 and 9

NHPUC — No. 76
MOBILE — Second Revision of Table of Contents Page 1
— Second Revision of Pages 6, 7, and 11 through 13

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NH.PUC*04/04/84*[61384]*69 NH PUC 208*Concord Electric Company

[Go to End of 61384]

69 NH PUC 208

Re Concord Electric Company

DR 84-28,
Second Supplemental Order No. 16,969

New Hampshire Public Utilities Commission

April 4, 1984

Order amending erroneous tariff references.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Report and Supplemental Order No. 16,957 ([1984] 69 NH PUC 198) ordered nisi that 1st Rev. Pages 34 and 25, 2nd Rev. Page 19B and 3rd Rev. Pages 12 and 13, Concord Electric Company Tariff, NHPUC No. 8 - Electricity be rejected; and

WHEREAS, the above tariff references are erroneous in part; it is therefore

ORDERED, that the tariff references in Report and Supplemental Order No. 16,957 (March 28, 1984) be amended to

read 1st Rev. Pages 34 and 35, 2nd Rev. Page 19B and 3rd Rev. Pages 32 and 33, Concord Electric Company Tariff, NHPUC No. 8 - Electricity.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1984.

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NH.PUC*04/04/84*[61385]*69 NH PUC 209*New England Telephone and Telegraph Company

[Go to End of 61385]

69 NH PUC 209

Re New England Telephone and Telegraph Company

DE 84-41, Order No. 16,970

New Hampshire Public Utilities Commission

April 4, 1984

Order granting authority to place and maintain an underground cable and conduit across state

land.

APPEARANCES: For the petitioner, Wayne Snow, Engineering Manager.

By the COMMISSION:

REPORT

On February 17, 1984 the New England Telephone Company filed with this Commission a petition seeking authority to place and maintain buried cable and conduit under state railroad right-of-way in Thornton, New Hampshire.

The Commission issued an Order of Notice on February 27, 1984 directing all interested parties to appear at a public hearing at 10 o'clock a.m. on March 27, 1984 at the Concord offices of the Commission. The petitioner was directed to publish a public notice in a newspaper having general circulation in the area concerned. In addition to the publication of said notice copies of the hearing notice were directed to George Gilman, Commissioner, DRED; John Clements, Commissioner, Department of Public Works and Highways; John R. McAuliffe, Railroad Administrator, Department of Public Works and Highways; John Bridges, Department of Safety Services; and the Office of the Attorney General.

An affidavit indicating that publication was made in the Union Leader on March 8, 1984 was received in the Commission's office at Concord, New Hampshire on March 12, 1984.

Wayne Snow, Engineering Manager, explained that the petition results from a customer request for telephone service at his property adjacent to U.S. Route 3, one-quarter mile north of exit 29 to Interstate Highway I-93. The Company proposes to install a single 50-pair buried cable adjacent to a single 2-inch diameter conduit, extending from utility pole number 12/74 at the easterly edge of pavement of Route 3 to a pole number 51/1.5 at the easterly edge of the railroad rightof-way. The total distance of the buried

cable will be approximately 75 feet. The installation will serve not only a customer, Mr. Paul Helgerson, but will also serve for future expansion in the Company's Campton exchange.

The line will be installed in accordance with all applicable safety requirements.

The Commission received oral testimony of Mr. John Clemens, New Hampshire Railroad Division, that his agency had reviewed and approved the petition. He offered a copy of an unexecuted license signed by both parties and the Office of the Attorney General which will be submitted to the Governor and Council for approval upon order of this Commission.

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 buried cable and conduit across state owned land in Thornton, New Hampshire to be in the public interest. Our

Order will issue accordingly.

ORDER

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

ORDERED, that authority be granted to New England Telephone and Telegraph Company to place and maintain underground cable and conduit across state owned land in the Town of Thornton, New Hampshire, said crossing from pole number 12/74 on the easterly side of U.S. Route 3 approximately one-quarter mile north of exit 29 to Interstate I-93, to a pole number 51/1.5 on the easterly side of state owned railroad property.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1984.

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NH.PUC*04/04/84*[61386]*69 NH PUC 210*Wentworth Cove Water Company

[Go to End of 61386]

69 NH PUC 210

Re Wentworth Cove Water Company

DR 83-373, Order No. 16,973

New Hampshire Public Utilities Commission

April 4, 1984

Order approving tariff revisions designed to increase revenues.

Expenses, § 93 — Rentals — Equipment used in meter installation.

The expense of renting a truck to transport workers and equipment in the installation of meters was included in rate base where the commission concluded that it was a reasonable and prudent expense. [1] p.212.

Return, § 6 — Basis of computation — Interest rate on long-term debt.

A proposed rate of return of 14 per cent was allowed where the evidence showed that the utility's capital structure consisted solely of long-term debt that was being serviced at that rate. [2] p.212.

Page 210

Rates, § 597 — Water — Special factors — Demand and load.

The commission held that the use of actual consumption figures in devising a rate structure for a water company was reasonable, but required the utility to file quarterly usage and revenue reports to monitor actual sales during the summer months. [3] p.215.

Rates, § 597 — Water — Special factors — Demand and load.

Statement, in dissenting opinion, that consumption figures for a water utility were unreasonable because they failed to account for exterior water use, the use of washing machines, and the probability of customer conservation resulting from new metered rates. p.216.

(Aeschliman, commissioner, dissents, p.216.)

APPEARANCES: Dom S. D'Ambruoso, Esquire on behalf of Wentworth Cove Water Company; Robert Lessels and Kenneth Traum on behalf of the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On December 5, 1983, Wentworth Cove Water Company (Wentworth), a division of Lakes Region Water Company (Lakes Region), filed revisions to its tariff (NHPUC No. 2) for effect January 5, 1984 designed to increase annual revenues by $1,150.00, a 5.9% increase. By Order No. 16,817 issued December 20, 1983, the Commission suspended the tariff pending investigation and hearing. Thereafter, on January 21, 1984, an Order of Notice was issued setting a hearing for February 23, 1984, at which time Wentworth and Commission Staff members appeared and took part in the hearing. There were no other intervenors. At the hearing, Wentworth revised its filing to provide for a revenue increase of $1,020.00. Testimony on behalf of Wentworth was provided by Thomas A. Mason, president of Lakes Region and Wentworth's chief operating officer. Robert Lessels, the Commission's water engineer, testified on behalf of the Commission Staff.

Wentworth filed the increase in revenues to cover the capital investment and operating expenses associated with the purchase and installation of meters for its customers. The Commission ordered Wentworth to install these meters in Report and Supplemental Order No. 15,348 issued on December 3, 1981 (66 NH PUC 529). The Commission stated therein as follows (66 NH PUC at p. 530):

We shall recognize the capital investment and associated operating expenses by allowing an automatic revenue adjustment upon notification by the Company of their installation with accompanying supporting financial data.

II. RATE BASE

Wentworth proposes a rate base of $4,750.00, almost all of which represents the capital investment in the purchase and installation of 33 meters and a master meter.[1(69)] Staff disagrees with this computation and instead proposes $4,055.00. The difference of $695.00 results from Wentworth's inclusion of certain transportation costs incurred in the installation process and Wentworth's working capital computation.

In installing the meters, Wentworth utilized a truck owned by Thomas Mason, Jr., son of Thomas Mason, Wentworth's chief operating officer, for a total of 78 hours. At a rate of $10.00 per hour, Wentworth paid Thomas Mason, Jr. a total of $780.00. In support of the reasonableness of this expenditure, Thomas Mason testified that the lowest available cost of renting a truck from a commercial establishment was $760.00. The calculation of this cost is set forth in Exhibit 3. Staff, however, takes the position that the payment of $10.00 per hour for 78 hours of usage is an unreasonable expense given that the truck was not in use for that entire time. It was used primarily to transport men and equipment to and from Wentworth Cove and was idle during the actual installation of the meters. Instead, Staff proposes that Wentworth be allowed $.25 per mile for the actual miles travelled. This figure is employed by the State of New Hampshire to compensate state employees for use of their private vehicles in the course of conducting state business. According to Staff's calculations, a reasonable travel expense would therefore be $95.00.

[1] There is no dispute that Wentworth needed to rent a truck in order to install the meters. In so doing, it had the option of renting a truck from a commercial establishment or directly from an owner. Wentworth chose the latter and paid a rate comparable to that offered by commercial rental agencies in the area. If a private vehicle had not been available, Wentworth's only recourse would have been to rent from a rental agency. The similarity between the rate actually paid and the commercial rate leads us to conclude that the transportation expenses incurred by Wentworth are reasonable. When viewed in this manner, Staff's proposal would not fully compensate Wentworth for its reasonable and prudently incurred expenses. We therefore will allow these costs to be included in rate base. These expenses, in addition to the others incurred by Wentworth listed in Exhibit 1 which Staff does not contest and which we also find to be reasonable, total $4,719.00.

In addition, Wentworth has submitted a working capital computation of $30.00. Staff, however, contends that $20.00 is the proper calculation. Both figures derive from calculating one-eighth (1/8) of the total operations and maintenance expense which we find to be a reasonable method of determining working capital. Differences in the parties' computation of these expenses account for the different calculations. For reasons explained below, we find Wentworth's calculation of $240.00 to be reasonable and will therefore include a working capital figure of $30.00 in its rate base.

Thus, Wentworth's rate base is calculated as follows:

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

Rate Base (previous to meter installation) $ 1.00

Additions:

Purchase and Installation of Meters 4,719.00
Working Capital 30.00

Adjusted Rate Base $4,750.00

III. RATE OF RETURN

[2] In its filing (Exhibit 1), Wentworth proposes a rate of return of 14 percent. This is based upon a capital structure consisting solely of long term debt in the

amount of $3,500.00, which Wentworth is currently servicing at that rate. The record is unclear as to the nature and cost of the capital utilized for the remaining $1,250.00 of Wentworth's investment. However, based upon the record we find it reasonable to assume 14 percent to be representative of Wentworth's overall cost of capital. Thus, we will allow Wentworth a 14% rate of return. Multiplying the adjusted rate base of $4,750.00 by 14 percent yields a return requirement of $665.00.

IV. EXPENSES

A. Operating and Maintenance Expenses

As additional annual operating and maintenance expenses resulting from the meter installation, Wentworth seeks to recover meter reading costs totalling $160.00 (1/2 day or 4 hours per quarter at $10.00 per hour) and general administrative costs of $80.00 (1/2 day or 4 hours per quarter at $5.00). Staff does not dispute Wentworth's general administrative costs but contends that Wentworth's meter reading time expenditures are unreasonable and should be disallowed.[2](70)

With respect to the time calculations, Mr. Mason testified that as the person responsible for reading the meters it takes him approximately 50 minutes (25.6 miles) to drive from his home in Moultonboro to Wentworth Cove, for a total of 1 hour and 40 minutes. He further testified that it takes him approximately 4 minutes per meter (33 meters) for a total of 2 hours and 12 minutes, which when added to the travel time yield 3 hours and 52 minutes or approximately 4 hours.

Staff disputes this computation. In his prefiled testimony, Mr. Lessels originally proposed two hours, one for travel (19 miles or 30 minutes in each direction) and one to read the meters. Subsequent to the hearing, on March 9, 1984, Mr. Lessels and Mr. Traum submitted a revised computation based upon their March 7 visit to Wentworth Cove and their drive therefrom to the water company headquarters at Paradise Shores. According to Mr. Lessels and Mr. Traum, the trip measures 17.6 miles and took 26 minutes, approximately the same time (30 minutes) they included in their original estimate. Allowing for the increased flow of traffic in the summer, they revised their original proposal by adding 15 minutes per trip thereby increasing total time to 2-hours per quarter or 10 hours per year. Staff's calculation of Wentworth's operating and maintenance expense is therefore increased to $180.00.

Staff's revised travel time estimates are approximately the same as those advanced by Wentworth (45 and 50 minutes respectively). Thus, the essence of Staff's dispute concerns the actual time necessary to read the meters. We do not agree with Staff's contention that Wentworth's time expenditures in this regard are unreasonable. We have no reason to disbelieve Mr. Mason's testimony that it takes him approximately 4 minutes to read each meter. Mr. Mason is other only person who has been performing this function and is therefore best qualified to provide this information. Neither Staff member has ever read the meters at Wentworth Cove and their calculations, while based on their considerable expertise and experience, are therefore speculative in nature. Thus, we find Wentworth's time expenditures, the expenses based thereon, and general administrative expenses to be reasonable. We will therefore include operating and

maintenance expenses of $240.00 to be included in Wentworth's revenue requirement.

B. Depreciation

Wentworth has accepted Staff's recommendation of a 40 year depreciation life. This derives from the results of studies concerning water companies around the country as set forth in two NARUC publications entitled Depreciation Practices for Small Water Utilities and Depreciation Practices for Very Small Water Utilities. Both found the range of meter lines to be 35-45 years. Staff utilized the mid point of 40 years. We agree that a 40 year depreciation life is reasonable for Wentworth's newly installed meters. Its depreciation expense on an annual basis is therefore $114.75 (4590°40).

V. REVENUE REQUIREMENT

In view of the above, Wentworth's revenue requirement is calculated as follows:

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

```
Operating Revenues 12/31/82   $5,000.00

 Adjustments:
   (1) O&M Expense
       Meter Reading $160.00
         (1/2 day/Qtr. at $10/Hr.)

   (1) General Administrative              80.00
        (1/2 day/Qtr. at $5/Hr.)   240.00

   (2) Depreciation Expense   114.75
         ($4,590 ° 40 yrs.)

   (3) Return Requirement                 665.00
     $6,019.75

 Adjusted Operating Revenue Required   $6,020.00
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VI. RATE STRUCTURE

A. Minimum Charge

In calculating the minimum charge, both parties agree that the total fixed costs to be recovered consist of depreciation, taxes, insurance and interest on borrowing. In addition, they further agree on the specific amounts to be recovered, with the exception of depreciation. Based upon their rate base calculation, Staff's depreciation figure is $98.00. As stated above, we have rejected Staff's rate base calculation in favor of that advanced by Wentworth and in accord therewith have found $114.75 to be a reasonable depreciation expense. We have reviewed these fixed costs and find the minimum charge of $26.00 per customer per year based thereon to be just and reasonable. It is calculated as follows:

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

```
 Depreciation $114.75

 Taxes (at 12/31/82, Table 40 of
       (1982 Annual Report) 75.13

 Insurance (at 12/31/82, Table 42 of
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          (1982 Annual Report) 146.00

Interest on Borrowing             525.00
  $860.88

Total Fixed Costs           $860.00

Minimum Charge Per Customer Per Year
  (860 ° 33 customers = $26.08) $  26.00
```

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B. Usage Charge

Wentworth's required annual revenues of $6,020.00 less the $860.00 to be collected from the minimum charge leave $5,160.00 to be derived from customer usage. As a basis for calculating its usage charge, Wentworth determined usage to be 1500 cubic feet per quarter per customer based upon actual usage figures from September, 1983 when the meters were installed through January 31, 1984 (Exhibit 1 and Exhibit 4). In accord therewith, Wentworth calculated its usage charge as follows:

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

Customers

 29 (seasonal) — 4 quarters at 1,500 cu.f./Qtr 174,000 cu. ft.
   4 (seasonal) — 2 quarters at 1,500 cu.f./Qtr  12,000 cu. ft.
                  Total Annual Consumption 186,000 cu. ft.

$5,160.00 ° 186,000 cu. ft. =   .0277 per cubic foot or
                                2.77 per 100 cubic feet
```

Staff argues that Wentworth's consumption figures are inaccurate in that they fail to account for exterior water use (lawn watering, pools, washing a car) and the use of a washing machine. When these usages are added to Wentworth's figures, and outside use is omitted from the winter months' calculations, Staff estimates that Wentworth's quarterly usage per customer should be approximately 2,000 cubic feet (Exhibit 5). Based upon this estimate, Staff calculates Wentworth's estimated annual usage as follows:

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

Customers

 29 (seasonal) — 4 quarters at 2,000 cu.f./Qtr 232,000 cu. ft.
   4 (seasonal) — 2 quarters at 2,000 cu.f./Qtr  16,000 cu. ft.
                  Total Annual Consumption 248,000 cu. ft.
```

Employing Staff's estimate to the required revenue as determined above yields a usage charge of $.021 (.0208 rounded) per cubic foot or $2.10 per hundred cubic feet.

Wentworth contends that its usage figures should be utilized because they represent the actual consumption of its customers, whereas Staff's figures are only estimates. Mr. Mason acknowledged that Wentworth's actual figures were obtained during the winter months, a period of low usage due to the absence of outside use. However, he testified that actual usage during the summer months will not increase these figures because the area serviced by Wentworth has few lawns and no pools. He further testified that in order to reach Staff's estimate of 2,000 cubic feet

per quarter, usage during the summer months would have to nearly triple.

Staff disagrees with Mr. Mason's assessment. Mr. Lessels testified that Wentworth's relatively low usage thus far (when compared to other companies) is due to heightened customer conservation resulting from uncertainty as to the new metered rate. According to Mr. Lessels, Wentworth's usage during the summer months will in fact increase three-fold thereby raising its quarterly average to 2,000 cubic feet.

[3] The Commission agrees with Wentworth that actual usage figures should be employed in designing a proper rate. Yet,

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we also share Staff's concern that Wentworth's usage figures are not entirely representative of usage on an annual basis given the absence of actual usage data during the summer months. While we doubt this usage will increase three-fold as Staff contends, it is possible that an increase will occur during the summer months as evidenced by data from similar water companies. However, it is equally possible that given the lack of pools or lawns in the area, usage will increase slightly or not at all. In the final analysis, based on the record before us, we have no way of predicting what in fact will happen.

At this time therefore, we find Wentworth's utilization of actual consumption figures in devising its rate structure to be reasonable. Accordingly, we find the above-stated rates to be just and reasonable. However, given our concerns, we will require Wentworth to submit quarterly usage and revenue data to the Commission in order that we may monitor its actual sales during the upcoming summer months. If, at the end of one year in October, 1984, this data reveals greater usage and earnings in excess of those allowed herein, we will convene a new docket for the purpose of revising the findings made herein to account for such changes.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the revisions to its tariff, NHPUC No. 2 - Water, as filed by Wentworth Cove Water Company on December 5, 1983, which revisions were suspended by Commission Order No. 16,817 dated December 20, 1983, shall be allowed to become effective with all service rendered on or after January 1, 1984; and it is

FURTHER ORDERED, that Wentworth Cove Water Company submit quarterly usage and revenue data to the Commission commencing with the first quarter of 1984.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1984.

Dissenting Opinion of Commissioner Aeschliman

While I concur with the majority in their computation of Wentworth's revenue requirement, I disagree with their calculation of the usage charge. I agree with Staff that Wentworth's consumption figures are unreasonable given their failure to account for exterior water use, the use of a washing machine and the probability of heightened customer conservation due to

uncertainty as to the new metered rate. Thus, I would have rejected those figures in favor of Staff's estimate as set forth on page 8 above. In accord therewith, I find $2.10 per hundred cubic feet to be a reasonable usage charge.

FOOTNOTES

[1]Prior to purchase and installation of the new meters, Wentworth's rate base was $1.00.

[2]Staff accepts the $10.00 hourly fee for meter reading.

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NH.PUC*04/05/84*[61387]*69 NH PUC 217*Pembroke Water Works

[Go to End of 61387]

69 NH PUC 217

Re Pembroke Water Works

DR 84-45, Order No. 16,975

New Hampshire Public Utilities Commission

April 5, 1984

Order approving rates for customers outside of municipal boundaries.

APPEARANCES: Michael Bobblis, William Stanley, and Armand J. Nolin, Jr., Commissioners, and Gerald L. Brasley, superintendent, for the petitioner; Kenneth E. Traum, Robert Lessels, and Karl Kramer for the New Hampshire Public Utilities Commission Staff; and Bo Scanto, ratepayer for purposes of making a public statement.

By the COMMISSION:

REPORT

On March 6, 1984, Pembroke Water Works filed certain revisions to its tariff, NHPUC No. 1 - Water, providing for an increase in annual revenues of $54,066 (30.0 per cent), to become effective for services rendered on or after April 1, 1984. On March 6, 1984 the Commission set the matter for hearing on March 29, 1984 at its offices in Concord, New Hampshire. A hearing on this matter was accordingly held on March 29, 1984.

Pembroke Water Works is a municipal water system and a public utility under the jurisdiction of this Commission only for the service it provides to customers in limited areas in the towns of Allenstown and Hooksett.

REVENUES REQUESTED

The Water Works is requesting a 30.0 percent overall rate increase to be passed on to all of their customers in the service territory.

The vast bulk of the Water Work's customers are located in Pembroke and do not fall under

our jurisdiction, as the Water Works commissioners are elected by the town voters and the budget is approved by the Pembroke Budget Commission. The Water Works is requesting the same rates be charged to the few customers outside of the town's borders, as those inside them. The Water Works filing was based on its 1984 budget, as approved by the Board of Water Commissioners, and marked as Exhibit 1 in this docket.

That budget was for approximately $236,000, including several items relating to fixed asset additions, as was developed based upon cash flow requirements. Realizing that for rate making purposes the Commission prefers the traditional rate base - rate of return - cost of service approach, over the cash-flow approach; Mr. Traum, the Commission's Assistant Director of Finance, submitted testimony developing the revenue requirement per the "traditional" approach.

Since Mr. Traum's testimony supported the Water Works' request for a revenue requirement of $234,288, as did the balance of the record and exhibits in the docket, the Commission finds it in the public good to approve the request as filed. For out-of-town customers this equates to a 30% increase, which will correspond to the same percent increase for in-town customers.

Said increase will be effective with all service rendered on or after April 1, 1984, as requested by the Water Works, and unopposed.

RATE STRUCTURE

Based on prior Commission staff concerns, the Water Works petitioned for approval of a rate structure based upon a minimum monthly charge for usage up to 3,000 gallons/month and a flat rate of 85/1,000 gallons thereafter, for its GM-1 customer class which composes 1,628 of its 1,630 customers. The remaining two customers are billed flat rates per hydrant.

The Commission feels the flattening of rates is in the public good and accordingly accepts the rate structures as proposed.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the revisions to its tariff, NHPUC No. 1 - Water, filed on March 6, 1984, shall be allowed to be- come effective with all service rendered on or after April 1, 1984.

By Order of the Public Utilities Commission of New Hampshire this fifth day of April, 1984.

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NH.PUC*04/11/84*[61388]*69 NH PUC 218*New England Telephone and Telegraph Company

[Go to End of 61388]

DE 84-46, Order No. 16,980

New Hampshire Public Utilities Commission

April 11, 1984

Order granting authority to construct and maintain telephone plant beneath state-owned railroad tracks.

APPEARANCES: for New England Telephone - Wayne E. Snow, Engineering Mgr. Dept. of Public Works and Highways, John W. Clement, Asst. Railroad Administrator

By the COMMISSION:

REPORT

On February 28, 1984, New England Telephone and Telegraph Company (NET) filed with this Commission its petition seeking license for placing and maintaining telephone plant under Stateowned railroad tracks in Laconia, New Hampshire. An Order of Notice was issued on March 6, 1984 setting the matter for public hearing on April 4, 1984 at 10 a.m. in the Commission's Concord offices. In addition to directing NET to publish public notice of this hearing, the Commission provided copies of the Order of Notice to the following:

Department of Public Works and Highways

Department of Resources and Economic
Development
Safety Services
Attorney General

The duly noticed hearing was convened as scheduled, with Hearing Examiner Daniel Kalinski presiding. The Commission staff was represented by Edgar D. Stubbs, Jr., Assistant Chief Engineer.

Mr. Wayne E. Snow described the proposed plant as part of an extensive program to provide added capacity to both local and toll networks in the Laconia area, indicating that completion of the project would result in underground conduit extending from the Laconia Central Office to McIntyre Circle. The leg of this conduit involved in the instant petition begins at a NET manhole on the easterly side of Messer Street in the vicinity of Bisson Avenue, passing beneath the tracks, thence crossing to the westerly side of Messer Street. The conduit then runs northerly towards Union Avenue. The rail crossing would be concreteencased, comprising twelve four-inch plastic conduits, five feet beneath the tracks. Mr. Snow indicated that much of the aerial plant would be replaced by this project. He further stated that all construction would be according to applicable codes.

Mr. John W. Clement testified that the project had been coordinated with his office and given full approval. He entered as Exhibit No. 2 a copy of a license for the crossing lacking only the approval of the Governor and Council. He indicated the license would be finalized upon receipt

of an approval order from this Commission.

With no intervenors objecting to this crossing, the Commission finds it for the public good and will grant the license.

Our order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company be, and hereby is, granted authority for the construction and maintenance of telephone plant beneath State-owned railroad tracks in Laconia, New Hampshire, in the vicinity of Messer Street and Bisson Avenue.

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1984.

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NH.PUC*04/13/84*[61389]*69 NH PUC 219*Fuel Adjustment Clause

[Go to End of 61389]

69 NH PUC 219

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 84-38,
Supplemental Order No. 16,983

New Hampshire Public Utilities Commission

April 13, 1984

Order approving monthly fuel surcharge for an electric utility.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Exeter & Hampton Electric Company, Connecticut Valley Electric Company, Inc., Granite State Electric Company, Municipal Electric Department of Wolfeboro, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), 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 be scheduled; it is

ORDERED, that 124th Revised Page 6 of the Littleton Water & Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $1.16/100 KWH for the month of April, 1984, be, and hereby is, permitted to become effective April 1, 1984.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of April, 1984.

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NH.PUC*04/17/84*[61390]*69 NH PUC 220*New England Alternative Fuels, Inc.

[Go to End of 61390]

69 NH PUC 220

Re New England Alternative Fuels, Inc.

DR 84-74,
Supplemental Order No. 16,986

New Hampshire Public Utilities Commission

April 17, 1984

Interconnection agreement approved as part of an interim cogeneration rate filing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission by Order No. 16,955 ([1984] 69 NH PUC 197) approved Nisi the March 20, 1984 long term rate filing of New England Alternative Fuels, Inc. ("NEAF"); and

WHEREAS, Order No. 16,955 provided that Public Service Company of New Hampshire ("PSNH") could file comments and exceptions within 14 days of the date of the Order; and

WHEREAS, PSNH filed timely exceptions which proposed an amended interconnection agreement in the form attached to the exceptions; and

WHEREAS, PSNH's proposed interconnection agreement is more consistent with the Commission requirements set forth for interim filings in Docket No. DE 83-62, Report and Fourth Supplemental Order No. 16,619 ([1983] 68 NH PUC 531) and Report and Fifth Supplemental Order No. 16,664 ([1983] 68 NH PUC 375); it is therefore

ORDERED, that Order No. 16,955 is

amended insofar as it approved the interconnection agreement contained in NEAF's March 20, 1984 filing; and it is

FURTHER ORDERED, that the interconnection agreement attached to PSNH's exceptions of April 11, 1984 is hereby approved as a part of the interim rate filing; and it is

FURTHER ORDERED, that NEAF and PSNH shall adhere to the terms and conditions and the payment schedule of the documents approved by the Commission.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1984.

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NH.PUC*04/20/84*[61391]*69 NH PUC 221*Wilton Telephone Company

[Go to End of 61391]

69 NH PUC 221

Re Wilton Telephone Company

DR 84-90, Order No. 16,988

New Hampshire Public Utilities Commission

April 20, 1984

Order suspending telephone tariff pending investigation of issues concerning payments by consumers for construction obligations.

By the COMMISSION:

ORDER

WHEREAS, Wilton Telephone Company has filed with this Commission certain tariff revisions documenting practices to be employed in payments by consumers for construction obligations; and

WHEREAS, the Commission finds such practices require investigation prior to a decision thereon; it is

ORDERED, that Part VI, Section 4, 2nd Revised Page 3, Wilton Telephone Company tariff, NHPUC No. 5 - Telephone, be, and hereby is, suspended pending investigation and decision thereon.

By order of the Public Utilities Commission of New Hampshire this twentieth day of April, 1984.

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NH.PUC*04/27/84*[61392]*69 NH PUC 222*Concord Electric Company

[Go to End of 61392]

69 NH PUC 222

Re Concord Electric Company

DR 84-28,
Third Supplemental Order No. 16,993

New Hampshire Public Utilities Commission

April 27, 1984

Conclusion in prior report and supplemental order pertaining to inadequacy of record support for an electric rate filing; vacated and tariff approved.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Concord Electric Company filed for approval of 1st Rev. Pages 34 and 35, 2nd Rev. Page 19B and 3rd Rev. Pages 32 and 33, Concord Electric Company Tariff, NHPUC No. 8 - Electricity; and

WHEREAS, the Commission in Report and Supplemental Order No. 16,957 ([1984] 69 NH PUC 198) ordered nisi that the above tariff filing be rejected; and

WHEREAS, the Commission provided in Report and Supplemental Order No. 16,957 that Concord Electric Company may file exceptions and additional information within 20 days of the date of the Order; and

WHEREAS, Concord Electric Company made a timely filing of additional information; and

WHEREAS, Concord Electric Company's filing of additional information adequately addressed the Commission's concerns articulated in Report and Supplemental Order No. 16,957; it is therefore

ORDERED, that the conclusions in Report and Supplemental Order No. 16,957 pertaining to the inadequacy of the record support for the filing be, and hereby are, vacated; and it is

FURTHER ORDERED, that 1st Rev. Pages 34 and 35, 2nd Rev. Page 19B and 3rd Rev. Pages 32 and 33, Concord Electric Company Tariff, NHPUC No. 8 Electricity be, and hereby are, approved effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of April, 1984.

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NH.PUC*04/30/84*[61393]*69 NH PUC 223*Public Service Company of New Hampshire

[Go to End of 61393]

69 NH PUC 223

Re Public Service Company of New Hampshire

DR 82-333,

12th Supplemental Order No. 16,995

New Hampshire Public Utilities Commission

April 30, 1984

Order approving customer refund by electric utility.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No. 16,902 issued on February 7, 1984 (69 NH PUC 125), directed refund of the difference between rates authorized under the instant docket and those collected under bond by PSNH; and

WHEREAS, PSNH now reports that it has refunded the bulk of said monies and has presented to this Commission an accounting for same reflecting a need for a final refund in the May billing cycle; and

WHEREAS, the Commission finds such in the public interest; it is

ORDERED, that 1st Revised Pages 15, 16, and 17 and Original Page 17-A of the PSNH tariff No. 29 be, and hereby are, approved for effect on May 1, 1984; and it is

FURTHER ORDERED, that public notice be given through a one-time bill insert accompanying all May statements explaining the credit being applied.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1984.

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NH.PUC*04/30/84*[61394]*69 NH PUC 223*Concord Electric Company

[Go to End of 61394]

69 NH PUC 223

Re Concord Electric Company

DR 84-103, Order No. 16,997

New Hampshire Public Utilities Commission

April 30, 1984

Order approving agreement for the installation of streetlights by an electric utility as part of a highway reconstruction project.

By the COMMISSION:

ORDER

WHEREAS, on April 6, 1984, Concord Electric Company filed for Commission approval an

agreement for the installation of streetlights as part of a highway reconstruction project by the State of New

Hampshire, Department of Public Works and Highways; and

WHEREAS, the parties contend that special circumstances exist which allow provisions to differ from the Company's existing tariff, NHPUC No. 8 - Electricity, pages 33 - 35; and

WHEREAS, the petition is supported by a memorandum of the Office of the Attorney General, State of New Hampshire which maintains that excess installation are the responsibility of the providing utility; and

WHEREAS, the contract provides that "determination of liability of the cost of the `difference in size of pole required for light' is in the Office of the Attorney General. Upon determination of liability the State will be billed accordingly". It is

ORDERED, that the agreement for the installation of street lights as part of a highway reconstruction project: CONCORD MG-M-5099 (004), C-2421-C, is hereby approved.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1984.

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NH.PUC*04/30/84*[61395]*69 NH PUC 224*Fuel Adjustment Clause

[Go to End of 61395]

69 NH PUC 224

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, and Woodsville Power and Light Department

DR 84-88, Order No. 17,003

New Hampshire Public Utilities Commission

April 30, 1984

Order setting monthly fuel adjustment clause charges for electric utilities.

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 ([1982] 67 NH PUC 268), notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

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

ORDERED, that the Commission in DR 83-352, Order No. 16,946, dated March 19, 1984 (69 NH PUC 189) of the New Hampshire Electric Cooperative, Inc., maintained the rolled in rate of $0.02822/ KWH in effect under changed by the Commission, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in this month's FAC order; and it is

FURTHER ORDERED, that 18th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 - Electricity, providing for a fuel surcharge credit of ($0.037) per 100 KWH for the months of April, May, and June, 1984, be, and hereby is, permitted to remain in effect for the month of May, 1984; and it is

FURTHER ORDERED, that 18th Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of ($0.048) per 100 KWH for the months of April, May, and June, 1984, be, and hereby is, permitted to remain in effect for the month of May, 1984; and it is

FURTHER ORDERED, that 9th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of 14.2 cents ($0.142) per 100 KWH for the months of April, May, and June, 1984, be, and hereby is, permitted to remain in effect for May, 1984; and it is

FURTHER ORDERED, that 11th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of April, May, and June, 1984 of $1.202 per 100 KWH be, and hereby is, permitted to remain in effect for May, 1984; and it is

FURTHER ORDERED, that 40th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity providing for a fuel surcharge of $2.73 per 100 KWH for the month May, 1984, be, and hereby is, permitted to become effective May 1, 1984; and it is

FURTHER ORDERED, that 92nd Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge credit of $(1.26) per 100 KWH for the month of May, 1984, be, and hereby is, permitted to become effective May 1, 1984; and it is

FURTHER ORDERED, that 89th Revised Page 18 of Connecticut Valley Electric Company,

Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge credit of $(0.46) per 100 KWH for the month of May, 1984; be, and hereby is, permitted to become effective May 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax docket, DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1984.

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NH.PUC*05/01/84*[61396]*69 NH PUC 226*Manchester Gas Company

[Go to End of 61396]

69 NH PUC 226

Re Manchester Gas Company

DR 84-84, Order No. 16,998

New Hampshire Public Utilities Commission

May 1, 1984

Reduction in summer cost of gas adjustment proposed by a natural gas utility; approved.

APPEARANCES: For Manchester Gas Company, David W. Marshall, Esquire; for the N.H. Public Utilities Commission Staff, Kenneth E. Traum, Assistant Finance Director.

By the COMMISSION:

REPORT

Manchester Gas Company ("Manchester" or the "Company") pursuant to Commission tariff filing rules filed on April 2, 1984 a proposed Cost-of-Gas Adjustment (CGA) for the Summer period, May 1, 1984 through October 31, 1984, seeking Commission approval for a proposed CGA rate of $0.0755/therm. Per a filing received on April 19, 1984, the Company proposed to reduce its request to $0.068/ therm.

A duly noticed hearing was held on April 26, 1984 at the office of the Commission. During the proceedings a Company witness discussed the elements found in the proposed CGA.

Through testimony and cross examination of the Company witnesses, the following areas were discussed: projected sales forecasts; lost and unaccounted for; computational consisting with past filings; pipeline contracts; cost estimates and billing procedures for pipeline and supplemental gas; prior period undercollections and the NHPUC audit of such; the Company's thermal billing procedure; interruptible sales; a possible restructuring of the CGA; etc.

With regards to a restructuring of the CGA, during the course of the CGA hearing for this utility, as well as the other New Hampshire gas utilities for which CGA hearings were held on April 26, 1984, the subjects of a change in the CGA mechanism, time duration, etc. were

discussed extensively.

The Commission does not feel there is sufficient information in this record to change the current mechanism and will thus not act, but is considering opening a separate docket to investigate these subjects.

The result of all these inputs to the revised CGA as proposed is a reduction of approximately 13.5/therm from last summer's CGA. The major reasons are Tennessee Gas Pipeline refunds.

Based upon the record, the Commission will accept the revised CGA rate as proposed, which is $0.0686/therm.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 13th Revised Page 26 of Manchester Gas Company, Tariff, NHPUC No. 13 - Gas, providing for a Cost-of-Gas Adjustment of $0.0686/therm for the period May 1, 1984 through

October 31, 1984 as issued April 19, 1984 be, and hereby is, accepted; and it is

FURTHER ORDERED, that Revised Tariff Pages approved by this Order become effective with all billings issued on and after May 1, 1984; and it is

FURTHER ORDERED, that public notice of this Cost-of-Gas Adjustment be given by one-time publication in newspapers having general circulation in the territories served.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1984.

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NH.PUC*05/01/84*[61397]*69 NH PUC 227*Gas Service, Inc.

[Go to End of 61397]

69 NH PUC 227

Re Gas Service, Inc.

DR 84-83, Order No. 16,999

New Hampshire Public Utilities Commission

May 1, 1984

Reduction in summer cost of gas adjustment proposed by a natural gas utility; approved.

APPEARANCES: For Gas Service, Inc., David W. Marshall, Esquire; and for the N.H. Public Utilities Commission Staff, Kenneth E. Traum, Assistant Finance Director.

By the COMMISSION:

REPORT

In conformance with Commission Tariff Filing Rules and cost-of-gas adjustment terms outlined in the tariff of the named company, proposed Cost-of-Gas Adjustment tariff pages for the Summer period May 1, 1984 through October 31, 1984 were filed originally on April 2, 1984 for Commission consideration. The Company's proposed cost-of-gas adjustment was $0.0829/therm. This was reduced by the Company's April 19, 1984 filing to $0.0549/therm.

A duly noticed public hearing was held at the offices of the Commission on April 26, 1984, at which time witnesses for the Company discussed the components of the cost-of-gas adjustment.

Through testimony and cross-examination of the company witnesses, the following areas were discussed: projected sales forecasts; lost and unaccounted for; computational consistency with past filings; pipeline contracts; cost estimates and billing procedures for pipeline and supplemental gas; prior period undercollections and the N.H. Public Utilities Commission audit of such; the Company's thermal billing procedure; interruptible sales; a possible restructuring of the CGA, etc.

With regards to a restructuring of the CGA, during the course of the CGA hearing for this utility, as well as the other New Hampshire gas utilities for which CGA hearings were held on April 26, 1984, the subjects of a change in the CGA mechanism, time duration, etc, were discussed extensively.

The Commission does not feel there is sufficient information in this record to

change the current mechanism and will thus not act, but is considering opening a separate docket to investigate these subjects.

The result of all these inputs to the revised CGA as proposed is a reduction of approximately 10.5/therm from last summer's CGA. The major reasons are Tennessee Gas Pipeline refunds and lower supplemental fuel prices.

Based upon the record, the Commission will accept the revised CGA rate as proposed, which is $0.0549/therm.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 9th Revised Page 1, superseding 8th Revised Page 1 of Gas Service, Inc. Tariff, NHPUC No. 6 - Gas, providing for Cost-of-Gas Adjustment of $0.0549/therm as issued April 19, 1984 for the period May 1, 1984 through October 31, 1984, be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised tariff page approved by this Order become effective with all billings issued on and after May 1, 1984; and it is

FURTHER ORDERED, that public notice of this Cost-of-Gas Adjustment be given by one-time publication in newspapers having general circulation in the territories served.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1984.

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NH.PUC*05/01/84*[61398]*69 NH PUC 228*Keene Gas Corporation

[Go to End of 61398]

69 NH PUC 228

Re Keene Gas Corporation

DR 84-82, Order No. 17,000

New Hampshire Public Utilities Commission

May 1, 1984

Revised summer cost of gas adjustment; approved as proposed by natural gas utility.

APPEARANCES: For Keene Gas Corporation, Kenneth W. Woods, For the New Hampshire Public Utilities Commission Staff, Kenneth E. Traum.

By the COMMISSION:

REPORT

Keene Gas Corporation ("Keene" or the "Company") on April 2, 1984 filed, pursuant to Commission filing rules, a proposed Cost-of-Gas Adjustment (CGA) for the summer period, May 1, 1984 through October 31, 1984, of $.0766/therm.

Keene's witness discussed the CGA and its components during the hearing.

Areas covered through direct testimony and cross-examination included projected sales forecasts; computational consistency with past filings; cost estimates; lost and unaccounted for and company use; the prior period overcollection; the

Company's non-thermal billing procedure; functioning of the CGA mechanism; the gas supply situation; etc.

The Commission accepts the Company's figures, estimates, and methodology, and is pleased to report that the Company is now able to purchase propane on the spot market. And the Commission is pleased to state that the CGA request represents a significant decline from the summer period, 1983, due to a prior period overcollection and lower estimated propane costs.

In addition, during the course of the CGA hearing for this utility, as well as the other New Hampshire gas utilities which had CGA hearings on April 26, 1984, the subjects of a change in the CGA mechanism, time duration, etc. were discussed extensively.

The Commission does not feel there is sufficient information in this record to change the current mechanism based upon company opposition, and will thus not act, but is considering opening a separate docket to investigate these subjects.

In summation, the Commission has found no cause to dispute the projected costs or projected sales, and finds the adjustments made consistent with those approved in past period CGA's. Therefore, the Cost of Gas Adjustment as proposed will be approved.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 5th Revised Page 27 of Keene Gas Corporation, tariff, NHPUC No. 1 - Gas, providing for a cost-of-gas adjustment of $0.0766/therm for the period May 1, 1984 through October 31, 1984, be, and hereby is, approved; and it is

FURTHER ORDERED, that Revised Tariff Pages approved by this Order become effective will all billings issued on and after May 1, 1984; and it is

FURTHER ORDERED, that public notice of this cost-of-gas adjustment be given by one-time publication in newspapers having general circulation in the territories served.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1984.

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NH.PUC*05/01/84*[61399]*69 NH PUC 229*Concord Natural Gas Corporation

[Go to End of 61399]

69 NH PUC 229

Re Concord Natural Gas Corporation

DR 84-86, Order No. 17,001

New Hampshire Public Utilities Commission

May 1, 1984

Revised summer cost of gas adjustment; approved as proposed by natural gas utility.

APPEARANCES: For Concord Natural Gas Corporation, David W. Marshall, Esquire; for the New Hampshire Public Utilities Commission Staff, Kenneth E. Traum.

By the COMMISSION:

Pursuant to Commission filing rules Concord Natural Gas Corporation (herein after referred to as "Concord" or the "Company") filed on April 2, 1984 a Summer period, May 1, 1984

through October 31, 1984, Cost-ofGas Adjustment (CGA) for Commission consideration. The CGA proposed was a credit of $0.0444/therm, which includes an additional 20/therm in base rates.

On April 20, 1984 the Company filed a revised CGA reflecting a credit of $0.0502/ therm.

A duly noticed public hearing was held at the Commission's office on April 26, 1984. During the proceeding a Company witness discussed the elements of the proposed and revised CGA.

Areas covered through direct testimony and cross-examination included projected sales forecasts; computational consistency with past filings; pipeline capacity; cost estimates; the change in policy of the Company, at the Commission's urging to fill its LNG tank for the summer period as do the other New Hampshire gas utilities; the prior period overcollection and the NHPUC Finance Department's audit of said period; refunds received from Tennessee Gas Pipeline; the Company's projected roll-in to base rates as stipulated to in DR 83-206; the gas supply situation and pricing for the Loudon franchise area; the Company's non-thermal billing procedure; etc.

In addition, during the course of the CGA hearing for this utility, as well as the other New Hampshire gas utilities for which CGA hearings were held on April 26, 1984, the subjects of a change in the CGA mechanism, time duration, etc. were discussed extensively.

The Commission does not feel there is sufficient information in this record to change the current mechanism and will thus not act, but is considering opening a separate docket to investigate these subjects.

In addition, Concord Natural Gas Corp., due to the type of contract in existence with Tennessee Gas Pipeline and the absence of storage gas demand charges, normally has lower CGA rates in the summer period than the winter period. This sends, what the Commission considers proper price signals to ratepayers; namely, that gas costs more in the higher demand winter period than in the summer period, which corresponds to general knowledge of home heating oil prices.

The result of all these inputs to the revised CGA as proposed is a reduction from last summer's CGA. The major reasons are Tennessee Gas Pipeline refunds and an overcollection from the 1983 summer period.

Based upon the record, the Commission will act on the revised CGA rate as proposed, which is a credit of $0.0502/ therm.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 39th Revised Page 21 of Concord Natural Gas Corporation, tariff, NHPUC No. 13 - Gas, providing for a cost-of-gas adjustment credit of $0.0444/ therm for the period May 1, 1984 through October 31, 1984, be, and hereby is rejected; and it is

FURTHER ORDERED, that 40th Revised Page 21 of Concord Natural Gas Corporation, tariff NHPUC No. 13 - Gas,

providing for a cost-of-gas adjustment credit of $0.0502/therm for the period May 1, 1984 through October 31, 1984 is accepted; and it is

FURTHER ORDERED, that Revised tariff pages approved by this order become effective with all billings issued on and after May 1, 1984; and it is

FURTHER ORDERED, that public notice of this Cost-of-Gas Adjustment be given by one-time publication in newspapers having general circulation in the territories served.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1984.

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NH.PUC*05/01/84*[61400]*69 NH PUC 231*Northern Utilities, Inc.

[Go to End of 61400]

69 NH PUC 231

Re Northern Utilities, Inc.

DR 84-85, Order No. 17,002

New Hampshire Public Utilities Commission

May 1, 1984

REVISED summer cost of gas adjustment; approved as proposed by natural gas utility.

Automatic Adjustment Clauses, § 14 — Demand costs — Winter/summer adjustments — Natural gas distributor.

The commission accepted, on an experimental basis, a change in the cost of gas adjustment requested by a natural gas utility in order to defer certain demand costs that are incurred in the summer period, but due to winter demands, from the summer period to the following winter period.

APPEARANCES: For Northern Utilities, Inc.; Margaret Nelson, Esquire and Eli Farrah, Esquire, for the New Hampshire Public Utilities Commission Staff; Kenneth E. Traum.

By the COMMISSION:

REPORT

In compliance with the Commission tariff filing rules and cost-of-gas adjustment terms outlined in the tariff of Northern Utilities, Inc. ("the Company"), a proposed cost-of-gas adjustment for the summer period, May 1, 1984 through October 31, 1984, was filed for Commission

consideration on April 2, 1984.

This was followed on April 11, 1984, by a revised filing reducing the proposed CGA rate.

A duly noticed public hearing was held at the offices of the Commission on April 26, 1984, at which time a witness for the Company discussed the components of its cost-of-gas adjustment as well as submitted an additional filing further reducing its proposal.

These proposals which correspond chronologically with exhibits NU1, NU2, and NU3, are:

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

	Standard	Alternate
NU1	$0.0583/therm	$(0.0145)/therm
NU2	(0.0042)/therm	(0.0769)/therm
NU3	(0.0105)/therm	(0.0832)/therm

Separate CGA rates for Gas Roots customers were calculated in compliance with Commission Report and Order dated April 15, 1983, in DR 82-350 (68 NH PUC 206). These rates reflect an additional charge to Gas Roots customers representing 25% of the difference between bottled propane dealer's rates and Northern's rates.

The reductions from NU1 to NU3 are based primarily on refunds from suppliers.

Beyond this, the proposed summer period, 1984, is a reduction from the summer period, 1983, primarily because of pipeline refunds.

Some of the areas covered through direct testimony and cross-examination included projected sales forecasts; computational consistency with past filings; pipeline capacity; cost estimates; the prior period collection and the NHPUC Finance Department's audit of said period; refunds received from suppliers; the Company's non-thermal billing procedure; the Pease Airbase situation; interruptible sales; changing the CGA mechanism; the "alternate" tariff approach; the Gas Roots surcharge; etc.

The Commission is satisfied with the Company's responses in all the above categories, and will only comment further on the last three items.

(1) During the coarse of the CGA hearing for this utility, as well as the other New Hampshire gas utilities which had CGA hearings on April 26, 1984, the subjects of a change in the CGA mechanism, time duration, etc. were discussed extensively.

The Commission does not feel there is sufficient information in this record to significantly change the current mechanism in light of company opposition and will thus not act, but is considering a separate docket to investigate these subjects.

(2) In the specific case of Northern Utilities, the utility has requested a change in the CGA mechanism in order to defer certain "demand costs" which are incurred in the summer period, but due to winter demands, from the summer period to the following winter period. The utility defended these shifts as being cost justified, and the Commission agrees. Based on this, the Commission will accept the Company's alternate tariff filing approach on an experimental basis.

(3) The surcharge for Gas Roots customers is the result of the Commission's Report and Order in DR 82-350, and since it was calculated in accordance with such, the Commission will accept the rates as shown on Alternate Fiftieth Revised page 22A to Tariff NHPUC No. 6 - Gas.

The purpose of DR 82-350 and this separate CGA rate, is to slowly phase out the subsidization of Gas Roots customers.

Based upon the preceeding discussion, the Commission finds no cause through hearing or audit to dispute the projected costs or projected sales, and will allow the alternate cost-of-gas adjustment as presented (in exhibit NU3 and franchise tax adjusted) to go into effect. Our order will issue accordingly.

ORDER

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

ORDERED, that 48th, alternate 48th, 49th, alternate 49th, and 50th Revised Page 22A of Northern Utilities, Inc., Allied Gas Division, Tariff, NHPUC No. 6 - Gas filed in lieu of 47th Revised Page 22A, are denied; and it is

FURTHER ORDERED, that alternate 50th Revised Page 22A of Northern Utilities, Inc., Allied Gas Division, tariff, NHPUC No. 6 - Gas, providing for a

Cost-of-Gas Adjustment credit of ($0.0832)/therm and as filed for the Gas Roots customers for the period May 1, 1984 through October 31, 1984, be, and hereby is, accepted; and it is

FURTHER ORDERED, that Revised Tariff Pages approved by this Order become effective with all billings issued on and after May 1, 1984; and it is

FURTHER ORDERED, that public notice of this Cost-of-Gas Adjustment be given by one-time publication in newspapers having general circulation in the territories served.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1984.

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NH.PUC*05/04/84*[61401]*69 NH PUC 233*Granite State Electric Company

[Go to End of 61401]

69 NH PUC 233

Re Granite State Electric Company

DR 83-347, Order No. 17,011

New Hampshire Public Utilities Commission

May 4, 1984

REVISED purchased power cost adjustment; approved as proposed by an electric utility.

By the COMMISSION:

ORDER

WHEREAS, on November 7, 1983, Granite State Electric Company filed with this Commission certain revised tariff pages proposing a Purchased Power Cost Adjustment W-6(I), said adjustment subsequently approved by this Commission's Order No. 16,850 ([1984] 69 NH PUC 16); and

WHEREAS, settlement negotiations at the wholesale level under jurisdiction of the Federal Energy Regulatory Commission has resulted in a revision to said PPCA in the form of W-6(S); and

WHEREAS, Granite State Electric Company now proposes conversion from its interim W-6(I) to the settled W-6(S), and has filed appropriate tariff revisions reflecting such changes; and

WHEREAS, this Commission was a party involved in the Federal negotiations and is signatory to said settlement; it is

ORDERED, that First Revised Page 31-G, Granite State Electric Company Tariff No. 10, be, and hereby is, approved for effect with the first billing cycle following FERC approval of the W-6(S) of New England Power Company, Granite's wholesaler; and it is

FURTHER ORDERED, that Granite State Electric Company provide this Commission with an accounting of W-6(I) revenues during its effect and the associated refund due its consumers because of the difference between W-6(I) and W-6(S), as well as its plan for such refund; and it is

FURTHER ORDERED, that Granite State Electric Company give two-time public notice of the changes in the PPCA W-6 in such manner as is deemed most effective by the Company.

By order of the Public Utilities Commission of New Hampshire this fourth day of May, 1984.

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NH.PUC*05/07/84*[61402]*69 NH PUC 234*Sunapee Power and Light Associates

[Go to End of 61402]

69 NH PUC 234

Re Sunapee Power and Light Associates

DR 84-97, Order No. 17,022

New Hampshire Public Utilities Commission

May 7, 1984

ORDER approving long-term electric rate filing including an interconnection agreement.

By the COMMISSION:

ORDER

WHEREAS, on April 5, 1984, Sunapee Power and Light Associates ("Sunapee") filed a long-term rate filing pursuant to Docket No. DE 83-62, Report and Fourth Supplemental Order No. 16,619 ([1983] 68 NH PUC 531) and Report and Firth Supplemental Order No. 16,664 ([1983] 68 NH PUC 375); and

WHEREAS, Sunapee filed an amendment to its filing on April 16, 1984; and

WHEREAS, Sunapee's filing appears to be consistent with the aforementioned Orders; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire the opportunity to file comments or exceptions; and

WHEREAS, it is in the public interest to approve long-term rate filings expeditiously; it is therefore

ORDERED NISI, that the long-term rate filings of Sunapee, including the interconnection agreement and the rates set forth on the amended long-term rate worksheet are approved; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire may file comments and exceptions no later than 14 days from the date of this Order; and it is

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

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1984.

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NH.PUC*05/07/84*[61403]*69 NH PUC 235*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 61403]

69 NH PUC 235

Re Continental Telephone Company of New Hampshire, Inc.

DR 83,136,
Third Supplemental Order No. 17,023

New Hampshire Public Utilities Commission

May 7, 1984

ORDER approving optional usage pricing telephone services.

Rates, § 539 — Telephones — Optional measured service — "Exchange only" service.

A proposal by a local exchange telephone company to offer an "exchange only" service — unlimited service within the customers home exchange but measured service for all other exchanges within the local service area — was rejected; however, the commission approved two optional measured services: one option providing a fee for the access line which included an amount for usage and another offering only the access line with an additional charge for each message.

APPEARANCES: For Continental Telephone: Earle A. MacKenzie, Revenue Requirements Manager.

By the COMMISSION:

REPORT

BACKGROUND

On April 8, 1983, Continental Telephone Company of New Hampshire (CONTEL) filed with this Commission certain revisions to its tariff No. 11 proposing a variety of optional usage pricing services for its Hollis exchange. The filing was suspended by Commission Order No. 16,358 on April 13, 1983 pending investigation and decision by the Commission.

Subsequently, on August 19, 1983, CONTEL filed similar tariff revisions proposing like services for its Hillsboro exchange. Because of the similarities, the Hillsboro filing was incorporated into the Hollis docket, DR 83-136. It, too, was suspended (Order No. 16,625).

The proposals added several options for the subscribers of the affected exchanges. In addition to the existing one-party and four-party flat rate services, CONTEL proposed three optional measured services for its residential subscribers and one measured option for its business subscribers. The first option provided a fee for the access line which included an amount for usage. The second offered only the access line, charging additional for each message. The third provided unlimited service within the customer's home exchange, but measured service for all other exchanges within the ELS area. Only the first of these was proposed for business customers.

The measured usage proposed was essentially the same as that approved by the Commission earlier for New England Telephone for that Company's "4E" measured service.

The Commission issued an Order of Notice on October 13, 1983 setting the matter for public hearing on November 7, 1983 at 9:30 a.m. at the Commission's

Concord offices. In addition to publication of this notice, copies were provided to the following: Consumer Advocate, Community Action Programs, New Hampshire Legal Assistance and the Attorney General.

The duly noticed public hearing was convened as scheduled with no intervenors present: Earle A. MacKenzie of CONTEL prefiled testimony in this case, summarized same and was cross-examined by Commission and Staff.

COMPANY POSITION

Witness MacKenzie testified that usage pricing, CONTEL's term for local measured service, had been implemented by his company in several other jurisdictions somewhat as a learning experience to determine what was best for its customers (T-6). He indicated the Company felt local service rates would increase dramatically in the future and the alternative of usage pricing over which the customer had some control was in his best interest.

Mr. MacKenzie testified that the setting of rates for its usage pricing services was not based upon cost studies. Pricing was based upon percentage of flat-rate service rates at a point where losses would be held 10-15%. He stated that estimates showed 42% and 68% of the Hollis and Hillsboro customers respectively could save money with usage pricing. Should those percentages opt for such service, revenue shortfall was indicated at about $2200 per month in Hillsboro and $1700 per month in Hollis. Actual penetration of the usage-pricing services was expected to be about 5%, so shortfalls would be far less. In any case, CONTEL proposed no adjustments at this time to offset a shortfall.

As far as seeking a mandatory usage pricing structure, Mr. MacKenzie testified his Company could not foresee such in the next five years. He suggested, however, that should the majority of customers be served with usage pricing, CONTEL might consider a universal measured service.

COMMISSION ANALYSIS

In 1979, this Commission recognized the benefits of a local measured service as an option for its residential customers. At that time, it approved what was termed "Low-Use Residential Measured Service" (LMRS) for the New England Telephone and Telegraph Company (NET) in limited exchanges. Over the years since it was introduced, the LMRS was expanded slowly to other exchanges; and, in the NET docket, DR 82-70, this Commission mandated that the option be available in all NET exchanges by the end of 1985.

In the course of implementing that order, NET introduced its four-element measured service, a very similar service to that offered by CONTEL in the instant docket. New England proposed that the 4E service be adopted where feasible in lieu of the LMRS. Differing from the four-element by offering a block of 30 five-minute message units in its basic charge, the Commission felt LMRS had become somewhat of a standard over the past years and directed that NET make such message unit service available as an added option to those available under the 4E system. To further standardize among the New Hampshire telephone utilities, the Commission will direct CONTEL to make such service available within those exchanges where it offers usage pricing.

The Commission is not convinced that the so-called `exchange only' pricing service is in the customers' best interest. Also, with the addition of a message unit service (LMRS), the options total four

which might lead to customer confusion. Accordingly, the Commission rejects the `exchange only' service at this time. The Commission suggests that CONTEL study the calling patterns of those opting for usage pricing to determine the impact on both customer and company had such been exchange only service. These data could be useful for future filings.

Recognizing that much telephone service pricing in the past has been based upon value of service and that there is a trend towards cost-of-service pricing, the Commission has some concerns about the rate schemes developed by CONTEL for its proposed options. However, with the absence of cost data, the Commission will accept the prices proposed for this docket. To facilitate adjustment of rates in the future, the Commission directs CONTEL to investigate the costs involved in providing such services. For the message unit service option added by this Commission, the rates CONTEL proposed for its exchange only service in Hollis and Hillsboro are accepted ... $10.60 for Hollis and $7.45 for Hillsboro, both to include 30 five-minute message units. Any excess will be priced at 10¢ per unit or fraction thereof. Discounts will not apply to LMRS.

The Commission accepts CONTEL's proposal to allow a four month period for customers to select an optional pricing service without service charge, to include one change should the first selection prove unsatisfactory.

By Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the following revised pages of the CONTEL-NH Tariff No. 11 be, and hereby are rejected:

Section 3 Contents (revision unlisted issued April 8, 1983)

7th Revised Sheet 1, Section 3

Original Sheets 6-11, Section 3

Supplement No. 2, 6th Revised Sheet 1, Section 3

Supplement No. 1, Original Sheets 6, 9, 11, Section 3;

and it is

FURTHER ORDERED, that CONTEL-NH file with this Commission revised tariff pages bearing an effective date of June 1, 1984, said pages to reflect the usage pricing schemes approved in the accompanying report; and it is

FURTHER ORDERED, that public notice of this approved usage pricing be given to all customers in affected exchanges by a two-time notice of the choice of the Company.

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1984.

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NH.PUC*05/11/84*[61404]*69 NH PUC 238*Public Service Company of New Hampshire

[Go to End of 61404]

69 NH PUC 238

Re Public Service Company of New Hampshire

DR 82-333,
13th Supplemental Order No. 16,996

New Hampshire Public Utilities Commission

May 11, 1984

ORDER rescinding a previous order requiring an electric utility to give public notice via a bill insert.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, this Commission's Order No. 16,995 ([1984] 69 NH PUC 223), directed Public Service Company of New Hampshire to give public notice via a bill insert; and

WHEREAS, the Commission has learned that such notice would result in an expenditure of approximately $2,100; and

WHEREAS, such notice can be adequately provided by a computer-generated statement appearing on the bill itself, thus voiding such expenditure; and

WHEREAS, the Commission finds such changed procedure to be in the public interest; it is

ORDERED, that so much of Order No. 16,995 as relates to bill insert be, and hereby is, rescinded.

By order of the Public Utilities Commission of New Hampshire this eleventh day of May, 1984.

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NH.PUC*05/11/84*[61405]*69 NH PUC 238*Shady Brook Water System

[Go to End of 61405]

69 NH PUC 238

Re Shady Brook Water System

DE 83-197,
Second Supplemental Order No. 17,024

New Hampshire Public Utilities Commission

May 11, 1984

SUPPLEMENTAL order requiring operator or a water system to appear and show cause why sanction should not be imposed for his failure to comply with previous commission orders.

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By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by Supplemental Order No. 16,934 dated March 9, 1984 (69 NH PUC 167), this Commission ordered Gary Armstrong, operator and manager of Shady Brook Water System and Gananoque Water System, to file a petition for franchise to operate as a water utility in the area serviced by said Gananoque Water System and Shady Brook Water System.

WHEREAS, this Commission further ordered that Gary Armstrong file a tariff of rates and charges for both Gananoque Water System and Shady Brook Water System as required by RSA 378:1; and

WHEREAS, the Commission further ordered that said Gary Armstrong furnish the Commission with the installation date and installed costs of the water plant and associated facilities of both Shady Brook Water System and Gananoque Water System by April 15, 1984; and

WHEREAS, the Commission further ordered that Gary Armstrong investigate the costs of making certain specified improvements to the Gananoque water system and the availability and cost of financing therefore to be submitted to the Commission no later than April 1, 1984; and

WHEREAS, the Commission further ordered that Gary Armstrong initiate discussions with the Town of Salem and other landowners who previously were members of the Gananoque Association to resolve the ownership problem and to inform the Commission on a regular basis as to the status of these discussions; and

WHEREAS, Gary Armstrong has not complied with any of the aforementioned Orders of this Commission; it is

ORDERED, that Gary Armstrong appear before this Commission on June 6, 1984 at 10:00 a.m. to show cause why said facilities do not comply with Commission Orders should not result in sanctions being imposed against Shady Brook Water System and Gananoque Water System and against Gary Armstrong personally pursuant to RSA 374:17, RSA 365:41 and RSA 365:42.

By order of the Public Utilities Commission of New Hampshire this eleventh day of May, 1984.

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NH.PUC*05/11/84*[61406]*69 NH PUC 239*Mountain Springs Water Company

[Go to End of 61406]

Re Mountain Springs Water Company

DE 6481,
18th Supplemental Order No. 17,025

New Hampshire Public Utilities Commission

May 11, 1984

ORDER granting motion to strike.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Seventeenth Supplemental Order No. 16,895 (February 2, 1984) ("Seventeenth Order")

Page 239

limited the scope of this proceeding to inter alia "the extent to which customer contributions offset rate base investment"; and

WHEREAS, Mountain Springs Water Company ("Company") submitted the prefiled testimony of Robert Maccini and Mary Taber pursuant to the procedural schedule set forth in the Seventeenth Order; and

WHEREAS, Mountain Lakes Village District ("District") filed a Motion to Strike Mountain Springs Water Company Prefiled Testimony as falling outside the scope of the proceeding; and

WHEREAS, the Company filed an Objection to Motion to Strike Prefiled Testimony; and

WHEREAS, argument was heard on the Motion and Objection at a procedural hearing held on May 3, 1984; and

WHEREAS, RSA 541-A:18 II. provides inter alia that the applicable evidentiary standard for the exclusion of testimony is whether the testimony is relevant; and

WHEREAS, the testimony of Mary Taber is relevant to the issues falling within the scope of the proceeding as defined in the Seventeenth Order; and

WHEREAS, the testimony of Robert Maccini pertains only to his estimate of the cost of interconnecting a customer with the system and how he billed that cost; and

WHEREAS, the testimony of Robert Maccini does not address the issue of how, if at all, the Company accounted for the costs associated with the Robert Maccini bills; and

WHEREAS, the testimony of Robert Maccini is accordingly not relevant to the issues falling within the scope of the proceeding as defined in the Seventeenth Order; it is therefore

ORDERED, that the District's Motion to Strike be, and hereby is, granted ot the extent that it applies to the testimony of Robert Maccini; and it is

FURTHER ORDERED, that the District's Motion to Strike is denied in all other respects.

By order of the Public Utilities Commission of New Hampshire this eleventh day of May, 1984.

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NH.PUC*05/11/84*[61407]*69 NH PUC 240*Hillsboro Water Company, Inc.

[Go to End of 61407]

69 NH PUC 240

Re Hillsboro Water Company, Inc.

DE 84-105, Order No. 17,028

New Hampshire Public Utilities Commission

May 11, 1984

PETITION by a water utility for permission to discontinue operations as a public utility; granted.

By the COMMISSION:

ORDER

WHEREAS, Hillsboro Water Company, Inc., a public utility franchised to operate in a limited area in the Town of Hillsboro, New Hampshire in DE 74-58 and Order No. 12,131 ([1976] 61 NH PUC 16), now seeks authority to discontinue operating as a public utility and to

transfer its plant and equipment to the Emerald Lakes Village District; and

WHEREAS, Emerald Lakes Village District encompasses all of the area franchised to the Hillsboro Water Company, Inc.; and

WHEREAS, Emerald Lakes Village District will provide water service to all customers within the District boundaries; and

WHEREAS, upon investigation and consideration, this Commission is satisfied that granting the authority sought is in the public good; it is

ORDERED, that Hillsboro Water Company, Inc., be, and hereby is, authorized to discontinue operations as a public utility upon the date of purchase by the Emerald Lakes Village District; and it is

FURTHER ORDERED, that this Commission be notified in writing by Hillsboro Water Company, Inc. as to the actual date of termination of its service as a public utility in Hillsboro, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this eleventh date of May, 1984.

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[Go to End of 61408]

69 NH PUC 241

Re Lane's End Realty Trust

DE 83-267, Order No. 17,029

New Hampshire Public Utilities Commission

May 16, 1984

PETITION by a condominium association for an exemption from public utility status; dismissed.

By the COMMISSION:

ORDER

WHEREAS, on August 18, 1983 Lane's End Realty Trust ("Trust"), a trust organized under the State of New Hampshire, Lane's End, Inc. ("Corporation"), a New Hampshire Corporation and Lane's End Condominium Unit Owner's Association ("Association") an association of condominium unit owners to be duly formed under the laws of the State of New Hampshire, all of Melvin Village, New Hampshire filed a joint petition for an order exempting them as a water public utility pursuant to the provisions of RSA 362:4; and

WHEREAS, the Commission, through the Executive Director and Secretary, submitted a written request for additional information to the Petitioners by letter dated September 8, 1983; and

WHEREAS, the Commission issued an Order of Notice on September 12, 1983 which allowed all persons wishing to be heard on the Petition to file written comments with the Commission and required the Petitioners to notify by publication all persons wishing to be heard with an appropriate affidavit of publication to be filed with the Commission; and

WHEREAS, to date the Commission has not received a response to its September 8, 1983 written request for additional information; and

WHEREAS, the Petitioners have not

filed an affidavit of publication with the commission as required by the September 12, 1983 Order of Notice; it is therefore

ORDERED, that the Petition of the Trust, Corporation and Association be, and hereby 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 sixteenth day of May,

1984.

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[Go to End of 61409]

69 NH PUC 242

Re Concord Electric Company

DF 84-100, Order No. 17,030

New Hampshire Public Utilities Commission

May 16, 1984

ORDER authorizing the issuance of first mortgage bonds.

APPEARANCES: For the petitioner, Dom S. D'Ambruoso, Esquire.

By the COMMISSION:

REPORT

By this unopposed Petition filed April 19, 1984, Concord Electric Company (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire and engaged in the business of supplying electrical power and energy for public and private use in the City of Concord and various neighboring municipalities all in said state, seeks authority, pursuant to the provisions of RSA 369 to issue and sell for cash at par Two Million ($2,000,000) Dollars principal amount of its First Mortgage Bonds, SEries F, (the "Bonds"), 13 7/8%, due June 1, 1999, such Bonds to be issued under the Company's existing Indenture of Mortgage to Old Colony Trust Company, Trustee (of which First National Bank of Boston is successor trustee) dated as of July 15, 1958, as heretofore supplemented by existing First, Second, Third and Fourth Supplemental Indentures as well as by a further proposed Fifth Supplemental Indenture to be given incident to the issue of the Bonds.

The petitioner represented that the proceeds of the Series F Bonds would be used solely for one or more of the following purposes: (a) to pay off short-term indebtedness outstanding at the time of the said sales, the proceeds of which will have been expended in the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of the Company's business, but may be applied in part; (b) to reimburse the Company Treasury for expenditures made from it for the said purposes; (c) to finance the future purchase and construction of such property and facilities; and (d) to defray the costs and expenses of the financing contemplated by this Petition or for other proper corporate purposes.

The Company submitted into evidence five (5) financial exhibits which are

appended to the Petition. The exhibits show The Sources and Application of FUnds to be Derived from Financing (Exhibit 1), Gross Additions to Plant (Exhibit 1-A), and Estimated Expenses of Proposed Issuance and Sale of Bonds (Exhibit 2). The Company also submitted its Balance Sheet (exhibit 3), Income Statement (Exhibit 4) and Capital Structure (Exhibit 5) all as at December 31, 1983 per books and pro formed to reflect the proposed issuance and sale of the Bonds. Copies of the proposed Purchase and Sale Agreement and the Fifth Supplemental Indenture were filed. Executed copies of these documents and certified copies of the resolutions of the Directors will be filed as late filed exhibits.

The Company presented the testimony of Charles J. Kershaw, Jr., Assistant TReasurer of the Company who testified that the Company last went to the external markets for permanent financing in July of 1975. Since that time there has been no need to go to external markets for financing principally because of the positive internal generation of cash. Upon a review of the financial exhibits Mr. Kershaw testified that the Company's earnings are adequate to support the proposed financing.

Upon consideration of the evidence submitted, this Commission is satisfied that the proceeds of the First Mortgage Bonds, Series F proposed herein will be used to redeem and retire the Company's outstanding short-term notes, the proceeds of which have been expended to pay for property and plant additions and improvements of a kind reasonably requisite to the conduct of the petitioner's public utility business, with the balance of the proceeds to be expended to pay for further such plant additions; to reimburse the Treasury for other such plant additions; and to defray the costs and expenses of this financing.

The Commission finds that the issue of the Bonds upon the terms proposed is consistent with the public good. Our order, authorizing the issue and sale of the Bonds and the mortgaging of the petitioner's present and future properties, including franchises, will issue accordingly.

ORDER

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

ORDERED, that Concord Electric Company be, and hereby is, authorized to issue and sell for cash at par Two Million Dollars ($2,000,000) principal amount of First Mortgage Bonds, Series F, 13 7/8%, due in 1999; and it is

FURTHER ORDERED, that Concord Electric Company be, and hereby is, authorized to mortgage its present and future properties, tangible and intangible, including franchises, as security for said bonds; and it is

FURTHER ORDERED, that the proceeds from the sale of said First Mortgage Bonds be used solely for one or more of the following purposes: to pay off its outstanding short-term loans incurred for property and additions requisite to the Company's public utility business, to finance present and future additions, extensions and improvements to the Company's plant; to reimburse the Company's treasury for expenditures properly made for the foregoing purposes; and for other lawful corporate purposes including the costs and expenses of this financing; and it is

FURTHER ORDERED, that on January first and July first in each year Concord Electric Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of such First

Mortgage Bonds until the whole of such proceeds shall have been fully accounted for.

By Order of the Public Utilities Commission of New Hampshire this sixteenth day of May, 1984.

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69 NH PUC 246

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

Dr 84-88,
Supplemental Order No. 17,033

New Hampshire Public Utilities Commission

May 17, 1984

ORDER permitting a fuel surcharge to become effective without formal fuel adjustment clause hearings.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1984, sent to the New Hampshire Electric Cooperative, Inc., Exeter & Hampton Electric Company, Connecticut Valley Electric Company, Inc., Granite State Electric Company, Wolfeboro Municipal Electric Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to Dr 82-58 ([1982) 67 NH PUC 268), 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 be scheduled; it is

ORDERED, that 125th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $1.29 per 100 KWH for the month of May, 1984, be, and hereby is, permitted to become effective May 1, 1984.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1984.

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[Go to End of 61412]

69 NH PUC 247

Re Country Corner Water Works

DE 83-367, Order No. 17,034

New Hampshire Public Utilities Commission

May 17, 1984

PETITION for authority to establish a water utility in another's franchised area; denied.

By the COMMISSION:

ORDER

WHEREAS, Country Corner Water Works seeks authority under RSA 374:22 and 26, to establish a water public utility in a limited area in the Town of Windham, New Hampshire; and

WHEREAS, the limited area sought is within an area presently franchised, and served, by the W & E Artesian Well Division of the Southern N. H. Water Company; and

WHEREAS, Southern N. H. Water Company does not wish to give up its right to serve in the area sought by Country Corner Water Works; and

WHEREAS, a franchise area authorized by this Commission is an exclusive right to serve within such area; it is hereby

ORDERED, that the petition here sought by Country Corner Water Works is denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1984.

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[Go to End of 61413]

69 NH PUC 248

Re Concord Natural Gas Corporation

Intervenor: Community Action Program

DR 84-94, Order No. 17,036

New Hampshire Public Utilities Commission

May 17, 1984

PROPOSAL by a gas company for an energy conservation program; approved on a pilot basis.

APPEARANCES: David Marshall, Esquire on behalf of Concord Natural Gas Corporation; Gerald Eaton, Esquire on behalf of the Community Action Program; Larry Smukler, Esquire, Steve Stocklan, Kenneth Traum, Melinda Rafter and Richard Marini on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On April 16, 1984, Concord Natural Gas Corporation ("Concord") filed for Commission review a Proposed Energy Conservation Program ("program"). Concord seeks commission approval of the program because it intends to request recovery of the direct costs of the Program. An order of notice was issued on April 27, 1984, at which time the above-stated parties appeared and took part in the proceedings. Testimony and exhibits regarding the program were submitted by Concord's Assistant Treasurer, Ronald Bisson. Both the Staff and the Community Action Program support the program in its entirety and urge its approval by the Commission.

Concord proposes to undertake the program on a pilot basis for twelve weeks in the summer of 1984 commencing during the month of May. The program will consist of energy surveys of homes and business establishments to be conducted by qualified students from the Energy Curriculum of the Thompson School of Applied Science at the University of New Hampshire under the supervision of Concord's personnel. The survey will enable Concord to measure a customer's present energy consumption and recommend conservation measures to reduce it.[1(71)] Concord hopes to achieve a total of 480 such surveys. Toward this end, it will promote the program by radio and newspaper advertising, direct mailing to all customers and personal contact by company personnel.

As part of the survey, Concord will provide the customers with the following information:

1. a list of qualified installers (listed with the Commission) to provide estimates of the cost of performing the conservation measures;

2. the estimated pay-back period if the recommended conservation measures are completed;

3. the availability of low interest loan money from the N. H. Housing Financing Authority to accomplish the conservation measures, and the names of local lending institutions cooperating with the authority.

Thereafter, Concord personnel will conduct a follow-up on the customers who received an energy audit to see if they have implemented the recommended measures.

In accordance therewith, Concord Natural Gas Corporation will submit to the Commission a

12-month history of the participating customers' energy consumption indicating the amount of energy saved as a result of the program. These computations, along with a full accounting of the costs, will be presented to the Commission for review and comment. In addition, further review and study of customer conservation conducted after the completion of the Program by means of Concord's computers, as well as other relevant data as agreed by Concord and the Commission Staff, will also be submitted to the Commission.

In support of the program, Concord submitted two exhibits, a detailed description of the program, its projected costs, energy savings and payback over a five-year period (Exhibit 1) and its response to the Staff's data requests (Exhibit 2) which includes further cost data. With regard to the actual costs incurred, Concord proposes to request recovery thereof by including these costs in a forthcoming step adjustment approved in its last cost of service rate case (DR 83-206 [(1984) 69 NH PUC 27]) and scheduled to take effect January 1, 1985. Finally, Concord does not propose to recover the lost profit margin resulting from conservation savings in this pilot program, but would, if the program were to become permanent, seek some form of margin recovery.

The Commission has and will continue to encourage and support utility efforts toward developing effective conservation programs. We commend Concord for its efforts in this regard. Concord's proposed program is a good first step towards developing a viable conservation program. We therefore will approve the program on a pilot basis for 1984 and allow Concord to recover the reasonable expenses associated therewith in its upcoming step adjustment. For accounting purposes, these expenses are to be recorded in Account 146, Miscellaneous Expense.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Concord Natural Gas Corporation be, and hereby is, authorized to implement its Proposed Energy Conservation Program on a pilot basis during the summer months of 1984; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation be allowed to recover the reasonable expenses incurred as a direct result of the implementation of this program by means of a forthcoming step adjustment scheduled to take effect January 1, 1985; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation file the data described in the foregoing Report with the Commission no later than sixty (60) days after the completion of the program.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1984.

FOOTNOTE

[1]The survey team will not provide fuel switching recommendations. Inquiries in this regard will be referred to appropriate personnel at the company.

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NH.PUC*05/18/84*[61414]*69 NH PUC 250*Chris Spirou

[Go to End of 61414]

69 NH PUC 250

Re Chris Spirou

DR 84-107, Order No. 17,037

New Hampshire Public Utilities Commission

May 18, 1984

PETITION for review of construction costs included in an electric utility's rates; denied.

Expenses, § 23 — Additions and betterments — Construction costs — Incomplete construction.

The state's so-called anti-construction work in progress statute does not necessarily preclude recovery of any construction-related costs in rates until construction is completed but only precludes recovery through the inclusion of construction costs in rate base or as a current expense.

(AESCHLIMAN, commissioner, concurs in part and dissents in part, p. 252.)

APPEARANCES: Chris Spirou, pro se.

By the COMMISSION:

On April 30, 1984, a petition was filed requesting the Commission to exercise its authority to review the rates currently allowed to Public Service Company of New Hampshire (PSNH).

The petition relies on language used by the Commission in its Report issued in DR 82-333 dated January 30, 1984, and Order No. 16,885 (69 NH PUC 67, 57 PUR4th 563).

The Commission has reviewed its decision issued in DR 82-333 and finds the decision is sound and based on accepted regulatory principles. The petitioner misreads that decision when it advances the position that the Commission violated RSA 378:30-a. That argument was clearly enunciated by the Consumer Advocate and the Campaign for Ratepayers Rights (CRR) when they objected to the capital structure and capital cost requested of the Company as being violative of RSA 378:30-a, the so-called anti-CWIP statute.

Both parties, CRR and the Consumer Advocate attempted to base their argument on facts developed by the Commission Staff.

The purpose of the Staff analysis was to identify and quantify the rate of return revenues associated with the construction of Seabrook. The Staff employed a methodology, which examined the Company's capital structure as it existed in each year from 1985 and excluded

specific issues of long-term debt and equity plus AFUDC commitment which could be attributed to Seabrook construction and recalculated the Company's revenue requirement, if there was no return on its "Seabrook securities."

The Company did not challenge the validity of the Staff's methodology, nor did the Commission test the methodology. The Commission noted that the Company maintained that the cost of all of its securities were consistent with prevailing market rates and the revenue requirement is more properly attributed to market rates rather than construction programs. The Company focused on the level of a particular cost while the Staff focused on the factors which caused the cost to be incurred. The Commission

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found that the Company's position was not totally inconsistent with the Staff's methodology.

It was the position of CRR and the Consumer Advocate that the statute must be read to preclude recovery of any Seabrook related costs in rates until construction is completed.

The Company maintained the position that the Commission had previously interpreted the statute as only precluding recovery through the inclusion of construction associated costs in rate base or as a current expense, and thus further maintained that there was no evidence presented to justify a departure from the Commission's previous practice.

The Commission accepted the Company's position, in that their position accurately characterized our previous orders and correctly pointed out those orders of the Commission rejected arguments identical to those raised by CRR and the Consumer Advocate and which are now being raised by this petition.

The Commission concluded in DR 82-333, Order No. 16,885 that the statute does not act as a barrier to recovery of any Seabrook related costs as part of a utility's rate of return.

Having found no reason to change the calculation methodology to arrive at a rate of return, the Commission went a step further than necessary in that proceeding to announce it would not hesitate to open a new docket if it had reason to believe that such recovery is not warranted due to management's conduct of the Seabrook construction program. The Commission will take this opportunity to clarify what it meant by the foregoing language. The Commission was responding in an effort to meet the concerns of Staff, that by continuing our current practice in the calculation of the rate of return, the Commission was closing the door in a prudency hearing to reject a rate base return for any imprudent investment decision. The Commission by use of the language in question attempted to convey that in a proper prudency hearing all issues of prudency would be considered.

Based on the above findings, the Commission finds that the petitioner misread its decision in DR 82-333 and Order No. 16,885 and declines to exercise its authority at this time based on the following reasons:

1. Petition misread Report and Order 16,885.

2. The rate of return calculation was in accordance with accepted ratemaking principles.

3. Parties were represented by proper counsel and any errors were subject to review pursuant

to RSA 541. The parties were as follows:

Stella Shively, Esquire for Public Service Company of New Hampshire;

Sulloway, Hollis and Soden by Martin L. Gross, Esquire for Public Service Company of New Hampshire;

Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire for Business and Industry Association of New Hampshire;

Gerald M. Eaton, Esquire for Community Action Program (CAP);

Larry S. Eckaus, Esquire for Campaign for Ratepayers Rights (CRR);

New Hampshire Legal Assistance by Alan Linder, Esquire for Volunteers Organized in Community Education (VOICE);

Michael W. Holmes, Esquire as Consumer Advocate for residential ratepayers;

Larry M. Smukler, Esquire for the Staff of the New Hampshire Public Utilities Commission.

4. Any alleged mismanagement or imprudent management conduct will be fully investigated when and if the Company seeks to include construction expenditures into rate base.

Based on the reasons set forth in the above Report, the petition is denied.

ORDER

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

ORDERED, that the petition is denied.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of May, 1984.

Opinion of Commissioner Lea H. Aeschliman

The majority decision in DR 82-333 made the following findings with which I concur:

(1) To accept the staff methodology which found that the Company's Seabrook project has a direct effect upon rates through the recovery of capital costs in the rate of return component of the rate formula;

(2) To accept the Staff's analysis that the Seabrook revenue requirement in this case is approximately $25 million;

(3) To accept Staff's position that the ability to review costs is a prerequisite to inclusion of costs in rates; and consequently

(4) To accept the Staff's position that the Commission should assert jurisdiction over management's conduct of Seabrook construction to the extent of the Company's Seabrook revenue requirement.

Based upon the finding of jurisdiction in this case, I dissented from the majority decision in determining that the management of the Company was deficient in its planning relative to the

Seabrook project. I concluded that the appropriate rate making response was a rate of return penalty, reducing the revenue requirement by $4,709,743. I find no reason to change my earlier decision.

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NH.PUC*05/21/84*[61415]*69 NH PUC 252*New Hampshire Electric Cooperative, Inc.

[Go to End of 61415]

69 NH PUC 252

Re New Hampshire Electric Cooperative, Inc.

DR 84-118, Order No. 17,038

New Hampshire Public Utilities Commission

May 21, 1984

ORDER accepting a special rate contract between an electric utility and a motor inn.

Page 252

By the COMMISSION:

ORDER

WHEREAS, the New Hampshire Electric Cooperative, Inc. has filed with this Commission its Special Contract No. 74, said contract outlining the special terms under which electric service will be provided Woodward's Motor Inn in Lincoln, New Hampshire; and

WHEREAS, the Commission finds such terms justified because of the storage heat installed in said motor inn and its use of off-peak energy; and

WHEREAS, the Commission finds use of such off-peak energy in the public interest; it is hereby

ORDERED, that Special Contract No. 74 of the New Hampshire Electric Cooperative, Inc. and Woodward's Motor Inn be, and hereby is, approved for effect on May 11, 1984.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of May, 1984.

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NH.PUC*05/21/84*[61416]*69 NH PUC 253*New England Telephone and Telegraph Company

[Go to End of 61416]

69 NH PUC 253

Re New England Telephone and Telegraph Company

DR 84-78, Order No. 17,039

New Hampshire Public Utilities Commission

May 21, 1984

ORDER approving the installation of aerial telephone cables across public waters.

APPEARANCES: for New England Telephone and Telegraph Co. - Alfred H. Ward, Manager of Construction Engineering.

By the COMMISSION:

REPORT

On March 30, 1984, New England Telephone and Telegraph Company (New England Telephone) filed with this Commission its Petition seeking license for placing and maintaining aerial plant across the East Branch Pemigewasset River in Lincoln, New Hampshire. An Order of Notice was issued by the Commission on April 2, 1984, setting the matter for hearing in the Commission's Concord offices on May 8, 1984 at 10 a.m. In addition to directing public notice of this hearing, the Commission individually notified the Aeronautics Commission, Safety Services, Department of Resources and Economic Development, and the Attorney General.

The duly noticed hearing was convened as scheduled, with no intervenors present. Alfred H. Ward, Manager of Construction Engineering, New England Telephone, described the proposed crossing as a 300-pair cable extending from Pole 160/79, located on State of New Hampshire property, to Pole 1600/2 located on private property of Beechwood Acres, in

Lincoln, New Hampshire. He stated that the 300-pair cable would be installed according to applicable codes, and that it would supplement a 100-pair cable now installed between referenced poles, for which records of a license could not be located. It would span about 515 feet at a height of 32 feet above the water. He added that the same poles currently carry a power line owned by New Hampshire Electric Cooperative, Inc.

Marked as exhibits were the following:

No. 1 - New England Telephone transmittal letter of March 29, 1984;

No. 2 - the New England Telephone petition;

No. 3 - a map of the Lincoln area where the proposed line is located; and

No. 4 - Drawing 16-1 dated February 27, 1984, showing a vertical view of the crossing.

With the need for additional capacity in this area, and with no opposition to this crossing, the Commission finds it to be for the public good; and will grant the Petition.

Our order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company be, and hereby is, granted authority to install and maintain aerial plant between Pole 160/79 on the property of the State of New Hampshire, extending approximately 515 feet across the East Branch Pemigewasset River to Pole 1600/2 on the private property of Beechwood Acres in Lincoln, New Hampshire; said plant serving the North Woodstock exchange.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of May, 1984

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NH.PUC*05/23/84*[61417]*69 NH PUC 254*New England Electric Transmission Corporation

[Go to End of 61417]

69 NH PUC 254

Re New England Electric Transmission Corporation

DE 84-58,
DE 84-59, Order No. 17,045

New Hampshire Public Utilities Commission

May 23, 1984

ORDER authorizing construction of overhead electric wires.

Electricity, § 6 — Wires and cables — Construction — Mitigation of interference.

Construction of an electrode bed and overhead electric wires crossing public waters was approved where the wires were essential to a transmission facility's continued viability and where steps had been taken to assure the wires would not interfere with other utility currents or broadcasting waves.

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By the COMMISSION:

REPORT

On March 6, 1984 the New England Electric Transmission Corporation filed a petition with this Commission for authority to construct and maintain electric wires crossing the Moore Reservoir of the Connecticut River in the Town of Littleton, New Hampshire. On March 12, 1984 an Order of Notice was issued setting a hearing for April 18, 1984 at 10:00 a.m. at the Commission's Concord offices. Notices were sent to Russell A. Holden and Michael Flynn,

Esquire, New England Electric Transmission Corp. for publication; John R. Sweeney, Director of Aeronautics Commission; George Gilman, Commissioner, DRED; Robert X. Danos, Director, Safety Services; and the Office of the Attorney General. On April 5, 1984 an Affidavit was filed confirming that publication was made in the Union Leader on March 23, 1984.

On March 6, 1984 the New England Electric Transmission Corporation also filed a petition for authority to engage in the business of a public utility and to begin construction of an electric facility in the Town of Lisbon, New Hampshire. On March 13, 1984 an Order of Notice was issued setting a hearing for April 18, 1984 at 11:00 a.m. at the Commission's Concord offices. Notices were sent to Russell A. Holden and Michael Flynn, Esquire, New England Electric Transmission Corp. for publication; Earl W. White, Chairman, Board of Selectmen, Lisbon; Barbara Jesseman, Chairman of the Planning Board, Lisbon; and the Office of the Attorney General. An Affidavit was filed on April 5, 1984 confirming that publication had been made in the Union Leader on March 23, 1984.

The Company's petition to commence business as a public utility also requested that the petitions be consolidated for hearing together. The motion was granted at the hearing by Commissioner Iacopino with the understanding that the hearings would reopen if interested parties arrived for the latter petition at the later time. This was done.

Mr. David L. Holt, the lead project engineer for New England Electric Transmission Corp. testified with regard to the petition to do business in the Town of Lisbon. Lisbon has been selected as the site of one of two ground electrode beds which will be used to electrically bond or connect the facilities handling electricity to the earth. The second electrode will be installed in Quebec. The Lisbon electrode will consist of a series of metallic rods connected by cables all buried in the earth. The area actually used for electrode array will be about one acre. The rods will be placed in six holes 12 inches in diameter and 130 feet deep in a star configuration. The ground electrode site is located on a 300 acre parcel of land presently owned by New England Transmission in the northwestern corner of Lisbon.

Mr. Frank Smith, principle engineer for the transmission department testified that the electrode will be connected to the terminal by a ground electrode feeder line which will consist of a wood pole with two conductors supported on a five foot crossarm and with 34 KV insulators. The average height of the poles will be 30 to 35 feet above ground. The line will extend approximately 5 1/2 miles coincident with the HVDC 450 KV transmission line and the conductor will be suspended from the transmission line. The remainder of the line will extend on independent poles and on an independent right-of-way to the ground electrode site, a distance of approximately 3.3 miles.

Mr. Smith testified that the course of the line takes it across two bodies of water in the vicinity of the Moore Reservoir. One water crossing is 200 feet and the other crossing is 100 feet. No structure will be located in the water, no heavy equipment will be used in the water, and there will be no dredging or filling in the waters of the Connecticut River. The minimum clearance from the conductor to the water will be 22 feet which meets the minimum clearance requirements of the National Electric Safety Code.

Upon cross-examination Mr. Smith testified that the 3.3 miles of ground electrodes federline will be on right-of-way which will be newly acquired. The remainder of the line will be on existing right-of-way which is wide enough to accommodate the new pole lines.

Mr. Holt testified that in normal operation there will be a very low level current being carried on the line, in the order of 10 or less amperes. During the year there will be between 10 or 15 occurances when the intertie goes into a contingency operations when the line will carry approximately 850 amperes for a period not to exceed 15 minutes. The relative risk to the public is not significant because the period of time when large amounts of current are being carried are of very short duration.

The Company has identified certain interference type risks which they have taken steps to avoid. Facilities of other systems of New England Power, Public Service of New Hampshire, Vermont Electric Company, Central Vermont Public Service, the telephone company, the railroad, and the Portland Pipeline will be monitored to assure that stray currents do not adversely affect the operations. Mr. Holt also testified that they have considered possible interference with general broadcasting, radio, television, fire paging or service paging services, ham radio and citizen band radios and there will be no interference associated with radio or television condition of the line, the continuity of the line similar to relay protective circuits which are installed on normal AC transmission lines. Ground fault detective devices will immediately shut down the terminal if a fault develops.

Upon investigation the Commission finds no reason to deny either petition. We found earlier, in DSF 81-349, Re New England Electric Transmission Corp. (1982) 67 NH PUC 409, that NEET should be authorized to conduct business as a public utility in the State of New Hampshire in the Towns of Littleton and Monroe on the basis that they had the essential (1) financial backing; (2) management and administrative expertise; (3) technical resources; and (4) general fitness to operate as a public utility. NEET is a subsidiary of New England Electric System, a large holding company which through other subsidiaries operates electric generation, transmission and distribution facilities in several New England States and has approximately 5,000 employees, a large engineering staff, and considerable experience in high voltage transmission. NEET will have ready access to these services as a subsidiary of New England Electric Systems. These same qualifications that were found adequate in that docket apply equally in this proceeding. We find that NEET should be authorized to engage in business as a public utility in the Town of Lisbon.

In regard to the electrode bed, we accept, based on the testimony, that it is an essential element in the integrity of the transmission facility. The land configuration and the soil characteristics in that portion of the Town of Lisbon appear to satisfy the design requirements of good engineering practice. The water crossings

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are essential to the integrity of the system and appear to be located in areas which will minimize any esthetic interference. We note, however, that easements have not been obtained for all sections of the line. The actions of this Commission in this docket will not prevent any parties from exercising their rights under RSA 371 in consideration of eminent domain requirements as

it relates to the specific location of the line.

We will approve the petition. Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition of New England Transmission Corporation to commence business as a public utility and begin construction of a ground electrode in the Town of Lisbon is approved; and it is

FURTHER ORDERED, that the petition of New England Electric Transmission Corporation to place and maintain electric wires over public waters in the Town of Littleton, New Hampshire, as specifically identified in Exhibit Attachment A is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of May, 1984.

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NH.PUC*05/24/84*[61418]*69 NH PUC 257*Public Service Company of New Hampshire

[Go to End of 61418]

69 NH PUC 257

Re Public Service Company of New Hampshire

DR 82-333,
14th Supplemental Order No. 17,046

New Hampshire Public Utilities Commission

May 24, 1984

MOTION by a consumer group for an immediate reduction in electric rates; denied.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Campaign for Ratepayers' Rights, by and through its attorney, filed a motion for immediate rate reduction dated May 11, 1984 pursuant to Commission Order No. 16,885 ([1984] 69 NH PUC 67, 57 PUR4th 563); and

WHEREAS, the Commission on May 18, 1984 ruled on this question in response to a similar petition for rate reduction filed by Chris Spirou by Report and Order No. 17,037 ([1984] 69 NH PUC 250), wherein the Commission denied said petition; it is hereby

ORDERED, that the instant motion by

the Campaign for Ratepayers' Rights is denied for the same reasons stated in the above cited order.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of May, 1984*(72)

FOOTNOTE

*Commissioner Aeschliman's position is stated in Report and Order No. 17,037 in response to the petition of Chris Spirou.

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[Go to End of 61419]

69 NH PUC 258

Re Pennichuck Water Works

DF 83-105,
Supplemental Order No. 17,047

New Hampshire Public Utilities Commission

May 24, 1984

ORDER authorizing the issuance of additional preferred stock.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Order No. 16,373 ([1983] 68 NH PUC 253) contemplated that upon consummation of the reorganization, Pennichuck Water Company, Inc. would bear primary liability with respect to the existing Preferred Stock of Pennichuck Water Works, Inc.; and

WHEREAS, the holder of such Preferred Stock has requested that, in order to formalize the transfer of such primary liability from Pennichuck Water Works, Inc. to Pennichuck Water Company, Inc., the Commission authorize Pennichuck Water Company, Inc. to issue the Pennichuck Water Works, Inc. preferred stock on terms identical to the present terms of the 12,480 shares of existing and outstanding Preferred Stock of Pennichuck Water Works, Inc., previously approved by the Commission; and

WHEREAS, the issuance of such additional preferred stock is consistent with the Commission's Report and Order in DF 83-105 ([1983] 68 NH PUC 253) and with the public good and constitutes a formality only; it is hereby

ORDERED, that Order No. 16,373 ([1983] 68 NH PUC 253) is hereby amended and supplemented so that Pennichuck Water Company, Inc. is authorized to issue all its common

stock, and in addition 12,480 shares of preferred stock on terms which are identical to the present terms of the 12,480 existing and outstanding shares of Pennichuck Water Works, Inc.'s Preferred Stock to Pennichuck Water Works, Inc. in exchange for its franchise, works and system; and it is

FURTHER ORDERED, that the remaining parts of Order No. 16,373 not inconsistent with this Order shall remain in full force and effect.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of May, 1984.

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NH.PUC*05/25/84*[61420]*69 NH PUC 259*Exeter and Hampton Electric Company

[Go to End of 61420]

69 NH PUC 259

Re Exeter and Hampton Electric Company

Intervenors: Boston and Maine Railroad, Public Service Company of New Hampshire, and Association of New Hampshire Utilities

DX 83-348, Order No. 17,048

New Hampshire Public Utilities Commission

May 25, 1984

ORDER determining the proper annual fee for a line crossing transaction between an electric utility and a railroad.

Commissions, § 3 — Jurisdiction and powers — Validity of delegation — Statutory delegation.

State statutes expressly give the commission jurisdiction over the construction of utility lines that may traverse or parallel railroad tracks or other property, and the validity and constitutionality of such statutes will be presumed where they do not interfere with a railroad's procedural rights, the appeal process, or federal jurisdiction over railroad rates. [1] p. 261.

Crossings, § 79 — Track-wire crossings — Annual fees — Cost elements.

Annual fees charged by a railroad to a utility for a line crossing transaction should be cost based and not determined by a hypothetical method such as using the crossing's fair market value, and it is appropriate for the cost elements to include maintenance, managerial time, clerical time, processing, billing, and mailing costs, and a profit or return cost in the form of a rental. [2] p. 263.

APPEARANCES: Sulloway, Hollis & Soden by Margaret Nelson, Esquire for Exeter & Hampton Electric Company; Gallagher, Callahan & Gartrell by Christopher Gallagher, Esquire

and James L. Kruse, Esquire for Boston & Maine Railroad; Pierre Caron, Esquire for Public Service Company of New Hampshire; RAnsmeier & Spellman by Dom S. D'Ambruoso, Esquire for the Association of New Hampshire Utilities.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On November 9, 1983, Exeter & Hampton Electric Company ("Company") filed a petition for approval by the Public Utilities Commission of New Hampshire ("Commission") of construction of distribution lines across and on the premises of the Boston & Maine Corporation ("Railroad") in the Town of Kingston, New Hampshire, to provide service to a single residential customer. An Order of Notice was issued on November 15, 1983 and a duly noticed hearing was held on December 14, 1983.

At the hearing, the Motion to Intervene of Public Service Company of New Hampshire ("PSNH") was granted. In addition, the Railroad raised certain jurisdictional objections. The Commission took those objections under advisement and proceeded to hear evidence on the merits of the Petition. The witnesses were Anthony Smoker on behalf of the Company and John Adams on behalf of the

Railroad. Three exhibits were entered into evidence.

Subsequent to the hearing, the Commission received a Motion to Intervene from the Association of New Hampshire Utilities ("Association"). By this Order, we will affirm the grant of Intervenor status to the Association.

Pursuant to the procedural schedule issued at the December 14, 1984 hearing, as amended, the parties filed timely legal memoranda on the jurisdictional and substantive issues before the Commission. On March 1, 1984, the Railroad withdrew its objection to filing additional substantive data and on March 9, 1984, a one page document containing such data was filed. The Company and the Association filed objections to the additional data on March 14, 1984.

II. POSITION OF THE PARTIES

As noted in the Procedural History, two broad issues have been presented to the Commission: 1) jurisdictional issues; and 2) substantive issues. We shall separately set forth the position of the parties on each of these issues.

Jurisdictional Issues

The Railroad, which raised the jurisdictional issue, contends that the Commission may not adjudicate issues relating to the crossing of railroad property by utility lines. The Railroad acknowledges the existence of RSA 371:24 which provides for Commission approval of such crossing, but contends that the statute as worded is unconstitutional. The reasons advanced in support of a finding of unconstitutionality are that the state operates to deprive the Railroad of rights of free trade and enterprise and due process of law. In particular: 1) the statute contains no limitation on Commission authority to intervene in areas which are traditionally matters of

private contract; 2) the statute is vague and ambiguous; 3) the statute might operate in a manner that excludes the right of appeal. In addition to the above constitutional arguments, the Railroad contends that Commission jurisdiction in this matter is preempted by federal legislation.

The Company took the position that the Commission has the authority to adjudicate the issues in this docket. It cites RSA 371:24 and argues that the language of the statute is clear, explicit, constitutional and applicable to the instant facts.

PSNH and the Association also supported Commission jurisdiction in this instance. Both parties argue that RSA 371:24 applies to the facts of this case and that the statute is constitutional. In particular, they argue that the statute provides a fair procedure for adjudicating what may be conflicting interest of the Railroad and a utility. In addition, the Intervenors argue that the statute provides the railroad with just compensation for any property interests lost within the context of an appropriate procedural mechanism. Finally, the Intervenors contend that RSA 371:24 should not be construed as an eminent domain statute and its application should not be limited to easement property interests.

Substantive Issues

The railroad argued that the "just and reasonable" standard of compensation is vauge and ambiguous. Accordingly, the standard may not be applied, if at all, until after the Commission undertakes a rulemaking process to define the standard. In the alternative, the Railroad argued that it would be proper to accept its proposal to impose a rate of $200 per year for the contested crossing. That figure is the Company's estimate of its cost of engaging in utility crossing

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transactions. In support of that cost, the Railroad presented the testimony and exhibits of Mr. John Adams, Manager of Agreements and Contracts. Mr. Adams estimated the transactions cost of preparing and reviewing the crossing agreement, billing the utility on an annual basis and a return to the Railroad based on the rental value of the land. Mr. Adams stated that the above costs were considered in addition to certain engineering costs, billed separately as an initial fee, which includes the time of Mr. Adams, engineering time, the Vice President's time and secretarial time needed to formulate the initial agreement (Tr. at 58).

The Company presented its position through the testimony of Anthony Smoker, Assistant Vice President in charge of operations. Mr. Smoker described the proposed crossing and the history of crossing agreements with the railroad. With respect to the proposed crossing, Mr. Smoker testified that the purpose of the crossing was to serve a single customer. The proposed crossing would involve poles and guy wires which would fall outside the railroad right-of-way. The only intrusion would be the conductors which would be 39 feet above the top rail. The Company would be required to construct, operate and maintain the crossing; no interference with Railroad operations would be necessary. With respect to the history of crossing agreements, Mr. Smoker testified that crossings of the type proposed have typically cost the company a fee of between $10.00 to $30.00 per year. Thus, the Railroad's demand for an initial fee of $100.00 plus an annual fee of $200.00 represented a sharp increase. In argument, the Company contended that the Railroad failed to meet its burden of justifying the increased annual fee. The Company pointed out that an examination of the justification for the fee revealed that it was based on an

undocumented estimate. When the components of the estimate were subjected to scrutiny, the Railroad's assumptions lacked credibility. In view of the fact that the proposed fee represents a sharp increase from fees previously imposed, the lack of credible support justifies a Commission finding that the Railroad has failed to meet its burden of demonstrating that its proposed minimum fee is just and reasonable.

PSNH and the Association confined their positions to the jurisdictional issues.

III. COMMISSION ANALYSIS

Jurisdictional Issues

[1] It is axiomatic that the Commission must act within the scope of its delegated powers. E.g., Re Concord Nat. Gas Corp. (1981) 121 NH 685, 689, 443 A2d 1291. Thus, the threshold inquiry is whether the legislature delegated the authority to the Commission to regulate the crossing of railroad property by public utilities.

The applicable authority may be found at RSA 371:24 which provides:

Upon approval of the commission, a public utility may construct transmission and distribution lines that traverse or parallel the tracks and property of a railroad and establish a permanent or temporary easement thereby. The public utility shall file a plan and layout delineating the route for such lines with the commission 30 days prior to beginning construction and shall make any payment to the railroad the commission determines to be just and reasonable.

No party disputed that RSA 371:24 provides the Commission with the requisite authority to adjudicate the instant docket.

The clear language of the statute and the legislative history conclusively establish an explicit grant of authority. The dispute centers on whether the legislature acted properly in enacting RSA 371:24; i.e., whether the statute is constitutional.[1(73)]

In addressing an allegation of facial unconstitutionality such as the one presented here, this Commission has only two choices: 1) to presume that the statute is constitutional (see e.g., Niemiec v King [1968] 109 NH 586) or 2) to reserve, certify and transfer the issue to the New Hampshire Supreme Court pursuant to RSA 365:20. A third alternative — that of declaring the statute unconstitutional in a Commission Report and Order — is not open to us. As we recently stated in Re Public Service Co. of New Hampshire (1984) 69 NH PUC 174, 178:

We agree with the argument ... that, as an administrative agency created by the legislature, the Commission must follow the clear language of our enabling legislation and the inferences that can reasonably be drawn therefrom. It is not our function to tell the legislature that its statutes either meet or do not meet constitutional tests. Therefore, we must assume that all applicable statutes are constitutional.

In choosing between the alternatives of addressing the merits or transferring the threshold issue to the Court, the Commission will consider a number of factors. In this case, a determinative factor has been our review of the constitutional arguments of the parties. That review leads us to conclude that the proper decision is to presume that RSA 371:24 is

constitutional and, accordingly, to adjudicate this case on the merits.

The review included careful consideration of all the Railroad's specific contentions. We did not find that any Railroad argument was persuasive enough to overcome the presumption of constitutionality which must be accorded to the acts of the legislature. Niemiec v King, supra. Specifically, we do not believe that RSA 371:24 lacks procedural safeguards to such an extent that it is violative of constitutional due process guarantees. This Commission is required to adhere to certain procedural standards including, inter alia, rights of notice, hearing and decisionmaking based on evidence of record. See e.g., RSA Chapter 541-A. In this context, Railroad property interests cannot be taken in violation of due process principles. Thus, the Railroad's contention that the statute is fatally flawed because it denies the right to a jury trial and the right to appeal to the superior court is not persuasive. The legislature is not required to adhere to only one procedural avenue. Cf., Manchester Housing Authority v Fisk (1959) 102 NH 280. Nor do we believe that the ratemaking standards set forth in the statute are vauge and ambiguous. The statute specifies that the Commission must determine a "just and reasonable" rate. This is the same term employed in other statutes, e.g., RSA 374:2, RSA 378:7, and the Commission has extensive experience in properly

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construing the terms. Cf., Legislative Utility Consumers' Council v Public Service Co. of New Hampshire (1979) 119 NH 332, 31 PUR4th 333, 402 A2d 626. Finally, we cannot accept the Railroad's argument that RSA 371:24 unlawfully limits the right of appeal. That right is defined in RSA Chapter 541 which provides inter alia that any party may file a Motion for Rehearing within 20 days of any Commission Order or Decision, RSA 541:3, and that such parties may appeal any adverse Commission ruling on such Motions for Rehearing to the Supreme Court, RSA 541:6. We do not believe that this right of appeal is limited simply because the Commission is exercising its authority under RSA 371:24. This avenue of appeal provided in RSA Chapter 541 is sufficient to protect the Railroad from any unconstitutional application of the statute.

We also do not find the Railroad's preemption contention sufficiently persuasive to defer a decision on the merits. After arguing that Congress has preemptive authority, the Railroad argued that the exercise of this authority should be inferred from "... a comprehensive, national scheme for regulation by the Interstate Commerce Commission of interstate railroads, whether engaged in intrastate or interstate commerce." Memorandum of Boston & Maine Corporation, February 24, 1983 at 10. The Railroad goes on to maintain that 49 U.S.C. § 10704 acts to preempt state ratemaking authority over the rates of interstate railroads. While we recognize that Congress may preempt conflicting state requirements, we are not convinced that Congress intended to exercise its preemptive authority in this instance. The validity of state law is to be presumed unless Congress clearly intended to substitute federal law. Here, there is no assertion of state regulatory authority over the rates of interstate railroad service. Rather, this Commission is resolving a dispute between two public utilities about the level of cost and the allocation of that cost at a local crossing. The regulation of such crossing transactions certainly falls within state police powers. Since our Order will have no effect whatsoever on interstate rail rates, we cannot find that our authority to issue this order is preempted by the authority over such

interstate rates granted to federal regulators.

In view of the above, we decline to reserve, certify and transfer the jurisdictional issue to the Supreme Court pursuant to RSA 365:20. We shall now turn to the substantive issues.

Substantive Issues

[2] The substantive issues involve the level of payments to be made by the Company to the Railroad. This involves two sub-issues: 1) the definition of the standard which will be used to establish the level of payments; and 2) the establishment of the level of payments under the above standard.

As previously noted, the Railroad argued that the Commission should undertake a rulemaking to determine how to construe the "just and reasonable" standard contained in RSA 371:24. Our analysis of the record, however, reveals that there is no significant disagreement over the method of defining those terms. The record information presented by the Railroad and the questioning of that information by the Company and the Intervenors all rest on the assumption that the "just and reasonable" standard should be defined to assure that the Railroad recovers the costs it incurs from entering into the crossing transaction.

Our review of the evidence leads us to conclude that the cost based standard

identified by the parties is proper. We are mindful that we are allocating costs between two public utilities: 1) the Railroad, which must be made whole by recovering its cost from the Company; and 2) the Company, which must recover its cost from the ratepayers. In view of this consideration, the only fair method of setting payments is to base it on cost, rather than other hypothetical methods such as the market value of the crossing. The cost based standard ensures that the Railroad is made whole at a minimum burden to the Company's ratepayers.

Having established that the Commission will set the RSA 371:24 payment schedule on the basis of cost, it remains to examine the record to determine the level of the Railroad's costs. Our review of the record leads us to conclude that the Company has met its burden of demonstrating that the Railroad's proposed payment schedule of $100.00 initially and $200.00 annually is not just and reasonable. The basis for the above conclusion is that we do not believe that the record contains sufficient reliable evidence to support the Railroad's contention that its proposed fee schedule is based on its cost of engaging in the crossing transaction.

The starting place of the necessary analysis is the cost components identified by the Railroad's witness, Mr. Adams. The initial fee is designed to recover:

1) the time of the Manager of Agreements and Contracts;

2) the time of the engineers;

3) the VIce President's time for the purpose of executing the agreement; and

4) the necessary clerical time to type, mail and file the agreements. (Tr. at 51-52).

Mr. Adams went on to testify that the above costs are not completely recovered by the initial fee; thus, the unrecovered costs are amortized in the annual fee (Tr. at 52). Mr. Adams estimated

that the initial processing costs would be fully recovered through the proposed annual fee within 3 to 4 years (Tr. at 57). The annual fee is designed to recover:

1) the unrecovered initial processing costs;

2) the cost of the Accounting Department for billing and recording payment; and

3) a profit or return cost in the form of a rental. (Tr. at 53).

After review, we find that it is proper to include all of the above listed components, including the return, in the Railroad's calculation of cost. We must now inquire as to whether the estimates of the level of the above cost components are reliable. Our review of the record leads us to conclude that it will not support a finding that the Railroad's estimate of the valuation of the cost components is reasonable.

Our conclusion is based on an analysis of the evidence supporting the proposed fee. That evidence consists entirely of the estimate performed by Mr. Adams; an estimate based on judgement. We searched the record for data to support that judgement. Unfortunately, the record does not contain such data. Mr. Adams indicated that he did not consult the written time or accounting records of the involved departments, nor did he interview the personnel who performed the tasks included in the cost estimate (Tr. at 77-79). Thus, Mr. Adams' judgement and experience stand alone as the justification for the steep increase in the payment schedule. It is important to note that Mr. Adams' judgement is not itself

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in question here; this Order is not based on any analysis which finds fault with that judgement. Rather, our difficulty is that, on a matter this important, we are left with no method of evaluating that judgement. The data and supporting documentation have not been provided and, apparently, do not exist.

A requirement of documentary support is particularly necessary where the opinion in evidence raises questions. In this case, Mr. Adams did not have the data to provide a detailed breakdown between the initial and continuing costs and the components of each. It is therefore not surprising that Mr. Adams could not be specific and had to hazard a guess that the initial costs would be paid back somewhere between the third and fourth year (Tr. at 57). The lack of a specific breakdown also raised questions about the estimate of continuing costs. For example, Mr. Adams testified that, after the second year, it would take the Accounting department at least four hours to process each bill (Tr. at 61). The implication of this testimony is that the Railroad's January 31, 1983 bill to the Company (Exh. 3), which combined the statements of nine separate crossings at continuing rates that did not have to be newly ascertained, took the Accounting Department at least 36 person hours to process. While it is possible that the Railroad legitimately needs 36 hours to process a bill such as the one depicted at Exhibit 3, it should be noted that the Commission routinely reviews estimates of this type and this particular figure falls outside the range of person hours required by other Companies for similar tasks. Thus, documentary support is required to satisfy the Commission that this particular estimate is both reasonable and reliable.

In view of the fact that the Company has met its burden of proving that the Railroad's proposal does not have the support necessary to allow us to conclude that it is just and

reasonable, we must decide that payment schedule should be imposed pursuant to RSA 371:24. The Company provided testimony that the Company's previous rate for crossings of the type presented in this docket was between $10.00 and $30.00 per year. No evidence was presented on the initial fee. Our review of the evidence leaves us satisfied with the Railroad's proposed initial fee. Thus, we will approve an initial fee of $100.00. Since we do not believe that the record supports the imposition of an annual fee of $200.00, the Railroad's proposal will be rejected. Instead we will choose the figure on the high end of the range of charges previously imposed by the Railroad. Accordingly, the Railroad will be directed to charge an annual fee of no more than $30 for the crossing addressed in this docket unless and until the Commission issues an Order authorizing an increase.

IV. CONCLUSION

As is obvious, this Order cannot be the final word on the Railroad's cost of engaging in a crossing transaction. We fully expect to see this issue again and, given that the importance of documentary evidence has been emphasized in this Order, we also expect to see a better record. We will thus take this opportunity to identify additional issues that will be important to us in future proceedings and to comment on the treatment of those issues here.

The first issue is the allocation of the burden of proof. In this proceeding, we assumed that the Company, as the Petitioner, had the burden of challenging the Railroad's proposed payment schedule. We found that the Company was

able to sustain that burden because the Railroad's proposal lacked documentary support. In future proceedings, we will consider whether the burden should instead be allocated to the Railroad. Such an allocation would be more in keeping with our traditional practice of allocating the burden on the proponent of a rate. See, RSA 378:8.

An additional issue which must be addressed is the definition of the cost standard applicable to a finding of "just and reasonable" rates. In this proceeding, we took the Railroad's definition of cost at face value. It was not necessary to look beyond that definition because it was not supported in any event. In a future proceeding, we will consider whether to define cost as a straight-forward allocation of total cost (e.g., total salaries and wages, materials, etc.) as proposed by the Railroad or, in the alternative, whether the cost of engaging in crossing transactions should be determined on an incremental basis. If we determine that the latter alternative us appropriate, we would only assess the Company for any additional costs it caused the Railroad to incur over and above those costs (e.g., salaries and wages) which would be incurred even if the Railroad did not engage in crossing transactions.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the jurisdictional objections asserted by the Boston & Maine Corporation be, and hereby are, denied; and it is

FURTHER ORDERED, that the Boston & Maine Corporation is authorized to impose an initial fee of $100.00 and an annual fee of $30.00 on Exeter & Hampton Electric Company for the instant crossing.

By order of the Public Utilities Commission of New Hampshire this twenty-five day of May, 1984.

FOOTNOTE

[1]This analysis demonstrates that we are not required in this instance to address the issue of whether one of two alternative interpretations of statutory language is constitutional while the other is not. In that situation, a reviewing court will presume that the legislature intended to enact a constitutional statute and, accordingly, we choose the constitutional alternative. E.g., Bruckner v Bruckner (1980) 120 NH PUC 402. However, in the instant circumstances, the constitutional infirmities alleged would, if accepted, preclude any constitutional reading of the statute. Thus, the issue is not one of deciding between two alternative statutory meanings; rather it is one of determining whether a clear legislative grant of regulatory authority is constitutionally proper.

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NH.PUC*05/25/84*[61421]*69 NH PUC 266*Northern Utilities, Inc.

[Go to End of 61421]

69 NH PUC 266

Re Northern Utilities, Inc.

Dr 84-127, Order No. 17,050

New Hampshire Public Utilities Commission

May 25, 1984

ORDER approving a special rate contract between a gas company and a local industry.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a utility selling gas under the jurisdiction of this Commission has filed with this Commission Special Contract No. 62 with General Electric-Dover, effective on

approval by Commission order, for gas service at rates other than those fixed by its schedule of general application; and

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

ORDERED, that said contract may become effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-five day of May, 1984.

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NH.PUC*05/25/84*[61422]*69 NH PUC 267*New Hampshire Electric Cooperative, Inc.

[Go to End of 61422]

69 NH PUC 267

Re New Hampshire Electric Cooperative, Inc.

DE 84-126, Order No. 17,051

New Hampshire Public Utilities Commission

May 25, 1984

ORDER accepting revisions to an electric cooperative's tariff provisions.

By the COMMISSION:

ORDER

WHEREAS, Tariff NHPUC No. 11, - Electricity, of New Hampshire Electric Cooperative, Inc. has become cumbersome over time with the incorporation of multiple changes in the form of tariff supplements; and

WHEREAS, New Hampshire Electric Cooperative, Inc. has filed with this Commission certain revisions to said tariff which relieve the confusion herein cited as well as other minor discrepancies; and

WHEREAS, said revisions have no impact on customers' rates or the Cooperative's revenues; and

WHEREAS, the Commission finds such housekeeping procedures in the public interest; it is

ORDERED, that the following revised pages and supplements to New Hampshire Electric Cooperative, Inc. tariff, NHPUC No. 11, be, and hereby are, approved for effect on the date of this Order:

Original Pages 13A, 13B, and 13C
1st Revised Pages 11-13
2nd Revised Pages 1, 14-17
Supplement Nos. 5 and 6.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of May,

1984.

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NH.PUC*05/25/84*[61423]*69 NH PUC 268*Northern Utilities, Inc.

[Go to End of 61423]

69 NH PUC 268

Re Northern Utilities, Inc.

DR 84-125, Order No. 17,052

New Hampshire Public Utilities Commission

May 25, 1984

ORDER approving a gas utility's special rate contract with an industrial customer.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a utility selling gas under the jurisdiction of this COmmission has filed with this Commission Special Contract No. 63 with General Electric-Somersworth, effective on approval by Commission order, for gas service at rates other than those fixed by its schedule of general application; and

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

ORDERED, that said contract may become effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of May, 1984.

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NH.PUC*05/25/84*[61424]*69 NH PUC 268*New England Telephone and Telegraph Company

[Go to End of 61424]

69 NH PUC 268

Re New England Telephone and Telegraph Company

Intervenor: Office of Consumer Advocate

DR 84-51,
Supplemental Order No. 17,053

New Hampshire Public Utilities Commission

May 25, 1984

PETITION for authority to reduce Centrex rates as an offset to federally imposed end-user access charges; granted as modified.

Rates, § 566 — Telephone — Centrex services — Offset to access charges.

Finding that federally mandated end-user access charges on a per line basis would disproportionately affect Centrex users as opposed to private branch exchange users, but that a movement from Centrex service to private branch exchange service was already evident, the commission said it was possible that the end-user access charges were not causing

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the migration from Centrex but merely magnifying it, and that a reduction in Centrex rates to offset the access charges as a means of retaining Centrex customers was a reasonable way to prevent intrastate revenue losses as long as the reduction applied only to existing Centrex customers and not new ones.

APPEARANCES: Bruce P. Beausejour, Esquire for New England Telephone and Telegraph Company; Michael W. Holmes, Esquire as Consumer Advocate for residential ratepayers; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

I. Procedural History

On March 2, 1984, New England Telephone and Telegraph Company (NET) filed a petition for reduction in the monthly rates for CENTREX-CO Services to offset the impact of interstate End User Access Service rates which were scheduled to become effective on April 3, 1984. The Order of Notice was issued on March 5, 1984 setting the matter for public hearing to be held at the Commission's Concord office on March 22, 1984 at 10:00 a.m., together with publication. NET filed an affidavit attesting to public notice on March 12, 1984.

The duly noticed hearing was convened as scheduled with NET represented by Bruce P. Beausejour. Mr. Beausejour presented two witnesses, William A. Blaisdell, a manager in the Revenue Matters Department and Thomas Coldwell, division manager of Local Services, both of NET.

A brief and a supplemental brief were filed by the Consumer Advocate on March 27, 1984 and March 30, 1984; reply briefs were filed by NET on April 2, 1984 and April 7, 1984.

As the filing was proposed for effect on April 3, 1984 and as it subsequently became clear that Commission investigation could not be completed to allow decision before that date, the filing was suspended by Order No. 16,956 on March 28, 1984.

II. Positions of Parties

CENTREX-CO is a central office service with features similar to those available from a customer-owned PBX, such as direct inward dialing and the identification of outward dialed calls. In contrast to PBXs, however, since the CENTREX-CO service utilizes NET's central office equipment rather than a customer premises switch, it is not subject to the Federal Communications Commission (FCC) orders regarding the provision of customer premises equipment. CENTREX-CO services are therefore the only remaining switching vehicles which the Company may offer to business customers.

On February 15, 1984, the FCC issued its decision regarding the implementation of CENTREX-CO end user charges. It imposed, effective for 1984 and 1985 a $2.00 charge on all CENTREX lines installed or on order before July 28, 1983, and the business end user charge of $6.00 per line (in New Hampshire) for all lines ordered on or after July 28, 1983. The effective date of the charge was originally April 3, 1984 but was subsequently postponed until May 25, 1984.

The Company states that the application of end user charges as prescribed by the FCC without a corresponding adjustment to rates for CENTREX-CO services will result in a significant increase on outward movement of the existing CENTREX customer base over the next few years. The Company argues, both in its

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testimony in this case and in its April 11, 1984 Petition for Reconsideration in FCC Docket No. 79-72, Phase I, that the imposition of these end user charges unreasonably discriminates against CENTREX customers in that it applies the charge to each CENTREX line and therefore each CENTREX main station. In contrast, PBX customers with functionally equivalent service pay the charge on each PBX trunk but not each PBX station. As the ratio between CENTREX main stations and PBX trunk lines is six to one, the impact of the end user charge is six times greater for the CENTREX customer than for the PBX customer. The Company states that this disparity in the impact of the charge will increase the rate of the migration of customers from the CENTREX service to an equivalent PBX service. As the contribution from CENTREX-CO is greater than the contribution from supplying PBX trunk lines, the Company states that the increased outward movement would result in a decrease in intrastate revenues.

The Company therefore proposes to reduce the System Features rates for CENTREX-CO services by $2.00 for existing lines and $6.00 for new lines. These reductions would exactly offset the end user charges prescribed by the FCC. The Company states that even with these reductions the proposed CENTREX-CO rates provide a contribution above relevant costs.

The Consumer Advocate argues that the Commission should consider similar reductions to offset residential access charges when and if those charges are imposed. He also notes that according to FCC Order No. 84-36 (34263) the problem with the imposition of end user charges on CENTREX customers and the migration to PBX services is one of stranded investment not reduced revenue. He further argues that the presentations to the FCC include no studies to quantify revenue erosion. He suggests that either the study was not sufficiently persuasive, in which case the standards of this Commission should be no less demanding, or that the BOC's

subsidiary relationship with AT&T precluded vigorous participation, in which case NET should first present the study to the FCC in an effort to convince them to rescind the end user charge altogether.

The Company responded that unlike CENTREX, there is no evidence that residential service is priced above costs, and that such determinations do not have to be made in the context of this docket. On the question of stranded investment, for the purposes of this study, it was assumed that loop and central office investment was 100 percent reusable. To the extent that this investment is not reusable, the study understates the potential loss which would be incurred if CENTREX customers left the system. Finally, the Company stated that the reason it did not submit a study to the FCC is that the FCC already had sufficient data before it and had determined that market reaction to cost based pricing as represented by the end user charges may arise rather from the divergence of State imposed rate structures from intrastate costs and that the problem should be addressed at the State level.

III. Commission Analysis

A. Market Forces

The Company has described its CENTREX offering as a "central office service offering which provides Direct Inward Dialing and Identification of Outward Dialed calling features in addition to other PBX-like features." (Blaisdell Testimony, pg. 2, 1. 3-5). It is uncontested that CENTREX and PBX services are

direct competitors in the marketplace and that the relative cost of the two services is a major factor for any business choosing between them. Therefore, increases in the cost of CENTREX relative to the cost of PBXs reduce the ability of CENTREX to compete with the PBX service. It is further uncontested that the FCC imposed end user charge does in fact, increase the cost of CENTREX relative to the cost of PBXs because the charge is levied per line and CENTREX requires six times the number of lines as a PBX service to provide an equivalent number of main stations.

Historically, CENTREX has evolved from technology available since the 1950's while PBXs became major competitors in the late 1970's. It is difficult for the Commission to determine the current relative attraction of the two services as the Company was unable to supply information on comparable prices for PBXs. These prices are not available to it as it is no longer in the terminal equipment business. As a result, the record does not provide a clear answer to the question of whether a cost-based CENTREX offering is competitive with an equivalent cost-based PBX. Some indication may be provided by the Company's experience in the installations of CENTREX in the pre-end user charge era. The Company obtained 34 new customers in 1983 of which 29 ordered 40 lines or less (Response to Staff request for clarification #3 May 3, 1984). At the same time, of the existing customers, three Custom CENTREX customers, one CENTREX CO II customer and the Company's CENTREX-CU I customer have plans to purchase their own terminal equipment (Ibid #2). It would appear therefore, that even before the end user charges there is movement from CENTREX to PBX, especially among larger customers. While there is no information on migration from PBX to

CENTREX, it is unlikely to be significant since the customer will have committed himself to PBX through purchase of the necessary terminal equipment.

The study provided by Mr. Blaisdell does not contain a detailed analysis of the market and the impact of price changes on customer decisions. The Commission has reservations about the quality of the assumptions which underlie its conclusions. The estimated impact is not based on formal studies of price elasticity and cross elasticity of demand. Rather the estimates are based on "opinions and the statements of marketing people and sales people who are in contact with (NET) customers and who pretty much know what customers feel about this type of access charge and how it will affect their future decision making." (Tr. p. 30) While the judgment of the NET marketing and sales personnel may accurately reflect the market realities, the Commission has little information by which it can assess their analysis. In particular, it is not known how precise is their estimate of market reaction, and whether that reaction is a result specifically of the end user charges. It is possible that the charges may "result in a significant increase in outward movement of the existing CENTREX customer base over the next few years," as testified by Mr. Blaisdell (Testimony, pg. 2, 1. 25-pg. 3, 1. 1 - Exhibit 1), but that the migration from CENTREX to PBX is a natural market phenomena which is only magnified, not caused, by the end user charges. Lacking firm evidence to the contrary the Commission cannot be unaware that the tendency on the telecommunications industry is in the direction of customer owned terminal equipment replacing services leased from the Company.

Finally, it is Commission intent to

offset the effect of the end user charges on the relative competitiveness of CENTREX and PBX systems. As the ratio of charges per main station between CENTREX and PBXs is six to one, to the extent that the Commission offsets the end user charge through reductions in the System Feature rates it is more appropriate that the reduction be on a PBX trunk equivalent basis, i.e., five-sixths of the end user charge, than an offset to the total charge.

B. Revenue Impact

The analysis presented by the Company indicates that a reduction of the CENTREX-CO rates will reduce the intrastate revenue loss. Faced with the impact of the end user charges the Company has two alternatives. It can maintain prices and lose customers; or it can attempt to maintain its customer base by reducing its prices. In either case, it loses revenue compared with a base year in which there are no end user charges. The amount of the revenue loss under each alternative, however, is influenced by the selection of the base year. It appears that the gross income loss is always greater under the alternative of maintaining prices and reducing the customer base. However, there are also costs savings from reducing the number of customers.

Therefore, a calculation of the net revenue impact of maintaining prices and allowing the customer base to erode can result in either a greater or lesser amount than the reduced prices alternative, depending on what is assumed about the base year and comparative cost savings. Therefore the Company has not persuaded us that the ratepayers benefit by reducing the CENTREX prices in order to maintain and expand its customer base.

C. Stranded Investment

An issue discussed in the NYNEX Reply to Oppositions to NYNEX's Petition for Reconsideration FCC Docket 78-72, Phase I (Ex. 3) and in brief by the Consumer Advocate and the Company, is one of stranded investment. To the extent that the technology of CENTREX and PBX are evolving and the prices are in flux, business customers have an incentive to choose the CENTREX service for an interim period, and move to PBX once the options are clearer. When they adopt this strategy the Company is required to make an investment in central office equipment in order to accommodate the customer, only to have that investment "stranded" when the customer eventually replaces it with a PBX. Other ratepayers must then bear the cost of the excess capacity in the central office. In its FCC "Reply" the Company states that customer conversion from CENTREX to PBX results not only "in a waste of resources, but also in stranded capacity and increased costs, the estimate result of which would be higher rates for users of other services, including local basis exchange." (pg. 8) In its brief, the Company notes that the Company study had assumed that central office equipment would be 100% reusable and that this assumption "understates the economic loss which the Company would suffer if CENTREX customers left the system." (emphasis in original) The Commission therefore believes that efforts to retain existing CENTREX customers are worthwhile in order to prevent erosion of the customer base and the concomitant burden on other ratepayers. However, it does not wish to encourage the Company to expand the customer base and increase the amount of investment which could be potentially stranded in the near future. Consequently, offsets to the end user charge will apply only to customers whose

lines were on order or installed on or before May 24, 1984.

The Commission will therefore allow the Company to reduce Service Feature rates by five-sixths of the FCC prescribed end user charge for customers whose lines had been installed or were on order on or before May 24, 1984. The reduction for customers whose lines were installed or ordered on or before July 27, 1983 is $1.67 per line; the reduction for customers whose lines were ordered between July 28, 1983 and May 24, 1984 is $5.

D. Issues Raised by the Consumer Advocate

The issue of stranded investment has been fully considered above.

The Commission has seriously considered the Consumer Advocate's jurisdictional arguments. Those arguments were initially directed at the Commission's jurisdiction to approve the Company's petition; essentially, the Consumer Advocate argued that since the End User Common Line (EUCL) charges were mandated by the FCC, this Commission's jurisdiction to offset those charges by a rate reduction is federally preempted. However, as refined in Brief, the Consumer Advocate's focus shifted from the jurisdictional argument to a recommendation that the Commission undertake a similar type of rate reduction investigation for residential customers if and when the FCC imposes residential EUCL charges. Since our independent analysis of the applicable FCC enabling legislation and the FCC Orders issued pursuant thereto convince us that we have the jurisdiction to grant the Company's Petition and since the Consumer Advocate and the Company now appear to agree with that analysis, we shall direct our analysis to that argument raised by the Consumer Advocate in his Brief.

As noted above, the focus of our inquiry is whether the Commission should undertake the same type of rate reduction investigation for the Company's residential customers as it has here for the Company's CENTREX customers. Since our jurisdiction to engage in a similar rate reduction inquiry for residential customers is not seriously questioned, our inquiry is not directed at whether we have the authority to similarly reduce residential rates, but rather at whether such a reduction is appropriately addressed in this docket. We conclude that such a residential rate reduction should not be addressed here. We base this conclusion on three factors. First, the issue has not been properly noticed by the Commission as required by RSA 541-A:16 (Supp. 1983). Second, because there has not been adequate notice, the parties have not had an opportunity to develop a record on the issue. Thus, we do not currently have a record which is sufficient to allow us to base any findings. Third, the FCC has not yet finally approved the implementation of EUCL charges on residential customers. Accordingly, the issue is one which is not yet ripe for adjudication.

As is apparent from the above-stated analysis, our conclusion that it is not appropriate to consider here a residential rate reduction similar to that considered for CENTREX customers is not intended to foreclose the parties from again raising the issue. Our analysis is only intended to be applicable to the instant docket. If the FCC issues a final ruling imposing EUCL charges on residential customers, the Commission, after notice will consider the evidence and arguments presented by the parties at that time.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the following tariff revisions be, and hereby are, rejected:

NHPUC No. 75
Supplement No. 9 — Title page
— Original Pages 1 and 2
Part A — Section 7
— Page 19, Second Revision
—Page 20, First Revision
— Page 21, Second Revision
— Page 27, First Revision
— Pages 28, 31 & 70, Third Revision:

and it is

FURTHER ORDERED, that New England Telephone file appropriate revised pages in lieu of those rejected, said pages to implement the reduction in the Centrex System Features charges and to bear the notation that they are issued according to this Order; and it is

FURTHER ORDERED, that said revised pages become effective upon issue of an approval Order; and it is

FURTHER ORDERED, that a one time public notice of the Order be given to all affected customers explaining the impact of the filing.

By Order of the Public Utilities Commission of New Hampshire this twenty-fifth day of May, 1984.

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NH.PUC*06/01/84*[61425]*69 NH PUC 274*Public Service Company of New Hampshire

[Go to End of 61425]

69 NH PUC 274

Re Public Service Company of New Hampshire

DF 84-121, Order No. 17,056

New Hampshire Public Utilities Commission

June 1, 1984

MOTION for reconsideration of a denial of a petition to intervene; denied.

By the COMMISSION:

ORDER

A Motion for Reconsideration of Denial of Intervention Pursuant to RSA 541:6 was filed on May 29, 1984 by the Seacoast Anti-Pollution League (SAPL) requesting that the order of the Chairman entered on May 28, 1984 denying intervention to SAPL be reconsidered and reversed.

The Commission, having reviewed the Motion and the reasons set forth therein, finds that the Motion should be denied for the following reasons:

1. The Chairman acted in full compliance with RSA 541-A:17, et seq.

2. The Motion is untimely, in that it should have been made immediately following the Chairman's ruling and prior to the hearing in this matter.

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By Order of the Public Utilities Commission of New Hampshire this first day of June, 1984*(74)

Aeschliman, commissioner, concurs in part: I concur with the decision to deny the Motion, but only for Reason No. 2.

FOOTNOTE

*It is Chairman McQuade's opinion that SAPL's Motion for reconsideration besides misconstruing RSA 541-A:17, should also have been addressed to the Chairman and not to the

Commission as a whole. It is the province of the Chairman, and not of the combined Commission to rule on matters pertaining to 541-A:17. All future motions for intervention and related motions for reconsideration should be addressed to the Chairman and accordingly rule on by the Chairman.

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NH.PUC*06/01/84*[61426]*69 NH PUC 275*Public Service Company of New Hampshire

[Go to End of 61426]

69 NH PUC 275

Re Public Service Company of New Hampshire

Intervenors: Community Action Program, Office of Consumer Advocate, Seacoast Anti-Pollution League, and Campaign for Ratepayers' Rights

DF 84-121,
Supplemental Order No. 17,057

New Hampshire Public Utilities Commission

June 1, 1984

PETITION for authority to issue short-term notes; granted.

Security Issues, § 57 — Purposes — Corporate practices — Fuel procurement — Conversion.

An electric utility's proposed issuance of short-term notes was approved where the financing would be used to promote proper corporate purposes in fuel procurement practices and the conversion of an oil-burning unit to a coal-burning unit.

(Aeschliman, commissioner, issues separate opinion, p. 279.)

APPEARANCES: Sulloway, Hollis and Soden by Martin L. Gross, Esquire for Public Service Company of New Hampshire; Gerald M. Eaton, Esquire for Community Action Program; Michael W. Holmes, Esquire for the Consumer Advocate; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire; Robert Backus, Esquire for the Seacoast Anti-Pollution League; Wilfred Sanders, Esquire and Larry Eckhaus, Esquire for the Campaign for Ratepayers' Rights.

By the COMMISSION:

REPORT

On May 21, 1984, Public Service Company of New Hampshire ("PSNH" or "Company") a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as a public utility under the

jurisdiction of this Commission, filed a Petition for Supplemental Authority With Respect To Issuance of Short Term Notes ("Petition") seeking authority pursuant to the provisions of RSA Chapter 369 to issue not more than $135,000,000 in aggregate principal amount of its notes payable less than twelve months after the date thereof subject to certain terms. A duly noticed hearing was held in Concord on May 28, 1984 at which the Chairman considered the Motions to Intervene, of the Community Action Program ("CAP"), the Consumer Advocate, the Seacoast Anti-Pollution League ("SAPL") and the Campaign for Ratepayers' Rights ("CRR"). The Motions to Intervene of CAP and the Consumer Advocate were granted over the objection of PSNH and the Motions to Intervene of SAPL and CRR were denied (Tr. at 3-6). In addition, the Commission considered the statements made by members of the public; the sworn testimony of the Company's witnesses, Charles E. Bayless and D. Pierre G. Cameron, Jr.; and the exhibits entered into evidence by the parties.

Mr. Bayless testified on the nature of the Company's proposed financing. That financing will consist of not more than $135,000,000 in aggregate principal amount of its notes payable less than twelve months after the date thereof. The notes would be subject to the following terms:

Maturity: May 15, 1984.

Price to Purchasers: 100% of Principal Amount.

Price to Company: Subject to continuing negotiation.

Interest Rate: Approximately 20% per annum, payable semi-annually.

Conversion Rights: The Notes are proposed to be convertible into "units" (consisting of new debentures and warrants to purchase shares of the Company's common stock, $5 pare value) when and if said units are issued and contingent upon regulatory approval of such units, at a price of 95% of the price of the units.

Additional Rights: Purchasers of the proposed notes would receive rights (which may be in the form of warrants) to purchase for cash $2,000 of new debentures (when and if issued and contingent upon regulatory approval of such issuance) for each $1,000 of notes, such debentures to be at a yield of approximately 20% per annum payable semi-annually.

Redemption Provisions: The Company may include a provision allowing it to redeem the notes on and after September 1,

1984 and prior to April 1, 1985, at face value, plus accrued interest payable either in cash or "units" at the conversion price.

Collateral Security: The Company's General and Refunding Mortgage Bonds, Series F, in an aggregate principal amount equal to 150% of the principal amount of the notes, such bonds to be issued under the provisions of the Company's General and Refunding Mortgage Indenture dated as of August 15, 1978, and to be coterminous with and bear the same interest rate as the notes.

Mr. Bayless acknowledged that the interest rate, conversion rights, additional rights and collateral security provisions offer returns that are considerably higher than market returns for other utilities. However, the returns currently required by investors on PSNH securities are consistent with those offered in the proposed financings. Those returns and the additional provisions are necessary because of the financial difficulties currently confronting the Company. As Mr. Bayless stated in his direct testimony (Exh. 1 at 2-3):

The Company is experiencing severe financial difficulties in generating cash flow sufficient to maintain its business operations precipitated by the unwillingness of the Company's commercial banks to make funds available under the Company's Revolving Credit Agreement. The Company's survival without resort to protection under the Federal Bankruptcy Code has been made possible by the implementation of extraordinary cash conservation measures, including the following:

(a) The suspension of construction of Seabrook Station and the suspension of most payments with respect thereto;

(b) The suspension of the conversion of Schiller Station from oil-burning to coal-burning and the suspension of most payments with respect thereto;

(c) The omission of dividends on the Company's Common and Preferred Stocks;

(d) The failure to make principal payments when due under the Company's Acceptance and Stand-by Revolving Credit Facility Agreement, resulting in the termination by the lenders thereunder of their commitments to accept further drafts or make further loans;

(e) The failure to make when due an interest payment under the Company's Nuclear Fuel Lease and Security Agreement, resulting in the acceleration by PruLease, Inc. of the maturity of this financing to May 21, 1984; and

(f) The deferral of payment of certain other accounts payable.

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The banks participating in the Company's Revolving Credit Agreement have terminated that Agreement, and the Company's New Hampshire lines of credit have been suspended as well.

The Company has been in a continuous search for additional sources of short-term credit since early March of this year. Efforts to obtain short-term credit on an unsecured basis have been unsuccessful. The only source of short-term credit now known to be available for the Company is the transaction for which authority is being sought in this proceeding. Negotiations are continuing with the Company's commercial bankers and other lenders for the obtaining of additional short-term credit on a secured basis; however, no agreement has yet been reached.

In the meantime, the Company's cash position is deteriorating, even with the cash conservation measures in effect, such that the Company currently projects that it will exhaust its supply of cash in mid-June. Consequently, completing the issuance of short-term notes with the additional provisions as proposed constitutes the only presently known avenue available to the Company to avoid a bankruptcy filing.

In addition to the testimony of Mr. Bayless and Mr. Cameron, PSNH put in evidence a

certified copy of authorizing votes of the Company's Board of Directors.

The Consumer Advocate and CAP did not file post hearing written positions opposing the terms of the proposed financing, nor was such opposition stated in the course of the hearing. Their concern was directed at how the Company intended to use the proceeds of the proposed financing. The Consumer Advocate and CAP recognized that the Company is experiencing severe financial difficulties, but wished to ensure that management would give priority to expenditures required to maintain the continuing ability of the Company to provide safe and reliable service. Thus, the Consumer Advocate and CAP were particularly concerned that sufficient funds be allocated to meet the operation and maintenance ("O&M") requirements of the Company.

The Commission shares the concerns of the Consumer Advocate and CAP. We believe that it is imperative that the Company make sufficient expenditures to ensure its continuing ability to provide service. The evidence indicates that those expenditures are particularly important in the areas of fuel procurement. We are also concerned about the Company's decision to suspend work on conversion of Schiller Station from oil-burning to coal-burning. That conversion was being accomplished pursuant to a Commission Order. While the practicalities of the Company's financial difficulties may be cause enough to affect the timing of compliance with a Commission Order, they are not sufficient cause for the Company to unilaterally choose to disregard a Commission Order.

Having stated our concerns, we are left to determine whether it is proper to act on those concerns in the context of this docket. After review, we have concluded that the effect of the Company's financial difficulties on its continuing ability to provide safe and reliable service is more appropriately addressed in separate dockets. Thus, we will confine our analysis in this docket to the issue of whether the

Company's proposed financing is in the public good.1(75)

The Commission will, as is our customary practice, reserve jurisdiction to approve the final terms of the issue and sale of the Notes, including the principal amount, term, purchase price and rate of interest thereof.

Based upon all of the evidence, the Commission finds that the proceeds from the proposed financing will be used for proper corporate purposes.

The approval of these proceeds from the issuance of the Notes is not to be construed as an advance approval for the prudency of any investment. Issues pertaining to prudency will be addressed at such time as any cost is requested to be passed on to the ratepayers.2(76)

Upon investigation and consideration of the evidence submitted, the Commission is of the opinion that the granting of the authorization and approval sought will be consistent with the public good.

3(77)

Our Order will issue accordingly.

Concurring Opinion of Commissioner Lea H. Aeschliman

I agree with and adopt the views of the other Commissioners as contained in the Commissioner's Report. However, I believe it is important to state several additional considerations which have affected my decision.

Both limited intervenors and parties requesting full intervention have urged the Commission to consider in this docket the effect that completion or abandonment of Seabrook I will have upon ratepayers. The Commission is asked repeatedly at what point does the Commission balance the interest of the ratepayers with the interest of the Company (RSA 363:17-a).[1(78)] While I believe that this docket is not the place to consider the effect of the Seabrook investment on rates, the issue is of such importance that the question

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of when and how this issue should be addressed deserves further explanation.

The Supreme Court indicated in Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 51 PUR4th 298, 454 A2d 435, that the proper time for the Public Utilities Commission to determine what costs associated with Seabrook are to be borne by consumers and what costs are to be borne by investors was when the Company sought to recover its Seabrook costs through rates. It was contemplated that this prudency determination would be made following a properly noticed hearing before this Commission when the plant was completed. The Newbrook proposal may substantially affect the nature and timing of the proceeding contemplated, including whether it would be removed from this Commission's jurisdiction, and may result in other proceedings before this Commission that were not contemplated by the Supreme Court. While it is clear that the Commission is not approving the Newbrook plan in this proceeding, the Company has characterized this financing as the first piece in moving toward accomplishment of that plan. Given this situation, I think it is essential at the outset to begin to articulate the major questions which I feel must be addressed.

Although the Newbrook structure has not yet been finalized, the Company witnesses and Counsel indicate that the Newbrook plan will at least require a financing proceeding at which time the Commission will be asked to approve up front the total amount of PSNH's share to complete the project. (Trans. p. 175) In addition, the Newbrook plan appears to require a proceeding pursuant to RSA 374:30, which may involve both contracts surrendering control of operations and transferring assets to a new entity. (Trans. p. 173)

The question raised by the prospective Newbrook financing is whether a request to approve up front PSNH's total share of the project makes this proceeding substantively different from other financing proceedings. The Court has held that the Commission in determining the public good in a financing proceeding must be concerned with overcapitalization and with the Company's ability to provide service at reasonable rates at the level of capitalization proposed. Re New Hampshire Gas & E. Co. (1936) 88 NH 50, 57, 16 PUR NS 322, 184 Atl 602. This responsibility of the Commission has not been affected by Appeal of PSNH. Yet, how does the Commission reconcile this responsibility with the Court's ruling that (122 NH at p. 1076, 51

PUR4th at p. 306):

Thus, while management in the first instance may be free generally to make its own decisions about its level of investment in new construction, ... it must bear in mind that as a regulated company not all costs may be recovered from the public when the plant is completed. (Emphasis in the original.)

A proceeding pursuant to RSA 374:30 also raises difficult questions. What standards should the Commission apply in determining the public good question? Is the value of assets to be transferred a question of fact for the Commission to determine? Is management prudence a question that must be considered in determining the value of assets to be transferred?

I raise these questions at this time because PSNH's situation and the Newbrook proposal pose issues that are not only unique but are of such overriding importance to the ratepayers and the State of New Hampshire, that they deserve full public

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discussion and consideration. In view of this, I believe the parties should have as much time as possible to develop these issues, as well as to formulate whatever additional issues they believe are important.

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 one hundred thirty-five million dollars ($135,000,000) in aggregate principal amount of its notes payable less than twelve months after the date thereof 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 principal amount, term, purchase price and rate of interest of said Notes, following which a Supplemental Order will issue approving 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 the proceeds from the sale of the Notes shall be used for the purposes stated in the report; and it is

FURTHER ORDERED, that on July first and January 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 the Notes 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 first day of June, 1984.

FOOTNOTES

[1]Our decision to limit the scope of this docket to financing issues should not be taken as

disregard for the concerns pertinent to the Company's continuing ability to provide service. As a result of inter alia information developed in this docket, we believe that an immediate investigation is warranted. Accordingly, Orders of Notice are being issued this day opening dockets and scheduling hearings for June 6, 1984 for the purpose of determining inter alia how funds, including the proceeds of the proposed financing, should be directed to ensure that the Company continues to meet its obligations as a public utility.

[2]In this context, PSNH stated that the proposed financing would have no impact on the Company's revenue requirement because short term debt is not included in its capital structure. See e.g., Exh. 3, Response 23. The Commission relied on this representation in its evaluation of all issues arising in this docket. While the Company is certainly free to seek to include short term debt in its capital structure at some future time, we believe that we must fairly provide notice of our reliance on its noninclusion in capital structure in our evaluation of the instant Petition.

[3]ALthough the Petition was framed in terms of a request for supplemental authority, the Commission intends its findings to be broad enough to encompass any authority needed to go forward with the proposed transaction (with the exception of our reserved jurisdiction to approve the final terms of the issue and sale of the Notes). It is necessary to state this because of the Company's reliance on our Order No. 14,854, Re Public Service Co. of New Hampshire (1981) 66 NH PUC 151 as the source of its original authorization. See e.g., Petition at 2; Exh. 1 at 1-2. However, review of Order No. 14,854 reveals that the Commission ordered "... that interest on bank borrowings will be at the prime rate or a rate or rates based on the prime rate." 66 NH PUC at p. 153. Since the proposed notes will not be issued at the prime rate or at a rate or rates based on the prime rate (Tr. at 124-125), we cannot be certain whether Order No. 14,854 grants the authority relied upon by the Company. Nor is it clear whether such authority may be independently derived from RSA 369:7. In any event, such clarity is unnecessary because of the authority granted in this Order.

Concurring Opinion of Commissioner
Lea H. Aeschliman

[1]The issue of the effect of the particular interest rate on the $135,000,000 in notes approved in this proceeding is addressed on p. 279, supra.

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NH.PUC*06/04/84*[61427]*69 NH PUC 281*Continental Telephone Company of Maine

[Go to End of 61427]

69 NH PUC 281

Re Continental Telephone Company of Maine

DR 84-64,
Supplemental Order No. 17,058

New Hampshire Public Utilities Commission

June 4, 1984

Petition for authority to increase certain telephone rates and charges; granted as modified.

Payment, § 53 — Penalties — Late payment charges — Bad check charges.

Telephone rates approved by a neighboring state commission were adjusted to conform to New Hampshire statutes so that late payment charges would apply only to

nonresidential bills and bad check charges would be limited to $5 or 5 per cent of face value. [1] p.282.

Rates, § 532 — Telephone — Maintenance charges — Basis.

Telephone maintenance visit charges were ordered to be billed on a time and materials basis. [2] p.282.

By the COMMISSION:

REPORT

Continental Telephone Company of Maine (CONTEL or Company) provides telephone service in both Maine and New Hampshire. In Maine it has some 32,000 customers in 46 exchanges, and in New Hampshire about 200 customers in two exchanges. Customarily, when the Company finds it necessary to apply for a rate increase, it first files with the Maine Public Utilities Commission (Main PUC) for a rate increase there. Once a rate hike is secured in Maine, CONTEL then petitions this Commission for rate increases for its two New Hampshire exchanges— Chatham and East Conway. For many years it was our practice to accept the extensive efforts of the Maine PUC and allow the results of its decision to apply to the two New Hampshire exchanges. Only in recent years have there been areas of disagreement.[1](79)

In the instant case the rates proposed for local service by CONTEL are similar to those of other New Hampshire jurisdictions, and in some cases even lower. Rental rates for Customer Premises Equipment previously were far lower than other companies' rates, and this filing brings those more realistically into line. With these facts in mind, and given that the increase amounts to about $3,800, we find it is in the best interest of the ratepayer to avoid extensive litigation and accompanying rate case expense. Accordingly, we will accept the rates proposed for local service and equipment rental.

[1] We do however take exceptions to some portions of the Maine PUC decision. One of these is the provision for a late-payment charge. CONTEL proposes (Section 2, Third Revised Sheet 8) a new 1% late-payment charge to be levied should a bill remain unpaid 30 days following the postmark of the bill. By omission, it indicates that such would apply to all customers. This is in direct conflict with Commission Rule PUC 403.06(b)(2)d which authorizes such charges for "nonresidential bills". This same section of the CONTEL filing also contains inappropriate references to rules of the Maine PUC, and another conflict with Commission rules

which had been overlooked in an earlier docket (DR 81-126 [(1981) 66 NH PUC 189]). That conflict involves a $15.00 bad check charge in lieu of the "$5.00 or 5% of face value" specified in the rules. In order that its tariff comply with Commission rules, CONTEL is therefore directed to file its Fourth Revised Sheet 8 in lieu of the third revision which is rejected. Our rejection of the late-payment and bad check charges does not preclude CONTEL from petitioning the Commission for a rule change, should it find these inadequate.

[2] CONTEL proposes changing the rate at which it bills a customer for a "Maintenance Visit Charge" when the problem originated in customer-provided equipment. Previously, this had been set at $15.00 for the first half-hour and $10.00 for each additional half-hour or fraction thereof. With such activity deregulated,

the Company now seeks to specify that such service will be on a time-andmaterials basis. The Commission finds such acceptable.

With the exceptions noted, the Commission will accept this filing. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED that the following revisions to Continental Telephone Company of Maine tariff, NHPUC No. 4 - Telephone, be, and hereby are, approved for effect with the first billing cycle following the date of this Order—

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

Section   4 — 3rd Revised Sheet  2
   6th "    "  3
   7th "    "  4
"   5 — 4th " Sheets 16, 18-20
   5th "    "  9, 14, 23
   6th " Sheet 11
   7th " Contents
"   6 — 5th " Sheet 5
"   8  3rd "    "  7
   4th "    "  8
" 100    Original Sheets 4-7
     2nd Revised Sheet 3;
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and it is

FURTHER ORDERED, that Section 2, 3rd Revised Sheet 8 of the cited tariff be, and hereby is, rejected; and it is

FURTHER ORDERED, that CONTEL file 4th Revised Sheet 8 of Section 2, said revision issued in lieu of that hereby rejected, to reflect terms cited in the accompanying Report; and it is

FURTHER ORDERED, that one-time public notice of the impact of this Order be given affected customers by bill insert.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1984.

FOOTNOTE

[1]Examples are the New Hampshire elimination of mileage charges on local service rates and the rejection of a 20 coin rate.

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69 NH PUC 283

Re New Hampshire Electric Cooperative, Inc.

DF 83-360,
Third Supplemental Order No. 17,060

New Hampshire Public Utilities Commission

June 4, 1984

Order establishing a docket to reconsider the purposes of approved additional financing.

Security Issues, § 58 — Purposes — Additions and betterments — Substitute projects — Reconsideration.

Where an electric cooperative informed the commission that changing circumstances required approved additional financing be used to substitute ownership interests in certain projects for other projects that had been the original subject of the financing request, the commission found that it should reconsider the financing to see if the substituted projects were in the public interest like the originally specified projects had been found to be.

(Aeschliman, commissioner, dissents, p.284.)

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By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Report and Supplemental Order No. 16,915 ([1984] 68 NH PUC 137) ("Decision") inter alia approved the request of the New Hampshire Electric Cooperative, Inc. ("Co-op") for authority to borrow $111,000,000 as set forth in the Co-op's Petition for such authority filed November 18, 1983; and

WHEREAS, the Decision was based inter alia on the statements contained in Paragraphs 6, 7

and 8 of the aforementioned Petition which represented inter alia that the proceeds of the proposed borrowing would be used to enable the Co-op to continue to finance its interest in the two Seabrook Units; and

WHEREAS, the Commission received a letter dated May 25, 1984 ("letter") from the Co-op's counsel advising the Commission inter alia of "the rapidly changing circumstances and New Hampshire Electric Cooperative's involvement in the same as they relate to the Public Service Company and the Seabrook construction"; and

WHEREAS, the letter stated that the rapidly changing circumstances included inter alia an allocation of $57 million of the proposed financing for the purpose of "... a 38 megawatt ownership interest in Yankee projects with certain further obligations that relate to the substitution of interest in Millstone Unit III for Seabrook Unit I"; and

WHEREAS, the above stated proposal is materially different than the one presented to the Commission in the Co-op's proposal; and

WHEREAS, there is a need to develop further record information to determine whether the proposed financing continues to be consistent with the public good in conformity with the applicable provisions of RSA Chapter 369; it is therefore

ORDERED, that the New Hampshire Electric Cooperative, Inc. file an amended Petition in this docket no later than June 22, 1984, which Petition should reflect the circumstances that exist on the filing date; and it is

FURTHER ORDERED, that the Co-op shall submit prefiled testimony and exhibits on the amended Petition no later than June 22, 1984; and it is

FURTHER ORDERED, that all other parties may submit prefiled testimony and exhibits on the amended Petition no later than June 29, 1984; and it is

FURTHER ORDERED, that hearings on the amended Petition shall be scheduled for ten o'clock in the forenoon on July 9 and 10, 1984 at the Commission's offices, 8 Old Suncook Road, Concord, New Hampshire; and it is

FURTHER ORDERED, that a copy of this Order be served on all parties along with a copy of the Co-op's letter of May 25, 1984.

By Order of the Public Utilities Commission of New Hampshire this fourth day of June, 1984.

Dissenting Opinion of Commissioner Aeschliman

I dissented from Report and Supplemental Order No. 16,915 for the reasons set forth in my separate opinion attached to that document. There has not been any formally submitted new information which has caused me to re-evaluate my analysis. However, inasmuch as the parties have followed the proper judicial review procedure under RSA Chapter 541, I do not believe it is appropriate for the Commission to undertake on its own motion a reconsideration of that decision

at this time. The Cooperative's letter of May 25, 1984 was submitted for informa- tional purposes only and, accordingly, should not be construed as either formal notification of changed circumstances or a formal request for Commission action. That letter only indicated that circumstances are continuing to change rapidly. It may be appropriate to review a new proposal if and when it is formulated and submitted to the Commission. At this time, however, I believe it is premature for the Commission to be the moving party.

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THE NEW YORK TIMES, THURSDAY, MAY 24, 1984 COMPANY NEWS

Details of Seabrook Rescue Bid

Exchange of Power Involved

BY MATTHEW L. WALD

The Federal Government has agreed to back a new deal that will help save the troubled Seabrook nuclear project because the revised arrangement will leave the New Hampshire Electric Cooperative with a valuable part of an operating nuclear plant no matter what the fate of Seabrook, according to the Rural Electrification Administration.

Under the plan, which was described yesterday at a meeting of the 16 partners in the project, the cooperative will pay the Public Service Company of New Hampshire, the main Seabrook builder, $57 million that the company needs to convince investors that it can pay interest on new loans. In exchange, Public Service will give the cooperative 38 megawatts of power from its holdings in existing nuclear plants, probably Maine Yankee, a 12-year-old reactor in Wiscasset, Me.

This deal is in addition to the co-op's 2.2 percent ownership of Seabrook 1. The R.E.A. is already backing the co-op's participation in the Seabrook project, the co-op, like Public Service's other 14 partners, is in danger of losing its investment if Public Service is forced into

bankruptcy. Public Service is almost completely out of cash and is counting on the completion of a new financing package for Seabrook to allow it to return to the credit markets.

The $57 million would be part of that package. The new financing plan, which is being developed by Robert G. Hildreth Jr., the managing director of the investment banking division of Merrill Lynch Capital Markets, calls for an effort by a new joint entity, called Newbrook, to borrow this summer and fall all the money that will be needed to complete construction of Seabrook 1, and cover financing costs through completion, ending fears by investors that the collapse of one partner could destroy the project.

The $57 million would be a reserve to pay an additional 18 months of interest on Public Service's share of the new financing. Public Service owns 35.6 percent of the project, and managed its construction until last month, when it unilaterally laid off most of the workers and relinquished control, saying it was out of money.

Seabrook 2, on which work was halted last year, is not covered by the new financing plan.

The deal between Public Service and the cooperative is a relatively simple part of the financing package.

"It's a straight sale," said Frank Naylor, an Under Secretary in the Department of Agriculture, of which the R.E.A. is a part. "As the banker, we feel assured that this is a very reasonable price for the power," he said.

The price comes to $1,500 per kilowatt of capacity. In contrast, if Seabrook 1 can be finished for the current estimate of $4.1 billion, it would cost about $3,600 per kilowatt of capacity.

The arrangement, which is subject to the approval of the New Hampshire Public Utilities Commission and possibly the Federal Energy Regulatory Commission, as well as various private parties, replaces an earlier proposal under which the cooperative would have promised investors that it would bear the interest payments on Public Service bonds for up to 18 months, if Public Service could not.

In exchange, the co-op would have received one kilowatt of extra power from Seabrook 1 for each $1,500 it paid out. If it had paid out nothing, it would have received no extra power.

No Contingency Clauses

The R.E.A., the co-op's banker, balked at approving that arrangement, however, according to Mr. Hildreth, who it putting together the rescue package for Seabrook. He has had the cooperation of all the partners, who together have invested $2.7 billion in Seabrook 1 and who stand to lose nearly all of that unless the plant can be finished, at an additional cost of perhaps $1.4 billion.

The new arrangement does not involve any contingency clauses about Public Service's ability to pay; the $57 million transaction would take place as soon as regulatory approvals can be obtained. The two parties have signed a letter of intent to proceed with the deal, Mr. Hildreth said in a telephone interview from Westborough, Mass., where the Seabrook partners were meeting.

According to Mr. Hildreth, a clause in the letter of intent would allow Public Service to reclaim its 38 megawatts of Maine Yankee or another older plant by swapping it for an equal

share of Seabrook 1 after the Seabrook plant is finished.

He said that the clause allowing the swap might make the deal more palatable to Public Service's partners in Maine Yankee, who must approve the arrangement. In addition, he said, 38 megawatts of Maine Yankee might prove to be more valuable than 38 megawatts of Seabrook 1, because the former might have lower operating expenses.

Maine Yankee, which has a license to operate until 2008, cost $250 million to build, or $300 a kilowatt — less than a tenth the estimated cost of Seabrook — according to a spokesman for the plant, Donald Vigue. It produced power last year at about 2.5 cents per kilowatt-hour. By comparison, other New England utilities reported that their oil-fired generators cost 6 to 7 cents per kilowatthour.

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The New Hampshire Electric Cooperative, with 45,000 customers around the state, owns no generating capacity and gets 85 percent of its supply from Public Service. On average, it pays 5.5 cents per kilowatt-hour for power. The new supply of power at 2.5 cents per kilowatt-hour will not cut rates, but will soften the rate increase that will be required by the completion of Seabrook 1, according to Maurice Muzzey, an official of the cooperative.

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NH.PUC*06/04/84*[61429]*69 NH PUC 291*Gas Service, Inc.

[Go to End of 61429]

69 NH PUC 291

Re Gas Service, Inc.

Intervenors: Community Action Program and Office of Consumer Advocate

DR 83-345,
Supplemental Order No. 17,061

New Hampshire Public Utilities Commission

June 4, 1984

Order rejecting the use of an incentive rate of return adjustment for management efficiency.

Return, § 36 — Factors — Management efficiency — Incentive rate of return.

It is improper to allow an incentive rate of return adjustment as a reward for efficient management because a utility has a duty to operate efficiently and it should not be rewarded for what it is supposed to do anyway.

(Aeschliman, commissioner, concurs, p. 294.)

APPEARANCES: Charles H. Toll, Jr., Esquire for the Petitioner; Gerald Eaton, Esquire for the Community Action Program; Michael Holmes, Esquire for the Consumer Advocate; and Larry Smukler, Esquire for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

This proceeding originated with the filing by the Company on December 20, 1983, of revised tariff pages to its Tariff NHPUC No. 6 - Gas (the "revised tariff pages") setting forth basic rates (the "proposed basic rates") designed to produce additional annual gross revenues of $2,224,258 or 8.38% (before adjusting for the effect of the Utility Franchise Tax) effective with bills rendered on or after January 19, 1984. By Order No. 16,843 dated January 6, 1984, the Commission suspended the revised tariff pages pending investigation and decision thereon. On December 30, 1983, the Company filed a Petition for Temporary Rates pursuant to RSA 378:27 requesting temporary rates sufficient to produce additional annual gross revenues of not less than $1,486,991. After due notice, a hearing on temporary rates and procedural matters was held on January 25, 1984 at which the Consumer Advocate appeared and the Commission granted the unopposed motion to intervene filed by the

Community Action Program ("CAP"). By Report and Supplemental Order No. 16,882 dated January 27, 1984 (69 NH PUC 49), the Commission (1) approved temporary rates for the Company designed to produce $1,236,568 of additional revenue (before adjusting for the effect of the Utility Franchise Tax) effective with bills rendered or on after March 1, 1984, per the proposed rate structure, (2) confirmed its granting of the CAP motion to intervene and (3) adopted a procedural schedule providing for a hearing on the merits on May 15 and 16, 1984.

During January, February and March, 1984, the Staff and the CAP made data requests to which the Company duly responded and the Staff conducted a field audit of the Company's books and records with respect to the Company's request for permanent rate relief.

During the weeks beginning March 11, April 8, and April 29, 1984, representatives of and attorneys for the parties held meetings to discuss the issues involved in the proceedings, including the extent of the need for permanent basic rate relief. The result of said meetings was a stipulation Agreement, which was submitted to the Commission and fully explained during the course of the May 16, 1984 Commission hearing.

For purposes of explaining the Agreement, the Company provided two witnesses; Mr. Mancini and Mr. Jackson; while the NHPUC also provided two witnesses; Dr. Kraemer and Mr. Traum.

Said Agreement was marked as Staff Exhibit 1, and some of the highlights of said Agreement are as follows:

a) The agreed upon rate increase after adjusting for the effect of Franchise Tax is $1,345,471.

b) The agreed upon allowed return on common equity was 15.50%.

c) The agreed upon overall rate of return was 13.48%.

d) No attrition allowance was included, but provision was made for a step adjustment.[1(80)]

e) Rate base, as agreed upon, utilized a 13 month average formula approach, with non-revenue producing assets (and depreciation thereon) calculated through February 29, 1984 (coinciding with the effective date of temporary rates), and the remaining fixed assets calculated through the end of the test year.

f) No change in rate design was proposed, but simply a proportional increase to the customer charge and usage blocks.

g) The revenue shortfall between the temporary and herein proposed permanent rates would be recouped during a period ending with and including the Company's October, 1984 billing cycle.

h) A step adjustment was proposed for effect on the Company's permanent rates with the bills rendered on or after March 1, 1985.

i) The step adjustment was proposed to cover items such as wages, fringe benefits, liability insurance, property taxes, PUC assessment tax, uncollectible accounts expense, electricity, depreciation relating to nonrevenue producing assets, ENI allocation factor, prior rate case expense, telephone installation expense, rate base adjustment for non-revenue producing asset update and corresponding depreciation reserve, and recognition as of September 30, 1984 of new capital infusions or changes

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in the cost of capital while maintaining the allowed return on common equity of 15.5%.

j)Thermal billing will be instituted in the near future by the utility, with revenue recognition of such commencing November 1, 1985, unless a rate case is filed by January 1, 1986.

k) The agreement was conditional upon the Commission accepting it in its entirety, and would not costitute continuing approval of or precedent regarding any particular principle or issue in this proceeding.

l) Working capital in the agreement was calculated upon the 45-day method adjusted for fuel costs.

m) The agreement didn't include the Company's proposed revenue erosion adjustment.

n) The agreement adjusted many test year operating expenses and correspondingly, income taxes.

Although the members of the Commission agree with the level of revenue required by the Company in the stipulation of agreement, there is sharp disagreement to the method employed in reaching item (b) above.

The Company presented Mr. Jackson, an economist who calculated the proper return on equity as 16.9% to 17.5%. The Staff economist, Dr. Kraemer, calculated the proper return on equity as 15%. The parties could not resolve the issue and apparently in an effort to move forward, the Staff recommended an adjustment of .50 basis points as an incentive reward for the

Company's management of its safety program. The recommendation increased Staff calculation for an allowed return on common equity to 15.5% which is acceptable to the Company for the revenue deficiency calculation.

The use of an incentive adjustment for management efficiency and operation requires some analysis by the Commission. A decision should be reached as to whether it is in the public good that efficiency of operation and management should be recognized as a factor in determining a proper return allowance.

A fundamental principle that deals with rates should be reviewed. A public utility must operate on the most economical basis consistent with good service and sound finance. Such a company has a duty to operate so as to give consumers the most favorable rates reasonably possible. A utility company bears a trust relationship to its customers and must conduct its operations on that basis and not as if it were engaged in a private business with no restrictions as to the income it could earn. See Ruling Principles of Utility Regulation — Rate of Return Supplement A, Nichols and Welch, page 303.

The utility company has an independent duty to operate efficiently and it makes no sense to reward the company for doing what it is supposed to do anyway.

There is no correlation between a gas utility managing its compliance with the National Gas Safety Pipeline Act and an adjustment to the proper allowance for the return on common equity. Compliance with the safety requirements of the federal act is mandatory. Compliance should not be treated with a carrot and stick approach, since it is required and subject to penalties for non-compliance. An incentive adjustment is an unnecessary expense and burden on ratepayers. It should be stopped immediately.

The Commission recognizes that many jurisdictions approve and encourage the use of adjustments in recognition of management efficiency. For the reasons expressed above, we do not approve of the practice. However, if the practice is

utilized, it should only be employed with proper standards and guidelines set through the rulemaking process. Then all utilities will be treated alike and not subject to the whim or discretion of the presiding commissioners or present composition of the Commission. Without such protection, the ratepayers suffer from an abuse of discretion.

Having expressed our views concerning the rationale behind item (b) above, we set forth that we accept the testimony of Mr. Jackson and fix an allowed rate of return on common equity at the level of 15.5%.

The Commission finds the agreement executed by the parties to be in the public good. The Commission further finds the rates necessary to achieve the revenue requirement as fair and reasonable. The Company is directed to file the necessary tariff pages to comply therewith.

Our Order will issue accordingly.

In conclusion, the Commission will take this opportunity to thank all parties involved in developing the Stipulation Agreement.

SUPPLEMENTAL ORDER

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

ORDERED, that Gas Service, Inc. shall file tariff pages to recover additional permanent annual revenues of $1,345,471 (after adjusting for the effect of the utility franchise tax), effective with bills rendered on or after June 1, 1984, in accordance with the provisions of the foregoing Report; and it is

FURTHER ORDERED, that the Company shall file tariff pages to recover through a temporary rate surcharge the temporary rate revenue deficency; and it is

FURTHER ORDERED, that public notice of this decision shall be given by one-time publication in newspaper having general circulation in the territories served.

By Order the Public Utilities Commission of New Hampshire this fourth day of June, 1984.

CONCURRING OPINION OF COMMISSIONER AESCHLIMAN

I have reviewed the settlement agreement submitted by the parties as well as the record support of the terms contained in that agreement. I concur in the conclusion that the rates recommended in the settlement agreement and the components thereof are just and reasonable. However, I believe that it is important for me to be explicit about the basis of my conclusion as it relates to the rate of return on equity.

The settlement agreement provides for an allowed rate of return on equity of 15.5%. The record reflects that the staff analysis would not support an equity return based on cost which would exceed 15%. The staff added .5% to the cost as an incentive for Gas Service Inc.'s ("Company") exemplary gas safety program. In particular, the staff allowed the Company's investors to retain a portion of the savings to ratepayers from reductions in lost and unaccounted for gas resulting from the safety program.

I agree with the staff analysis and, for that reason, I would not have accepted an allowed return on equity of 15.5% in the absence of the gas safety incentives. It has long been my view that rates should not be established on the basis of a particular cost plus formula. Regulatory authorities must make judgements based on record evidence about whether management is efficiently engaging in utility operations. It is appropriate for

favorable or unfavorable judgements to be reflected in the equity component of rate of return either as an incentive or as a penalty to the utility's equity investors. See, e.g., my dissent in Re Public Service Co. of New Hampshire (1984) 69 NH PUC 67, 93, 97-100, 57 PUR4th 563, 588, 593-595. See also, Stelzer, Irwin M., Electric Utilities in the Near-Term Future: A Hard Look, 13th Southwest Electric Conference, March 26, 1984 at 15-20. In this instance, I find the record support of an exemplary gas safety program persuasive and, accordingly, I believe that an incentive of .5% is appropriate.

FOOTNOTE

[1]The Commission notes that any step adjustment is not simply reviewed according to the formula laid out in the step wording, but also the reasonableness and prudency of the inputs are analyzed.

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NH.PUC*06/04/84*[61430]*69 NH PUC 295*Public Service Company of New Hampshire

[Go to End of 61430]

69 NH PUC 295

Re Public Service Company of New Hampshire

Intervenors: Community Action Program and Volunteers Organized in Community Education

DR 82-333 — Part B,
15th Supplemental Order No. 17,062

New Hampshire Public Utilities Commission

June 4, 1984

Order instituting a pilot lifeline rate program.

Rates, § 125 — Electric — Lifeline rates.

Approval was given to a pilot program for lifeline rates for certain eligible and certified low-income residential customers modeled on an electric utility's current energy assistance and weatherization programs.

(Aeschliman, commissioner, separate opinion, p. 299.)

APPEARANCES: Martin L. Gross, Esquire for Public Service Company of New Hampshire; Gerald Eaton, Esquire for Community Action Program (CAP); Alan Linder, Esquire of New Hampshire Legal Assistance for VOICE; Larry Smukler, Esquire for Public Utilities Commission Staff.

By the COMMISSION:

REPORT

By Order No. 16,885 dated January 30, 1984, the Commission granted leave to Public Service Company of New Hampshire (PSNH) to prepare and present a pilot program for targeted lifeline rates which would produce experience generated data, as well as appropriately allocate the function of identifying eligible recipients.

The background of this proceeding flows from Order No. 16,356 ([1983] 68 NH PUC 216) and Order No. 16,461 ([1983] 68 NH PUC 392) entered in Docket No. DP 80-260, Lifeline

Rates. The Commission directed PSNH to file on or

before July 1, 1983, revised tariff pages implementing lifeline rates in conformance with the standards set forth in Order No. 16,356 ([1983] 68 NH PUC 216), for effect August 1, 1983. PSNH complied, under protest, and submitted tariff pages revising portions of its Tariff NHPUC No. 28 which PSNH placed in effect under bond as of August 1, 1983, pursuant to RSA 378:6. In the Report accompanying the commission's procedural order in this Docket (Order No. 16,471 [1983] 68 NH PUC 407), the Commission directed that Part B of this Docket address issues related to rate structure.

In the Report accompanying Order No. 16,460 in Docket No. DP 80-260 ([1983] 68 NH PUC 389, 391 Footnote 1), Lifeline Rates, while denying PSNH's motion for rehearing to the extent it pertained to implementation of standards already adopted by the Commission for lifeline rates, the Commission noted that the issue of implementation "could be incorporated into an ongoing ratemaking proceeding such as DR 82-333."

In Report and Order No. 16,543 ([1983] 68 NH PUC 489), the Commission granted the Company's motion to include the lifeline implementation issues in this proceeding (Docket No. DR 82-333 [(1983) 68 NH PUC 407], Part B) and permitted PSNH to include materials addressing that issue in Part B.

Pursuant to the Report accompanying Order No. 16,885 ([1984] 69 NH PUC 67, 57 PUR4th 563), Tariff NHPUC No. 29 - Electricity - Public Service Company of New Hampshire, Supplement No. 1, Residential Service, Targeted Lifeline Rate D-TL, Pilot Program, Original Pages 1, 2, 3, 4 and 5, effective June 1, 1984, was filed with the Commission on April 17, 1984.

The rationale for a targeted lifeline rate is that generally the Commission believes that it will be vitally important to provide meaningful assistance to the truly needy to help them cope with high electric bills. Meaningful and substantial assistance to the truly needy can only be accomplished through a targeted lifeline rate.

The objective of the pilot program is set forth in the Report accompanying Order No. 16,885, wherein the Commission established the following policy (69 NH PUC at p. 90, 57 PUR4th at p. 586):

We are convinced that there are good reasons to consider seriously a targeted lifeline program. We believe that such a program can mitigate the hardship of electric utility rates for certain needy customers. We believe it is proper to state plainly that we will be engaging in a program of "social" ratemaking which may vary from traditional concepts in recognition of the proposed costs that will soon confront consumers.

Based on the above rationale, the Commission granted leave to PSNH to develop a pilot targeted lifeline program with the following objectives:

(a) Develop data based on actual experience in order to aid in the planning for the ultimate implementation of a system-wide targeted rate at the appropriate time; and

(b) Determine and demonstrate whether the identification function is best performed by a

government agency or private organization.

The purpose of the pilot targeted program is that PSNH is to demonstrate that it will be possible for the Company to implement a simple, efficient, and economical system-wide targeted lifeline program, and to demonstrate that the

Page 296

Community Action Program (CAP) as a private agency under the overall direction in this program of the Division of Human Resources (DHR), can best perform the function of identifying the Company's truly needy customers. An "initial identification period' will take place from June 1 (or as soon thereafter as possible) to September 30, 1984.

At some appropriate point, a petition will be made by PSNH to seek approval from the Public Utilities Commission for the implementation of the system-wide program.

The AVAILABILITY provision of this proposed rate states that Rate D-TL is available only to those customers who are identified and certified as eligible for participation in the Targeted Lifeline Rate Pilot Program.

The ELIGIBILITY provision specifies that service under proposed Rate D-TL is available to only those customers who are identified and certified as eligible for participation in the Targeted Lifeline Rate Pilot Program in accordance with the following criteria:

(1) Eligible customers must be certified as income-eligible by the Division of Human Resources of the State of New Hampshire and the Community Action Agency in accordance with the Targeted Lifeline Rate Pilot Program approved by the New Hampshire Public Utilities Commission, and

(2) Eligible customers must receive service under this rate at a principal residence located in a limited area consisting of the City of Nashua and the Towns of Hudson, Hollis, Brookline, Milford and Wilton.

Customers will be deemed to be eligible by CAP if their income is less than 150 percent of the Federal Poverty Income Guideline.

The RATE PER MONTH provision of proposed Rate D-TL contains the following rate design:

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

Customer Charge $3.00 per month
Energy Charges: Per Kilowatt-Hour
 First 250 Kilowatt-hours  4.583
 Next 250 kilowatt-hours 10.198
 Next 300 kilowatt-hours 10.698
 All additional kilowatt-hours  9.194
```

This rate design was suggested to PSNH by the Economics Department Staff of the Commission and provides the rationale underlying the proposed rate design. PSNH believes that the proposed rate design is appropriate, at least for the pilot program.

All other provisions of Rate D-TL, including water heating and space heating rates, are identical to those contained in Residential Service Standard Rate D.

During the pilot program the amount of benefit received by a customer using 400 KWH will be approximately $10 per month. (Typical residential power and light use is about 400 KWH per month.)

Increased expenses consisting of payments to DHR for coordinating the identification and certification function, will be incurred by PSNH as a result of implementing Rate D-TL. Upon approval by the Commission of the proposed pilot program, PSNH, DHR and CAP will negotiate a fee for reimbursement for performing the identification function during the pilot program. One item of data to be generated by the pilot program will be the amount of "incremental cost" incurred and billed to PSNH for performing the identification function during the permanent, system-wide program.

The revenue deficiency resulting from the lower bills received by customers

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taking service under Rate D-TL is estimated to be as much as $50,000 per month.

In an overall relative sense, the amounts associated with increased expense and lost revenue can be expected to be small for the pilot program. Moreover, they are not susceptible of measurement at this time and, in fact, would be even difficult to accurately estimate. Nevertheless, in light of the Company's current financial circumstances, these expenses and lost revenue must be recovered by the Company in a timely manner.

The petitioner presented Witnesses James Rodier, Joan E. Rinker and Shannon Nolin and Tess Petix in support of the petition. The testimony supports the position of the Company that it is in the public interest to develop a pilot program to gain sufficient data and experience to enable PSNH and CAP to determine if the program should be implemented on a state-wide basis. Public comments were received, including comments from the Governor, People's Alliance and members of the public. The present pilot program will take place only in the following cities and towns in the Nashua and Milford districts of Public Service Company of New Hampshire: Hollis, Hudson, Milford, Brookline, Wilton and Nashua.

The pilot program is designed to work in a similar fashion to the way the lowincome energy assistance and weatherization program are operated. The Department of Human Resources will administer the program with the Community Action Program utilized to identify eligible recipients and PSNH to

deliver the electric service.

The Department of Human Resources, being a State Agency, is in a position to monitor the uniformity of service if the targeted lifeline rates are offered on a state-wide basis in the future, as well as monitor the performance of CAP as it presently does with its Energy Assistance and Weatherization Program.

VOICE, an intervenor, raised the following concerns: revenue recovery should extend to all customer classes, including commercial and industrial customers; flexible guidelines for eligibility; outreach efforts be required to reach the maximum number of ratepayers who qualify; duration of test period to be at least one year; a possible cap on administrative costs; proper

monitoring and recordkeeping and lifeline rate and structure.

The Commission has reviewed the petition, testimony and documents submitted by the petitioner, the Community Action Program and the Department of Human Resources along with the testimony of the witnesses presented by VOICE and the comments submitted.

Upon consideration of the above, the Commission finds it is in the public interest to allow a pilot program to be implemented for a targeted lifeline rate to qualified recipients as set forth in the petition. The Company is directed to have a conference with all of the parties in this docket to develop a proper monitoring and record system as soon as possible. The proposed tariff upon approval of the Commission shall be effective on June 1, 1984 for bills rendered on or after July 1, 1984.

SUPPLEMENTAL ORDER

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

ORDERED, that the targeted lifeline pilot program be implemented as set forth in the petition; and it is

FURTHER ORDERED, that Tariff NHPUC No. 29 - Electricity - Public Service Company of New Hampshire, Supplement No. 1, Residential Service,

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Targeted Lifeline Rate D-TL, Pilot Program, Original Pages 1, 2, 3, 4 and 5, effective June 1, 1984 is approved; and it is

FURTHER ORDERED, that the parties in this proceeding schedule a conference as soon as possible to discuss and agree to the following:

a) specific amendments or deletions to the eligibility criteria submitted by Community Action Program; b) a proper monitoring and recordkeeping system; and c) in the event that an agreement cannot be reached, the parties shall report to the Executive Director who will then schedule a hearing to reach a final disposition.

By Order of the Public Utilities Commission of New Hampshire this fourth day of June, 1984.

Opinion of Commissioner Aeschliman

I have no objection to the implementation of the proposed pilot program for a targeted lifeline rate. As I indicated in my dissent in DR 82-333 (69 NH PUC at pp. 103, 104, 57 PUR4th at p. 599),

Clearly, PSNH has two objectives in desiring to replace the present lifeline rate structure with a targeted structure. The first objective is to provide greater assistance to the most needy customers to offset the effects of Seabrook rate shock. This is indeed a legitimate concern, particularly in view of the potential size of the Seabrook rate shock.

However, my concurrence with the pilot program should not be interpreted as waiving or changing my concerns as expressed in the above cited opinion relative to the timing of implementation of a state-wide program and the need for a coordinated approach to the problem

of Seabrook rate shock.

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[Go to End of 61431]

69 NH PUC 299

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, and Woodsville Power and Light Department

DR 84-113, Order No. 17,064

New Hampshire Public Utilities Commission

June 5, 1984

Order permitting current fuel surcharges to remain in effect.

By the COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric

Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

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

ORDERED, that the Commission in DR 83-352, Order No. 16,946 dated March 19, 1984 (69 NH PUC 189), of the New Hampshire Electric Cooperative, Inc., maintained the rolled in rate of $0.02822/ KWH in effect until changed by the Commission, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in this month's FAC order; and it is

FURTHER ORDERED, that 18th Revised Page 19A of Concord Electric Company tariff,

NHPUC No. 8 - Electricity, providing for a fuel surcharge credit of ($0.037) per 100 KWH for the months of April, May, and June, 1984, be, and hereby is, permitted to remain in effect for the month of June, 1984; and it is

FURTHER ORDERED, that 18th Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of ($0.048) per 100 KWH for the months of April, May, and June, 1984, be, and hereby is, permitted to remain in effect for the month of June, 1984; and it is

FURTHER ORDERED, that 9th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of 14.2 cents ($0.142) per 100 KWH for the months of April, May, and June, 1984, be, and hereby is, permitted to remain in effect for June, 1984; and it is

FURTHER ORDERED, that 11th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of April, May, and June, 1984 of $1.202 per 100 KWH, be, and hereby is, permitted to remain in effect for June, 1984; and it is

FURTHER ORDERED, that 41st Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity providing for a fuel surcharge of $2.62 per 100 KWH for the month of June, 1984, be, and hereby is, permitted to become effective June 1, 1984; and it is

FURTHER ORDERED, that 93rd Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge credit of ($1.07) per 100 KWh for the month of June, 1984, be, and hereby is, permitted to become effective June 1, 1984; and it is

FURTHER ORDERED, that 90th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge credit of ($0.55) per 100 KWH for the month of June, 1984; be, and hereby is, permitted to become effective June 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1%

depending upon the utility's classification in the Franchise Tax docket, DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this fifth day of June, 1984.

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NH.PUC*06/05/84*[61432]*69 NH PUC 301*New Hampshire Electric Cooperative, Inc.

[Go to End of 61432]

Re New Hampshire Electric Cooperative, Inc.

DE 84-92, Order No. 17,065

New Hampshire Public Utilities Commission

June 5, 1984

Petition for authority to construct an electric line over a state-owned railroad right of way; granted with discussion of compensation reasonable for such a crossing.

Electricity, § 7 — Transmission lines — Crossings — Railroad right of way.

The construction of an electric distribution line across a state-owned railroad right of way was seen as the least expensive, least duplicative, and least hazardous way to extend service to an industrial customer. [1] p.304.

Eminent Domain, § 8 — Compensation — Easement over state property — Electric lines.

In determining what compensation should be made for establishing a transmission line across state-owned railroad property, the commission found that processing and administrative costs should be considered but that no value per se should be assigned to the privilege of crossing state property as state property should be open to any use that will benefit the public interest. [2] p.304.

By the COMMISSION:

REPORT

On April 11, 1984 the New Hampshire Electric Cooperative, Inc. filed with this Commission a petition for approval to construct an electric distribution line across state owned railroad right-of-way in Bridgewater, New Hampshire. The petition requests that the Commission determine any payment it feels to be just and reasonable for the petitioner to pay to the State Railroad Division in consideration of that crossing.

On April 12, 1984 an Order of Notice was issued setting a hearing for May 16, 1984 at 10:00 a.m. Notices were sent to Earl Hansen, Plant Manager, New Hampshire Electric Cooperative, Inc., for publication; John A. Clements, Commissioner, Department of Public Works and Highways; John R. McAullife, Railroad Administrator, Department of Public Works and Highways; John R. Sweeney, Director, Aeronautics Division; Robert X. Danos, Director, Safety Services; George Gilman, Commissioner, DRED: and the Office of Attorney General.

On May 11, 1984 the Commission received an affidavit attesting to publication being made in the Union Leader on May 2, 1984.

The Cooperative has received a request for a three-phase electric service from Keith

Construction, Inc. located on Route 3 in Bridgewater, New Hampshire. In response to that request, the Company proposes to install a new distribution service line from pole number NEC 31/3 presently located on the westerly side of Route 3 in Bridgewater, extending over Route 3 and over a section of state owned railroad track paralleling Route 3 and easterly of Route 3 to a pole number NEC 31/6.1 on the easterly side of the state owned railroad tracks. The distance from pole to pole is approximately 140 feet.

In preparation for this license the Cooperative submitted a crossing application to the State Railroad Division. The Division advised the Co-op that there would be an annual license fee of $75.00 or, in the alternative, that a one-time fee of $750.00 would suffice for a permanent license. The Cooperative finds the license fee excessive and requests the Commission to determine, in accordance with RSA 371:24, any payment it feels to be just and reasonable.

Mr. Earl Hansen, Plant Manager, NHEC represented the Co-op and testified that there are four options available to the Company to provide service to the customer in question. Firstly, it could install the desired service from an existing three-phase line presently located approximately 460 feet easterly of the desired site and extending in a north-south direction parallel to the Pemigewasset River. The service line would extend across an existing parking lot and would therefore, in the Company's opinion, be required to be placed underground. Costs related to such installation, not including trenching costs which would be the responsibility of the customer, would be approximately $2500 in excess of those related to the Company's preferred option. Secondly, the Cooperative could install a new three-phase line easterly of the state owned tracks and extending northerly a distance of approximately 1000 feet from an existing substation. That line would parallel the line which now extends northerly along the river and would, in effect, simply avoid having to cross the parking lot. Thirdly, the Company could extend its service from the existing three-phase line at the river over the parking lot. That option was discounted because of the necessity of installing poles within the parking lot. Fourthly, it can pursue the option provided in the petition.

As to the annual or one-time costs, the Company finds them excessive based on the State's previous record of similar charges. Historically, payments for similar installation have ranged from $4.00 to $10.00. The Cooperative does not object to reimbursing the division for actual costs associated with the installation and it has no opinion of what those costs should be, but it objects to annual charges which it considers to be arbitrary. The Cooperative advises that the customer has agreed to pay whatever charges are necessary, up to and including the $750.00. It is the Cooperative which objects, on principle, to the magnitude of the fee.

Mr. John W. Clement, Assistant Railroad Administrator, testified for the New Hampshire Railway Division. The Division has no objection to the Company's crossing plans, but offered testimony and exhibits supporting the crossing fees. He presented an exhibit listing the chronological order of events leading to the present hearing and detailing the time requirements necessary for the licensing review process as well as the costs associated with that review:

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

ITEM TIME

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 1. Review, request and plans
 submitted by applicant 1 hour
 2. Review, actual site 1-2 hours plus
  travel expense
  and travel time
 3. Discussed terms of license
 with applicant  hour
 4. Fill in license and send to
 applicant for applicant's
 signature 1/2-1 hour
 5.  When applicant returns license,
  Railroad Division Representative
 must sign license and forward
 to Attorney General for
  approval as to form, substance,
 and execution. 1/2 hour
 6. Railroad Representative must
 attend Public Utilities
  Commission hearing regarding
 petition of applicant. 1 hour
 7. If PUC authorizes license,
  Railroad Division Representative
 must write a resolution to the
  Governor and Council requesting
 authorization for Railroad
 Division to grant the license. 1-1 1/2 hours
 8. If Governor and Council
  approves authorization request,
 the license must be sent to
 the Secretary of State to attest
 passage by Governor and
 Council 1/2 hour
 9. Executed license is sent to
 applicant. Account set up
 with license holder. 1/2 hour
10. Records must be maintained
 and invoices sent at least —
 annually —
 TOTAL 6 1/2-8 1/2 hours
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Since the review process is undertaken by a single individual, the review time may be translated from hours to manhours. The Division offers testimony which finds manhour costs to be $26.40 per hour; therefore, assuming the lower manhour requirements, the actual cost of processing a single license equals 6 hours x $26.40 = $172.00 plus travel expenses.

In support of its proposed rate schedule, the Division offered an exhibit of rates assessed by the Maine Central Railroad Company which became effective on April 1, 1965 and which were as follows:

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

ANNUAL AGREEMENT
VOLTAGE RATE PREPARATION

0 to 750 volts $15.00 $25.00
751 to 15000 volts $25.00 $75.00
15001 to 50,000 volts $40.00 $75.00
50,001 to 150,000 volts $65.00 $75.00
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The Division contends that it has used that schedule and developed its own as a multiple of three times that schedule. Accordingly, their own schedule is as follows:

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

ANNUAL AGREEMENT
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VOLTAGE RATE PREPARATION

0 to 750 volts $ 45.00 $ 75.00
751 to 15,000 volts $ 75.00 $225.00
15,001 to 50,000 volts $125.00 $225.00
50,001 to 150,000 volts $195.00 $225.00
```

Mr. Clements contends that the present schedule has been in effect approximately one year, and applies to all new customer installation. It does not apply to existing installations. The Division does not charge for on-site construction costs associated with utility crossings.

Mr. Clements supports the need for annual costs by referring to a requirement for maintaining files, developing and administering annual bills and coordinating with their accounting division.

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The Division further supports its annual fee by pointing to the fact that there is a value to the utility and its customers which may be assigned the privilege of crossing the railroad property. It also points to the need for increased inspection procedures resulting for any perceived hazard increase that might result from the crossing installation.

Finally, the Division contends that the railroad is intended as a service oriented profitable business entity. In order to maintain its economic stabilization and to ultimately eliminate the subsidy presently required for its maintenance, it must review its opportunities and responsibilities for customer related costs. The crossing of state owned property is a privilege. There is value to be assigned to that privilege. The Division feels that the present rate schedule fairly represents those values.

COMMISSION ANALYSIS

[1] There are two issues facing the Commission in this docket. The petition accompanying the filing package requests authority to install and maintain a power cable across the State of New Hampshire right-of-way in the Town of Bridgewater. The cover letter accompanying the package requests that we determine any payment found just and reasonable in support of a fee for that license.

The Commission's authority to authorize the crossing license is found in RSA 371:17:

Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit or a line of poles or towers and wires and fixtures thereupon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for license to construct and maintain the same.

Our investigation into this matter, and our review of the testimony of the parties involved in the proceeding, lead us to conclude that the issuance of such a license is in the public interest. The customer requesting the service is clearly entitled to electric service. The route selected for that service by the Company is, in our judgment, the better of the four options available to it. The alternative plan of installing an underground line under the parking lot at the rear of the customer premises is a logical one, but presents an unnecessarily expensive alternative in view of the other

available options. The alternative extending a new line parallel to the railroad tracks is unnecessarily duplicative of the line which extends along the river. The alternative of installing a line over the parking lot presents an unnecessary hazard to company employees.

We find no unnecessary risk or inconvenience to the public by the proposed installation over the railroad property. We note, in fact, that the Railroad Division supports the petition. We find that the use of state land for this purpose is proper since this use, as many other uses, is after all representative of the conceptual purpose of state land itself, which is to serve the general public. In the instant case the requesting customer is entitled to share in those benefits. We will approve the license to install the distribution line.

[2] The issue as to payment for that line is more difficult. RSA 371:24 provides:

Easements for Utility Lines Crossing Railroad Property. Upon approval

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of the Commission, a public utility may construct transmission and distribution lines that traverse or parallel the tracks and property of a railroad and establish a permanent or temporary easement thereby. The public utility shall file a plan and layout delineating the route for such lines with the Commission 30 days prior to beginning construction and shall make any payment to the railroad the Commission determines to be just and reasonable.

This issue manifests itself into two subissues. Firstly, is any payment to the railroad just and reasonable? Secondly, if so, what is that reasonable payment?

The question of whether or not any fee should be required can best be answered upon a review of the costs, if any, which are associated with a crossing. In the instant case, we find that there are such costs. The Railroad Division has specified the administrative expenses associated with the identification of the project, the review of the project, the license application procedures, the public hearing procedures, and the execution procedures; and, after assigning a value to each increment of the process, has arrived at a cost associated with each license. Absent any contrary testimony in the matter, we will accept those calculations. The Division offers a range of hourly requirements from 6 hours to 8 hours and allocates expenses of $26.40 an hour, plus travel time and travel expenses, to the process. Since 6 hours represents a cost of $172.00 and 8 hours represents a cost of $224.00, we will accept a norm of $200.00 as being a representative charge for this, and future, administrative petition costs. In consideration of proper travel time and travel expenses, we will refer, for lack of a better reference, on the State of New Hampshire "Table of Mileages Between Cities, Towns and Villages in New Hampshire", compiled by the Works Process Administration in 1937 and will find, on the basis of that reference, that the distance from Concord to Bridgewater is 35 miles. On that basis at travel expenses at $0.20 per mile, the Division is entitled to 35 x $0.20 x 2 = $14.00 for travel expenses. We will accept one hour for travel each way and, accordingly, allocate $26.40 x 2 hours = $52.80 for travel time.

Accordingly, the costs which we will assign for administration of a new petition are as follows:

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

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Personnel $200.00
Travel Expense   14.00
Travel Time   52.80
 $266.80, rounded to $270.00
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There will be, we accept, additional annual costs associated with the recording and monitoring of the lines. As a minimum, the Railroad Division's records will have to be maintained to account for the existence of this and similar projects. There is value to be assigned to that recording responsibility. There is, however, nothing in the record to quantify that value. In the absence of any such testimony we will assign a value of 10 percent of the initial administrative costs as being representative of the annual administrative requirements, and we will find that in the instant case, a value of $27.00 is reasonable as an annual fee.

We have difficulty in accepting the premise that there is value assigned to the privilege of crossing state property; and whether or not the value can be assigned as a cost to an individual who, by virtue of a petition such as this, imposes his will upon the state by placing upon its property such fixtures as benefit only him. We are not persuaded that such value exists. State property is, after

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all, open for all to use. Unless and until it can be shown that specific costs are being generated which, if not paid by the petitioner, will have to be borne by others including the general public, then we cannot find that justification exists for such a charge.

Accordingly, we find that a proper fee is represented by the sum of all the approved costs noted herein, and which equal the initial administrative costs of $270.00, plus the annual administrative costs of $27.00 times the number of years that the license is to be in effect.

The parties are at liberty to choose an alternate payment plan of a one-time payment, calculated on the basis of an assumed ten-year license life. If that alternative is selected, then the one-time charge shall be:

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

Initial administrative cost $270.00
Annual costs = 10 x 27.00  270.00
 $540.00
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Our Order will issue accordingly.

ORDER

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

ORDERED, that the New Hampshire Electric Cooperative is authorized to install and maintain a power cable across the State of New Hampshire Department of Public Works and Highways Railroad Division right-of-way in the Town of Bridgewater, New Hampshire at a site as specifically noted in exhibits in this docket; and it is

FURTHER ORDERED, that the State of New Hampshire Department of Public Works and Highways Railroad Division be, and is authorized to collect revenues for this license by one of the following methods:

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

a. Initial administrative cost $270.00
 Annual administrative charge   27.00
b. One-time administrative charge $570.00
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By order of the Public Utilities Commission of New Hampshire this fifth day of June, 1984.

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NH.PUC*06/07/84*[61433]*69 NH PUC 306*Public Service Company of New Hampshire

[Go to End of 61433]

69 NH PUC 306

Re Public Service Company of New Hampshire

DF 84-121,
Second Supplemental Order No. 17,067

New Hampshire Public Utilities Commission

June 7, 1984

Motion for reconsideration of a denial of a petition to intervene; denied.

By the COMMISSION:

SUPPLEMENTAL ORDER

A Motion for Reconsideration of Order Denying Intervention was filed on June 5, 1984 by the Campaign for Ratepayers Rights (CRR) requesting that the order of the Chairman entered on May 28, 1984 denying intervention

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to CRR be reconsidered and reversed.

The Commission, having reviewed the Motion and the reasons set forth therein, finds that the Motion should be denied for the following reasons:

1. The Chairman acted in full compliance with RSA 541-A:17, et seq.

2. The Motion is untimely, in that it should have been made immediately following the Chairman's ruling and prior to the hearing in this matter.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1984.

Aeschliman, commissioner, concurs in part: I concur with the decision to deny the Motion, but only for Reason No. 2.

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NH.PUC*06/08/84*[61434]*69 NH PUC 307*New England Telephone and Telegraph Company

[Go to End of 61434]

69 NH PUC 307

Re New England Telephone and Telegraph Company

DR 84-51,
Second Supplemental Order No. 17,069

New Hampshire Public Utilities Commission

June 8, 1984

Motion for reconsideration of an order approving a decrease in Centrex rates; granted.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS the Commission issued Report and Supplemental Order No. 17,053 ([1984] 69 NH PUC 268) in which it approved in part New England Telephone and Telegraph Company's petition for reduction in the monthly rates for CENTREX-CO Services; and

WHEREAS, on June 4, 1984, New England Telephone and Telegraph Company filed a Motion for Reconsideration and Clarification of said Order; it is hereby

ORDERED, that a hearing be held on said Motion at the offices of the Commission, 8 Old Suncook Road, Building #1, in Concord, New Hampshire at eleven o'clock in the forenoon on the fourteenth day of June, 1984.

By order of the Public Utilities Commission of New Hampshire this eighth day of June, 1984.

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NH.PUC*06/11/84*[61435]*69 NH PUC 308*Public Service Company of New Hampshire

[Go to End of 61435]

69 NH PUC 308

Re Public Service Company of New Hampshire

DR 84-115, Order No. 17,070

New Hampshire Public Utilities Commission

June 11, 1984

Order invoking confidentiality for records and contracts during an investigation of coal supply practices.

By the COMMISSION:

ORDER

WHEREAS, the Commission has commenced an investigation into the coal supply at Merrimack Generating Station located in Bow, New Hampshire; and

WHEREAS, as a part of its investigation, the Commission desires to review the current coal contract between Public Service Company of New Hampshire (hereinafter "PSNH") and Consolidation Coal Company (hereinafter "CCC") dated April 1, 1983 and correspondence relating to the interim agreement, so called, (hereinafter together the "Contract"); and

WHEREAS, disclosure of the terms of the Contract to the general public might adversely impact the ability of PSNH to obtain the most favorable terms and conditions available in the marketplace in both (i) making spot purchases of coal and (ii) negotiating new contracts with other suppliers;

NOW, THEREFORE, it is:

ORDERED: That PSNH immediately upon receipt hereof provide to the Commission, the Commission Staff and Counsel appearing for the parties who have intervened in this docket an accurate copy of:

a. The Coal Sales Agreement between PSNH and CCC dated April 1, 1983, and

b. Subsequent correspondence between PSNH and CCC relating to the interim agreement, and

c. The opinion of PSNH counsel as to the legal effect of the Coal Sales Agreement between PSNH and CCC dated April 1, 1983, now and in the event that PSNH's arrearage under said contract is paid in full, and as to whether under said agreement there are any bars to PSNH purchasing coal on the spot market, and these documents are to be viewed only by the Commission, the Commission Staff and said Counsel, and until further order, said documents and the information contained therein shall not become a part of the public records of the Commission, nor shall the documents be copied or reproduced and the information contained therein shall not be further disseminated; and it is

FURTHER ORDERED: That upon completion of this docket or upon further order of the Commission, whichever shall first occur, all documents the subject hereof shall be forthwith returned to the custody of PSNH.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of June, 1984.

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NH.PUC*06/14/84*[61436]*69 NH PUC 309*Town of Derry, Water Department

[Go to End of 61436]

Re Town of Derry, Water Department

Intervenor: Southern New Hampshire Water Company

DR 84-5,
DE 83-386, Order No. 17,071

New Hampshire Public Utilities Commission

June 14, 1984

Order accepting a settlement agreement on a wholesale water rate contract.

APPEARANCES: for the Town of Derry, Larry S. Eckhaus, Esquire; for Southern N.H. Water Company, E.J. Bouton, Esquire; for the NHPUC Staff, Kenneth E. Traum and Robert B. Lessels.

By the COMMISSION:

On January 9, 1984, the Town of Derry, Water Department (herein after referred to as "Derry") pursuant to RSA Chapters 365 and 378, filed a petition requesting a rate increase for its customers. The request was to bill similar tariff rates for all metered sales and hydrants in Derry and Londonderry, with the exception of a wholesale rate for Southern N.H. Water Company (hereinafter referred to as "SNHWCo."). The proposed rate for SNHWCo. was a fixed charge of $55,948 per year and a consumption charge of $0.615 per CCF.

On February 16, 1984, the Commission issued an Order of Notice setting the matter for hearing on March 21, 1984 at 2 p.m. at the Commission's office in Concord. The hearing date was first postponed until April 24, 1984, and then until May 10, 1984 at 10 a.m. Said hearing was accordingly held on May 10, 1984.

After recognizing the parties to the docket, at their request, the Commission adjourned the hearing in order to enable the parties to conduct discussions for the purpose of narrowing or settling the issues in this docket.

The parties met on May 10, 29, and June 1, 1984 over which time they ar- rived at a Settlement Agreement which was provided to the Commission as Exhibit three and explained during the course of a second hearing held on June 1, 1984. In summary, said Settlement and explanations include:

(A) The proposed tariff rates as filed by Derry in exhibit 1, for all customers except wholesale sales, are acceptable as filed. This acceptance is based on the results; namely, that the Derry In-Town customers and the limited number of Londonderry (NHPUC jurisdictional customers) will be charged under the same tariff rates; not the fact that Derry's filing was made on a municipal cash flow approach.

(B) The agreed upon Wholesale Sales Tariff rate applicable to SNHWCo. is made up of two parts:

1. A rate of $0.600/CCF for all water consumed, which (the parties recommend) will include a Purchased Water Adjustment Mechanism in order to reduce the time and expense to Derry (and similarly to SNHWCo.) of acquiring NHPUC acceptance and inclusion in rates of any increases in purchased water as approved by the NHPUC for Derry's sole supplier of water, Manchester

Water Works. The $0.600/CCF rate includes

$0.534/ CCF as a bulk sales rate.

2. An annual fixed charge of $31,844 for the first year the new rates are in effect, $31,214 for the second year, and for subsequent years the same methodology (as in Attachment 2, page 2 to exhibit 3) will apply and any party shall have the opportunity to file additional or subsequent information.

(C) An agreement that a quarterly fixed charge payment from SNHWCo. is due and payable on June 1, 1984. The parties, however, did not reach agreement on whether this payment should be in arrears or advance. That issue will be addressed later in this Report and is the reason for the incorporation of DE 83-386 into this docket.

(D) The Derry customers located in Londonderry, with the exception of SNHWCo. will have the agreed upon tariff pages effective for all service rendered on or after June 1, 1984.

Based on the record in this proceeding, the Commission will accept the Settlement Agreement as well as items (A), (B), (C), and (D) above.

Our Order will issue accordingly.

DE 83-386

With regards to the effective date for 10the Wholesale Rates chargeable to SNHWCo., docket DE 83-386 ([1983] 68 NH PUC 672) is relevant. In that docket the Commission issued Order No. 16,760 which stated in part (68 NH PUC at p. 673):

WHEREAS, Southern New Hampshire Water Company, Inc. has entered into a contract with the Town of Derry for the wholesale supply of water for its service area in Londonderry; and

WHEREAS, this contract was received at the Commission on November 10, 1983; and

WHEREAS, the Southern New Hampshire Water Company, Inc. and the Town of Derry seek to have this contract to take effect on November 14, 1983; and

WHEREAS, this does not allow sufficient time for Commission investigation of this contract; it is hereby

ORDERED, that this contract may become effective on November 14, 1983 for a temporary period ending November 28, 1983; and it is

FURTHER ORDERED, that on or after November 28, 1983 the Commission will issue a supplemental order either denying or approving said contract.

By order of the Pubic Utilities Commission of New Hampshire this tenth day of November, 1983.

In DR 84-5 the letter from Edmund J. Boutin to the Derry Board of Selectmen dated November 1, 1983 and the Wholesale Water Contract between Derry and SNHWCo. were marked as exhibit 4.

The issue is whether Derry may charge the settled wholesale rate to SNHWCo. effective

March 1, 1984 (the date on record after which Perry and SNHWCo. began to receive full allotments of Manchester Water Works' water and Derry paid Manchester Water Works for said water). If the Commission doesn't acknowledge that exhibit 4 was effective on March 1, 1984, no retroactivity would be allowable since Derry never requested temporary rates.

In exhibit 4, page 2 of the letter, points 1, 2, and especially 3 states,

My client can execute the proposed contract which is attached hereto and

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incorporated by reference, subject to the following conditions, which shall be deemed amendments to the contract:

1. The contract rate for water is $.68 per 100 cubic feet. The contract should read so; provided, however, that nothing therein shall be deemed to prevent the Town from applying to the Commission for a revision of the tariff, based upon the ongoing rate study; nor shall anything therein be deemed to prevent the Company from intervening in that proceeding to protect its interest and protest the same.

2. The contract is amended to provide for a minimum charge of $1,300.00 per month, commencing on the date that the full 500,000 gallon per day supply is available for delivery to the Company; and on our understanding that a temporary 50,000 gallon per day commitment will be made to allow service along the EPA line, until then, for at least the Londerry Green, McAllister Drive and Charleston Avenue customers, as well as such other customers as the Company may connect, and Derry has capacity to supply water for, during this hiatus, with an additional 25,000 gallons per day figure being the assumed amount of temporary excess capacity. Nothing herein, however, shall be denied to prevent the Town from applying to the Commission for a change in this minimum charge, based upon the ongoing rate study; nor shall anything herein be deemed to prevent the Company from intervening in that proceeding to protect its interest and to protest this change.

3. With regard to Items 1 and 2 above, the parties agree that Derry's tariff application to the Commission will contain provision for retroactive application, to the time when the relevant charges commence, such tariff application to be filed on or before January 15, 1984. In such event, the Company agrees not to contest any charges authorized by the Commission to be applied retroactively.

Since point three (3) provides the agreement for retroactive application, if the tariff application is made on or before January 15, 1984 (which it was) between Derry and SNHWCo., the Commission will recognize the agreement.

Thus Derry may commence billing the fixed charge to SNHWCo. on a quarterly basis for service provided, effective with service as of March 1, 1984, and correspondingly adjust the metered sales billings.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Settlement Agreement submitted by the parties and labelled as Exhibit 3 is accepted; and it is

FURTHER ORDERED, that the Town of Derry, Water Department shall file a corresponding Wholesale Sales Tariff for service provided after March 1, 1984, to be billed quarterly in arrears for fixed charges and monthly in arrears for metered sales; and it is

FURTHER ORDERED, that the Customer Service Charge Tariff, Metered Sales Tariff, Public Fire Protection Tariff, and the Miscellaneous Charges Tariff as filed NHPUC Jurisdictional Customers in Exhibit 1 are accepted for service provided as of June 1, 1984.

By Order of the Public Utilities Commission of New Hampshire this fourteenth day of June, 1984.

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NH.PUC*06/14/84*[61437]*69 NH PUC 312*Public Service Company of New Hampshire

[Go to End of 61437]

69 NH PUC 312

Re Public Service Company of New Hampshire

Intervenors: Vermont Electric Cooperative, Inc., Community Action Program, Campaign for Ratepayers' Rights, and Office of Consumer Advocate

DR 84-115,
Supplemental Order No. 17,072

New Hampshire Public Utilities Commission

June 14, 1984

Investigation into an electric utility's coal procurement and inventory practices.

Electricity, § 4 — Operating practices and efficiency — Coal inventory.

Despite an electric utility's problems in meeting its coal payment obligations, the utility was directed to build up its coal inventory in order to assure continued safe and reliable service and to assure proper usage of funds received through an energy cost recovery mechanism.

(Aeschliman, commissioner, separate opinion, p.315.)

APPEARANCES: D. Pierre G. Cameron, Jr., Esquire and Sulloway, Hollis & Soden by Eaton W. Tarbell, Jr., Esquire for Public Service Company of New Hampshire; J. Denny Cochran, Esquire for Vermont Electric Cooperative; Gerald M. Eaton, Esquire for the Community Action Program; Larry S. Eckhaus, Esquire for the Campaign for Ratepayers' Rights; Michael W. Holmes, Esquire for the Consumer Advocate; Larry M. Smukler, Esquire for the Staff of the

Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

This docket was opened on the Motion of the Commission for the purpose of investigating inter alia the current and projected quantity and quality of coal at the Merrimack Station, the current agreement regarding the procurement of coal between Public Service Company of New Hampshire ("PSNH" or "Company") and Consolidation Coal Company (including how said current agreement compares to former agreements between the parties), the current and projected cost of coal, the reliability of continued adequate supply of coal, and the ability of PSNH to continue to furnish service that is safe, adequate, just and reasonable. An Order of Notice was issued on June 1, 1984 setting a hearing for June 6, 1984. An affidavit of publication was duly filed.

At the hearing, the Commission entertained the Motions to Intervene of Vermont Electric Cooperative ("VELCO"), the Consumer Advocate, the Campaign for Ratepayers' Rights ("CRR") and the Community Action Program ("CAP"). All of the above Motions to Intervene were granted.

The Commission also heard the testimony of PSNH witnesses Ray A. Hinds, Jr. and D. Pierre G. Cameron, Jr.

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Mr. Hinds is the Company's Director of Fuel Procurement and Supply, and Mr. Cameron is the Company's General Counsel.

Mr. Hinds provided testimony on the terms of the Company's contract with its coal supplier, Consolidation Coal Company ("Consolidation") and the recent events that have affected the Company's coal supply situation. The Company's contract with Consolidation is a five year agreement which commenced in April of 1983. Under that contract, it is Consolidation's responsibility to maintain the Company's supply of coal at its Merrimack Station at certain designated levels. Those levels are a minimum of at least a 60 day inventory at all times, a 70 day supply just prior to the winter and a 90 day supply at the time when Consolidation's labor contract is due to expire. Although title to the coal passes to PSNH at the time of delivery, the payment terms do not require PSNH to pay for the coal until it is bunkered (i.e., moved to bunkering facilities just prior to being burned).

The record reflects that the Company's difficulties vis a vis its coal supply began with PSNH's failure to make a March 25, 1984 payment to Consolida- tion. As a result, Consolidation stopped making shipments on April 9, 1984. At that time, PSNH had an approximate 70 day inventory of coal; an inventory which dwindled to an approximate 36 day supply before shipments resumed.

As noted above, shipments did resume under payment terms arranged on an interim basis. Those payment terms applied to approximately 10 shipments which would be completed by June 15, 1984. Under the interim arrangement, the Company had paid 150% of the cost of each shipment prior to the dispatch of the coal bearing train. Since PSNH was and is continuing to

bunker and burn coal, its arrearage continued to climb even during the time of the interim arrangement. As of the June 6, 1984 hearing, PSNH's arrearage amounted to $13,965,160.77.

With respect to the Company's future plans, Mr. Hinds testified that it is PSNH's intent to build its inventory up to a 90 day level by October 1, 1984.1(81) Mr. Hinds acknowledged that the achievement of such a build up will be difficult and will depend upon a number of factors including inter alia the ability of the Company to negotiate a new arrangement with Consolidation and its ability to handle the increased number of shipments. However, Mr. Hinds stated that [he] believed that the goal can be achieved by PSNH. Mr. Hinds declined to speculate about the nature and terms of any new agreement with Consolidation; an agreement that has yet to be negotiated. He did state, however, that he believed that the current uncertainty has not and will not adversely affect the price of coal.

Mr. Cameron testified with respect to the cause of the Company's difficulties with Consolidation. That cause was PSNH's severe cash shortage precipitated by the unwillingness of the Company's lenders to continue to extend short term credit. As a result, the Company had to decide to defer payment to a number of vendors, including Consolidation. Both Mr. Hinds and Mr. Cameron acknowledged that the Company receives revenues from ratepayers through the Energy Cost Recovery Mechanism ("ECRM") which allows it to recover its cost of coal. The Company, however, directed those

revenues elsewhere in its efforts to avoid the necessity of seeking protection from its creditors. In view of its continuing need to maintain financial flexibility, the Company refused to make a commitment to direct ECRM revenues to fuel and purchase power.

Our analysis of the above leads us to direct PSNH to adhere to its committment to build up its inventory to a 90 day supply by October 1, 1984. Our conclusion is based on several factors including, inter alia: 1) the importance of ensuring that the Company continues to meet its primary obligation of supplying safe and reliable service to its ratepayers at reasonable rates; and 2) the existence of the ECRM component of rates. We shall address each of these principal factors in turn.

The initial factor need hardly be restated: it is fundamental that PSNH, a public utility licensed to conduct business in the State of New Hampshire, has both the right and the obligation to provide service within its franchise territory. That service must meet Commission standards of safety and reliability (see e.g., RSA 374:1) and must be provided at just and reasonable rates (see e.g., RSA 374:21). We recognize that PSNH's current difficulties are causing it to juggle a variety of financial priorities and commitments; but the obligation to meet its public utility obligations to the ratepaying public must always be the beacon. Thus, appropriate weight must be given to those priorities which ensure on a day to day basis that the Company will continue to provide the high quality of service to which its ratepayers are entitled. The continuing operation of Merrimack Station, one of the lowest cost sources of baseload electricity, is in the public interest. The consequences of a shut down of Merrimack in terms of inter alia increased costs and less reliable capacity would be severe. Thus, we cannot allow operations to be threatened by an inadequate supply of fuel.

As noted above, the ratepayers are entitled to continue to receive the current level of high quality service. One important reason for this is that the ratepayers have paid and are continuing to pay for this level of service through the ECRM component of rates. The ECRM, which was established pursuant to inter alia RSA 378:3-a, differs from other rate components in the sense that it explicitly provides for a prospective dollar for dollar recovery of certain costs. Thus, unlike other rate components, costs and revenues are subject to a retroactive true up so that the Company is fully compensated. We recognize that the Company has not been subject to a legal or regulatory obligation to segregate dollars. However, when ratepayers are asked to provide revenues for a particular purpose, they are justified in an expectation that those dollars will not be diverted to an alternative purpose, particularly where more dollars may be requested retrospectively. The record reflects that PSNH has not met the justified expectations of both ratepayers and regulators.

In view of the fact that we have given and will continue to give PSNH the means of retiring its arrearage and building up its inventory to a 90 day supply through the ECRM component of rates, there can be no legitimate reason for the company to default on its obligation to secure an adequate supply of fuel. Thus, we will take the following actions:

1) PSNH will be ordered to build up its inventory to a 90 day supply no later than October 1, 1984;

2) PSNH will be ordered to report weekly to the Commission on:

(a) the status of its efforts to rebuild its coal inventory;

(b) the status of its arrearage with Consolidation;

(c) the status of its contractual negotiations with Consolidation or other suppliers;[2(82)] and

(d) the terms and conditions of any contract entered into between PSNH and any coal supplier.[3(83)]

3) PSNH will be placed on notice that if the Commission finds that its continuing efforts to secure an adequate supply of fuel are deficient, the Commission will issue appropriate Orders which may require, inter alia, segregation of customer revenues to be used solely for fuel supply.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire build up its coal inventory at the Merrimack Station to a 90 day supply no later than October 1, 1984; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire report weekly to the Commission on: a) the status of its efforts to rebuild its coal inventory, b) the status of its arrearage with Consolidation Coal Company Coal, c) that status of its contractual negotiations with Consolidation Coal Company or other suppliers (subject to the provisions of Order No. 17,070 [(1984) 69 NH PUC 308]), and 4) the terms and conditions of any contract entered into

between Public Service Company of New Hampshire and any coal supplier (subject to Order No. 17,070); and it is

FURTHER ORDERED, that Public Service Company be placed on notice that the Commission will issue appropriate Orders which may require inter alia segregation of customer revenues to be used solely for fuel supply if the Commission finds that the Company's continuing efforts to secure an adequate supply of fuel are deficient.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of June, 1984.

Opinion of Commissioner Aeschliman

The Commission opened this docket to investigate the adequacy of Public Service Company's current and projected coal supply, and the effect of the coal supply on PSNH's ability to provide service that is "safe, adequate, just and reasonable". The evidence at the hearing revealed the following facts relative to PSNH's coal inventory.

(1) PSNH failed to meet the March 25th coal payment which resulted in Consolidation Coal Company stopping coal shipments as of April 9th.

(2) When the coal shipments were stopped on April 9th, PSNH had 232,000 tons of coal in inventory.

(3) Subsequently, PSNH and Consolidated Coal developed an interim agreement for the delivery of 10 unit trains. This agreement terminates on June 15th.

(4) The interim agreement provides

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that PSNH pay for the coal prior to shipment plus paying an amount on the arrearage equal to an additional 50% of the price of the unit train per week.

(5) At the time of the interim agreement PSNH's arrearage to Consolidated Coal Company amounted to nearly $16 million. This has been reduced to slightly less than $14 million.

(6) By May 20, PSNH's coal inventory had declined to 118,000 tons, significantly below the minimum desired level of 200,000 tons.

PSNH presented a "Tentative Plan to Achieve Ninety-Day Coal Supply by September 30, 1984" (Exhibit 1) which if fully implemented would build up the inventory to the desired level. However, the Company's testimony and the exhibit indicated that the plan is not a firm one and that implementation depends upon a resolution of the Company's financial difficulty. The Commission should find this response inadequate for the following reasons:

(1) PSNH receives revenues through the Energy Cost Recovery Mechanism (ECRM) to pay for its fuel costs on a current basis.

(2) The Company has had adequate ECRM revenues to pay for its coal supply, in fact, the ECRM account has been carrying a substantial surplus.

(3) The testimony indicates that the Company postponed payment of its coal bills in order to pay other bills which it deemed more urgent.

(4) This is contrary to the intent of ECRM, which is to provide sufficient funds in a timely fashion for the payment of fuel bills and purchased power costs.

(5) The Company will not give the Commission assurance that fuel revenues will not be diverted to other purposes again.

(6) The likelihood of a coal miner's strike in October makes it imperative that no further interruptions in rebuilding the coal inventory occur.

(7) Testimony indicates that the schedule in the tentative plan is fairly tight already.

(8) The Company is dependent on Consolidated Coal as a supplier and it is urgent that a firm agreement with Consolidated be made.

(9) Yet the Company testified that no firm time has been set to negotiate a repayment agreement with Consolidated Coal, because PSNH executives have not had time.

(10) PSNH did not report promptly to the Commission relative to its coal supply situation.

Given these findings the Commission should issue an order requiring that:

(1) PSNH implement the plan to rebuild the coal supply to a 90 day level by September 30 as outlined in Exhibit 1;

(2) PSNH use the ECRM revenues only for fuel bills and purchased power commitments;

(3) PSNH immediately meet with Consolidated Coal Co. to finalize satisfactory payment arrangements;

(4) PSNH report to this Commission on a weekly basis the status of its coal supply.

Furthermore, the Commission should place PSNH on notice that if despite the order to use ECRM revenues only for fuel bills, PSNH again diverts fuel

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revenues to other purposes, that the Commission will order the cash segregated in a separate account, as well as take whatever additional action it deems appropriate.

FOOTNOTES

[1]The 90 day level by October 1, 1984 would be consistent with Consolidation's commitment because Consolidation's labor contract with the United Mine Workers expires on or about that date.

[2]This information will be subject to the provisions of the Commission's protective order in this docket, Order No. 17,070 ([1984] 69 NH PUC 308).

[3]Id.

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69 NH PUC 317

Re Public Service Company of New Hampshire

DR 84-132, Order No. 17,073

New Hampshire Public Utilities Commission

June 14, 1984

Order finding an electric utility's oil inventory to be adequate.

By the COMMISSION:

ORDER

WHEREAS, the Commission opened this docket for the purpose of investigating inter alia the current and projected quantity and quality of oil at Public Service Company of New Hampshire's ("PSNH") oil fired generation stations, the status of current agreements regarding the procurement of oil between PSNH and its suppliers (including how said current agreements compare to former agreements between the parties, the current and projected price of oil, the reliability of continued supply of oil, and the ability of PSNH to continue to furnish service that is safe, adequate, just and reasonable; and

WHEREAS, by Order of Notice dated June 1, 1984, the Commission scheduled a duly noticed hearing, which hearing was held on June 11, 1984; and

WHEREAS, the record indicated that PSNH's No. 6 oil supplies are at an adequate level; and

WHEREAS, PSNH represented that it will continue to maintain an adequate inventory of No. 6 oil; and

WHEREAS, the record reflects that PSNH is in compliance with all contract terms with its No. 6 oil suppliers and no arrearages are outstanding; and

WHEREAS, the Commission finds that the record does not contain evidence of imprudent conduct of PSNH management with respect to PSNH's current oil inventories; it is therefore

ORDERED, that no further Commission action on this docket is currently warranted; and it is

FURTHER ORDERED, that PSNH must report to the Commission within two days of 1) any material changes in its oil inventory situation, 2) any material changes in the contracts between PSNH and its oil suppliers, and 3) the development of any significant arrearages of dollars owed by PSNH to its No. 6 oil vendors.

By Order of the Public Utilities Commission of New Hampshire this fourteenth day of June, 1984.

SEPARATE OPINION OF COMMISSIONER AESCHLIMAN

In Docket No. 84-115 ([1984] 69 NH PUC 308), I set forth the findings and conclusions that I deemed appropriate with respect to the coal inventory situation of Public Service Company of New Hampshire ("PSNH"). I also stated that I would order inter alia that PSNH use ECRM revenues only for fuel bills and purchase power commitments. My review of the record in the instant docket did not present me with sufficient reason to change my thinking. Although the precise dates and inventory levels may be different for oil supplies, my material findings and conclusions would be the same. Accordingly, I would make similar findings in this docket and I would issue an order requiring that:

(1) PSNH implement a plan to maintain its oil supply at its target average inventory;

(2) PSNH use the ECRM revenues only for fuel bills and purchased power commitments;

(3) PSNH immediately meet with its oil suppliers (Sprague and Apex) to finalize satisfactory payment arrangements;

(4) PSNH report to this Commission on a weekly basis the status of its oil supply.

Furthermore, the Commission should place PSNH on notice that if despite the order to use ECRM revenues only for fuel bills, PSNH again diverts fuel revenues to other purposes, that the Commission will order the cash segregated in a separate account, as well as take whatever additional action it deems appropriate.

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NH.PUC*06/15/84*[61439]*69 NH PUC 318*New Hampshire Electric Cooperative, Inc.

[Go to End of 61439]

69 NH PUC 318

Re New Hampshire Electric Cooperative, Inc.

DF 83-360,
Fourth Supplemental Order No. 17,074

New Hampshire Public Utilities Commission

June 15, 1984

Motion to reopen a docket to consider additional evidence; granted.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc., having filed, through counsel, a Motion To Reopen Docket dated June 6, 1984 in order that the Commission may receive and consider additional evidence; and

WHEREAS, the Commission on its own motion scheduled additional hearings on this matter for July 9 and 10, 1984 by Third Supplemental Order No. 17,060 ([1984] 69 NH PUC 283) for reasons similar to those cited by the New

Hampshire Electric Cooperative, Inc. in the instant motion; it is therefore

ORDERED, that the motion is granted.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of June, 1984.

Addendum by Aeschliman, commissioner: If the New Hampshire Electric Cooperative intends to change the purpose for which the proceeds of its financing are to be used it must receive Commission approval pursuant to RSA 369:1. However, it is premature for the Commission to act on a motion to reopen this docket until the New Hampshire Electric Cooperative has a plan to submit to the Commission.

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NH.PUC*06/18/84*[61440]*69 NH PUC 319*Connecticut Valley Electric Company, Inc.

[Go to End of 61440]

69 NH PUC 319

Re Connecticut Valley Electric Company, Inc.

Intervenors: Office of Consumer Advocate and Sinclair Machine Products, Inc. et al.

DR 83-200,
Second Supplemental Order No. 17,075

New Hampshire Public Utilities Commission

June 18, 1984

Order adopting a federally approved settlement agreement governing the treatment of abandoned plant costs.

Expenses, § 35 — Abandoned plant — In wholesale tariff — Effect of federal approval.

Approval by the Federal Energy Regulatory Commission of a settlement agreement which does not establish principle or precedent is still considered approval of a wholesale rate tariff, and where a utility's federally approved wholesale tariff recognizes inclusion of abandoned plant costs, the state commission is bound by that federal approval even if the abandoned plant component is in contravention of state law. [1] p.322.

Automatic Adjustment Clauses, § 68 — True-up — Federally approved tariffs — Exception to retroactive rate-making ban.

Consideration of federally approved tariffs and expenses in a true-up proceeding for a purchased power cost adjustment does not violate traditional restrictions on retroactive rate

making. [2] p.324.

APPEARANCES: Steven Allenby, Esquire for Connecticut Valley Electric Company, Inc.; Michael Holmes, Esquire for the Consumer Advocate; Myers and Laufer by David William Jordan, Esquire for Sinclair Machine Products, Inc. et al.; Larry M. Smukler, Esquire for the Commission Staff.

By the COMMISSION:

REPORT

I. INTRODUCTION

On July 21, 1983, Connecticut Valley Electric Company ("Company") a public

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utility engaged in the business of supplying electrical service in limited areas of this State, filed a request for permanent rate relief in the amount of $991,147 to be effective August 21, 1983. On July 21, 1983, the Company also filed a petition for the establishment of temporary rates in the amount of its revenue deficiency or at such other level as the Commission determines is fair and reasonable.

The Commission suspended the effective date of the new tariff for permanent rates by its Order No. 16,582 dated August 9, 1983. An Order of Notice was issued on July 29, 1983 setting a hearing for September 15, 1983 at 10:00 a.m. for the purpose of determining temporary rates and to discuss the procedural aspects of the permanent rate increase.

The hearing was held as scheduled and, following the September 15, 1983 hearing, on September 23, 1983, the Commission issued Supplemental Order No. 16,646 (68 NH PUC 556, 558) authorizing the Company "to recover additional annual revenues of $569,000 in temporary rates. ..."

Following this Order, the parties held a number of meetings and discussions, made and responded to numerous data requests, filed additional testimony and succeeded in narrowing the issues in this case.

On January 16, 1984, during the course of a duly noticed Commission hearing in Concord, the parties submitted Exhibit 3, which when taken in conjunction with the testimony and statements made on that day, narrowed the issues in contention to one, subject to Commission approval.

II. PARTIAL SETTLEMENT

As noted above, the parties held meetings and discussions for the purpose of narrowing the issues in this docket. As reflected in the evidence presented at the January 16, 1984 hearing, the parties were able to come to a number of agreements which had the effect of limiting the issues to be litigated to one. Highlights of the adjustments which were made to the Company's filing in order to reach the proposed stipulation are as follows:

1. Wages and fringe benefits reflecting 1984 levels, which were known and measurable as of January 1, 1984 were included, with adjustments made through the reconciling adjustment for the lower 1983 expense levels.

2. The uncollectible account expense was adjusted to reflect actual performance.

3. Rate case expenses were amortized over 2 years.

4. Actual property taxes were used.

5. Membership dues which were duplicates were removed.

6. Tree trimming expenses were adjusted based upon a 5 year average adjusted for the CPI.

7. Actual PUC assessments were used.

8. Updated Service Contracts billings were used.

9. The refund from the estimated overcollection in the RS-2 (PPCA Rate) by Central Vermont Public Service Co. to Connecticut Valley Electric Company will be used to offset the recoupment between temporary and permanent rates, etc.

10. Rate base, which used the 13 month average concept, was reduced by interest on customer deposits.

11. The reversal and normalization of the tax benefits from flow through of the tax depreciation on 1971-80 assets will be amortized over a 21 year period, which corresponds with the remaining life of those

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assets and the test year tax effect of flow through was consistently adjusted.

12. Starting with power year (calendar year) 1984, any overcollection of PPCA rates will accrue interest at FERC approved interest rates and in compliance with the agreement of the parties.

13. The overall cost of capital will be 12.49%, but there was no agreement among the parties as to the proper capital structure or cost of equity. The NHPUC Staff through Dr. Voll and Exhibit 5, supported the 12.49% with 14.85% on common equity based on 45.529% of the capital structure.

14. Corresponding Federal and State tax adjustments were made.

15. The rate structure as originally proposed by the Company and based on a marginal cost study was accepted by the parties and supported by Ms. Melinda Rafter of the NHPUC Staff through direct testimony and Exhibit 6.

16. The settlement reduces the Company's original request of $991,147 by $134,149 and by $45,000 (tax normalization) to $811,998, while recognizing that the figure still includes $51,187 (plus New Hampshire State Franchise Tax) of contested but FERC authorized abandoned plant costs.

The Commission finds the settlement and add-ons to be in the public good, and our Order will issue accordingly, but we must express a strong concern relating to the settlement process.

This concern arises from the cost of capital which the parties, herein, agreed to in the overall, but not the specifics. In the future the Commission will expect the rate on equity to be agreed upon by the parties in order to settle on the overall cost of capital.

In this docket, Staff's Exhibit 5 is the only evidence submitted which specifically develops the 12.49%. Thus, the Commission will accept the Staff's approach.

III. ABANDONED PLANT

The issue which was not settled by the parties was abandoned plant component of Purchased Power Costs. The issue may be further divided into two sub-issues: (1) Whether the abandoned plant component of purchased power costs contained in RS-2 is recoverable in retail rates of Connecticut Valley, and (2) Whether the $51,189/year in abandoned plant costs previously incurred by Connecticut Valley in 1982 are recoverable. The resolution of the sub-issue of whether the abandoned plant costs in the RS-2 rate are recoverable depends, to some extent, on our analysis of the issue of federal preemption. The resolution of the sub-issue of retroactive recovery is governed by previous agreements of the parties as adopted by the Commission.

Position of the Parties

The abandoned plant issue was addressed by the parties through the submission of testimony and exhibits, as well as post-hearing memoranda of law.

With respect to the sub-issue of recovery of abandoned plant costs, it is the position of the Company that Commission discretion on this matter is federally preempted. The Company rests this argument on its corporate structure which has separated the Company from its parent, Central Vermont Electric Company ("CVEC"). The separation results in a situation where transfers of power from CVEC to the Company are sales of

electricity for resale. Such wholesale transactions are subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") pursuant to the provisions of the Federal Power Act ("FPA"). Since the abandoned plant cost is a part of a wholesale rate which has been reviewed and approved by the FERC, the State Commission is preempted; it must allow the Company to recover from ratepayers all properly incurred purchase power costs at FERC approved rates. In support of its argument, the Company relies on, inter alia, the Commission's decision in Re Granite Electric Co. (1984) 69 NH PUC 1, and the cases cited therein.

Sinclair Machine Products, Inc., et al. ("Intervenors") argue that recovery of abandoned plant costs is prohibited by RSA 378:30-a (Supp. 1979). The Intervenors recognize that there may be occasions where arguments pertaining to federal preemption of state ratemaking authority are applicable; however, New Hampshire's authority in this case is not preempted. FERC jurisdiction cannot preempt state authority here because of two factors. The first factor is that, for all but corporate organization purposes, the Company and CVEC are identical. This includes both identity of management and identity of operations. The second factor is the nature of FERC process of approving the inclusion of abandoned plant costs in the CVEC's wholesale rate. That process consists of an Offer of Settlement by CVEC and the FERC staff which was approved by the FERC. In its Order approving the rate, the FERC stated, inter alia:

The Commission's acceptance of this amended settlement does not constitute approval of or precedent regarding any principle or issue in this proceeding. (Exhibit 2.)

Thus, the FERC did not specifically approve the method of computing the RS-2 rate, nor did it specifically approve the inclusion of abandoned plant in the computation of the rate.

With respect to the issue of retroactive recovery, it is the Intervenor's position that the Settlement Agreement approved by the Commission in Docket No. DR 82-67 (See Report and Seventh Supplemental Order No. 16,185, issued on January 12, 1983 [68 NH PUC 40]), reflected an agreement by the Company to forego recovery of abandoned plant expenses which may be incurred prior to the time the issue is considered in a general rate case. The Company's position is that it has merely agreed to defer recovery until the resolution of the issue.

Commission Analysis

[1] We shall initially address the preemption issue.

The starting place of our analysis is the Commission's decision in Re Granite State Electric Co. (1984) 69 NH PUC 1 ("Granite State"). There, the utility sought to recover from ratepayers purchase power expenses based on a FERC approved tariff which included Construction Work in Progress ("CWIP")[1](84) as a rate base element. In the Report, the Commission articulated the issue as follows (69 NH PUC at p. 2):

Having determined that NEPCO's request could not have been approved had it been a part of a retail rate case before this Commission, it remains to

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determine whether we have the authority to deny a PPCA based on a FERC approved tariff.

After an extensive review of the applicable statutes and caselaw, the Commission concluded:

... In view of our review of the foregoing, we believe that the clear weight of authority dictates a conclusion that we must deem a FERC approved wholesale rate as a reasonable operating expense, even when that rate includes a CWIP element in violation of New Hampshire legislation. (Footnote omitted.)

Given the conclusion that the FERC approved rate must be deemed reasonable, the Commission approved the Granite State Electric Company Purchase Power Cost Adjustment tariff.

In view of the Commission's decision in Granite State, the focus of our inquiry must be whether the facts in the instant case differ materially from those in Granite State and, if so, whether those different facts dictate a different conclusion.[2](85) After review, we find that the facts as found herein do not differ materially from those of Granite State for the purpose of the preemption analysis. Accordingly, we will conclude that we cannot disallow recovery of the cost of abandoned plant when those costs are a part of an applicable FERC approved tariff.[3](86)

The two factual distinctions between Granite State and the instant docket argued by the Intervenors are: 1) that Company and CVEC are in fact operated and managed in a totally integrated fashion; and 2) that the inclusion of abandoned plant costs was not a part of a FERC

established rate, rather it was part of a settlement agreement approved by the FERC.

With respect to the first distinction, we do not believe that the fact that the Company and CVEC act in an integrated fashion is sufficient to alter our conclusion that the Granite State rationale applies here. The only real distinguishing factor is that Granite State Electric Company

and its wholesaler, New England Power Company are both wholly owned subsidiaries of a holding company, New England Electric System while the Company, instead of being owned by a holding company, is the wholly owned subsidiary of its wholesaler, CVEC. We do not believe that the above distinction is material. In both cases, the utilities involved have succeeded in preempting state regulation because of the manner in which they organized their corporate structures. The FERC has asserted its jurisdiction by setting the rates in both instances. Thus, those corporate structures both operate equally well in enabling the Companies to recover from ratepayers costs that may otherwise not be available under RSA 378:30-a.

We must also concede that the second distinction—the FERC approval of a settlement—is not meaningful for a preemption analysis. The record reflects that the facts are as averred by the Intervenors and we find them as such. However, even the approval of a settlement which does not establish principle or precedent must be construed as a FERC approved wholesale rate. It is not our place to rule after the fact on the quality of the FERC procedures. The record reflects that both this Commission and the Intervenors have had and will continue to have the opportunity to participate in the appropriate FERC proceedings. If a settlement reached between the two integrated companies and the FERC staff is not just and reasonable, both this Commission and the Intervenors may file the appropriate exceptions with the FERC. No exceptions were filed in this instance[4(87)] and, accordingly, we do not believe it is appropriate for us to review here the quality of the decisionmaking process of a sister regulatory agency. Cf., Narragansett Electric Co. v Burke (1977) 119 RI 559, 23 PUR4th 509, 381 A2d 1358. (The state commission was required to deem a FERC approved wholesale rate as a reasonable operating expense for retail ratemaking purposes).

[2] Having resolved the issue of whether the abandoned plant costs currently being incurred in the purchased power cost may be passed through to retail ratepayers, it remains to determine whether to apply our conclusions retroactively. Since we are addressing the issue in the context of a cost included in the Company's Purchase Power Cost Adjustment ("PPCA"), traditional restrictions on retroactive ratemaking do not automatically apply. A retroactive true-up is often employed in PPCA proceedings because recovery is generally designed to be on a dollarfor-dollar basis. Thus, the issue does not turn on whether the rate would apply retroactively; rather, we must determine whether there is reason to vary from our general practice of truing-up PPCA revenues to account for all legitimate expenses. The reason offered here by the Intervenors is the settlement agreement of the parties accepted by the Commission in Docket No. DR 82-67, Report and Seventh Supplemental Order No. 16,185 ([1983] 68 NH PUC 40). If the parties settled on a rate formula that would not include retroactive recovery and we approved that settlement, we should not disturb that rate formula here.

Accordingly, the determinative factor in our resolution of this issue is the language used in

the Settlement Agreement

in DR 82-67 as approved by the Commission in Report and Seventh Supplemental Order No. 16,185 (January 28, 1983).[5(88)] The operative term in the settlement agreement can be found at Section 2.0 which provides:

The parties agree that the abandoned nuclear plant costs of the Company for the twelve (12) months ended December 31, 1982 are excluded from this rate increase, and shall not be included in any future PPCA unless previously approved in a general rate case. The parties further agree that nothing herein shall preclude the Company from requesting the inclusion of any abandoned nuclear plant costs in future general rate increase requests. (Emphasis supplied.)

Since the language of the settlement applies to any abandoned nuclear plant costs, it is apparent that those costs incurred prior to December 31, 1982 are included as a part of the agreement. A further reading of the above term reveals that recovery of the disputed cost is contingent on: 1) the approval of the Commission in the course of a general rate case; and 2) the request by the Company that the cost be recovered.

The instant docket is a general rate case. Thus, our decision here on the preemption issue is dispositive to the extent that it does approve recovery in a general rate case. Additionally, the Company has sought recovery of the disputed costs, including those which were incurred prior to December 31, 1982. It is therefore apparent that the two requirements of the settlement agreement have been fulfilled. The retroactive recovery will be permitted.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the recommendations of the parties contained in the Partial Settlement Exhibit No. 3, the Normalization Settlement and the Interest Settlement be, and hereby are, adopted as the findings and conclusions of the Commission; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company, Inc. Tariff NHPUC No. 4 - Electricity 4th Rev. Page 14, 19.1, 19.2, 8th Rev. Page 19; 7th Rev. Page 20, 24; 6th Rev. Page 21, 25 and 28 be, and hereby are, rejected; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company file revised tariff sheets in accordance with the terms and conditions of the above-referenced settlement agreements.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1984.

FOOTNOTES

[1]For the purpose of this analysis, the recovery of the cost of abandoned plant is treated as falling within the definition of "construction work", the recovery of which is prohibited by RSA 378:30-a. See, Re Public Service Co. of New Hampshire (1984) 124 NH —, 60 PUR4th 16, 480

A2d 20.

[2]For the purposes of this Order, we see no reason to abandon the legal analysis in Granite State. The Intervenors argued that the cases cited in Granite State are not applicable to the instant situation and, in addition that the Commission did not consider the effect of Arkansas Electric Co-op. Corp. v Arkansas Pub. Service Commission (1983) 461 US 375, 52 PUR4th 514, 76 L Ed 2d 1, 103 S Ct 1905. Since we have already set forth our analysis of the caselaw cited in Granite State, it is not necessary to repeat it here. The Arkansas Electric Co-op. Corp. case, which was not discussed in Granite State, does not upset the Granite State analysis. In Arkansas Electric Co-op. Corp., the Court implicitly reversed its holding in Rhode Island Pub. Utilities Commission v Attleboro Steam & Electric Co. 273 US 83, PUR1927B 348, 71 L Ed 549, 47 S Ct 294. Attleboro had previously been read as applying a constitutional barrier to the regulation by the States of electric sales for resale on the interstate transmission system. In Arkansas Electric, the Court revised its analyses by holding that the Arkansas PSC could regulate the wholesale rates of an electric cooperative located within the state. The Arkansas situation involved an electric cooperative which is not subject to FERC regulation under the FPA; nor, as the Court held, was it subject to preemptive rate regulation by the Rural Electrification Administration. Thus, in addition to the lack of constitutional limitations, there was a lack of statutory limitations. In the instant situation, both CVEC and New England Power Co. are investor owned electric utilities which, pursuant to legislation lawfully enacted by Congress, are subject to wholesale rate regulation by the FERC. Thus, the cases holding that the States are preempted from wholesale rate regulation by the superceding authority of the FERC granted by statute continue to apply to this docket.

[3]We are not addressing here our authority to review whether a distribution utility acted properly when it agreed to purchase power from a particular wholesaler. That issue has not been raised in this case. Thus, our conclusion herein assumes that the decision to enter into a purchase power transaction with a particular wholesaler was a reasonable and proper exercise of managerial discretion.

[4]The record reflects that, under the FERC approved RS-2 tariff, the parties will have an opportunity to participate in ongoing proceedings. If the Commission or the Intervenors should prevail in those proceedings, the RS-2 rate provides for retroactive adjustment.

[5]Since the discussions leading up to the settlement were privileged (Settlement at Section 3.7), we cannot rely on them as manifesting any parties' intent. In addition, we have no record explanation of the terms since the Commission accepted the settlement without a hearing. Thus, we may rely on only the settlement document itself and the Commission order accepting that document.

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NH.PUC*06/18/84*[61441]*69 NH PUC 326*Public Service Company of New Hampshire

[Go to End of 61441]

Re Public Service Company of New Hampshire

DF 84-121,
Third Supplemental Order No. 17,076

New Hampshire Public Utilities Commission

June 18, 1984

Petition for authority to issue and sell secured exchangeable promissory notes; granted.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, our Supplemental Order No. 17,057 ([1984] 69 NH PUC 275) issued in the above-entitled proceeding, granted supplemental authority for Public Service Company of New Hampshire to issue and sell for cash its notes payable less than twelve (12) months after the date thereof in an aggregate principal amount not exceeding $135,000,000 with conversion rights, additional rights and collateral security; and

WHEREAS, in compliance with said supplemental Order No. 17,057 the Company has submitted to this Commission details concerning the sale of its Secured Exchangeable Promissory Notes with Warrants (the Notes") as follows:

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

Principal Amount: $90,000,000

Maturity Date: May 31, 1985

Price: 100% of the Principal Amount

Merrill Lynch Fee: 3% of the Principal Amount

Interest Rate: 20% Per Annum

Exchange Rights: The Notes are exchangeable into units
 (consisting of new debentures yielding not
 less than 21% to maturity and warrants to
 purchase shares of the Company's Common
 Stock, $5 par value) (the "Units") when and
 if the Units are issued and contingent upon
 regulatory approval of the Units, on a basis
 of one Unit for each $1,000 in principal
 amount of Notes exchanged.

Additional Rights: The purchasers of the Notes will receive two
 warrants for each $1,000 in principal amount
 of Notes purchased, each warrant entitling
 the holder to purchase from the Company
 $1,000 in principal amount of new debentures
 (when and if issued and contingent upon
 regulatory approval of such issuance) at a
 price to yield not less than 21% to maturity.
 The warrants expire on the date of the sale
 of the Units.


Redemption Provisions: The Company may redeem the Notes on and after
 September 1, 1984 at face value, plus accrued
 interest payable in cash.
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Collateral Security: Pledge of the $135,000,000 in aggregate
 principal amount of the Company's General and
 Refunding Mortgage Bonds, Series F, to be
 issued under the provisions of the Company's
 General and Refunding Mortgage Indenture
 dated as of August 15, 1978, such bonds being
 coterminous with and bearing the same
 interest rate as the Notes.
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AND WHEREAS, after due consideration, it appears that the issue and sale of $90,000,000 in aggregate principal amount of the Notes hereinabove described upon the terms presented to this Commission 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 for cash its Secured Exchangeable Promissory Notes with Warrants in the aggregate principal amount of $90,000,000 upon the terms hereinabove set forth; and it is

FURTHER ORDERED, that all other provisions of said Supplemental Order No. 17,057 of this Commission are incorporated herein by reference.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1984.

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NH.PUC*06/19/84*[61442]*69 NH PUC 327*TDEnergy, Inc.

[Go to End of 61442]

69 NH PUC 327

Re TDEnergy, Inc.

DR 84-139, Order No. 17,077

New Hampshire Public Utilities Commission

June 19, 1984

Order conditionally approving an energy corporation's long-term rate filing.

Cogeneration, § 33 — Rate design factors — Capacity level — Timing of coming on line.

An energy corporation's long-term rate filing was approved on the condition that it come on line at its 20-year capacity level for the year 1985 but was ordered void if it did not come on line at its 20-year capacity level for 1985.

By the COMMISSION:

ORDER

WHEREAS, on May 25, 1984, TDEnergy, Inc. ("TDEnergy") filed a longterm rate filing pursuant to Docket No. DE 83-62, Report and Fourth Supplemental Order No. 16,619 ([1983] 68 NH PUC 531) and Report and Fifth

Supplemental Order No. 16,664 ([1983] 68 NH PUC 375); and

WHEREAS, TDEnergy's filing appears to be consistent with the aforementioned Orders if TDEnergy comes on line at its 20 year capacity level for the twelve months of 1985; and

WHEREAS, TDEnergy's proposed long-term rates as contained in the Long Term Rate Worksheet (Attachment B) appears to exceed the rates allowed by the Commission if the proposed facility does not provide energy and capacity at its annual 20 year level during calendar year 1985; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire and TDEnergy the opportunity to file comments or exceptions; and

WHEREAS, it is in the public interest to approve long-term rate filings expeditiously; it is therefore

ORDERED NISI, that the long-term rate filing of TDEnergy including the Interconnection Agreement and the rates set forth on the long-term rate worksheet are approved provided that TDEnergy comes on line at its 20 year capacity level for the twelve months of 1985; and it is

FURTHER ORDERED, that this Order is void if TDEnergy does not come on line at its 20 year capacity level for the twelve months of 1985; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire and TDEnergy may file comments and exceptions no later than 15 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 25 days from the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of June, 1984.

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NH.PUC*06/20/84*[61443]*69 NH PUC 328*Mount Crescent Water Company

[Go to End of 61443]

69 NH PUC 328

Re Mount Crescent Water Company

DR 84-73, Order No. 17,080

New Hampshire Public Utilities Commission

June 20, 1984

Application for ex post facto approval of a bank loan; granted.

Security Issues, § 31 — Commission jurisdiction — Borrowings — Ratifying unauthorized transactions.

The commission reluctantly gave ex post facto approval to a water utility's unauthorized borrowing where the borrowing was necessitated by certain emergency sterilization and health needs, but it warned the utility not to circumvent the commission's loan authorization procedures again.

APPEARANCES: for the petitioner,

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William Pfeffer, Jr., Treasurer; for the New Hampshire Public Utilities Commission Staff, Robert B. Lessels and Kenneth E. Traum.

By the COMMISSION:

On April 24, 1984, Mount Crescent Water Company, a franchised New Hampshire water utility operating in Randolph, New Hampshire serving 64 customers filed a petition with this Commission for ex post facto approval for a bank loan and an 18% ($640) increase in annual revenues.

On April 27, 1984 the Commission set the matter for hearing on June 7, 1984, pursuant to RSA Chapters 365, 369, and 378.

A duly noticed public hearing was held on June 7, 1984, at 10 a.m. at the Commission's office in Concord.

As stated by the Company, the petition is a result of coliform bacteria showing up in water analysis. Based on that, the New Hampshire Water Supply and Pollution Control Commission required installation of a sterilization unit in the system. Accordingly, in the fall of 1983, the utility installed an ultraviolet sterilization system for approximately $6,000.

The utility borrowed $2,700 of the $6,000 from the Berlin City Bank on January 5, 1984, at an interest rate of 13.5%, but did not first request PUC approval. The utility is now requesting such approval.

The balance of the petition requests approval to increase rates by $640 (18%) on an annual basis, even though the Company's filing supported an increase of $3,531.

The filing was based on a 1983 test year, which the Commission accepts as "normal" for ratemaking purposes. The test year resulted in net operating income of $111 or 0.52% on an average rate base of $21,331.

Simply recognizing the aforementioned facts and the pro forma's relating to the sterilizing

unit of an additional $360 annually for electricity and $503[1](89) for depreciation, the $630 requested increase is certainly reasonable. Our Order will issue accordingly.

With regards to the loan, since the purpose of it is beyond repute and the terms are reasonable, the Commission will reluctantly approve it, but must inform the utility that similar disregard for Commission rules and regulations will not be tolerated in the future.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Mount Crescent Water Company may increase its rates to customers by $640 on an annual basis effective with all bills rendered after the date of this Order; and it is

FURTHER ORDERED, that 3rd Revised Page 5 of NHPUC tariff No. 3 — Water is approved; and it is

FURTHER ORDERED, that the Commission will "ex post facto" approve the terms and conditions of the $2,700 borrowing of January 5, 1984.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1984.

FOOTNOTE

[1]Utilization of this figure should not be interpreted as accepting a 10 year depreciable life.

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NH.PUC*06/20/84*[61444]*69 NH PUC 330*Northern Utilities, Inc.

[Go to End of 61444]

69 NH PUC 330

Re Northern Utilities, Inc.

DR 84-122, Order No. 17,081

New Hampshire Public Utilities Commission

June 20, 1984

Order approving a gas utility's special rate contract with an electric utility.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a utility selling gas under the jurisdiction of this Commission has filed with this Commission Special Contract No. 64 with Public Service Company of New Hampshire, effective on approval by Commission order, for gas service at

rates other than those fixed by its schedule of general application; and

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

ORDERED, that said contract may become effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1984.

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NH.PUC*06/20/84*[61445]*69 NH PUC 330*New England Telephone and Telegraph Company

[Go to End of 61445]

69 NH PUC 330

Re New England Telephone and Telegraph Company

DR 84-141, Order No. 17,082

New Hampshire Public Utilities Commission

June 20, 1984

Order approving the separation of customer premises equipment charges from existing telephone tariffs.

By the COMMISSION:

ORDER

WHEREAS, New England Telephone and Telegraph Company (NET) has filed with this Commission tariff provisions proposing to disaggregate certain customer premises equipment charges from existing rates; and

WHEREAS, such separation of charges is consistent with decisions by the Federal Communications Commission in its

Computer Inquiry II ([1980] 77 FCC2d 384, 35 PUR4th 143); it is

ORDERED, that Part B, Section 3, 1st Revised Pages 5-7 and 3rd Revised Pages 8 and 9, New England Telephone and Telegraph Company tariff, NHPUC No. 75, be, and hereby are, approved for effect June 20, 1984; and it is

FURTHER ORDERED, that one-time public notice of this filing be given, via publication of a summary of its impact, in The Union Leader.

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1984.

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[Go to End of 61446]

69 NH PUC 331

Re Mountain Springs Water Company

DR 82-359,
Second Supplemental Order No. 17,083

New Hampshire Public Utilities Commission

June 20, 1984

Clarification that earlier orders in the same docket made neither findings of fact nor rulings of law.

By the COMMISSION:

SUPPLEMENTAL ORDER

Upon consideration of the issues raised by the Mountain Springs Water Company in their appeal to the New Hampshire Supreme Court, No. 84-074, and in order to clarify the previous two orders entered by this Commission (Nos. 16,803 [(1983) 68 NH PUC 723] and 16,859 [(1984) (1984) 69 NH PUC 25]) in the above captioned proceeding; it is hereby

ORDERED, that the Commission has not made findings of fact or rulings of law in this docket; and it is

FURTHER ORDERED, that the three orders issued herein were and are issued without prejudice to the right of any party to address the issues in an appropriate future proceeding before this Commission and to present evidence and make legal arguments during that proceeding; and it is

FURTHER ORDERED, that the Orders continue to be valid solely for the purpose of providing the parties with a framework within which to present their positions on the relevant issues at an appropriate proceeding; and it is

FURTHER ORDERED, that neither this order nor the previous orders impose any duty or obligation upon the parties before this Commission; and it is

FURTHER ORDERED, that this docket is closed.

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1984.

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[Go to End of 61447]

69 NH PUC 332

Re Birchmere Water Company

DE 84-157, Order No. 17,088

New Hampshire Public Utilities Commission

June 21, 1984

Order allowing a water company to discontinue operations as a public utility.

By the COMMISSION:

ORDER

WHEREAS, Birchmere Water Company, a public utility franchised to operate in a limited area in the Town of Antrim, New Hampshire in DE 82-245 and Order No. 16,425 ([1983] 68 NH PUC 339), has transferred its plant and equipment to the White Birch Point Association; and

WHEREAS, the White Birch Point Association will provide water service to the former customers of the Birchmere Water Company as members of this Association; it is hereby

ORDERED, that the authority granted in DE 82-245 and Order No. 16,425 is hereby rescinded and the Birchmere Water Company is authorized to discontinue service as a public utility.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of June, 1984.

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NH.PUC*06/21/84*[61448]*69 NH PUC 332*Littleton Municipal Electric Department

[Go to End of 61448]

69 NH PUC 332

Re Littleton Municipal Electric Department

DR 83-351,
Supplemental Order No. 17,089

New Hampshire Public Utilities Commission

June 21, 1984

Order rejecting a municipal electric utility's proposed rate increase and substituting a purchased power cost adjustment instead.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on November 23, 1983, the Littleton Municipal Electric Department (the Department) filed with this Commission revised tariff pages, said revisions purporting to provide the Department an increase in annual revenues of $242,597.08, or about 12%; and

WHEREAS, pending investigation and decision, said filing was suspended for jurisdictional customers on December 9, 1983 by Commission Order No. 16,799; and

WHEREAS, supporting data filed by

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the Department continues to be inadequate to substantiate this increase, which allegedly was initiated following notification of an increase in wholesale rates by the Department's supplier, New England Power Company; and

WHEREAS, the Department's tariff adequately provides for a Purchased Power Cost Adjustment (Original Page 16) which outlines procedures for implementing a surcharge to pass through to consumers any increase in wholesale costs of electricity; and

WHEREAS, this Commission finds the Purchased Power Cost Adjustment to be the method appropriate for the instant case; it is

ORDERED, that 2nd Rev. Pg. 7A, 6th Rev. Pgs. 11 and 12, 7th Rev. Pg. 7, 8th Rev. Pgs. 9, 10 and 13, and 9th Rev. Pg. 15, Littleton Municipal Electric Department Tariff, NHPUC No. 1 — Electricity, be, and hereby are, rejected; and it is

FURTHER ORDERED, that, should the Department find it necessary, appropriate revisions be filed effecting a Purchased Power Cost Adjustment according to established tariff procedures; and it is

FURTHER ORDERED, that said PPCA be based upon settled New England Power Company W-6 rates, which the Commission notes are at levels lower than those upon which the Department's tariff revisions hereby rejected were based.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of June, 1984.

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NH.PUC*06/22/84*[61449]*69 NH PUC 333*Fuel Adjustment Clause

[Go to End of 61449]

69 NH PUC 333

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 84-113,
Supplemental Order No. 17,090

New Hampshire Public Utilities Commission

June 22, 1984

Order permitting a fuel surcharge to become effective without formal fuel adjustment clause hearings.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1984, sent to the New Hampshire Electric Cooperative, Inc., Exeter & Hampton Electric Company, Connecticut Valley Electric Company, Inc., Granite State Electric Company, Wolfeboro Municipal Electric Department, and Littleton Water and 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

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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 be scheduled; it is

ORDERED, that 126th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of $1.10 per 100 KWH for the month of June, 1984, be, and hereby is, permitted to become effective June 1, 1984.

By Order of the Public Utilities Commission of New Hampshire this twentysecond day of June, 1984.

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NH.PUC*06/22/84*[61450]*69 NH PUC 334*Tilton and Northfield Aqueduct Company

[Go to End of 61450]

69 NH PUC 334

Re Tilton and Northfield Aqueduct Company

DR 84-106, Order No. 17,091

New Hampshire Public Utilities Commission

June 22, 1984

Order approving tariff reduction.

APPEARANCES: J. Boynton, Esquire for the Company; Kenneth E. Traum and Robert B.

Lessels for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

Based upon the recommendation of the Commission staff, on May 3, 1984, the Commission issued an Order of Notice setting the subject of the reasonableness of the rates of Tilton & Northfield Aqueduct Company ("Company"), a New Hampshire public utility, for hearing on June 13, 1984.

A duly noticed public hearing was held at 10 a.m. on June 13, 1984 at the Commission's offices in Concord. Prior to the hearing, the Commission staff had made numerous data requests of the Company which were responded to in a timely manner and marked as Exhibits 1 and 2 in this docket.

After the Commission opened the June 13, 1984 hearing, and all parties in attendance noted their appearances, the parties requested an adjournment for purposes of discussing the situation in an effort to limit or settle the issues. The Commission complied with that request, and the parties did meet with success in settling the issues among themselves.

This settlement was then offered to the Commission for its approval. In summation the settlement included:

(1) A reduction of 8.5% to all tariff rates or approximately $18,000 annually.

(2) The reduction would be effective with all service rendered on or after July 1, 1984.

(3) In DR 82-51, 4th Supplemental Order No. 16,285 dated March 22, 1983 (68 NH PUC 147), the Commission had stated that at the time of the

next rate adjustment, the third block of the metered rate schedule should be eliminated. The parties felt that this elimination should be delayed until the next full rate case, as significant additional analysis is required.

The Commission has analyzed the proffered settlement and the utility's 1983 Annual Report, as filed in the normal course of business with the Commission's Finance Department, and feels the settlement is in the public good.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Tilton & Northfield Aqueduct Company reduced its tariffed rates by 8.5% effective with all service rendered on or after July 1, 1984; and it is

FURTHER ORDERED, that Tilton & Northfield Aqueduct Company shall file the applicable tariff pages.

By Order of the Public Utilities Commission of New Hampshire this twentysecond day of June, 1984.

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NH.PUC*06/22/84*[61451]*69 NH PUC 335*Wilton Telephone Company

[Go to End of 61451]

69 NH PUC 335

Re Wilton Telephone Company

DR 84-90,
Supplemental Order No. 17,092

New Hampshire Public Utilities Commission

June 22, 1984

Order rejecting proposed revisions of procedures for construction on private property.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on April 10, 1984, Wilton Telephone Company filed with this Commission certain revisions of its tariff, NHPUC No. 5 - Telephone, said revisions proposing to further document procedures for the construction of pole lines on private property; and

WHEREAS, on April 20, 1984, the filing was suspended by Commission Order No. 16,988 (69 NH PUC 221) pending investigation and decision thereon; and

WHEREAS, said investigation reveals that the proposed revisions merely elaborate on the payment of costs for construction by the consumer; and

WHEREAS, the Commission in its earlier orders in DR83-135 adequately specified that any term payments granted for such construction could be effected through a Special Contract approved by the Commission; and

WHEREAS, specifications for Special Contracts are adequately covered by both statute and Commission rules; and

WHEREAS, testimony in DR 83135 indicated circumstances under which such construction would be undertaken

were practically non-existent; it is

ORDERED, that Part VI, Section 4, 2nd Revised Page 3 of Wilton Telephone Company tariff, NHPUC No. 5 - Telephone, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Company personnel familiarize themselves with Chapter PUC 1600 regarding Special Contracts; and it is

FURTHER ORDERED, that any interest charged by the Company in such contract be equal

to that specified by this Commission in its rules for Customer Deposits.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of June, 1984.

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NH.PUC*06/22/84*[61452]*69 NH PUC 336*Public Service Company of New Hampshire

[Go to End of 61452]

69 NH PUC 336

Re Public Service Company of New Hampshire

DF 84-121,
Fourth Supplemental Order No. 17,093

New Hampshire Public Utilities Commission

June 22, 1984

Denial of motion for rehearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

On June 13, 1984, the Consumer Advocate filed a Motion for a Rehearing to amend or modify Order No. 17,057 (69 NH PUC 275) by conditioning said Order to the extent that the proceeds of the financing approved by the Commission be applied to correct the coal inventory and to further condition revenues received from rates in a manner that they be dedicated first to expenses for operation and maintenance.

The Commission, having reviewed the Motion and the arguments set forth therein find that Order No. 17,057 is lawful and reasonable. The Commission further finds that the Motion fails to set forth sufficient specifications as required by RSA 541:4.

The Commission, in Order No. 17,057, set forth that it shared the concerns of the Intervenors. However, those concerns would be more appropriately addressed in separate dockets. (See DR 84-131, DR 84-132 ([1984] 69 NH PUC 317) and DR 84-115.) Our present views remain the same.

By Order of the Public Utilities Commission of New Hampshire this twentysecond day of June, 1984.

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NH.PUC*06/27/84*[61453]*69 NH PUC 337*AT&T — Northeast, Inc.

[Go to End of 61453]

69 NH PUC 337

Re AT&T — Northeast, Inc.

DR 84-39, Order No. 17,095

New Hampshire Public Utilities Commission

June 27, 1984

Order deregulating provision of customer premises equipment to the disabled.

Public Utilities, § 117 — Telephone — Customer premises equipment — Provision to the disabled.

A company formed solely to provide customer premises equipment to the disabled was held not to be a public utility; regulation of the provision of such equipment to the disabled was held unnecessary because regulation would create higher costs to consumers. [1] p.338.

Rates, § 533 — Telephones — Customer premises equipment — Provision to the disabled.

A proposed tariff for the provision of customer premises equipment to the disabled was rejected because a determination had been made that formal regulation of such services was not in the public interest and because competition would adequately regulate prices. [2] p.338.

APPEARANCES: For AT&T—Northeast, Lester G. Stiel, Esquire; for the PUC Staff, Larry Smukler, Esquire.

By the COMMISSION:

REPORT

On December 30, 1983, AT&T Communications of New England delivered to this Commission an AT&T letter which discussed the provision of specialized equipment for disabled customers and customer premises equipment (CPE) used for National Security and Emergency Preparedness. It indicated that the Federal Communications Commission (FCC) had excepted these categories when it detariffed customer premises equipment. The National Security and Emergency Preparedness CPE was to remain tariffed until June 1, 1984, but the disposition of the equipment for the disabled was left to State authorities. While AT&T—Information Services (ATT—IS) was the subsidiary designated to handle detariffed equipment, other subsidiary companies, including AT&T—Northeast (ATT— NE), were formed to handle the excepted equipment. Since time constraints precluded filing of the appropriate tariff, ATT—NE proposed adoption of applicable sections of the New England Telephone Tariff No. 75.

New England Telephone (NET), in its letter of December 29, 1983, indicated no objections to the ATT—NE adoption of sections of its tariff, and confirmed that, as of January 1, 1984, all CPE would be transferred to AT&T.

On February 14, 1984, AT&T Communications of New England filed on behalf of ATT—NE tariff No. 1 addressing the equipment for the disabled customer. While New England Telephone was supplying such equipment to medically certified customers at no charge, AT&T— Northeast indicated it would discontinue such practice for future requests, but would grandfather those currently in use.

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(The Commission notes, however, that the grandfathering agreement was part of the ATT—COM transmittal letter, not the filed tariff.) That Company also indicated it would file as soon as practicable a motion to detariff this equipment. That action was taken by letter of April 1, 1984 with its accompanying petition. ATT—NE indicated that, should the Commission agree that this equipment be detariffed, it would be handled by ATT—IS with other CPE.

The Commission issued an Order of Notice on March 21, 1984 referencing the filing of tariffs by ATT—NE and indicating that it had no authority to accept or reject such tariff until it were determined that the Company should be franchised to operate as a New Hampshire utility. Accordingly, it directed that a hearing be convened at the Commission's Concord offices on April 19, 1984 at 10:00 a.m. at which it would hear testimony from the petitioner and all intervenors on the requests by ATT—NE.

At the duly noticed hearing, Attorney Stiel presented one witness, Ralph M. Schultz, President of ATT—NE as well as 21 similar companies formed to handle the cited equipment in various jurisdictions. No intervenors were present.

Mr. Schultz emphasized that his 22 companies had been formed solely for vending tariffed CPE for the disabled customers. He compared the operation to the telephone sales efforts of Radio Shack and Sears, Roebuck & Co. He insisted that his 22 companies were not utilities since none operated facilities for the transmission of intelligence by telephone for hire.

In preparation for their roles as utilities, each of the 22 companies formed by AT&T had established contracts with other AT&T entities for services. For example, ATT—IS would handle the National Special Needs Center (NSNC) and any installation and maintenance. ATT —COM would handle legal and regulatory matters. The Commission notes that testimony revealed the NSNC would function regardless of its decision to tariff or detariff this type of CPE, except in the latter case it would be directly via ATT—IS rather than through ATT— NE et al.

Mr. Schultz testified that 17 states had detariffed this specialized equipment at the time he had prepared his testimony (Exhibit 2). He assured the Commission that pricing would be stabilized according to the Price Predictability Plan (PPP). That plan establishes pricing over a threeyear period. As indicated earlier, both ATT—NE and ATT—IS would grandfather all medically certified customers now using the specialized equipment at no cost.

Attorney Stiel subsequently filed a memorandum in which he elaborated upon regulatory actions on this subject by many other states. This information had been requested by Commissioner Iacopino during the April 19 hearing. Mr. Stiel cited many similarities between laws of those states that had detariffed specialized CPE and those of New Hampshire.

[1,2] There are two questions which must be answered ... whether or not ATT—NE is, in

fact, a public utility as defined by RSA 362:2 and whether or not the specialized CPE should be tariffed.

The record revealed that the sole enterprise of ATT—NE is the provision of small amounts of specialized CPE. The Commission is convinced that, if such an operation were to be maintained on a regulated basis, costs would be higher and not in the public interest. Testimony also revealed that, with deregulated equipment handled by ATT—IS customers

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would have the advantage of new technologies which might not be available to ATT—NE. Accordingly, deregulation seems in the best interest of the consumer. There is concern, however, that pricing of this CPE remains affordable.

Assurances of the witness and his associated companies indicate price stability as specified in the PPP. The certified disabled will see no change to their cost of service, since the zero rental charge will be maintained for those now certified. Those new customers are protected by the PPP and have available the option to buy not only from AT&T, but also from a variety of vendors. Competition will regulate price. ATT—NE Tariff No. 1, therefore, is rejected.

As an equipment vendor, ATT—NE does not meet the definition of `public utility' as specified in RSA 362:2. Accordingly, the Commission denies utility status to ATT—NE at this time. Such denial does not preclude future investigation and acceptance of jurisdiction should the Commission feel such is necessary in serving disabled subscribers.

Our Order will issue accordingly.

ORDER

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

ORDERED, that AT&T—Northeast does not meet the definition of a public utility and this Commission denies jurisdiction; and it is

FURTHER ORDERED, that Tariff No. 1 of AT&T—Northeast be, and hereby is, rejected; and it is

FURTHER ORDERED, that ATT— NE give public notice of this Order by publishing a one-time summary of its effect in a newspaper or newspapers of general statewide circulation; and it is

FURTHER ORDERED, that said Company also give personal notice to all currently certified customers of the impact of deregulation of the specialized CPE for the disabled.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of June, 1984.

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69 NH PUC 339

Re New Hampshire Electric Cooperative, Inc.

DF 83-360,
Fifth Supplemental Order No. 17,096

New Hampshire Public Utilities Commission

June 27, 1984

Order authorizing loan to avoid default.

APPEARANCES: Attorney Larry M. Smukler for the Public Utilities Commission Staff; Roger Easton, pro se; Gary McCool, pro se; and Attorney Mayland Morse for the petitioner.

By the COMMISSION:

REPORT

The Commission issued Report and Supplemental Order No. 16,915 on

February 24, 1984 (69 NH PUC 137) which granted the New Hampshire Electric Cooperative, Inc. (Company) petition for authority to borrow $111,000,000 from federal financing institutions including the Rural Electrification Administration (REA). On March 30, 1984, in Report and Second Supplemental Order No. 16,965 ([1984] 69 NH PUC 201) the Commission denied motions for a rehearing filed by the intervenors. The matter was subsequently appealed to the New Hampshire Supreme Court.

After receiving additional information, the Commission issued Report and Third Supplemental Order No. 17,060, dated June 4, 1984 (69 NH PUC 283), which directed the Company to file an amended petition and established a further procedural schedule. As a result of this Order, the Supreme Court remanded to the Commission the issue of whether to approve a $57,000,000 portion of the previously approved authority to borrow $111,000,000.

The Company represented in its petition that the REA, the Company's lender, will not allow it to draw on its $111,000,000 line of credit until it is given assurance that necessary regulatory approvals have been issued. The Commission accordingly issued an Order of Notice setting a hearing on the petition for June 25, 1984 at the Commission offices. The required affidavit of publication was timely filed and the hearing was held as scheduled.

The Company testified at the hearing that it requires $9,000,000 of financing to avoid default through the end of calendar year 1984 and that emergency approval to borrow $9,000,000 out of the previously approved $111,000,000 is required by the REA before any such borrowing can occur.

The intervenors and the Consumer Advocate objected to the petition. The Staff recommended approval. The Commission agrees with Staff.

RSA 365:26 provides, in pertinent part, that Orders of the Commission shall be in effect until

altered, amended, suspended, annulled, set aside or otherwise modified by the Commission or the Court. To date, neither the Commission nor the Court has altered, amended, suspended, annulled, set aside or otherwise modified Report and Supplemental Order No. 16,915 or Report and Second supplemental Order No. 16,965, the two Orders authorizing the original $111,000,000 borrowing. Therefore, those Orders are still in full force and effect and the Cooperative is authorized to borrow the required $9 million pursuant thereto.

The Commission also stated in Report and Supplemental Order No. 16,915, that it is not in the public interest for the Company to be put in default of its lawful obligations. The Company demonstrated at the duly noticed hearing held on June 25, 1984 that it requires $9,000,000 of financing to avoid default through the end of calendar year 1984. For the reasons stated above, the Commission finds that approval of the authority to borrow $9,000,000 is consistent with the public good. Our Order will issue accordingly.*(90)

SUPPLEMENTAL ORDER

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

ORDERED, that the request of the New Hampshire Electric Cooperative, Inc. for emergency authority to borrow $9,000,000 out of the previously approved $111,000,000 be, and hereby is, granted.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of June, 1984.

FOOTNOTE

*Commissioner Aeschliman did not participate in this proceeding but will research the record and in the event she concurs therewith will add her signature at a later date.

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NH.PUC*06/28/84*[61455]*69 NH PUC 341*Fuel Adjustment Clause

[Go to End of 61455]

69 NH PUC 341

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, Woodsville Water and Light Department, and Connecticut Valley Electric Company, Inc.

DR 84-130, Order No. 17,097

New Hampshire Public Utilities Commission

June 28, 1984

Order approving fuel adjustment clause rates.

Automatic Adjustment Clauses, § 13 — Purchased power — Outages — Replacement costs.

Increased replacement power costs that had been included in a fuel adjustment clause rate for an electric utility were approved, subject to refund if it was determined that the power outage creating the higher costs had been caused by negligence or company error.

APPEARANCES: For Concord Electric Company and Exeter & Hampton Electric Company, Margaret Nelson, Esquire; for Granite State Electric Company, Philip Cahill, Esquire; for the PUC Staff, Kenneth E. Traum.

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 1984 at its office in Concord in June 27, 1984.

Concord Electric Company and Exeter & Hampton Electric Company were represented by one witness, William H. Steff. Concord had a FAC rate credit of ($0.037)/100 KWH approved for April, May, and June, 1984, while Exeter & Hampton Electric Company had a rate credit of ($0.048)/100 KWH.

In developing the third quarter of 1984 estimates, the most significant inputs were based on estimates provided by the companies' sole electricity supplier, PSNH, of $0.03701/KWH for July, 1984, $0.03560/KWH for August, 1984, and $0.03594/KWH for September, 1984.

Based on this and taking the amount of fuel expense rolled into base rates and the effect of the State Franchise Tax into account, Concord's proposed rate for the third quarter of 1984 was a credit of ($0.198)/100 KWH, while Exeter & Hampton's was a credit of ($0.064)/100 KWH. These will result in lower bills to customers in both cases. A net decrease of 81/month for average Concord customers, and a 13 decrease for an average 500 KWH/month customer on the Exeter & Hampton System.

The decreases are attributable to larger overcollections in the second quarter of 1984 than the prior quarter, which by the

mechanism of the Fuel Adjustment Clause, are deducted from the cost estimates for the 3rd quarter of 1984. This is due to the utilities' sole supplier of electricity, Public Service Company of New Hampshire over estimating its cost of generation due to under estimating coal and nuclear generation.

During the course of the June 27, 1984 hearing the Commission Finance Staff brought up the subjects of the Company's estimates of sales growth estimates, PSNH line loss adjustments, overcollections for the 2nd quarter of 1984, etc. Based on these lines of cross and the direct

testimony, the Commission believes the rates as filed for both companies are in the public good and our Order will issue accordingly.

Granite State Electric Company (GSEC) made its filing for a fuel Adjustment Clause Rate (FAC), an Oil Conservation Adjustment Rate (OCA), and a Qualifying Facility Rate on June 12, 1984 for the third quarter of 1984.

The rates requested were $0.949/100 KWH for the FAC, and $0.187/100 KWH for the OCA. For comparative purposes the respective rates for the second quarter were $1.202/100 KWH and $0.142/100 KWH (OCA). A combined decrease of $1.04/month for a typical 500 KWH/ month customer.

During the course of the duly noticed hearing on June 27, 1984, twelve exhibits were submitted by the Company through one witness.

First, addressing the FAC request, the Commission is again pleased with the decrease and the reasons for such; namely a smaller prior period adjustment, more hydroelectric, coal and nuclear generation, with an offset by slightly higher estimated oil and coal costs.

The GSEC rate for the 4th quarter of 1983 had increased dramatically due to an extremely costly outage which occurred on August 26, 1983. On that date GSEC's sole electricity supplier and affiliate, New England Power Company (NEPCo.), saw its largest and most efficient generating unit, Brayton Point III, suffer a fire, explosion and very extensive damage. Even with all the measures NEPCo. took to expedite repairs, the unit was down for approximately six months.

The cause continues under investigation by various entities and until the unit returned to service, NEPCo. was forced to buy or generate replacement power from other more expensive sources.

The NHPUC feels unable to automatically approve inclusion of the replacement power costs even though the reconciliation adjustment in GSEC's New Hampshire FAC rate prior to completion of the investigations of the accident and reports. If an act of negligence or Company error is found to have been the cause of the outage, the Company can be rightfully held accountable.

With that understanding the Commission will approve the increased replacement power costs in the reconciliation due to the Brayton Point III outage, subject to refund if negligency or company error is found to have caused the damage.

With the aforementioned caveat, and bearing in mind the record in this docket regarding fuel costs, coal inventory plans and shipping operations, sales growth, etc. the Commission will accept GSEC's proposed second quarter FAC rate of $0.949/100 KWH.

Our Order will issue accordingly.

GSEC's OCA rate as proposed reflects a slight increase from the second quarter rate due to a greater oil/coal price differential and a prior period undercollection.

Based on the record, the New Hampshire PUC will accept GSEC's proposal

for the third quarter OCA rate of $0.187/100 KWH.

Correspondingly, the Commission will accept GSEC's proposed Qualifying Facility Power Purchase Rates for the third quarter of 1984.

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 and 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 an FAC hearing for those utilities which file monthly unless requested or needed by one of those utilities; and the Commission would not automatically schedule FAC rate hearings.

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

ORDERED, that the Commission in DR 83-352, Order No. 16,946, dated March 19, 1984 (69 NH PUC 189), of the N.H. Electric Co-op maintained the rolled in rate of $0.02822/KWH in effect until changed by the Commission, no new rate will be stated for the N.H. Electric Co-op in this month's FAC order; and it is

FURTHER ORDERED, that 19th Revised page 19A of Concord Electric Co. tariff NHPUC No. 8 — Electricity, providing for a fuel surcharge credit of ($0.198)/100 KWH of the months of July, August, and September, 1984, be, and hereby is, permitted to go into effect for the month of July, 1984; and it is

FURTHER ORDERED, that 19th Revised page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of ($0.074)/100 KWH for the months of July, August, and September, 1984 be, and hereby is, permitted to go into effect for the month of July, 1984; and it is

FURTHER ORDERED, that 10th Revised page 57 of Granite State Electric Co. tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of 18.7 cents ($0.187)/100 KWH for the months of July, August, and September, 1984, be, and hereby is, permitted to go into effect for July, 1984; and it is

FURTHER ORDERED, that 12th Revised page 30 of Granite State Electric (GSEC) tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the months of July, August, and September, 1984, of $0.949/100 KWH be, and hereby is, permitted to go into effect for July, 1984; and it is

FURTHER ORDERED, that 2nd Revised page 11C of GSEC tariff, NHPUC No. 10 —

Electricity, providing for a Qualifying Facility Power Purchase Rate for July through December, 1984, be, and hereby is, accepted for effect for July, August, and September, 1984; and it is

FURTHER ORDERED, that 42nd Revised page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC

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No. 6 — Electricity, providing for a fuel surcharge of $2.54/100 MWH for the month of July, 1984, be, and hereby is, permitted to become effective July 1, 1984; and it is

FURTHER ORDERED, that 94th Revised page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of ($1.43)/100 KWH for the month of July, 1984, be, and hereby is, permitted to become effective July 1, 1984; and it is

FURTHER ORDERED, that 91st Revised Page 18 of Connecticut Valley Electric Company, Inc., tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of ($0.47)/100 KWH of the month of July, 1984, be, and hereby is, permitted to become effective July 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax docket DR 83-205, Order No. 16,524 ([1983] 68 NH PUC 461).

By Order of the Public Utilities Commission of New Hampshire this twentyeighth day of June, 1984.

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NH.PUC*07/02/84*[61456]*69 NH PUC 344*Public Service Company of New Hampshire

[Go to End of 61456]

69 NH PUC 344

Re Public Service Company of New Hampshire

Intervenors: Community Action Program and Office of Consumer Advocate

DR 84-128, Order No. 17,099

New Hampshire Public Utilities Commission

July 2, 1984

Order setting energy cost recovery mechanism rate.

Automatic Adjustment Clauses, § 57 — Overcollections — Refunds — Deferrals.

A proposal to allow an electric utility to increase its cash on hand by deferring flow through to customers of overcollections of energy cost recovery mechanism revenues was rejected

because the benefits of allowing deferral were outweighed by the difficulties raised by the proposal. [1] p.346.

Automatic Adjustment Clauses, § 57 — Overcollections — Interest.

A proposal to require an electric utility to pay interest through the energy cost recovery mechanism on average arrearages owed to fuel suppliers was rejected because ratepayers had not incurred additional costs from the arrearages. [2] p.347.

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

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By the COMMISSION:

REPORT

This docket was initiated by a petition filed on May 24, 1984 by Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire. Said petition requested a change in the ECRM rate from the January through June, 1984 rate of $3.615/100 KWH.

The original rate requested was $3.691/ 100 KWH for July through December, 1984, later revised to $3.635/100 KWH.

Following the duly noticed public hearing at the Commission's offices in Concord on June 20, 1984, the Commission issued an Order of Notice setting an additional hearing date for June 28, 1984 in connection with DR 84-131 (Schiller Station).

Said second public hearing was held at the Commission's offices in Concord.

On May 24, 1984, PSNH prefiled twelve exhibits and requested an ECRM rate of $3.691/100 KWH for July through December, 1984. On June 18, 1984, PSNH updated a number of those exhibits due to revised fuel cost estimates, inclusion of the proposed Small Power Producers rate in DE 83-62, and inclusion of actual May, 1984 results. These revisions reduced the rate request from $3.691/100 KWH to $3.635/100 KWH.

During the course of the June 28, 1984 hearing, PSNH further revised its request to $3.636/100 KWH by updating prior exhibits. Second, PSNH submitted an exhibit requesting a rate of $3.822/100 KWH and deferral of the flow back of the $4,431,143 overcollection of ECRM plus interest on such.

In total, prior to and during the course of the hearings, twenty-three exhibits and revisions were submitted into evidence, and numerous witnesses testified on behalf of the Company. In addition, posthearing information and argument were provided.

Prior to the hearings, the Commission's staff and other parties met with PSNH for discovery purposes. Many of the Company's responses were submitted in writing on June 18, 1984 and

were marked as Exhibit 20.

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

1. Oil price estimates, trends, contracts, payments status;

2. Coal price estimates, contracts, inventory policy, arrearages;

3. Natural gas purchases as planned;

4. Retail loss adjustment factor;

5. Construction power estimates;

6. Historical unavailability factors;

7. Sales growth estimate of 3.2%;

8. Potential Schiller conversion penalties;

9. Marginal energy costs;

10. Estimate savings from short-term purchases; and

11. Usage of the $4.4 million estimated overcollection as of 6/30/84.

Several of the items merit additional discussion.

1. The oil situation was fully addressed by the parties and Commission in DR 84-132 which was incorporated into this docket; no further comment is necessary other than to make reference to Commission Order No. 17,073 ([1984] 69 NH PUC 317).

2. The coal situation was fully addressed by the parties and Commission in DR 84-115 which was incorporated into this docket; no further comment is necessary other than to make reference to Commission Order No. 17,072 ([1984] 69 NH PUC 312); and to refer to the

Commission's response to CAP's motion which is a part of this report.

4. PSNH calculated a new ECRM Loss Adjstment Factor based upon data for the twelve months ended December 31, 1983. This factor as developed in exhibit eight (8) was 1.00860, rounded to 1.009. The Commission accepts the method of computation, but recognizing that application of this figure is non-reconcilable, believes that rounding, even though the Commission previously allowed PSNH to round up, acts to lose some of the accuracy of the calculation. Therefore, the Commission will accept a 1.0086 loss factor. This reduces the Estimated Total Cost Subject to Adjustment in Revised Exhibit 1-A by $36,825 from $88,345,114 to $88,308,289 and the requested rate from $3.636/100 KWH to $3.634/100 KWH.

8. The status of the conversion of Units 4, 5, and 6 of Schiller Station from oil to coal was addressed in DR 84-131, which was incorporated into this docket. From that docket it was learned that a cessation of construction, due to PSNH's financial difficulties and decisions, means the conversion will not be completed within the non-penalty periods endorsed in the settlement agreement which was entered into by the parties in DE 79-141, and accepted by the Commission.

Since page 8 of the Schiller Settlement Agreement stated that the Early Conversion Reward (or Late Conversion Penalty) "will be reconciled in the first effective period following the In-Service date", and no units were or anticipated to be converted as of June 30, 1984, no penalty will be assessed in this ECRM period.

In the next ECRM period (January 1, 1985 — June 30, 1985) any applicable penalties and/or rewards will come into play as well as the determination of the availability targets for the converted units.

[1] 11. PSNH estimated a cumulative overcollection of ECRM revenues through June 30, 1984, of $4.4 million. Normally this overcollection is automatically flown through the next ECRM period, and any cumulative over/under collections during the period accrue interest at 8%.

PSNH requested a deferral in the refund of the $4.4 million plus accumulated interest until January 1, 1986 at an 8% annual interest rate. The simplistic purpose of this deferral is to allow PSNH to increase its cash flow by $4.4 million. PSNH would then, out of its improved cash flow, commit at least $4.4 million to the Schiller Conversion and reduce the arrearage to Consolidation Coal (as previously outlined by PSNH). This would be in addition to the $1.0 Million/month already committed to the Conversion in DR 84-131.

The effect of deferring the $4.4 million flow back would raise ECRM's share of bills to customers by $1.04/month on average, for the months of July through December, 1984. In turn, per PSNH, if their request were to be granted, the conversion of the three units would be expedited by 13.5 months. Also, according to PSNH, this speed up of the conversion would result in a $5.3 million savings to ratepayers.

The expedited conversion of Schiller Units 4, 5, and 6 was recognized as a benefit to ratepayers in DR 79-141, and remains uncontested (all other things remaining equal). While it appears that allowing PSNH to defer the flowback may accelerate the completion of the project because of PSNH's precarious financial situation, many new and complicated issues must be resolved in order to grant the request. Those issues include inter alia: whether ratepayers should be required to loan PSNH funds at 8% interest (or at any rate?); whether the Commission should allow the breaking of the

ECRM mechanism; whether the proposal is a violation of the anti-CWIP law (RSA 378:30-a); whether the proposal should be noticed under RSA 369.

The Commission is of the belief that the benefits of allowing the deferral do not outweigh the difficulties raised by the proposal. Accordingly, PSNH's request will be denied. As of this date, PSNH in under Commission Order to complete the conversion according to the schedule set forth in the settlement agreement.

Motion of Community Action Program

[2] Per a filing of June 22, 1984, the CAP requested the Commission order PSNH to pay interest through the ECRM mechanism, on average arrearages owed to all fuel suppliers.

The fact that PSNH did and does have arrearages due to certain fuel suppliers is uncontested. Through dockets incorporated into this docket (DR 84-115 and DR 84-132 [(1984) 69 NH PUC 317], this Commission has ordered PSNH to keep the Commission appraised of any major changes in the arrearage situation; and PSNH has stated a plan to the Commission to alleviate any major fuel supplier arrearages in a timely manner.

PSNH, in addition to stating a plan to alleviate the arrearages, has informed the Commission that no late payment charges or revised higher contractual rates have arisen due to these arrearages. If this had not been the case, this Commission would not have allowed late payment charges or higher contractual rates, due to arrearages, to be passed through to ratepayers through the ECRM mechanism. Since ratepayers have not incurred any additional costs, the Commission cannot accede to CAP's motion of assessing and applying interest through ECRM.

Motion of Campaign for Ratepayers' Rights

At the beginning of the June 28, 1984 hearing, the Campaign for Ratepayers' Rights submitted a Motion for Summary Judgement on the issue of whether to defer the flow through of the $4.4 million overrecovery. The Motion was based on an assertion that Commission approval of PSNH's proposal is prohibited by RSA 378:30-a. In view of our decision to deny PSNH's request to defer the flowback, we need not reach the issue raised by the Campaign for Ratepayers' Rights.

Conclusion

In summation, with the adjustment noted in paragraph 4 above, the Commission accepts an ECRM rate for July — December, 1984 of $3.634/100 KWH, an increase of approximately 9 per month for the typical 500 KWH/month customer.

Our Order will issue accordingly.

ORDER

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

ORDERED, that PSNH shall file revised tariff pages setting an ECRM rate of $3.634/100 KWH for July through December, 1984.

By Order of the Public Utilities Commission of New Hampshire this second day of July, 1984.*(91)

FOOTNOTE

*Chairman McQuade was absent on the date of the decision, but will review the decision upon his return. In the event he concurs, his signature will be added herewith.

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NH.PUC*07/03/84*[61457]*69 NH PUC 348*New England Telephone and Telegraph Company

[Go to End of 61457]

69 NH PUC 348

Re New England Telephone and Telegraph Company

DR 83-186,
Third Supplemental Order No. 17,100

New Hampshire Public Utilities Commission

July 3, 1984

Order approving implementation of optional measured service.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, New England Telephone and Telegraph Company has filed with this Commission its Supplement No. 13, comprising Original Pages 1-13, to Tariff NHPUC No. 75; and

WHEREAS, said pages propose the implementation of its optional measured service in exchanges capable of providing such service during the third quarter of 1984; and

WHEREAS, said filing is consistent with earlier orders implementing such service; it is

ORDERED, that Supplement No. 13 to New England Telephone and Telegraph Company tariff, NHPUC No. 75, be, and hereby is, approved for effect July 8, 1984; an it is

FURTHER ORDERED, that public notice of this filing be given in the manner used with earlier approvals of such measured service.

By order of the Public Utilities Commission of New Hampshire this third day of July, 1984.

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NH.PUC*07/03/84*[61458]*69 NH PUC 348*New England Telephone and Telegraph Company

[Go to End of 61458]

69 NH PUC 348

Re New England Telephone and Telegraph Company

DR 84-51,
Second Supplemental Order No. 17,101

New Hampshire Public Utilities Commission

July 3, 1984

Order approving revisions to tariffs.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No. 17,053 issued on May 25, 1984 (69 NH PUC 268), directed the filing of revised

pages in lieu of those rejected therein; and

WHEREAS, on June 15, 1984, New England Telephone and Telegraph Company filed certain tariff revisions in compliance with said order; and

WHEREAS, the Commission finds such filing acceptable; it is

ORDERED, that the following revisions to New England Telephone and Telegraph Company tariff, NHPUC No. 75, be, and hereby are, approved for effect May 25, 1984.

Supplement No. 12 (Title Page, Orig. Pg. 1)
Pt. A, Sec. 7 — 2nd Rev. Pgs. 20 and 27
— 3rd Rev. Pgs. 19, 21 and 30
— 4th Rev. Pgs. 28, 31 and 70.

By order of the Public Utilities Commission of New Hampshire this third day of July, 1984.

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NH.PUC*07/05/84*[61459]*69 NH PUC 349*New England Electric Transmission Corporation

[Go to End of 61459]

69 NH PUC 349

Re New England Electric Transmission Corporation

DE 84-99, Order No. 17,102

New Hampshire Public Utilities Commission

July 5, 1984

Order granting petition to construct feeder line.

APPEARANCES: For the Petitioner, Philip H. R. Cahill, Esquire.

By the COMMISSION:

REPORT

On April 18, 1984 the New England Electric Transmission Corporation filed a petition with this Commission for authority to engage in the business of a public utility and to begin construction of an electric facility in the Town of Lyman, New Hampshire. On April 25, 1984 an Order of Notice was issued setting a hearing for May 29, 1984 at 10:00 a.m. at the Commission's Concord offices. Notices were sent to Russell Holden and Michael Flynn, Esquire, New England

Electric Transmission Corporation for Publication; Selectmen's office. Town of Lyman; and the Office of the Attorney General. On May 25, 1984 an affidavit was filed confirming that public action was made in the Union Leader on May 4, 1984, in the Littleton Courier on May 9, 1984, and the Caledonian-Record on May 4, 1984.

A request by the petitioner that this docket be consolidated with two earlier dockets, DE 84-58 and DE 84-59 ([1984] 69 NH PUC 254) was denied on the basis that disposition had already been made on those dockets. The commission agreed to incorporate the testimony from the witnesses in those previous dockets into this proceeding.

Mr. David L. Holt, the Lead Project Engineer for New England Electric

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Transmission (NEET) and Mr. Frank S. Smith Project Engineer for Transmission Lines Related to the Hydro-Quebec Interconnection, testified for the petitioner. Mr. Smith testified that the sole purpose of this petition is to allow NEET to install, operate and maintain a feeder line to its ground electrode located in Lisbon, New Hampshire. NEET will not sell electricity at retail or wholesale rates in Lyman. The ground electrode feeder line will be a distribution line with poles 30 to 35 feet in height, on which will be installed two conductors approximately one inch in diameter. The poles will carry five foot crossarms and the conductors will be supported on 34 KV insulators. The right-of-way will extend through the northeast corner of Lyman and would be a fully cleared 40 foot width with the line located in its center. Trees which are outside of that width which may endanger will also be cut. The total length of the line within Lyman is 1.4 miles as depicted on the Company's exhibit. The line will be constructed to meet all applicable safety construction codes and standards.

Mr. Holt testified that the purpose of the proposed feeder line as it relates to the ground electrode, the operation of the feeder line and ground electrode, and the level of risk to the public are as he testified in dockets DE 84-58 and DE 84-59. The feeder line will be continuously monitored and the Hydro-Quebec intertie will automatically shut down in miliseconds should the feeder line break. The line will carry a significant load for a total of only about four hours per year or less than one hour in every 2000 hours.

Both witnesses testified that the proposed line and electrode are necessary for the proper operation of the proposed high voltage DC line between HydroQuebec and New England.

Upon investigation the Commission finds no reason to deny the petition. We found earlier, in DSF 81-349, (Re New England Electric Transmission Corp. [1982] 67 NH PUC 409) that NEET should be authorized to conduct business as a public utility in the State of New Hampshire in the Towns of Littleton and Monroe on the basis that they have the essential (1) financial backing; (2) management and administrative expertise; (3) technical resources; and (4) general fitness to operate as a public utility. In docket DE 84-59 we found that the Company should also be allowed to engage in business as a public utility in the Town of Lisbon, New Hampshire for the same purpose as requested in the instant petition. We reconfirm here that NEET is a subsidiary of New England Electric System, a large holding company which through other subsidiaries operates electric generation transmission and distribution facilities in several New England States and has approximately 5000 employees, a large engineering staff and considerable

experience in high voltage transmission. NEET will have ready access to these services as a subsidiary of New England Electric Systems. These same qualifications that were found adequate in the previous dockets apply equally in this proceeding. We find that NEET should be authorized to engage in business as a public utility in the Town of Lyman, New Hampshire. 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 petition of New England Electric Transmission Corporation to commence business as a public utility and begin construction of a

portion of the ground electrode feeder in the Town of Lyman, New Hampshire is approved.

By order of the Public Utilities Commission of New Hampshire this fifth day of July, 1984.

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NH.PUC*07/05/84*[61460]*69 NH PUC 351*TDEnergy, Inc.

[Go to End of 61460]

69 NH PUC 351

Re TDEnergy, Inc.

DR 84-139,
Supplemental Order No. 17,103

New Hampshire Public Utilities Commission

July 5, 1984

Order granting motion for extension of time.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Order No. 17,077 ([1984] 69 NH PUC 327) which inter alia, approved nisi a long term rate filing of TDEnergy, Inc. effective July 14, 1984; and

WHEREAS, on June 29, 1984, Public Service Company of New Hampshire ("PSNH") filed a Motion for Extension of Time to File Comments and Exceptions ("Motion") which requested, inter alia, that the Commission extend the time to file exceptions and comments and the effective date of Order No. 17,077; and

WHEREAS, the commission finds that there is good cause to extend the time for filing exceptions and comments and the effective date of Order No. 17,077; it is therefore

ORDERED, that Order No. 17,077 be, and hereby is, modified to provide that PSNH and

TDEnergy, Inc. may file comments and exceptions no later than July 12, 1984; and it is

FURTHER ORDERED, that Order No. 17,077 be, and hereby is, modified to provide for an effective date of July 19, 1984.

By order of the Public Utilities Commission of New Hampshire this fifth day of July, 1984.

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NH.PUC*07/05/84*[61461]*69 NH PUC 352*Small Energy Producers and Cogenerators

[Go to End of 61461]

69 NH PUC 352

Re Small Energy Producers and Cogenerators

Intervenors: Public Service Company of New Hampshire, Granite State Hydroelectric Association, Franconia Power and Light Associates, Inc., Claremont Hydro Associates, Newfound Hydro Electric Company, Franklin Falls Hydro Electric Company, Rollingsford Manufacturing Company, Concord Steam Corporation, Waterloom Falls Hydro Companies, Conservation Law Foundation of New England, Inc., New England Alternative Fuels, Inc., Office of Consumer Advocate, and Delta Power Engineering et al.

DE 83-62,
Eighth Supplemental Order No. 17,104

61 PUR4th 132

New Hampshire Public Utilities Commission

July 5, 1984

Order establishing rates for small energy producers and cogenerators.

Cogeneration, § 36 — Rate design factors — Time-differentiated pricing.

To qualify for time-of-day rates, small power producers must have a time-of-day meter or they will receive either the off-peak rate for all energy sold or an average "all hours" rate. [1] p.356.

Cogeneration, § 28 — Avoided costs — Energy and production costs.

The energy component of avoided cost rates was calculated by multiplying marginal energy cost by loss factor by indirect factor. [2] p.357.

Cogeneration, § 28 — Avoided costs — Energy and production costs.

Marginal energy cost is a cost, composed primarily of fuel, that will be avoided if a kilowatt-hour of energy is produced by a small power producer. [3] p.357.

Cogeneration, § 37 — Rate design factors — Line losses.

The loss factor is intended to adjust for energy losses which occur in the generation and

transmission of electricity. [4] p.357.

Cogeneration, § 28 — Avoided costs — Energy and production costs — Indirect factor.

The indirect factor used in computing the energy component of avoided cost rates represents the combined effects of adjustments to methodology, inventory costs, working capital costs, and operating and maintenance costs. [5] p.358.

Cogeneration, § 28 — Avoided costs — Energy and production costs.

The amount paid to small power producers for the energy component will be calculated by multiplying the energy component by the energy produced during the time period for which payment is made. [6] p.358.

Cogeneration, § 27 — Avoided costs — Capacity costs — Calculation.

The capacity component is calculated by multiplying the marginal cost of capacity per kilowatt per year by the loss adjustment factor. [7] p.358.

Cogeneration, § 27 — Avoided costs — Capacity costs.

The marginal cost of capacity per kilowatt is an annual cost based on estimated avoided costs of generation and transmission capacity. [8] p.358.

Cogeneration, § 30 — Rates — Calculation.

The amount to be paid a small power producer is calculated by multiplying the capacity component by the audit value of the site by the peak reduction factor. [9] p.359.

Cogeneration, § 30 — Rates — Calculation — Audit value.

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The audit value of a small power production site is determined by the commission on the basis of historical data and the characteristics of the specific plant. [10] p.359.

Cogeneration, § 25 — Avoided costs — Peakload reduction.

The peak reduction factor relates the amount of actual peak-load reduction of a small power producer to its audit value. [11] p.359.

Cogeneration, § 24 — Rates — Bridge rates.

The commission rejected a proposal for a short-term bridge rate for eligible small power producers that included ratepayer subsidies, stating that rates based on subsidies should be adopted only where the evidence conclusively demonstrates that such rates are necessary and in the public interest. [12] p.367.

APPEARANCES: Catherine E. Shively, Esquire and Sulloway, Hollis & Soden by Eaton W. Tarbell, Jr., Esquire and Margaret Nelson, Esquire for Public Service Company of New Hampshire (PSNH); Robert A. Olson, Esquire for Granite State Hydroelectric Association and Franconia Power & Light Associates, Inc.; Orr and Reno by Howard M. Moffett, Esquire for Claremont Hydro Associates, et al; Nathan Wechsler for Newfound Hydro Electric Company;

Robert H. Rowe, Esquire and Representative Eugene S. Daniell for Franklin Falls Hydro Electric Company et al; Lawrence Keddy for Rollingsford Manufacturing Company; Roger Bloomfield for Concord Steam Corporation; Robert Greenwood for Chamberlain Otis and Waterloom Falls Hydro Companies; J. Cleve Livingston, Esquire for Conservation Law Foundation; Goldstein, Manello & Burak by Michael Burak, Esquire for New England Alternative Fuels, Inc.; Michael Holmes, Esquire for Consumer Advocate; John Sims for Delta Power Engineering; Larry M. Smukler, Esquire, Sarah Voll, Ph. D. and Melinda Rafter for the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

By Order of Notice dated February 25, 1983 the Public Utilities Commission ("Commission") opened this docket for the purpose of inter alia updating and establishing the short term and long term rates to be paid by Public Service Company of New Hampshire ("PSNH" or "Company") to small power producers and cogenerators ("SPPs"), and the methodologies to be employed in deriving such rates. A procedural hearing was held on March 25, 1983. PSNH filed its direct testimony and exhibits on July 22, 1983. At a hearing on July 28, 1983, the Commission ruled that it would hold hearings to determine if a conservative longterm rate should be set on an interim basis. Following interim hearings, the Commission issued its Report and Fourth Supplemental Order No. 16,619 ([1983] 68 NH PUC 531), establishing a methodology for the calculation of an interim long-term rate based, for the most part, on PSNH data and assumptions supplied in its original testimony. The Commission subsequently issued Report and Fifth Supplemental Order No. 16,664 ([1983] 68 NH PUC 575) which clarified certain aspects of its original Interim Order along with certain terms and conditions for implementing the rate.[1](92)

The Commission's stated goal in the Interim Order was to arrive at a "conservative" interim long-term rate based on and not exceeding PSNH's avoided costs,

as mandated by the New Hampshire Limited Electrical Energy Producers Act, RSA Chapter 362-A as amended ("LEEPA") and the Federal Public Utility Regulatory Policies Act, 16 U.S.C. § 824a-3 et seq. ("PURPA"). The Commission started with PSNH's marginal energy costs as developed in the Company's Production Simulation Model ("PROSIM") and then allowed "adders" to reflect the avoided cost of working capital and inventory. It permitted the long-term rate to be frontend-loaded and levelized, but provided for a maximum first year price beginning in 1983 of 9 per KWH to limit ratepayer exposure. The Commission also permitted a SPP to "buy out" of its longterm rate by repaying to PSNH the sums advanced under the front-end-loaded portion of the rate. SPPs signing on for the interim long-term rate were required to enter into an Interconnection Agreement with PSNH. The Commission stated that prior orders relating to inter alia capacity audits and interconnection would continue to apply. It advised the parties that it wished to explore other aspects of the long-term marketing relationship in further proceedings and set a schedule for the remainder of the docket, a schedule which called for final hearings in March, 1984.

In January, 1984, PSNH requested that the Commission extend the procedural schedule to permit the parties to undertake settlement discussions. The Commission did so in Report and Seventh Supplemental Order No. 16,863 ([1984] 69 NH PUC 29). After notice to all parties who had appeared in the docket, a series of settlement conferences were held at the Commission's offices beginning in February, 1984. Stipulated Recommenda- tions (Exhibit 12) were presented by the parties at a hearing on June 14, 1984, on which all signatories agreed with the exception that Commission Staff, PSNH and the Conservation Law Foundation did not recommend the adoption of Section II.E. (Short-Term Bridge Rate). Signatories to the stipulated recommendations were PSNH, the NHPUC Staff, the Conservation Law Foundation ("CLF"), the Granite State Hydropower Association, Franconia Power and Light and Franklin Falls Hydro Electric Company. New England Alternate Fuels was unable to be present to sign the recommendations, but informed the Commission that it supported the Stipulated Recommendations. Claremont Associates et al. did not sign because of a dispute with PSNH not directly involving the terms of the Stipulated Recommendations; however, counsel stated that the dispute did not affect its support for the terms of the stipulations. A number of the original parties did not participate directly in the negotiations. However, many were represented through the Granite State Hydropower Association and none expressed disagreement with the recommendations.

After a complete review of the testimony and evidence, the Commission finds that the record supports the Stipulated Recommendations and that the recommended short and long term rates, terms and conditions provide encouragement for the development of economically efficient small power production while being just and reasonable to the ratepayers of PSNH and in the public interest. We therefore adopt the terms of the Stipulated Recommendations, with the exception of the Short-Term Bridge Rate (Section II.E.) which we will address separately. To the extent to which we do not address any particular stipulated recommendation in this Order, such stipulated recommendation should be deemed to be approved by this Order. All provisions of the Interim Order will continue

in effect for those facilities who have elected to take that rate prior to the effective date of this Order. In addition, all prior Commission Orders relating to SPPs, including the Interim Order, will remain in effect to the extent that they are not inconsistent with this Order and shall be superceded to the extent that they are inconsistent with this Order.

II. COMMISSION ANALYSIS

A. Jurisdiction of the Commission

The Commission's authority to set rates for power sold by SPPs to PSNH is based on both LEEPA and PURPA.

LEEPA was enacted in 1978 "to provide for small scale and diversified sources of supplemental electric power to lessen the state's dependence upon other sources which may, from time to time, be uncertain". RSA 362-A:1. LEEPA requires a public utility serving a franchise area to purchase all electric power offered by limited electrical energy producers in its franchise area, RSA 362-A:3, at rates set from time to time by the Commission, RSA 362-A:4.

The Commission's authority to set long-term as well as short-term rates was addressed by the 1983 Legislature, which amended RSA 362-A:4 to provide:

Public utilities purchasing electrical energy in accordance with the provisions of this chapter shall pay rates per kilowatt-hour to be set from time to time by the Commission. Such rates shall be based on the purchasing utility's avoided costs. The Commission may set long-term rates which shall, at the option of the qualifying small power producer or qualifying cogenerator, be based on the purchasing utility's avoided costs either calculated for the time of delivery or calculated for a specified term at the time the qualifying small power producer or qualifying cogenerator agrees to be obligated to deliver for the specified term. Nothing in this section shall limit the authority of any electric utility or any qualifying small power producer or qualifying cogenerator to agree to a rate for any purchase which differs from the rate or terms or conditions which would otherwise be required by the Commission.

This Order, under RSA 362-A:4 (Supp. 1983), requires certain rates, terms and conditions for those qualifying SPPs who elect to avail themselves of the short or long-term rates, terms and conditions approved herein. Nothing in this Order will prevent any person from negotiating and entering into a contract for the purchase and sale of electric energy at rates and on terms and conditions other than those or in addition to those contained herein.

The Federal Act, PURPA, also passed in 1978, affords the Commission a second independent statutory basis for setting rates for SPPs. PURPA requires electric utilities to offer to purchase electric energy from qualifying small power producers and cogenerators under rules established by the Federal Energy Regulatory Commission ("FERC") and at rates set by state regulatory agencies. 16 U.S.C. § 824a-3. Sub-section (b) of § 824a-3 provides in part:

... in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase

(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest; and

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(2) shall not discriminate against qualifying cogenerators or small power producers.

No such rule ... shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

This order fulfills the Commission's responsibility under PURPA to set just and reasonable rates for sales of electric power to public utilities, based on the utility's incremental cost of alternative electric energy and capacity.

B. General Provisions Which Apply to Both Short- and Long-Term Rates

B.1. Marginal Cost Methodology

The terms "incremental cost," "avoided cost" and "marginal cost" are used interchangeably for purposes of this Order. The methodology on which this Order is based involves the calculation of marginal energy and capacity costs avoided by PSNH, using principles adopted by the Commission in PSNH's last retail rate proceeding, Re Public Service Co. of New Hampshire

(1984) 69 NH PUC 67, 57 PUR4th 563.[2(93)] The methodology is described in more technical detail in the Stipulated Recommendations, Exhibit 12, Attachment 1 ("PSNH System Planning Response Methodology"). Avoided costs are the appropriate basis for SPP rates, from both an economic and legal perspective. It is anticipated that refinements to the marginal cost methodology adopted will be forthcoming and of value to both SPP and retail ratemaking. The Commission recognizes that some aspects of the methodology apply only to retail ratemaking and others need modification for specific SPP application.

B.2. Rate Structure

[1] Both short and long-term rates will contain an energy component, expressed in cents per kilowatt-hour (/KWH), and a capacity component, expressed in dollars per kilowatt-year ($/KW). Rates will be rounded to the nearest one hundredth of a cent. Time-of-Day rates for the energy component will be available on an optional basis except that time of day metering will be required for SPP facilities with an audited capacity in excess of 1000 KW and for all SPPs who do not sell all of their output to PSNH (i.e., net billing or sale of excess energy). However, as alternatives, SPPs not selling all of their output to PSNH may: 1) use a less expensive non-Time-of-Day meter and receive the off-peak rate for all energy sold to PSNH; or 2) enter into commitments designating amounts to be sold to PSNH which warrant payment of the average "all hours" rate. The Time-ofDay meter will be a solid state meter with battery carryover and other criteria as specified by PSNH. (The current approximate cost of the meter is $650.) All SPPs, including those on Time-of-Day rates, shall continue to pay for the entire cost of metering.

For purposes of the Time-of-Day rates established in this Order, the on-peak hours are between 7 a.m. and 10 p.m., Monday through Friday, excluding

holidays. The off-peak hours are between 10 p.m. and 7 a.m., Monday through Friday, and the entire day on Saturdays, Sundays, and holidays. Holidays are defined in Section 12 of the Company's Tariff.

The Commission recognizes that the timing of the implementation of the Timeof-Day option may be subject to meter and manpower availability and the development of administrative procedures by PSNH.

B.3. Energy Component of the Rate

[2] The energy component will be calculated as follows: (Marginal Energy Cost) x (Loss Factor) x (Indirect Factor).

[3] "Marginal Energy Cost" is defined as the energy-related costs to generate the most expensive kilowatt-hour of energy required by PSNH customers at each hour in a given year, averaged over the appropriate time period. This is also the cost, composed primarily of fuel, that will be avoided if that final kilowatt-hour of energy is instead provided by SPPs. Marginal Energy Cost for the projected period will be provided from PSNH's PROSIM model. The model utilizes the "highest cost block on line" definition, as in Re Public Service Co. of New Hampshire, supra, and an arithmetic average of data in each of the time periods.

[4] The "Loss Factor" is intended to adjust for energy losses which occur in the generation

and transmission of electricity. SPPs can either add losses to portions of the system, or decrease losses, or have no effect at all. If the SPP is large enough, it may by increasing electrical loading increase the losses on a portion of the system, or it may reduce the electrical loadings and the associated losses by providing a source of power closer to the load. For purposes of these rates, the Commission assumes that the typical SPP has a delivery point at the primary voltage system and reduces losses for the portion of the electrical system upstream of the point of the primary voltage interconnection.

The marginal loss factor associated with energy is the average of the marginal values for all hours of the time period. Since losses are a function of load level, the energy related loss factor is slightly different for the first and second halves of the year: 1.092 from January to June and 1.086 from July to December. The value also varies for peak and off-peak periods. The appropriate value for the energy related loss factor on an annual basis for "all hours" is found to be 1.088.

These loss factor values were determined as part of the comprehensive loss study which PSNH performed for the system planning response method marginal cost study in Re Public Service Co. of New Hampshire, supra, and are applicable for both the short and long-term analysis. See, Exh. 12, Attachment 2. The values assume that the delivery point is at primary voltage, i.e., the SPP is either directly connected and metered at the primary voltage level or secondary metering has been appropriately adjusted or compensated for losses. The primary voltage system for purposes of these provisions is defined as voltages from about 1,000 volts through 34.5 KV. Compensating metering adjustments for losses between secondary and primary will not be made for residential installations less than 10 KW. This implicitly recognizes that a higher loss factor would be appropriate in some cases for small secondary producers without requiring a completely unique rate schedule. Should a SPP be connected at greater than primary voltage the calculations and factors will be adjusted to reflect a lower loss adjustment factor. The provisions for

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connections at greater than primary voltage will be implemented as necessary, but the specific rates for such cases have not been developed at this time.

[5] The "Indirect Factor" represents the combined effects of several potential adders, including: 1) an adjustment to translate the results from the PROSIM marginal cost methodology into the rigorous PROSIM method; 2) inventory costs; 3) working capital costs; and 4) operating and maintenance costs.

A comprehensive analysis of the merits of each adder would require time consuming investigation of several issues and is deemed to be impractical at this time. For purposes of this docket the Commission accepts a composite value of 1.08 for the indirect factor for both peak and offpeak periods, and for both short and longterm rates.[3(94)]

B.4. Payment for the Energy Component

[6] The amount to be paid by PSNH to an SPP for the energy component will be calculated as follows: (energy component) x (energy produced during the time period for which payment is

made). The rates and energy metered may be distinct by time of day as discussed herein at B.2.

B.5. Capacity Component of the Rate

[7] Although the magnitude of avoided capacity costs may be quite different depending upon the number of years to which the SPP is committed, several aspects of the capacity component of short and long-term rats are the same. The first is that the expression of the capacity values will remain in $/KW/YR and will no longer be translated into /KWH and added to the energy rate. The Commission notes that the existing short term rate translated a capacity value of $22 per KW year into a /KWH adder by spreading the $/KW year value over the number of hours SPPs were assumed to operate during the year. The Commission assumed a 50% capacity factor, with the resulting capacity payment of

0.5/KWH ($22).
0.5/KWH .50x8760

Payment on a per kilowatt hour basis meant that to the extent that a SPP had a capacity factor greater (or less) than 50%, and operated more (or less) than 4380 hours, it was being overpaid (or underpaid) for its capacity value. Payment on a $/KW/Yr basis will provide a more direct correlation between cost and rate components and facilitates administrative policies. The capacity component will be calculated in the following manner: (Marginal Cost of Capacity per KW per Year) 152 (Loss Adjustment Factor) = Capacity Component.

[8] The "Marginal Cost of Capacity per KW" is an annual cost based on estimated avoided costs of generation and transmission capacity. The specific assumptions and methodologies for quantifying these values for short and long-term rates will be discussed within each section.

The "Loss Adjustment Factor" for capacity reflects load losses at the time of peak loads. See, Exhibit 12, Attachment 2. This factor further recognizes the potential of SPPs to reduce system load and eventually PSNH's cost of meeting demand at times of peak load. Assuming that SPPs produce power at the point of interconnection, the magnitude of the peak load change at the generation and transmission levels of the system will be increased

by a certain percentage relative to the value metered at the point of meter connection due to a loss factor. PSNH's loss study shows that the loss adjustment factor for the peak load hour applicable to SPPs is 1.159 at the generation level and 1.152 at the transmission level. The loss factors for capacity are higher than the 1.088 energy loss factor because they reflect values at time of peak load, rather than the average for the year.

B.6. Payment of the Capacity Component

[9] The amount to be paid by PSNH to a SPP for capacity will be calculated as follows: (Capacity Component) 152 (NHPUC Audit Value for the Site) 152 (Peak Reduction Factor). The annual payments for capacity will be made in twelve monthly payments.

[10] The "NHPUC Audit Value" is a site specific value expressing the estimated dependable capacity for the site, based on historical data (such as river flows for hydro) and the characteristics of the specific plant. See, Exh. 12, Attachment 3. The audits do and should

reflect, to the extent possible, criteria similar to those imposed by the New England Power Pool ("NEPOOL") on PSNH generation units so that marginal capacity cost values, peak reduction factors and audit values are calculated on a consistent basis. The initial audit value, or if the initial audit value has changed the audit value in effect on January 1st of the year, determines the value to be used for determining payments during that calendar year. Following the initial audit, periodic reviews will be conducted. Audit values are expressed in kilowatts and will generally be a fraction of nameplate rated capacity; for example, a particular hydro site with a rated capacity of 900 KW may have an audit value of 500 KW. The audit procedures discussed in Commission Orders will apply. See e.g., Re Small Energy Producers and Cogenerators (1982) 67 NH PUC 168; Re New Hampshire Electric Co-op., Inc. (1979) 64 NH PUC 244. In particular, it is the responsibility of the SPP to request the audit, and no capacity payments will be made prior to the assignment of an audit value nor will retroactive payments be made.

[11] The "Peak Reduction Factor" relates the amount of actual peak load reduction for an individual SPP or class of SPPs to the sum of their audit values. For those SPPs on Time-of-Day rates, the peak reduction will be calculated as the average KW during on-peak hours in the month of January and for SPPs on non Time-of-Day rates, the peak reduction will be calculated as the average KW of all hours during the month. The intent is eventually to group together SPPs with similar characteristics in contributing to peak load reduction. While actually metering the output of each SPP at time of peak load would measure its avoided capacity cost value, annual metering could be risky to individual producers in the event of unexpected outages, such as ice blockage at a hydro site. The process adopted herein is fairly calculated to determine the proper avoided capacity cost and then allocate the value to SPPs by class in a way that reduces individual risk.

The peak reduction factor for each class of SPPs will be based on a three-year average of the most recent actual data, measured during the month of January in each year, historically the month of highest demand on the PSNH system. The data will be updated annually as new data become available. Only sites having an assigned NHPUC audit value will be considered in the data base. A Commission objective is to maximize the SPP contribution at time of peak load

and it is expected that over time the peak reduction factors will rise.

At present, the only group of SPPs with similar characteristics and sufficient historical data to be considered as a class is hydro. Certain other technologies (i.e., wood and biomass) have assigned NHPUC audit values but do not have sufficient historical data to be considered as a class. For those SPPs, the peak reduction factor will be calculated in the following manner. When the SPP has been audited, it will be assigned an estimated peak reduction factor by the Commission. The SPP's capacity payments will be based on that estimated peak reduction factor until the first January after the SPP is on line under a rate established in this docket. The estimated peak reduction factor will then be replaced with a factor based on the SPP's actual performance in that January and capacity payments for the following year will be made based on the actual peak reduction factor. In the following two Januaries, new peak reduction factors will be calculated from actual data and capacity payments will be made based on the two and then three year averages of the peak reduction factors. Thereafter, the peak reduction factor will be

based on a three year rolling average. When there are sufficient similar facilities to develop class data, the peak reduction factor for all such similar SPPs will be based on class data.

For facilities which have neither an established audit procedure (such as wind or photovoltaic) nor sufficient data to establish peak reduction factors, the SPP's capacity payment will be based on the average KW calculated at time of peak load (average KW in January for the "all hours" rate or average on-peak KW for Time-of-Day ("TOD")).

The following table shows the peak reduction factors which will be used to initiate the process of implementing short and long-term rates for hydro facilities.

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

TABLE 1

Type of Facility	Year 1	Year 2	Year 3	3 Year Average
Hydro - TOD	.80	.80	.80	.80
Hydro - Non TOD	.70	.70	.70	.70

The factors are intended to be updated annually and the average of the most recent three-year period will be applied in a calendar year. Because the actual data now available were developed before an incentive to produce at time of peak load existed, the initial factors have been developed with a degree of judgement. As data become available beginning with January 1985, actual data will replace the estimated data. Thus, the three-year average values for 1985 will be calculated with two estimated values and one actual value. By 1987, the reduction factors will be based on actual data for January 1985, January 1986 and January 1987. The most recent factor will continue to be used in the first months of a year and then adjusted when the current year January data are available. Payments for the Capacity Component will be adjusted so that the proper annual payment is paid and any over or under payment in the early months of a year is removed.

Larger SPPs who wish to avoid the procedure of being grouped by class may contract with PSNH to allow NEPOOL dispatch and NEPOOL capacity credit to PSNH for the specified SPP site. The

specific details and values for the site would have to be determined by the parties to the private contract.

B.7. Interconnection Policy

All prior Commission Orders relative to interconnection procedures continue to apply except to the extent they are inconsistent with provisions contained herein. SPPs are directed to contact PSNH for an Interconnection Study prior to any commitments and at least 45 days prior to filing for the rate, and must file an Interconnection Agreement signed by the SPP as part of the rate filing. As previously noted, SPPs are responsible for all costs reasonably incurred by PSNH as a result of interconnection. Those costs include costs of installation of equipment elsewhere on the utility's system necessitated by the interconnection. In the case of a number of SPPs interconnecting in the same area, the costs will be charged on an incremental basis so that the

last SPP on line is responsible for all costs to interconnect the facility and no retroactive cost allocation to facilities on line is permitted.

B.8. Eligible Facilities

Eligible facilities are Qualifying Small Power Producers and Qualifying Cogenerators as defined in LEEPA and PURPA.[4](95) Until such time as the Commission establishes differing requirements with respect to

1) minimum size, fuel use, fuel efficiency and ownership for Qualifying Cogenerators and

2) fuel use, fuel efficiency, reliability and ownership for Qualifying Small Power Producers

the FERC rules and regulations implementing PURPA which govern these matters will continue to apply.

In addition, neither facilities less than 15 KW nor residential facilities will be eligible for the long-term rate.

C. Short-Term Rates

C.1. Overview and Administrative Provisions

The short-term energy rate will be set every six months during Energy Cost Recovery Mechanism ("ECRM") proceedings. Except for the marginal energy cost, which will be redetermined in each ECRM proceeding, the methodology and all other factors will be held constant during ECRM proceedings. Factors other than marginal energy cost, such as loss adjustment factors, the indirect factor and capacity values, will be revised when data from new studies become available in more comprehensive, non-ECRM dockets.

The parties have filed a copy of an Interconnection Agreement to be required of SPPs electing to take the short term rate. See, Exh. 12, Attachment 5. The Commission's acceptance of the Stipulated Recommendations includes acceptance of the filed Interconnection Agreement. The Commission notes that the Agreement is essentially the same as that being used currently except that the period of notice has been extended from 6 months to one year to provide adequate time for PSNH to plan in the spring to avoid capacity costs in the following January. PSNH is directed to allow SPPs currently on the LEEPA short-term contracts to waive the notice period for release from their present agreement for the sole purpose of allowing the SPP to elect either

the new short or long-term arrangements adopted herein. The Company is also directed to make available copies of the Interconnection Agreement upon request.

No formal filing requirements will be required of SPPs electing the short-term rate. The SPP will execute the Interconnection Agreement with PSNH and PSNH will file the Agreement with the Commission.

C.2. Energy Component of the Short-Term Rate

The energy component for the short term rate will be calculated from marginal energy cost data using the same assumptions and the same PROSIM scenario used to calculate the ECRM rate. The rate will therefore be calculated for the two periods January to June and July to

December. The rates will be forward looking and will not be subject to reconciliation. However, PSNH is directed to monitor and report to the Commission the actual marginal energy costs using standard PSNH data to ensure that any deviations between actual and forecast marginal energy cost values are small and adequately explained.

While the rate for each six month period will be set during the ECRM proceedings, the initial short term rate for the period of July-December 1984 will be:

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

TABLE 2

Period	Hourly Marginal Energy Cost (/KWH)	Loss Adjustment Factor	Indirect Factor	Total Energy Component (/KWH)
All Hours	5.521	1.086	1.08	6.48
On-Peak	6.184	1.105	1.08	7.38
Off-Peak	4.990	1.072	1.08	5.78

Source: Public Service Co. of New Hampshire, Docket No. DR 84-128, Exhibit 13.

C.3. Capacity Component of Short-Term Rate

As noted herein at Section B.5, the capacity component of the rates will vary depending on the length of time to which the SPP is committed. There may be opportunity for short-term generation capacity savings depending on the secondary market in New England. SPPs can produce a system value by reducing system peak load and PSNH's resulting short-term Capability Responsibility. See,

Exh. 12, Attachment 1. This system peak load reduction can lead to avoided costs in the near term if PSNH is able to avoid purchases or increase sales of capacity.

Until Seabrook I comes on line, PSNH will generally need to contract for purchased capacity to meet peak demand. At the present time, PSNH estimates in the spring of each year how much additional capacity it will need in order to meet peak demand in the following January. PSNH then contracts to supply this predetermined amount of additional capacity. Under current circumstances, PSNH has a capacity deficiency and a 1984 short-term capacity value (net of fuel savings) of $52.67 per KW.

The calculation of the short-term capacity cost is based on results for the year 1984 in the "PSNH System Planning Response Marginal Cost Methodology and Results" calculations found in Re Public Service Co. of New Hampshire, supra. The short-term capacity cost

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is determined by dividing the 1984 estimate ($2633.30) by 50 KW. The resulting value of $52.67 per KW will remain constant until it is revised in future nonECRM proceedings. This value includes avoided transmission wheeling costs and an adjustment for reserves.

Short-term commitments of only 1 year will not allow PSNH to avoid construction of transmission lines since thes projects require several years of lead time. Thus, no avoided transmission costs are included in the short-term rate other than those associated with wheeling.

Applying a generation loss adjustment factor of 1.159, as discussed herein at Section B.5,

produces a total annual capacity component of $61.04 per KW ($52.67 per KW x 1.159). The Commission notes, however, that the short-term value may drop sharply when Seabrook I comes on line.

C.4. Payment of Energy and Capacity Components

Payment for the energy component will be as discussed herein at Section B.4. The annual amount paid to a SPP for capacity will be the product of the capacity component, times the audit value of the site, times the appropriate peak reduction factor as discussed herein at Section B.6. See also, Exh. 12, Attachment 4. For example, a hypothetical hydro site on the Time-of-Day rate would be eligible for current short-term capacity payments equal to $61.04 152 500 KW (audit value) 152 .80 (peak reduction factor) = $24,416, divided into 12 monthly payments. For SPPs electing the short-term rate, only sites on line by January 1st of the year will receive capacity payments during that calendar year. Sites on line after January 1st will receive their first capacity payments the following year.

D. Long Term Rates

D.1. Overview and Administrative Provisions

This Order incorporates much of the methodology initially prescribed in the interim Order. In the following sections we note certain revisions or additions to the procedures of the Interim Order. The parties are directed to develop a complete description of the procedures to be used in calculating and obtaining a longterm rate, which can serve as a complete and easily understood explanation to SPPs.

D.2. Assumptions Regarding PSNH and Seabrook for Purposes of this Docket

As discussed herein at Section B, this Order is based on the premise that SPP rate-setting should use the same methodology and assumptions for calculating avoided costs that are used to calculate marginal costs in setting retail rates. The marginal cost methodology referred to herein at Section B.1. requires detailed assumptions and forecasts of several factors for precise calculations. However, because of the current uncertainties surrounding PSNH and Seabrook, the Commission is unable to select a single most likely scenario or set of assumptions for purposes of calculating long-term avoided costs. Thus, we accept the recommendation of the parties who arrived at a resolution through both analytical and judgmental weighting of several possible scenarios. This procedure is quite unique, but is a necessary and innovative approach to address some areas which are currently in considerable doubt.

The three scenarios weighted by the parties are as follows:

Case 2 with both Seabrook Units (7/86, 12/90)

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Case 1 with one Seabrook Unit (7/86)
Case 0 with no Seabrook Units

Several other scenarios such as different in-service dates for Seabrook, high and low fuel price scenarios, and other modifications of assumptions were discussed by the parties. The parties agreed, and the Commission accepts, that by applying various weights to each of the

three scenarios (Cases 0, 1, and 2), impacts under other assumptions and scenarios (e.g., a completion date later than July 1986 for Seabrook I in Case 1) could be considered, and these are ultimately reflected in the final weighted series of values shown in the Stipulated Case. The Stipulated case reflects a weighting of 25% for Case 2, 50% for Case 1, and 25% for Case 0.[5(96)]

D.3. Applicable Long Term Rates

The following table displays the avoided costs relevant to long term SPP rates which result from the weighted case stipulated by the parties and accepted by the Commission. Column A contains values for the Total Capacity Component. Column B-ALL, B-ON, and B-OFF display the total energy component for "all hours", peak and off-peak rates respectively.

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

TABLE 3

SUMMARY OF AVOIDED COSTS RELEVANT TO SPP
LONG TERM RATES

Year	COLUMN A Avoided Cost Total Capacity $/KW/YR	COLUMN B - ALL Avoided Cost of Energy Loss Adjusted cents/KWH	COLUMN B - ON Avoided Cost of Energy After Adjustments cents/KWH	COLUMN B - OFF Avoided Cost of Energy After Adjustments cents/KWH
1984	49.25	6.23	7.21	5.46
1985	52.55	6.23	7.30	5.46
1986	56.07	5.88	6.58	5.25
1987	59.83	5.93	6.91	5.25
1988	63.83	6.46	7.48	5.57
1989	68.11	6.93	7.87	6.27
1990	72.67	7.67	8.65	6.88
1991	77.54	8.08	9.25	7.17
1992	82.74	9.22	10.53	8.21
1993	88.28	10.19	11.73	9.06
1994	94.20	11.57	13.17	10.30
1995	100.51	12.84	15.26	11.03
1996	107.24	13.89	16.49	11.87
1997	114.43	15.54	18.43	13.32
1998	122.10	16.92	19.99	14.60
1999	130.28	19.56	23.31	16.63
2000	139.00	21.18	24.99	18.29
2001	148.32	21.94	25.32	19.45
2002	158.25	25.15	29.42	21.86
2003	168.86	28.26	32.98	24.67
2004	180.17	28.64	33.88	24.41
2005	192.24	32.58	38.24	28.30
2006	205.12	35.90	42.76	30.68
2007	218.87	38.54	45.96	32.83
2008	233.53	45.21	54.31	38.23
2009	249.18	46.53	55.45	39.71
2010	265.87	48.50	57.61	40.93
2011	283.69	52.35	62.36	44.79
2012	302.69	55.78	66.13	47.86
2013	322.97	63.01	74.93	53.84
2014	344.61	67.23	79.95	57.45
2015	367.70	71.74	85.31	61.30

The annual data in Table 3 provides the basis for selecting and determining a rate for each SPP site. The rate may be simply the schedule tariff, providing for annual energy and capacity payment as shown, or the rate may be varied, subject to the conditions discussed below.

Obligations of 5 to 30 years will be permitted. The initial year of the longterm rate obligation may not be more than four years from the time of filing. SPPs may select as their rates the values shown above, levelized values for the years of their obligation, or some rate in between, so long as the cumulative net present values, discounted appropriately, do not exceed the values shown in Table 3.

For facilities on line before September 1, the year in which the facility first supplies power under the long-term rate is considered to be the initial year for rate calculations. For facilities on line after September 1, the following year will be considered as the initial year. All facilities will receive annual rate changes (if any) of their elected rate schedule in the month of their anniversary date (the date on which the SPP supplied power under the long-term rate). Any SPP may elect the short-term rate until September 1 to obtain rates using the following year as the initial year and an anniversary date commensurate with the start of the longterm rate.

Calculations for rates which vary from the schedule in Table 3 must use the Net Present Value method prescribed in the Interim Order. The discount factor used is 13.43%; a value based on a calculation of PSNH's long-term cost of capital. See, Exh. 12, Attachment 9. An average of values for several time periods was calculated to produce a single discount factor in order to reduce the administrative problems which occur when multiple discount rates are used. The value is

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accepted strictly for purposes of this docket.

The Capacity Component includes avoided costs for generation and transmission capacity. These calculations assume a permanent decrement of 50 MW to peak load and reflect a levelizing of costs for 20 years using an economic carrying charge. This method removes, to a large extent, the lumpiness of annual costs associated with transmission and generation plant. However, when the load decrements are of shorter duration (i.e., when SPPs obligate themselves for less than 20 years), the opportunity to avoid costs is reduced and the values of the avoided costs are also reduced. To reflect this, the capacity values will be reduced by 5 percent for each year that the rate term is less than 20 years (e.g., a 10 year rate would use 50 percent of the capacity values). For shorter term rates the SPP may elect to be paid based on the long-term energy component and the short-term capacity component. As discussed herein at Section C.3, the short-term capacity component will be set from time to time. The rate is currently set at $61.04/KW/ YR, but may be substantially less in later years.

For informational purposes, the Commission has calculated the levelized value of obligations of 10, 15, 20 and 30 years, commencing in 1984, 1985, and 1986. The calculation includes in the capacity value the 5 percent discount per year that the rate term is less than 20 years.

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

TABLE 4

ENERGY — ALL HOURS /KWH

Start 1984 1985 1986

Term
10 6.86 7.23 7.72
15 7.95 8.50 9.16
20 9.08 9.73 10.51
30 11.27 11.97 12.75

CAPACITY $/KWYr.

Start 1984 1985 1986

Term
10* 31.39 33.49 35.73
15** 52.13 55.63 59.36
20 75.43 80.48 85.87
30 85.92 90.95 96.22

**discounted 50%

**discounted 25%

See also, Exh. 12, Attachment 8.

Long-term front-end-loaded rates are subject to a "ceiling" provision (similar to the 9 ceiling of the Interim Order), which must be factored into the rate calculation. A maximum of 90 percent of the levelized rate (for both energy and capacity components) is allowed for the first three years of long-term rates which commence prior to July 1, 1989. After the first three years, rates may rise to a re-calculated levelized value (based on net present value for the remainder of the term) which compensates for the original ceiling. (For rates commencing after July 1, 1989, levelized values for all years of the obligation may be selected by the SPP.) This provision addresses the concern that retail ratepayers will pay rates for SPP energy in the near term in excess of short-term avoided costs.[6](97) An exemption from the ceiling provision may be obtained from the Commission. To qualify, the SPP must demonstrate that the full levelized rate is necessary to permit development of the site.

For SPPs requesting a degree of levelizing in rates, the following measures are included to provide for additional ratepayer protection:

1) Project life must be equal to or greater than the rate term.

2) Assurances must be provided that

the level of annual output will be adequately maintained by the SPP, so that PSNH (and ratepayers) may recoup the full Net Present Value of payments.

3) For rate terms longer than 20 years, a surety bond or a junior lien on the project must be given to cover the "buy out" value at the site.

The provisions adopted in this section for front-end loading and levelizing are intended to stimulate SPP site development and will be applied only once to each site.

The buy out provision of the Interim Order will be modified to allow an SPP to buy out of the rate, provided that the SPP must continue to sell its output to PSNH for the term of the SPP's original commitment or the term of the new rate, whichever is greater. The buy out will only apply to the energy component of the rate. The capacity component and other terms and conditions of the original rate will remain in effect. To exercise the buy out, a SPP must provide 60 days notice and pay PSNH the difference between the energy component payments and the amount which would have been paid if the annual values of Table 3 were applied. The annual differences will be increased by 13.43% compounded annually to the year of buy out to provide appropriate buy out present value.

D.4. Filing Requirements

The same filing requirements as provided in the Interim Order will apply except as modified by this Order. Rate calculations must be filed on the worksheets provided herein as Attachment 1.

E. Implementation of the Short and LongTerm Rates

The procedures and the new rates adopted herein will be implemented with the effective date of this Order. The short term rate will be established for July December 1984 based on the findings from Re Public Service Co. of New Hampshire (1984) 69 NH PUC 344. It is intended that avoided cost data will be updated annually by the Company and reviewed by the Commission to determine the extent, if any, to which the rates should be revised. With respect to long-term arrangements, any such changes will be applied prospectively only; those SPPs with existing long-term arrangements will continue to be governed by those arrangements.

The implementation of this Order is subject to various lead times required by PSNH for such matters as purchasing and installing time-of-day meters, developing and implementing provisions of interconnection studies, and other administrative procedures. It is the responsibility of SPPs to contact PSNH prior to any commitments to ensure that the costs and scheduling requirements of such matters are recognized.

Because this Order implements many new procedures regarding SPP rates, it is anticipated that questions of intent or interpretation will arise. We adopt the recommendation of the Parties that, where possible, informal discussion, rather than formal litigation or arbitration, will be an initial method of resolving such questions. The parties are directed to report to the Commission on the outcome of such discussions.

F. Short Term Bridge Rate

[12] As previously noted, the Stipulated Recommendations (Exhibit 12) contained a provision which created a short term bridge rate for certain eligible SPPs. The parties were not able to agree on whether this particular recommendation

should be adopted; PSNH, Staff and CLF recommended that the short term bridge rate should be rejected by the Commission, while the remainder of the parties recommended adoption. All signatories to the Stipulated Recommendations agreed that the disposition of the

issue was to be left to the Commission; Commission rejection of the provision would not affect the remainder of the Stipulated Recommendations.

As described in Exhibit 12, Section II.E., the Short Term Bridge Rate would allow eligible SPPs to continue to receive the short term rates established by the Commission in Re Small Energy Producers and Cogenerators (1980) 65 NH PUC 291 for a period of 5 years. That rate is 7.7/KWH for energy and 8.2/KWH for energy and capacity (65 NH PUC at p. 300). Eligible SPPs would be defined as those SPPs who made a substantial capital commitment between the June 18, 1980 date of Re Small Energy Producers and Cogenerators, supra, and the September 16, 1982 date of Re Granite State Electric Co. (1981) 121 NH 787, 435 A2d 119.

Those parties favoring the adoption of the short term bridge rate justify that rate on the basis of the reliance of certain SPPs on a provision of the Commission's Order in Docket DE 79-208 which established the 7.7/8.2 rate as a minimum rate (65 NH PUC at p. 298); a provision which was explicitly reversed by the Court in Re Granite State Electric Co., supra. This rationale was expanded in Exhibit 12 which stated at 23:

As a result of the decision in DE 79-208, it was reasonable to expect that the short-term rate would not be reduced. In addition to the Commission's Order, establishing a lifetime guaranteed minimum rate, the State of New Hampshire had experienced a continuing series of escalations in the price of oil. As a result, a small number of Small Power Producers did make substantial capital commitments relying upon this Commission's Order and the expectation that oil prices would not decrease. As a result, Small Power Producers viewing their existing cash flow data, did commit to replacement equipment and improved facilities for greater production reliability and/or for new facilities and equipment for additional production. These improved facilities, whether for greater service continuity or for increased production, were based upon the Commission's Order and the Small Power Producer's financial ability.

... Since the rate set by the Commission in DE 79-208 has been in existence for over four years without a change, it is reasonable to expect that the Small Power Producers did not view this rate as a (sic) annually adjusted rate. As such, Small Power Producer's relied on rate continuity as a basis for the improvement and upgrading of facilities and equipment. The unique and short history of this concept is such so that it is reasonable to expect that these Small Power Producers would rely upon the rate or, at the worst, only slight modifications in the short-term rate. Although the rate was set as a year to year rate, Small Power Producers recognized it as more like a fixed rate than a rate fluctuating annually.

The parties opposing the adoption of the short term bridge rate base their position on the fact that the rate is higher than PSNH's avoided cost (see e.g., the short term rate established, supra, at p. 362). Thus, approval of the bridge rate means that the Commission would be allowing PSNH's ratepayers to subsidize

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eligible SPPs. Such a subsidy is improper, it was argued, because the SPPs have the alternative of continuing to receive rates that are in the 7.7/8.2 range, or higher, by obligating themselves to PSNH under the long-term rate provisions established in this proceeding.

Our analysis of the issue leads us to conclude that it would not be in the public interest to

adopt the short term bridge rate. Although we recognize that many eligible SPPs were industry "pioneers" who deserve the appreciation of this Commission and the public for their courage and foresight, we believe we should consider rates which involve ratepayer subsidies only where the evidence conclusively demonstrates that such rates are necessary and in the public interest.[7](98) That evidence does not exist here.

The evidence which does exist reflects the fact that SPPs who would be eligible for the short term bridge rate would be able to receive rates which either equal or exceed the short term bridge rate by obligating themselves to long term arrangements pursuant to the terms of this Order. The evidence of record also reflects the fact that SPPs who would be eligible for the short term bridge rate do not wish to engage in a long term arrangement because they are suspicious of PSNH. Our analysis of this evidence is that it simply cannot be considered as a basis for allowing a rate which exceeds avoided cost. Certain SPPs may or may not have good reason to be suspicious of PSNH, but we cannot base our decisionmaking on unsupported suspicion, particularly where an otherwise available arrangement is the one established by the Commission in this Order. Since we believe that the long term alternative would meet the requirements of all concerned persons and since we have not been presented with a good reason for the rejection of that alternative by certain SPPs, we must conclude that a rate which exceeds avoided cost is not in the public interest. We therefore reject Section II.E. of Exhibit 12, Stipulated Recommendations.

III. CONCLUSION

After review, we have found that the Stipulated Recommendations set forth in Exhibit 12 (with the exception of the recommendation contained at Section II.E.) are just, reasonable, in the public interest and consistent with the requirements of LEEPA and PURPA. We have therefore adopted all recommendations, with the exception of Section II.E. of Exhibit 12. We cannot conclude, however, without commending our Staff and all the parties for their efforts in this docket. The issues resolved in this docket were difficult and the recommendations submitted to us reflect extraordinary good faith efforts by all participants over an extended period of time.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that short term and long term rates be, and hereby are, established for the purchase of energy, capacity or

both by Public Service Company of New Hampshire from Small Power Producers as provided in the foregoing Report; and it is

FURTHER ORDERED, that the terms and conditions of the purchase of energy, capacity or both by Public Service Company of New Hampshire from Small Power Producers shall be set forth in the foregoing Report; and it is

FURTHER ORDERED, that this docket is closed.

By order of the Public Utilities Commission of New Hampshire this fifth day of July, 1984.*(99)

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FOOTNOTES

[1]Report and Fourth Supplemental Order No. 16,619 and Report and Fifth Supplemental Order No. 16,664 will be collectively referred to in this Report as the Interim Order.

[2]Our adoption of these principles is consistent with the important objective of utilizing, to the extent possible, the same methodology, computer resources, and assumptions in rate proceedings for SPP purchases that the Commission uses in rate proceedings for PSNH's retail sales. To the extent this is possible, several benefits will result, including consistency of assumptions, ease of understanding, reduced administrative costs, timely enhancements and reduced requirements for regulatory proceedings.

[3]The merits and specific values of each adder are further discussed in the Interim Order at 17-18 and in Exhibit 12 at 10-12.

[4]The Commission acknowledges PSNH's reservation of rights to argue at a later time that the eligibility criteria adopted in this Order should be narrowed. See, Exh. 12 at 18.

[5]The detail on Cases 0, 1, 2 and the Stipulated case may be found at Exhibit 12, Attachment 7.

[6]Of course, levelized rates, by definition, will allow ratepayers the benefit of rates which are lower than the short-term avoided cost for SPP power purchased at the tail end of the obligation.

[7]As noted, supra, at p. 354, the provisions of this Order are designed to encourage economically efficient SPPs while being just and reasonable to PSNH's ratepayers. The only way these two standards can be reconciled is to define economically efficient SPPs as those SPPs who can produce electricity at a cost which is at or below the avoided cost of the purchasing utility. We do not believe that either LEEPA or PURPA embody policies which would require us to encourage SPP development which is not economically efficient.

*Chairman McQuade was absent on the date of the decision, but will review the decision upon his return. In the event he concurs, his signature will be added herewith.

69 NH PUC 374

Re New England Telephone and Telegraph Company

DE 84-116, Order No. 17,105

New Hampshire Public Utilities Commission

July 10, 1984

Order granting authority to place and maintain submarine plant crossing public waters.

APPEARANCES: For the Petitioner, Wayne Snow, Engineering Manager.

By the COMMISSION:

REPORT

On May 14, 1984 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 Berlin, New Hampshire under the Androscoggin River.

The Commission issued an Order of Notice on May 15, 1984 directing all interested parties to appear at a public hearing at 10:00 a.m. on Monday, June 18, 1984 at the Concord office 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 the publication of said notice copies of the hearing notice were directed to Robert X. Danos, Director of Safety Services; John Clements, Commissioner, Department of Public Works and Highways; the Department of Resources and Economic Development; and the Office of the Attorney General.

An affidavit of publication indicating that publication was made in the Union Leader on June 4, 1984 was received in the Commission's office at Concord, New Hampshire on June 11, 1984.

Wayne Snow, Engineering Manager, explained that the petition results from a company-identified need to replace existing aerial cable to 556 customers in Berlin. Existing area cable was installed in 1960 and 1974 over a highway bridge which has been recently closed to vehicular traffic. The Company will place submarine cables at the location in view of a decision made by highway officals to remove the present bridge within the next two years and replace it with a footbridge.

The proposed installation will consist of a 900 pair armored-covered cable which will be laid on the bottom of the Androscoggin River at a depth of approximately 5 feet, and over length of approximately 350 feet. At the westerly bank the line will continue underground to existing telephone pole 75/1/2, and on the easterly side it will extend underground to existing telephone pole 75/1.

Installation is contemplated during the third quarter of 1984. There will be no interruption of service to existing customers during the construction period.

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

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permits from the Water Supply and Pollution Control Commission and the State of New Hampshire Wetlands Board were offered as exhibits.

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 under the Androscoggin River in Berlin, New Hampshire as specified in the exhibits, to be in the public interest. Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition for a license to place and maintain submarine plant under the Androscoggin River in Berlin, New Hampshire, as specified in the exhibits, be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1984.

==========

NH.PUC*07/10/84*[61463]*69 NH PUC 375*Northern Utilities, Inc.

[Go to End of 61463]

69 NH PUC 375

Re Northern Utilities, Inc.

DR 83-90,
Sixth Supplemental Order No. 17,107

New Hampshire Public Utilities Commission

July 10, 1984

Order deferring implementation of step adjustment mechanism.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Report and Second Supplemental Order No. 16,693 ([1983] 68 NH PUC 603) approved inter alia a step adjustment mechanism for Northern Utilities, Inc.

("Northern") effective in April of 1984 and July of 1984; and

WHEREAS, Northern filed a letter dated May 24, 1984 which requested inter alia that the step adjustment process be deferred; and

WHEREAS, Northern stated that the basis of its request is that it has benefited from dual fuel users and the offset against the Company's increased expenses would result in an increase of less than $21,000; and

WHEREAS, Northern requested a delay in the effective date of said adjustment; and

WHEREAS, the Commission believes that it would be in the public good to grant said request; it is

ORDERED NISI, that the step adjustment mechanism filing noted above shall be deferred and updated with an effective date of November 1, 1984; and it is

FURTHER ORDERED, that any parties in DR 83-90 may file comments and exceptions no later than 15 days from the date of this Order; and it is

FURTHER ORDERED, that this Order NISI shall be effective 25 days from the date of this Order unless the

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

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1984.

==========

NH.PUC*07/11/84*[61464]*69 NH PUC 376*Southern New Hampshire Water Company, Inc.

[Go to End of 61464]

69 NH PUC 376

Re Southern New Hampshire Water Company, Inc.

DR 84-144, Order No. 17,108

New Hampshire Public Utilities Commission

July 11, 1984

Order approving accounting procedure.

Accounting, § 30.1 — Public relations expenses — Operations and maintenance account.

For accounting purposes a water utility was authorized to characterize as an operation and maintenance expense fees paid to a public relations firm for improvement of relations with the community and local government.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc. proposes to enter into a contract with HMS Associates, Inc. a public relations firm for the purpose of improving its community and local government relations; and

WHEREAS, the NARUC Uniform System of Accounts for Water Utilities includes the provision of "good will advertising" as an Operation and Maintenance Expense in Account 930 Miscellaneous General Expenses (Interpretation of Uniform System of Accounts for Electric, Gas, and Water Utilities No. 58 and 77 NARUC); and

WHEREAS, after investigation and consideration it is the opinion of this Commission that the inclusion of such expenses as an Operation and Maintenance Expense, is in the public good; it is hereby

ORDERED, that the expense incurred by Southern New Hampshire Water Company, Inc. from its contract with HMS Associates, Inc. shall be included in Accounts 2801 (NHPUC) or 930 (NARUC); and it is

FURTHER ORDERED, that the expense incurred by this contract shall be a matter of review in future rate proceedings brought by Southern New Hampshire.

By order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1984.

==========

NH.PUC*07/11/84*[61465]*69 NH PUC 377*Public Service Company of New Hampshire

[Go to End of 61465]

69 NH PUC 377

Re Public Service Company of New Hampshire

Intervenor: Office of Consumer Advocate

DR 84-167, Order No. 17,109

New Hampshire Public Utilities Commission

July 11, 1984

Denial of motion to postpone hearings; deferral of motion to obtain investigative funds.

APPEARANCES: Sulloway, Hollis & Soden by Martin L. Gross, Esquire for Public Service Company of New Hampshire; Michael W. Holmes, Esquire for the Consumer Advocate.

By the COMMISSION:

REPORT

On June 29, 1984, Public Service Company of New Hampshire ("PSNH" or "Company") filed a Petition for certain financing authority. The Commission issued an Order of Notice on July 2, 1984 which inter alia, established a procedural schedule; a schedule which included an evidentiary hearing on July 24, 1984. On July 5, 1984, the Consumer Advocate filed his appearance and filed a motion to continue the proceedings and a motion to obtain investigative funds. The Consumer Advocate's motions were followed by an objection by PSNH which was filed on July 6, 1984. The purpose of this Report and Order is to address the motions of the Consumer Advocate.

The Consumer Advocate requested that the Commission postpone the hearing on this proceeding until no earlier than August 27, 1984. The grounds for the Motion were: 1) that the Consumer Advocate is planning to be on vacation on July 24, 1984 (the scheduled date); and 2) that the Consumer Advocate needs the additional time to engage expert assistance and to allow that expert an opportunity to perform the appropriate analysis. The second ground is followed up with the Consumer Advocate's request that the Commission seek certain approvals through Governor and Council in order to enable the Consumer Advocate to engage expert assistance.

PSNH objected to both Motions. The objection to the Motion to Continue was based on the assertion of financial need. According to the Company, the investment bankers wish to close on the proposed financing prior to July 31, 1984. This is because "... there is little activity in securities markets during the month of August due to unavailability of buyers, and ... full activity in the securities markets does not resume until mid-September." (Objection at paragraph 3). PSNH represented that such a delay would put the proposed financing in jeopardy and would exacerbate the company's financial difficulties.

The Objection to the Motion to obtain investigative funds was based on an assertion that the expert analysis that the

Consumer Advocate wishes to obtain falls outside the scope of the instant proceedings.

After due consideration, we have decided to deny the Consumer Advocate's Motion to Continue and to defer consideration of the Motion to Obtain Investigative Funds.

The Motion to Continue will be denied because we believe that it is important to take Company evidence expeditiously. We have also been informed by the Consumer Advocate that he can make himself available for the hearing, albeit with great inconvenience. The Commission regrets having to require the Consumer Advocate to subject himself to this level of inconvenience. However, we believe that this docket is sufficiently important to proceed on schedule to the initial evidentiary hearing. We do not mean to imply, however, that we have accepted or based our decision on PSNH's representations about the consequences of delay. The Commission intends to review thoroughly all of the evidence put before it, including evidence on the consequences of delay. The Company should understand that such a review means that the Commission may not be able to render a decision, in whole or in part, until sometime after July 31, 1984.

The ruling on the Motion to Obtain Investigative Funds will be deferred until further

information is provided by the Consumer Advocate. We believe that the Consumer Advocate should be entitled to access to expert analysis and assistance. However, PSNH's objection and our own analysis raise questions about the scope of the work to be performed, the schedule and the cost. We are reluctant to make these judgments on the basis of the abbreviated information which is contained in a pleading. Accordingly, we will direct the Consumer Advocate to prepare and submit to the Commission a proposal that is adequately detailed for ultimate submission to the Executive Council. We will rule on the Consumer Advocate's Motion after we have had the opportunity to review his proposal.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Consumer Advocate's Motion to Continue be, and hereby is, denied; and it is

FURTHER ORDERED, that our ruling on the Consumer Advocate's Motion to Obtain Investigative Funds be deferred until the Commission has had an opportunity to review the proposal described in the foregoing Report.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1984.

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NH.PUC*07/16/84*[61466]*69 NH PUC 379*Claremont Gas Light Company

[Go to End of 61466]

69 NH PUC 379

Re Claremont Gas Light Company

Intervenor: Office of Consumer Advocate

DE 83-215,
Second Supplemental Order No. 17,110

New Hampshire Public Utilities Commission

July 16, 1984

Order approving settlement agreement.

APPEARANCES: Dom S. D'Ambruoso, Esquire for the Petitioner; Michael Holmes, Esquire for the Consumer Advocate; Larry Smukler, Esquire for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

On November 20, 1983, Claremont Gas Light Company of Claremont, New Hampshire filed a petition for temporary and permanent rates and revisions to its Tariff NHPUC No. 9 - Gas,

providing for an aggregate annual increase in base revenues of $119,669 or 30% (net of the N.H. State Franchise Tax and Fuel Adjustment Clause).

A duly noticed public hearing on temporary rates and procedural matters was held on February 7, 1984 at 2 p.m. at the Commission's offices in Concord.

On February 23, 1984 as a result of said hearing, the Commission issued Supplemental Order No. 16,914 (69 NH PUC 135) ordering Claremont Gas Light Company to "raise its annual revenues by $119,669 on a temporary basis effective with all service rendered on or after February 7, 1984" and established a procedural schedule for proceeding in the docket in an orderly manner.

In conformance with the procedural schedule, the utility filed its annual report in a timely manner, the NHPUC Finance Department Staff conducted an extensive audit of the utility, data requests were submitted and responded to, duly noticed public night hearings were held on June 20 and July 5, 1984 in Claremont; the parties met to settle (and did settle the issues in the case) on June 21, 1984, and finally on June 21, 1984, at the request of the parties the Commission held an additional haring to receive the settlement agreement.

The highlights of the settlement agreement as proposed in the June 21 hearing included the following:

1. The company's filing and the settlement were based upon a pro formed 1982 test year.

2. Rate base and cost of equity were not issues in the case as the company only requested funds sufficient to cover some of the interest expense it incurs related to Accounts Payable on the purchase of propane.

3. The NHPUC Finance staff conducted and continues an indepth audit of the company for the year 1983. The results of that audit, upon completion will be reported to the Commission. If any action is deemed necessary by the Commission and/or staff, such action will be separate from this docket.

4. Information collected during the course of the Commission audit was

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indirectly beneficial to the parties in developing the settlement agreement.

5. Based upon the proformed test year, the settlement proposed that the Company's total annual revenues (net of the Franchise Tax) be increased by $119,669. This $119,669 would be achieved by:

a. A restructuring of the utility's Cost of Gas Adjustment (COGA) to enable the utility to have its fuel related revenues (including approximately 46.2/therm to be included in base rates) through base rates and the COGA to match its fuel expenses. A deferred account to the COGA should contribute approximately $58,282 of the $119,669 increase.

b. Per the Commission audit, it was determined that 36 customers were being billed under improper classifications. Their classifications are being corrected on a current basis, and were assumed to ultimately increase revenues by approximately $2,700 for purposes of the settlement.

c. The remainder of the $119,669 increase, (net of the Franchise Tax) or $58,687 will be spread evenly, on a percentage basis, to all customer blocks and classes.

d. Since the Temporary rates in effect in this docket were designed to generate the same Operating Revenues as the proposed Permanent Rates, but*(100) require the utility to revise rate classifications, the COGA methodology, etc., the parties proposed that the Permanent rates go into effect on the effective date of the new tariffs with no retroactive adjustment (which would net out to $0 effect on the utility's Operating Revenues).

e. In 1982 the utility transferred $17,085 of dollars from the Casualty Insurance Reserve account to the Earned Surplus account. Due to this, the utility has agreed that in the future, for ratemaking purposes, any non-deductible costs incurred and related to the Casualty Insurance Reserve will be booked below the line.

The Commission after analyzing the parties' proposal in this docket, finds approval of such to be in the public good.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Claremont Gas Light Company may raise its annual revenues by $119,669 plus recognization of the State Franchise Tax effect on a permanent basis, in accordance with the attached Report; and it is

FURTHER ORDERED, that the utility shall file appropriate revised tariff pages.

By Order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1984.**(101)

FOOTNOTES

*The permanent rates.

**Commissioner Aeschliman was absent on the date of the decision, but will review the decision upon her return. In the event she concurs, her signature will be added herewith.

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NH.PUC*07/16/84*[61467]*69 NH PUC 381*Southern New Hampshire Water Company, Inc.

[Go to End of 61467]

69 NH PUC 381

Re Southern New Hampshire Water Company, Inc.

DE 84-176, Order No. 17,111

New Hampshire Public Utilities Commission

July 16, 1984

Order designating special contract.

By the COMMISSION:

ORDER

WHEREAS, the Southern New Hampshire Water Company, Inc., a utility under the jurisdiction of this Commission, has filed copies of its Special Main extension Contract - Developer, for the installation of certain water mains so as to provide service to a subdivision known as Winslow Farms and certain neighboring areas, all in the Town of Hudson, New Hampshire; and

WHEREAS, upon investigation and consideration, this Commission is of the opinion that the nature of the construction of this extension requires the issuance of a special contract, and is in the public good; it is hereby

ORDERED, that this Special Main and Extension Contract - Developer shall be designated Special Contract No. 16 and shall become effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1984.

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NH.PUC*07/17/84*[61468]*69 NH PUC 381*Connecticut Valley Electric Company, Inc.

[Go to End of 61468]

69 NH PUC 381

Re Connecticut Valley Electric Company, Inc.

DR 83-200,
Third Supplemental Order No. 17,112
New Hampshire Public Utilities Commission
July 17, 1984

Order denying motion for rehearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Report and Second Supplemental Order No. 17,075 ([1984] 69 NH PUC 319) ("Decision") in this docket which, inter alia, allowed Connecticut Valley Electric Company ("Company") to recover certain

wholesale purchase power expenses which had been previously approved by the Federal

Energy Regulatory Commission; and

WHEREAS, Sinclair Machine Products, Inc., et al filed a timely Motion for Rehearing averring that the Decision was unreasonable and unlawful in that it allowed the Company to recover from ratepayers certain elements of the above referenced wholesale purchase power expense; and

WHEREAS, the Motion for Rehearing contained no fact or argument which had not been fully reviewed prior to the issuance of the Decision; and

WHEREAS, the Commission finds that the Commission acted correctly in all areas where error was averred in the Motion for Rehearing; and

WHEREAS, the Commission finds that the Decision was reasonable and lawful; it is therefore

ORDERED, that the Motion for Rehearing of Sinclair Machine Products, Inc., et al be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1984.

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NH.PUC*07/17/84*[61469]*69 NH PUC 382*Merrimack County Telephone Company

[Go to End of 61469]

69 NH PUC 382

Re Merrimack County Telephone Company

DR 84-165, Order No. 17,113

New Hampshire Public Utilities Commission

July 17, 1984

Order approving special contract.

By the COMMISSION:

ORDER

WHEREAS, Merrimack County Telephone Company, a utility selling telephone service under the jurisdiction of this Commission has filed with this Commission Special Contract No. 1 with Kearsarge Reel Corporation, effective on approval by Commission order, for telephone service at rates other than those fixed by its schedule of general application; and

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

ORDERED, that said contract may become effective July 2, 1984.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1984.

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NH.PUC*07/17/84*[61470]*69 NH PUC 383*New England Telephone and Telegraph Company

[Go to End of 61470]

69 NH PUC 383

Re New England Telephone and Telegraph Company

DR 84-95, Order No. 17,125

New Hampshire Public Utilities Commission

July 17, 1984

Order granting motion to intervene.

By the COMMISSION:

ORDER

WHEREAS, New Hampshire Legal Assistance (Petitioner) having filed on July 2, 1984 a petition for leave to intervene in this docket on behalf of VOICE, et al; and

WHEREAS, the petition was filed out of time in that a duly noticed procedural hearing was held on June 11, 1984; and

WHEREAS, after said hearing, the Commission established a procedural schedule as set forth in Supplemental Order No. 17,094 dated June 26, 1984; and

WHEREAS, the parties have not objected to the motion to intervene; it is hereby

ORDERED, that the motion is granted subject to the condition that the petitioner adheres to the same procedural schedule which applies to the other parties in this docket.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1984.

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NH.PUC*07/17/84*[61471]*69 NH PUC 383*New England Telephone and Telegraph Company

[Go to End of 61471]

69 NH PUC 383

Re New England Telephone and Telegraph Company

DR 84-95, Order No. 17,126

New Hampshire Public Utilities Commission

July 17, 1984

Order granting motion to intervene.

By the COMMISSION:

ORDER

WHEREAS, the Department of Defense and the Federal Executive Agencies (Petitioner) having filed on June 11, 1984 a petition for leave to intervene in this docket; and

WHEREAS, the petition was filed out of time in that a duly noticed procedural hearing was held on June 11, 1984; and

WHEREAS, after said hearing, the

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Commission established a procedural schedule as set forth in Supplemental Order No. 17,094 dated June 26, 1984; and

WHEREAS, the parties have not objected to the motion to intervene; it is hereby

ORDERED, that the motion is granted subject to the condition that the petitioner adheres to the same procedural schedule which applies to the other parties in this docket.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1984.

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NH.PUC*07/17/84*[61472]*69 NH PUC 384*New Hampshire Electric Cooperative, Inc.

[Go to End of 61472]

69 NH PUC 384

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Office of Consumer Advocate et al.

DF 83-360,
Fourth Supplemental Order No. 17,132

New Hampshire Public Utilities Commission

July 17, 1984

Order postponing hearings indefinitely.

APPEARANCES: Attorney Larry M. Smukler for the Public Utilities Commission Staff; Roger Easton, pro se; Gary McCool, pro se; and Attorney Mayland Morse for the petitioner; Michael

Holmes, Consumer Advocate.

By the COMMISSION:

REPORT

The New Hampshire Electric Cooperative, Inc. (Co-op or Company) filed a petition on November 18, 1983 for authority to borrow $111,000,000 from Federal lenders including the Rural Electrification Administration. After a duly noticed hearing the Commission issued Report and Supplemental Order No. 16,915 dated February 24, 1984 (69 NH PUC 137), approving the borrowing. On March 30, 1984, the Commission issued Second Supplemental Order No. 16,965 (69 NH PUC 201) denying motions for rehearing filed by intervenors Michael Holmes, Gary McCool and Roger Easton.

The Co-op advised the Commission on May 25, 1984 of changed circumstances in how the proceeds of the loan would be applied. The Commission accordingly petitioned the Supreme Court to remand the case for further deliberations.

On June 15, 1984, the Court remanded the $57 million portion of the case which was subject to the above-mentioned changed circumstances and established a briefing and oral argument schedule for the remaining $54 million.

The Commission issued an Order of Notice setting a procedural schedule and a hearing on the remand for July 9 and 10, 1984. A continuance was granted to July 30, 1984.

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Now the Commission has before it a motion from the Company requesting that the matter be continued indefinitely until it is able to negotiate a contract with Public Service Company of New Hampshire on the use of the $57 million. No objections have been filed. The Supreme Court also remanded the $54 million portion of the case to the Commission on July 13, 1984 for further deliberations. Because that order is not yet final and for the reasons cited in the Co-op's motion for continuance, the Commission has decided to grant the Co-op's motion.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

For the reasons cited in the foregoing Report, which is hereby incorporated by reference, the hearing scheduled for July 30, 1984 is hereby continued at the call of the Commission.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1984.

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NH.PUC*07/18/84*[61145]*70 NH PUC 646*Northeast Hydrodevelopment Corporation

[Go to End of 61145]

Re Northeast Hydrodevelopment Corporation

DR 85-187, Order No. 17,754

New Hampshire Public Utilities Commission

July 18, 1984

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

Cogeneration, § 5 — Qualifying status — Licensing requirements — Small power production.

A petition for a long term rate for a small power production project was denied, without prejudice, as premature where the petitioner had not yet received a license to develop the project from the Federal Energy Regulatory Commission.

By the COMMISSION:

ORDER

WHEREAS, on May 31, 1985, Northeast Hydrodevelopment Corporation (NHC) filed a petition for a long term rate for the Goffs Falls-Pine Island Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, NHC does not yet have a license to develop Goffs Falls-Pine Island and an application for a preliminary permit to develop the project has been filed by Anne L. Warner who is also preparing a license application; and

WHEREAS, until NHC obtains a license to develop Goffs Falls-Pine Island from the Federal Energy Regulatory Commission in an order denying all competing applications, NHC cannot represent that it will have output to sell from this project and the longterm rate filing for Goffs Falls-Pine Island is therefore premature; it is therefore

ORDERED, that the long-term rate filing for Goffs Falls-Pine Island be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. 85-187 be, and hereby is closed.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1985.

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NH.PUC*07/18/84*[61473]*69 NH PUC 385*Sunapee Hills Water Company

[Go to End of 61473]

Re Sunapee Hills Water Company

DE 83-235,
DE 83-260, Order No. 17,115

New Hampshire Public Utilities Commission

July 18, 1984

Order closing dockets.

By the COMMISSION:

ORDER

WHEREAS, the Commission in Order No. 16,919 dated February 27, 1984 ([1984] 69 NH PUC 149), stated "Sunapee Hills Water Company submit to the Commission the required financial reports for the years 1981 and 1982"; and

WHEREAS, 1981 was a transitional year in terms of ownership and management of the company as a utility; and

WHEREAS, the Sunapee Hills Water Company has filed the required financial reports for the years 1982 and 1983; it is

ORDERED, that DE 83-235 and DE 83-260 (which was incorporated into DE 83-235) are hereby closed.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1984.

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NH.PUC*07/18/84*[61474]*69 NH PUC 386*Southern New Hampshire Water Company, Inc.

[Go to End of 61474]

69 NH PUC 386

Re Southern New Hampshire Water Company, Inc.

DR 82-253,
DR 80-218, Order No. 17,117

New Hampshire Public Utilities Commission

July 18, 1984

Order deferring step and rate structure adjustments.

By the COMMISSION:

ORDER

WHEREAS, on May 7, 1984, Southern New Hampshire Water Company, Inc. (SNHWCo.)

filed information on step adjustment in accordance with DR 80-218, 2nd Supplemental Order No. 15,057 and DR 82-253, 2nd Supplemental Order No. 16,299 ([1983] 68 NH PUC 156); and

WHEREAS, SNHWCo. calculates the combined effect on total revenues net of sales revenue growth to be approximately $16,000; and

WHEREAS, the NHPUC staff and SNHWCo. have discussed the filing and proposed taking no action currently, but deferring and updating of both adjustments until June 1, 1985, and a similar deferral of the rate structure changes; and

WHEREAS, the Commission believes that it would be in the public good to grant said request; it is

ORDERED NISI, that the step adjustments and rate structure adjustments as Ordered in DR 80-218 and DR 82-253 be deferred until June 1, 1985, and the filing should be based on updated information at that time; and it is

FURTHER ORDERED, that any parties in DR 82-253 or DR 80-218 may file comments and exceptions no later than 15 days from the date of this Order and it is

FURTHER ORDERED, that this Order NISI shall be effective 25 days from the date of this order unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1984.

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NH.PUC*07/18/84*[61475]*69 NH PUC 387*New England Telephone and Telegraph Company

[Go to End of 61475]

69 NH PUC 387

Re New England Telephone and Telegraph Company

DE 84-136, Order No. 17,119

New Hampshire Public Utilities Commission

July 18, 1984

Order granting license to place and maintain telephone plant beneath public waters.

APPEARANCES: For NET&TCo. - Maureen Nolan, Manager - Engineering.

By the COMMISSION:

REPORT

On June 4, 1984, New England Telephone and Telegraph Company (NET) filed with this Commission a petition for license to place and maintain submarine plant beneath the waters of Lake Sunapee in Sunapee, New Hampshire.

On June 6, 1984, an Order of Notice was issued setting the matter for public hearing at 10 a.m. on July 3, 1984 at the Commission's Concord offices.

At the duly-noticed public hearing the Company's representative, Maureen Nolan, described the crossing, indicating the submarine cable would originate at Pole 67D/7 on Great Island and proceed in a buried trench to the shoreline, a distance of approximately 20 feet. The cable would then run underwater a distance of about 598 feet to Little Island. Once ashore, the cable would lie in a trench about 10 feet to Pole 67DC/1. The cable will be a 50-pair armored submarine cable and will provide telecommunications service to Little Island from the Sunapee Exchange. The above poles currently carry electric service to said island.

The filing included a map and drawing of the installation. At the hearing, the Petitioner indicated that all construction would meet applicable codes. There were no objections, or motions to intervene.

Based on these facts, the Commission finds the crossing in the public interest; and will issue its license accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company be, and hereby is, granted license for the placing and maintaining of telephone plant beneath the waters of Lake Sunapee extending from Pole 67D/7 on Great Island in said lake to Pole 67DC/1 on Little Island; and it is

FURTHER ORDERED, that all construction of said plant comply with the National Electrical Safety Code and other applicable standards.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1984.

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NH.PUC*07/18/84*[61476]*69 NH PUC 388*Public Service Company of New Hampshire

[Go to End of 61476]

69 NH PUC 388

Re Public Service Company of New Hampshire

DR 84-128,
Supplemental Order No. 17,120

New Hampshire Public Utilities Commission

July 18, 1984

Order approving tariff revisions that implement an energy cost recovery mechanism.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No. 17,099 ([1984] 69 NH PUC 344), issued under this Docket, approved an Energy Cost Recovery Mechanism (ECRM) for the second half of calendar 1984; and

WHEREAS, said component amounted to 3.634 cents per kilowatt-hour; and

WHEREAS, said ECRM component replaces that allowed for the first half of said year in the amount of 3.615 cents per kilowatt-hour, the net result being an increase in energy charges of 0.019 cents per kilowatt-hour; and

WHEREAS, Public Service Company of New Hampshire has filed with this Commission certain revisions of its Tariff, NHPUC No. 29, reflecting such increase; and

WHEREAS, this Commission finds such revisions acceptable; it is

ORDERED, that the following revisions of Public Service Company of New Hampshire Tariff, NHPUC No. 29, be and hereby are, approved for effect on July 1, 1984:

1st Revised Pages 1, 2, 13, 17-A, 18, 23, 27, 33, 34, 38, 41, 49-A, 49-B, 51, 54, 58, 59 and 64; 2nd " " 15, 16, 17, 24, 25, 28, 29, 42, 43, 46, 47, 48 and 49; and Supplement No. 1 1st Revised Pages 1, 2, 3 and 4.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1984.

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NH.PUC*07/18/84*[61477]*69 NH PUC 388*Exeter and Hampton Electric Company

[Go to End of 61477]

69 NH PUC 388

Re Exeter and Hampton Electric Company

DX 83-348,
Supplemental Order No. 17,122

New Hampshire Public Utilities Commission

July 18, 1984

Order denying motion for rehearing.

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Procedure, § 33 — Grounds for granting — Additional information.

Where a motion for rehearing did not present any additional information which warranted reconsideration of the commission's analysis in the original order, the commission denied the

motion. [1] p.389.

Rates, § 143 — Reasonableness — Cost of service — Cost-based rates — Crossings.

The commission held that a cost-based standard was appropriate for determining crossing fees to ensure that the railroad was fully compensated for all costs, including a return on investment. [2] p.390.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On May 25, 1984, the Commission issued Report and Order No. 17,048 ([1984] 69 NH PUC 259) ("Decision") which inter alia allowed the Boston and Maine Corporation ("Railroad") to impose certain crossing fees on the Exeter & Hampton Electric Company ("Company") pursuant to RSA 371:24. On June 13, 1984, the Railroad filed a Motion for Rehearing requesting that the Commission rehear and reconsider the Decision. An Objection to the Motion was filed by the Company on June 21, 1984. After due consideration, we will deny the Motion for Rehearing.

[1] In its Motion, the Railroad set forth in eighteen separate paragraphs the reasons why it believes the Decision merits reconsideration. Many of those assertions were fully argued, reviewed and addressed in the context of the Decision and the Commission's analysis need not be repeated here. The Motion for Rehearing did not present any additional information which warrants reconsideration of that analysis. Accordingly, we will deny the Railroad's Motion on those grounds without further discussion.[1(102)] c.f. O'Laughlin v New Hampshire Personnel Commission (1977) 117 NH 999 (Agency on a Motion for Rehearing is not required to consider additional facts or arguments which were available to the parties at the time of the initial Order.)

The remaining assertions, which pertain to the particular analysis adopted in the Decision, will be addressed in this Order. Those assertions generally claim, inter alia, that the Commission should have engaged in a more generic proceeding to adopt standards (paragraphs 1, 2, 5, 6 and 8). In particular, the Railroad argued that the language in the Decision at 14-15 confirms the necessity to develop standards generally, that the Commission was incorrect in its assumptions regarding the position of the parties on the "just and reasonable" standard and that the Commission incorrectly applied ratemaking standards to the crossing payment. We do not find the Railroad's contentions to be persuasive.

The Railroad's attempt to use our language in the Decision at 14-15 indicates that the Railroad may have misconstrued that language. That language was intended to provide notice that the Commission may reconsider several of the standards it applied in this docket; it was not meant to imply that standards had not yet been adopted for the purposes of the Decision. In each instance in the Decision where the Commission faced a choice about which standard to apply, it selected the standard which favored the

Railroad.[2](103) For example, the burden of proof was assigned to the Company rather than to the Railroad. Additionally, an average cost standard, which provided for the recovery of both the fixed and variable costs of the Railroad was selected, instead of a standard that would only provide for the recovery of variable costs. Thus, although we provided notice that the standards may be re-examined in future proceedings, the Railroad cannot claim prejudice in the instant docket because the standards which were applied all benefited the Railroad.

[2] The Railroad also argued that the Commission erroneously assumed that a consensus existed among the parties as to the definition of the "just and reasonable" standard set forth in RSA 371:24. Since the Commission adopted a cost based standard, the Railroad is presumably arguing that a value based standard, which includes a profit, should have been adopted. We acknowledge that there may not have been a consensus in the positions taken by the parties in argument; however, our examination of the evidence proferred by the Railroad indicates that it was basing its requested payment schedule on its costs, rather than on value.[3](104) No other party disputed a cost based standard. After review, we remain convinced that even if there was no consensus among the parties, a cost based standard is proper. A cost based standard will ensure that the Railroad is fully compensated for all costs, including a return for investors (i.e., profit).[4](105) Alternatively, a value based standard would subject the Railroad to an analysis which may or may not fully compensate it for its costs. For this reason, and for the reasons set forth in the Decision at 10, we will continue to apply the cost based standard to crossing payments determined in RSA 371:24 proceedings.

The fact that a cost based standard is applied by the Commission in a ratemaking context does not make it inappropriate for the purposes of determining a crossing payment. While the elements that determine cost may vary in different contexts, the standard itself remains appropriate. We thus reject the Railroad's contention that the use of standards and definitions which may be associated with ratemaking means that the Decision is unlawful and unreasonable as defined in RSA 541:4.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion for Rehearing of the Boston & Maine Corporation be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1984.

FOOTNOTES

[1]This finding applies to the assertions contained in paragraphs 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Motion for Rehearing.

[2]The standards to be reconsidered were: 1) whether the burden of proof should continue to be allocated to the Company, as the Petitioner, rather than the Railroad, as the party seeking to impose a payment; and 2) whether the average cost standard adopted in the Decision should

continue to be used to determine the level of payment as distinguished from an incremental cost standard.

[3]Our review of the record here confirms the absence of evidence that would support a value based standard (real estate appraisals, etc.). See also, the Railroad's Motion at paragraph 8 which stated, inter alia, that: "The Commission erred in declining to accept the B&M's cost analysis relative to the proposed charges". (Emphasis supplied.)

[4]Since we have included a return or profit element in cost, the Railroad's contention that the Commission neglected to consider such an element is groundless. See also, Decision at 11 ("After review, we find that it is proper to include all of the above listed components, including the return, in the Railroad's calculation of cost.")

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NH.PUC*07/18/84*[61478]*69 NH PUC 391*Public Service Company of New Hampshire

[Go to End of 61478]

69 NH PUC 391

Re Public Service Company of New Hampshire

DR 83-398 et al., Order No. 17,127

New Hampshire Public Utilities Commission

July 18, 1984

Order denying motion for recusal.

Commissions, § 55 — Removal of commissioners — Recusal.

A motion to recuse the commission chairman, on the basis of remarks made in a speech, was denied where it was found that the chairman had no pecuniary interest in the case, entertained no ill will toward the parties, and would render a decision based on the record evidence with no bias or prejudgment.

By the COMMISSION:

REPORT

The Consumer Advocate filed a Motion to recuse on July 13, 1984, in which he moved that the Chairman recuse himself from dockets DR 83-398, DF 84-167 and DR 84-168 in accordance with RSA 363:12 and RSA 363:19. The reason alleged in the Motion is a speech made by the Chairman to The Greater Portsmouth Chamber of Commerce on June 28, 1984, a copy of which was submitted as an attachment to the Motion.

RSA 363:12 (Supp. 1981) states inter alia that a Commissioner should disqualify himself

from proceedings in which impartiality might be reasonably questioned. Further guidance as to the level of impartiality required may be found in RSA 363:19 which reads as follows:

Disqualification of Member. No commissioner shall sit upon the hearing of any question which the commissioner is to decide in a judicial capacity who would be disqualified from any cause, except exemption from service and knowledge of the facts involved gained in the performance of his official duties, to act as a juror upon the trial of the same matter in an action of law. (Emphasis supplied.)

The operative words are, in pertinent part, "except ... knowledge of the facts involved gained in the performance of his official duties". The alleged remarks fall in this category and even if they did not, disqualification would not be required or appropriate under RSA 363:12 or 19, or under more general principles of proper official conduct.

A Federal Court addressed similar circumstances regarding a speech by an administrative officer holding that "no basis for disqualification arises from the fact or assumption that a member of an administrative agency enters a proceeding with advanced views on important economic matters in issue. Nothing in the record disturbs the assumption that the two commissioners are `men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances.'" Skelly Oil Co., Inc. v Federal Power Commission (CA10th 1967) 68

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PUR3d 209, 221, 375 F2d 6, 18, modified on other grounds (1968) 390 US 747, 75 PUR3d 257, 20 L Ed 2d 312, 88 S Ct 1344, citing United States v Morgan (1941) 313 US 409, 40 PUR NS 439, 85 L Ed 1429, 61 S Ct 999, see also 3 K.C. Davis, Administrative Law Treatise §§ 19.1 et seq (San Diego 1980); cf. New Hampshire Milk Dealers' Asso. v Milk Control Board (1966) 107 NH 335. (Appellant was not denied due process by refusal of Board member to disqualify himself, even when that Board member had taken a public position on the policy issue which was adjudicated, because the Board member had no pecuniary interest in the case, entertained no ill will or prejudice toward the parties, and had no bias or prejudgment concerning the issues of fact or the outcome of the proceeding.)

In the instant situation, the Chairman's remarks were not conclusory. A careful reading clearly shows that the remarks in no way reflected prejudgment, crystalized opinions or any conclusions of fact. A typical example is on page 2 of the speech which is attached to the Consumer Advocate's Motion where the Chairman said that such changes in policy as PSNH's policy of hiring a "nationally respected financial institution" as a consultant "appear to be in the best interest of New Hampshire". (Emphasis Supplied.) The word "appear" hardly indicates an inflexible opinion, nor does it indicate that the Chairman would not be able to sit in the subject dockets with an open mind. On page 14, the Chairman referred to a possible temporary rate hike once a Seabrook rate case is filed which "could amount to approximately 8% to 10%". (Emphasis Supplied.) Once again, the word "could" as opposed to "will" or "should" shows the use of the figures to be as an example, not as an inflexible opinion or conclusion of fact.

To the extent that the Chairman's remarks to The Portsmouth Chamber of Commerce can be interpreted as indicating that the public interest would not be served by a bankruptcy of Public

Service Company of New Hampshire, the Chairman would observe that this sentiment accords with the stated position of the Supreme Court of New Hampshire. Re Legislative Utility Consumers' Council (1980) 120 NH 173, 174. The Court stated, in upholding the Commission's determination of the public good in that case, "A bankrupt utility is not in the public interest."

Furthermore, the remarks were delivered at a time when there were no open Seabrook dockets before the Commission. (Docket No. DR 83-398, which was referenced in the Motion, is a docket concerning the Pilgrim II facility.) The dockets referenced in the Motion were opened after the remarks and the Chairman has not directly or indirectly given his opinion or formed an opinion, nor has he offered any public comments about these pending matters. See RSA 500-A:12, 363:19, 363:12(IV). Nothing in the record indicates that he is not capable of judging the matters in each of the subject dockets fairly on the basis of the evidence of record in each docket respectively.

All Commissioners have been presented with substantial quantities of Seabrook data and all Commissioners have formed various judgments about that data. It is the duty of each Commissioner to keep informed, RSA 374:4. Thus, the issue is not whether Commissioners have formed past opinions based on facts gained in the performance of official duties (RSA 363:19). Rather, the issue is whether a Commission will approach each new docket with an open mind, view the record evidence as presented in the proceeding and abide by the oath of office

to uphold the laws of the State of New Hampshire. New Hampshire Milk Dealers' Asso. v Milk Control Board, supra, 107 NH at p. 338. If that is the case, there is no requirement of disqualification for bias.

The facts demonstrate and the Chairman represents that he has no pecuniary interest in the case, entertains no ill will toward the parties, will approach the matter with an open mind, will render a decision based on the record evidence and has no bias or prejudgment concerning issues of fact or of the outcome of the proceedings. Accordingly, the Motion will be denied.

ORDER

For reasons cited in the foregoing Report, which is hereby incorporated by reference, the Consumer Advocate's Motion for Recusal is denied.

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NH.PUC*07/19/84*[61479]*69 NH PUC 393*Public Service Company of New Hampshire

[Go to End of 61479]

69 NH PUC 393

Re Public Service Company of New Hampshire

DE 84-115,
Second Supplemental Order No. 17,128

New Hampshire Public Utilities Commission

July 19, 1984

Order denying motions for rehearing.

Constitutional Law, § 20 — Due process — Notice and hearing — Transcript.

The commission found that the due process rights of an intervenor had not been violated where the commission rendered its decision before a transcript was filed because all of the commissioners were present at the initial hearing. [1] p.395.

Constitutional Law, § 20 — Due process — Notice and hearing — Waiver of notice requirement.

Waiver of a 14-day notice requirement was found to be appropriate where an expeditious resolution to an investigation initiated by the commission was required. [2] p.396.

(Aeschliman, commissioner, separate opinion, p.397.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On June 14, 1984, the Commission issued Report and Supplemental Order No. 17,072 (69 NH PUC 312) ("Decision") in this docket. The Decision inter alia required Public Service Company of New Hampshire ("PSNH" or "Company") to rebuild its coal inventory to acceptable levels and file weekly status reports. The Decision also placed PSNH on notice about possible further Commission actions if PSNH's efforts to rebuild its coal inventory were deficient. Timely Motions

for Rehearing were filed by the Community Action Program ("CAP") and the Campaign for Ratepayers' Rights ("CRR").[1](106) By this Order, we will deny the Motions for Rehearing.

Both the CAP and the CRR Motions claimed that the Decision is unlawful, unjust and unreasonable because the Commission failed to consider the arguments raised by the Intervenors. In addition, CAP and CRR claimed the following errors: 1) the Commission erred in issuing the Decision prior to the filing of the hearing transcript (CAP); 2) the Commission erred in its waiver of the 14 day notice period (CRR); and 3) the Commission erred in denying a CRR Motion to obtain certain information from PSNH. We shall address each of the Intervenor contentions in turn.

CONSIDERATION OF ISSUES RAISED BY INTERVENORS

The Intervenors claimed that the Commission ignored arguments raised during the course of

the hearings. Those arguments included inter alia a request the Commission require PSNH to earmark for fuel certain revenues recovered through the Energy Cost Recovery Mechanism ("ECRM"), utilize the proceeds of a recent PSNH financing for coal,[2](107) reduce ECRM recovery by the amount of PSNH's fuel arrearages, readjust PSNH's rates to reflect differing fuel inventory and working capital assumptions,[3](108) order PSNH to file a financial plan, prohibit the diversion of ECRM proceeds to other uses pursuant to RSA 378:30-a (Supp. 1981) and recognize the practical and contractual difficulties inherent in PSNH's commitment to rebuild its coal inventory. Before addressing the Intervenor's specific arguments, it is necessary to set forth here the procedural context in which those arguments were raised.

The June 6, 1984 hearing was scheduled pursuant to an Order of Notice which defined the scope of the proceeding as a Commission investigation into: 1) the current and projected quantity and quality of coal at the Merrimack Station; 2) the current agreement regarding the procurement of coal between PSNH and Consolidation Coal Company; 3) the current and projected cost of coal; 4) the reliability of continued adequate supply of coal; and 5) the ability (in the context of this coal investigation) of PSNH to continue to provide service that is safe, adequate, just and reasonable. The specific statutory authority noticed was RSA 363:5 (Commission's authority to undertake an independent inquiry), RSA 374:1 (Utility's responsibility to furnish safe, reliable, just and reasonable service), RSA 374:3 (general supervisory power of Commission), RSA 374:4 (Commission's duty to keep informed) and RSA 374:7 (Commission's authority to undertake an investigation and issue appropriate Orders). It is noteworthy that the Commission did not notice RSA 378:3-a (Sup. 1984) (Fuel Adjustment Charges), RSA 378:7 (Fixing the Rates by Commission), and RSA Chapter 369 (Commission review of utility financings).

The procedural context described above is important. This docket is a Commission initiated investigation into the status of PSNH's coal supply undertaken for the purpose of assuring the Commission and the public that PSNH will take steps to build up its inventory to acceptable levels. Thus, the focus of the proceeding was to develop information. If,

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as a result of such information, the Commission believed that an order, rule or regulation was warranted, it could then, after notice, undertake an appropriate proceeding.

In this instance, the Commission, after full analysis of the factual record, believed that it could impose the requirements contained in the Decision and that further requirements which may require additional notice or proceedings were not warranted at that time.[4](109) To date, the circumstances which may warrant further proceedings have not occurred. PSNH's weekly reports, filed in compliance with the requirements of the Decision, state that the Company is ahead of the required schedule for replenishing coal inventory.

We do not mean to imply here that parties are always bound by the statutory authority cited in the original Order of Notice and that they will therefore be foreclosed from raising important issues which may technically fall outside of the scope of a particular docket. However, the appropriate method of raising such issues is to ask the Commission to expand the scope (through the filing of a Motion or other appropriate mechanism). At that point, the Commission can decide whether it wishes to enlarge the scope and, if it does, notice can be provided for all parties

that particular issues or actions are contemplated. In this instance, as noted above, additional actions may be warranted at some point in time. At that time, if it occurs, the Commission will address all appropriate issues.

ISSUANCE OF DECISION

[1] The CAP claimed that it was denied due process because the Commission issued the Decision prior to the time that the hearing transcript was filed. We do not believe that due process requirements have been violated in this instance.

In the instant proceeding, all three Commissioners were present at the hearing. All due consideration was given to the evidence and the argument of all parties. Our subsequent review of the transcript reveals no areas where particular evidence or argument would have caused us to alter our analysis. In its Motion, the CAP did not specify any particular portion of the transcript which, if it had been in hand, would have caused us to alter our findings and conclusions to favor the CAP.

Although the CAP in its Motion did not cite authority, our review of the applicable authority convinces us that there is no requirement that we defer our decisionmaking until a transcript is filed. The Administrative Procedures Act provides, at RSA 541-A:19, inter alia:

If a majority of the officials of the agency who are to render the final decision in a contested case have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the final decision.

It is therefore apparent that no requirement to read the record exists where a

majority of the decisionmakers heard the case. Since all three Commissioners were present to hear the case in the instant proceedings, the timing of the Decision was proper.

Our analysis is directed at what we must do, rather than what we may do. We agree with the CAP's feeling that, circumstances permitting, it is better to defer a decision until after the Commission has had a full opportunity to review the transcript. However, we do not agree that this instance warranted deferring the decision. We believe that it was important to issue an Order which required the Company to replenish its coal supply to acceptable levels. Given the record evidence of the difficulty in meeting a requirement to build up to a 90 day inventory by October 1, 1984, all parties deserved expeditious action so that the ability of the Company to comply with the Commission's Order could be maximized. Thus, we believe that it was an appropriate exercise of discretion to issue the Decision on June 14, 1984.

WAIVER OF NOTICE PERIOD

[2] The CRR claimed that the Commission erred in waiving its 14 day notice requirement. New Hampshire Code of Administrative Rules Puc 203.01(a). After due consideration, we do not believe CRR's claim merits rehearing.

This proceeding was initiated as a Commission investigation into the status of the Company's

coal inventory. Prior to the taking of evidence, the Commission had reason to believe that PSNH had allowed its coal inventory to dwindle and did not have the information to assess whether PSNH's continuing ability to provide safe reliable service was thereby adversely affected. This concern was expressed by the Consumer Advocate in a related docket.[5(110)] As a result of that concern, as well as the independent concern of the Commission, we acted expeditiously to assure ourselves and the public that there was no immediate threat to PSNH's ability to adhere to its obligations as a public utility. A waiver of our notice requirement under such circumstances is authorized by our regulations. See, New Hampshire Code of Administrative Rules Puc 201.05. This waiver provision is not inconsistent with the requirements of the Administrative Procedural Act, RSA 541A:1 et seq.

The result of the waiver was that the Commission could quickly ascertain the relevant facts concerning the Company's fuel inventory. The CRR had sufficient notice to appear and participate in the proceeding. The CRR did not submit an offer of proof of additional evidence that would have been proffered had not the Commission waived the 14 day notice requirement, nor did the CRR specify how its presentation had been prejudiced by the waiver. Since we had to act on the basis of available information and since that information indicated and continues to indicate that an expeditious hearing was in the public interest and without prejudice to the parties, the waiver was proper.

REQUEST FOR PRIORITY LIST

In the course of the hearing, CRR requested that PSNH provide it with a list setting forth the priority of payments to creditors. The Commission sustained a PSNH objection. The CRR duly excepted and argued its position in its Motion for Rehearing. We again deny CRR's request. Such evidentiary rulings are within the discretion of the Commission and we have

not been convinced by CRR that we abused that discretion.

Our Decision required PSNH to replenish coal inventory to a 90-day supply no later than October 1, 1984. The Decision was based upon evidence which indicated that PSNH would be making arrangements with Consolidation Coal to retire its arrearage and that such arrangements would not carry any need to increase rates through the ECRM or otherwise. In view of this evidence and the Commission's Order, the information about where Consolidation Coal falls within a priority list is unnecessary. It is sufficient that PSNH will meet its obligations to Consolidation Coal in order to adhere to the requirements of the Decision. We will, therefore, reject CRR's contention that denial of access to the priority information was error.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motions for Rehearing of the Community Action Program and the Campaign for Ratepayers' Rights be, and hereby are, denied.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of July,

1984.

Separate Opinion of Commissioner Aeschliman

In Report and Supplemental Order No. 17,072, I attached a separate opinion which set forth the analysis I believed should have been employed. I have reviewed the record and the Motions for Rehearing. I do not believe that I have been presented with sufficient reason to alter my previous analysis. Accordingly, I would have granted the Motions for Rehearing to the extent that they present analysis which is consistent with my separate opinion and I would deny the Motions for Rehearing in all other respects.

FOOTNOTES

[1]CAP and CRR will be collectively referred to as the Intervenors.

[2]See, Re Public Service Co. of New Hampshire (1984) 69 NH PUC 275.

[3]See, Re Public Service Co. of New Hampshire (1984) 69 NH PUC 67, 57 PUR4th 563.

[4]See e.g., 69 NH PUC at p. 315, "PSNH will be placed on notice that if the Commission finds that its continuing efforts to secure an adequate supply of fuel are deficient, the Commission will issue appropriate Orders which may require, inter alia, segregation of customer revenues to be used solely for fuel supply." See also, RSA 541-A:1 III (Definition of "Contested case").

[5]See, Re Public Service Co. of New Hampshire, supra, 69 NH PUC at p. 315, Footnote 2.

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NH.PUC*07/19/84*[61480]*69 NH PUC 397*TDEnergy, Inc.

[Go to End of 61480]

69 NH PUC 397

Re TDEnergy, Inc.

DR 84-139,
Second Supplemental Order No. 17,129

New Hampshire Public Utilities Commission

July 19, 1984

Order approving rates for small power producer on the condition of filing a performance bond.

APPEARANCES: LeBoeuf, Lamb, Leiby & MacRae for Lindsay Johnson, Esquire for TDEnergy, Inc.; Catherine E. Shively, Esquire for Public Service Company of New Hampshire.

By the COMMISSION:

REPORT

On May 25, 1984, TDEnergy, Inc. ("TDE") submitted a small power

producer long term rate filing pursuant to Report and Fourth Supplemental Order No. 16,619 ([1983] 68 NH PUC 531) and Report and Fifth Supplemental Order No. 16,664 ([1983] 68 NH PUC 575) in Docket No. DE 83-62. As is the custom in such filings, the Commission issued an Order Nisi approving the filing with certain conditions, effective 25 days after the issue date of the Order and provided that the parties could file comments and exceptions in the interim period, Order No. 17,077 ([1984] 69 NH PUC 327). TDE filed timely comments and exceptions to address the conditional nature of the Order Nisi and Public Service Company of New Hampshire ("PSNH" or "Company") filed a request for an extension of time to file comments and exceptions. By Supplemental Order No. 17,103 ([1984] 69 NH PUC 351), the Commission granted the request for an extension and modified Order No. 17,077 to provide for an effective date of July 19, 1984. PSNH subsequently filed timely comments and exceptions.

This Order will address the comments and exceptions filed by the parties. TDE's filing reflected a concern with the conditional nature of the Order Nisi. Accordingly, it revised its rate schedule to reflect the Commission's concerns and requested that the condition be dropped. PSNH's concerns revolved around the nature of the technology of the proposed facility. It believed that the technology is sufficiently uncertain to justify rejection of: 1) the proposed capacity credit; and 2) the front loaded rate. We shall address each of the above concerns.

It is important to state initially that this filing represents a unique situation. It is a filing made pursuant to orders establishing an interim long term rate. Since the filing date, the Commission has issued Report and Eighth Supplemental Order No. 17,104 ([1984] 69 NH PUC 352, 61 PUR4th 132) ("Permanent Order") which established permanent rates, terms and conditions for long term arrangements between PSNH and small power producers. By its terms, the Permanent Order provided that all filings submitted prior to its effective date will continue to be governed by the interim orders. The TDE filing is the only filing which was submitted prior to the effective date of the Permanent Order and which had not been finally approved under the terms of the interim orders. Thus, any of the analysis used herein is only applicable to this situation. Future filings will be governed by the terms of the Permanent Order.

TDE's Concern

TDE was concerned because Order No. 17,077 provided inter alia that the submitted rate schedule was approved only if TDE comes on line at its 20 year capacity level for the twelve months of 1985. The reasons for this condition was that TDE's long term rate exceeded the present value of the Commission approved rates if PSNH did not enjoy the full level of TDE output in the first year. TDE filed a modified rate schedule which addressed the Commission concern. Inasmuch as the rates in that modified schedule will not exceed the present value of the Commission approved rates even if TDE's facility is not fully operational in the first year, the condition in Order No. 17,077 will be dropped.

PSNH's Concerns

As described above, PSNH is concerned about the effect of technological uncertainty on the

capacity credit and the front loaded rates. TDE filed a response on July 17, 1984 which was also duly considered. After review we will reject PSNH's

request to modify the capacity component of the rate and grant PSNH's request to modify the order to reflect the risks of front loading.

Under the interim orders, capacity is calculated on a per Kwh basis calculated on the assumption that the facility will have a 50% capacity factor with capacity valued at $22.00/Kw/year. Since the rate is based on output, it is, to some extent, self correcting. If the TDE facility does not provide output, no capacity payment will be forthcoming from PSNH. In view of the fact that PSNH's concerns are that the technology is such that it cannot rely on it to generate electricity, its risk is addressed in the self correcting payment method.[1](111) Thus we will accept TDE's inclusion of a capacity credit as a component of its rate schedule.

We find PSNH's front loading argument to be more persuasive. PSNH quantified the risk to ratepayers if the technology fails in the later years of the contract, thus denying the ratepayers the tail end benefit of a front loaded rate. That risk is significant. We have reviewed the representations of TDE about the quality of its wind machines and we believe that those representations are such that we will continue to allow a front loaded rate. However, in view of the lack of long term New England experience to support those representations, we believe that some additional measures to reduce ratepayer risk are justified. Accordingly, we will condition the approval of the rate on the submission of a performance bond to PSNH by TDE no later than the operational date of the facility. The parties are directed to confer on the appropriate terms and conditions of the performance bond and file a summary of any agreements on such terms and conditions. To the extent that the parties are unable to agree, a precise statement of the issue(s) in dispute should be submitted to the Commission by the parties. We will then institute appropriate proceedings to resolve the dispute pursuant to RSA 362-A:5.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the long term rate filing of TDEnergy, Inc., as modified, be, and hereby is, approved; and it is

FURTHER ORDERED, that this approval is conditioned on the submission of an appropriate performance bond by TDEnergy, Inc. to Public Service Company of New Hampshire no later than the operational date of the facility in accordance with the provisions of the foregoing Report.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1984.

FOOTNOTE

[1]If the risk was that output would be more reliable than predicted, PSNH's concern of

overpayment would be more credible. We also find comfort in the underlying interim rate valuation of $22/Kw/ yr. which is considerably less than the 20 year capacity value of e.g. $80.48/Kw/yr set in the Permanent Order.

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NH.PUC*07/19/84*[61481]*69 NH PUC 400*Public Service Company of New Hampshire

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69 NH PUC 400

Re Public Service Company of New Hampshire

DR 83-152 et al., Order No. 17,130

New Hampshire Public Utilities Commission

July 19, 1984

Order denying motion for recusal.

By the COMMISSION:

REPORT

On July 19, 1984, the Community Action Program ("CAP") filed Motions for Disqualification in Dockets DR 83-152 (Rate Shock), DF 83-331 (Seabrook Cost Containment) and DR 83-398 (Pilgrim II Recovery). All Motions request that the Chairman disqualify himself from the respective dockets because of remarks made to The Greater Portsmouth Chamber of Commerce on June 28, 1984. Since the issues and parties are similar in all material respects, the Motions will be consolidated and addressed in this single Order.

On July 13, 1984, the Consumer Advocate filed a Motion to Recuse which contained substantially similar allegations as those contained in the CAP Motions.[1](112) In response, the Chairman issued Report and Order No. 17,127 ([1984] 69 NH PUC 391). That Report and Order addresses all of the issues raised by the CAP Motions. Accordingly, Report and Order No. 17,127 will be incorporated herein by reference.[2](113) Accordingly, the CAP Motions will be denied.

ORDER

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

ORDERED, that the Motions for Disqualification of the Community Action Program be, and hereby are, denied; and it is

FURTHER ORDERED, that Report and Order No. 17,127 be amended as set forth in the foregoing Report at Footnote 2; and it is

FURTHER ORDERED, that a copy of this Order be placed in the file of each of the above-referenced dockets and, in Docket Nos. DF 84-167 and DR 84-168.

FOOTNOTES

[1]The Consumer Advocate's Motion was filed in Docket Nos. DR 83-398, DF 84-167 and DR 84-168. Only one of the dockets mentioned by the Consumer Advocate was the subject of the CAP Motions. However, the issue raised by the Consumer Advocate in his Motion is identical to that contained in the CAP Motions in all material respects.

[2]It is true that Report and Order No. 17,127 states (69 NH PUC at p.392): "Furthermore, the remarks were delivered at a time when there were no open Seabrook dockets before the Commission." CAP's Motions point out that certain dockets were open at the time of the remarks, even though those dockets were not active at the time of the remarks. We will hereby amend Report and Order No. 17,127 to reflect the existence of Seabrook dockets other than those referred to in the Consumer Advocate's Motion. However, the analysis in that Order clearly rests inter alia on whether the Chairman is capable of judging matters fairly on the basis of the evidence of record. That analysis contained in Report and Order No. 17,127 is applicable here.

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NH.PUC*07/19/84*[61482]*69 NH PUC 401*City of Concord Department of Recreation and Parks v. Concord Electric Company

[Go to End of 61482]

69 NH PUC 401

City of Concord Department of Recreation and Parks
v.
Concord Electric Company

DR 83-256,
Supplemental Order No. 17,131

New Hampshire Public Utilities Commission

July 19, 1984

Order directing electric company to offer city a special local facilities charge rate.

Rates, § 344 — Electric — Municipal and other public use.

The commission found that a city, which provided off-peak outdoor lighting, had been treated unfairly by being classified in a rate structure that required the city to pay demand costs and designed a special local facilities charge rate for the city.

Rates, § 344 — Electric — Municipal and other public use.

Statement, in dissenting opinion, that designing a special rate for city facilities constituted a discriminatory action. p. 405. (Iacopino, commissioner, dissents p. 405.)

APPEARANCES: Ransmeier and Spellman by Dom D'Ambruoso, Esquire for Concord Electric Company; John Keach, Director Recreation and Parks Department for the City of Concord; and Melinda Rafter, Kenneth Traum, Edgar Stubbs and Larry Smukler, Esquire for Staff.

By the COMMISSION:

REPORT

Procedural History

On August 1, 1983, a complaint was filed by the Department of Recreation and Parks of the City of Concord ("City") and other persons pertinent to the rate design of Concord Electric Company ("Company").

On August 10, 1983, an Order of Notice was issued setting a hearing for September 22, 1983. At the hearing, the purpose of the docket was summarized as an investigation of the applicability of demand charges to the outdoor lighting load of the City's Memorial Field Facility particularly with respect to the time of use in the rates of the Company. The Commission directed the parties to meet informally to make an attempt at resolution. The parties were to report back to the Commission in a timely fashion.

The parties subsequently met on September 30, 1983, October 21, 1983 and April 11, 1984. During the course of these meetings several suggestions were made to the City with the purpose of minimizing its electricity costs.

In summary, it was proposed that the City improve load management, remeter the Memorial Field by converting to a

single high-side meter, and close out meters during the months in which the Facility is not in use.

On March 15, 1984, the Commission issued Order No. 16,939 setting a hearing for April 17, 1984. At that time, it was reported that the City accepted the proposal to remeter and that the payment for the conversion was agreed to occur over a 24 month period. The City also accepted the annual close out of meters that were temporarily not in use. Lastly, the City accepted in principle the concept of load management, although it was noted that the City had limitations on its ability to make adjustments.

Additionally, it was reported that the City was continuing to seek relief by requesting a special contract with the Company. The Company expressed its belief that there is no justification for a special contract.

Positions of Parties

The City's position is basically that it is on the "G" rate which includes a demand factor. Since the time of use is off-peak and, thus, no significant incremental demand costs are incurred by the Company, the City contends that it is in the wrong rate structure. It believes that the rate

structure should more accurately reflect its actual demand placed on the system. Since it is not causing the system to incur additional cost, it should not be in a rate class that is so significantly influenced by the demand factor.

The Company's position is that the City has been correctly classified as a "G" customer and that the City does not qualify for either the "PL" rate (limited power service) or the "OL" rate (outdoor lighting). The Company believes that if a special arrangement were entered, there would be a revenue loss which it would be entitled to recoup from other customers. The Company also believes that the City does not have an efficient relationship between its energy usage and its demand. It believes that the Commission, in the last rate case, intended to place a rate burden on customers with inefficient relationships.

The Company further contends that if a special arrangement were entered, other customers in similar situations would also request special arrangements. To the Company, this would be an undesirable turn of events because its rates are such that everyone is billed on the basis of average costs. It believes that its other customers would be harmed by any special arrangements and would be harmed more by numerous special arrangements.

Findings

The first function of the Commission in this docket is to determine whether the City is being unfairly treated under the "G" rate structure. Secondly, the Commission will determine if there is any other existing rate structure that would constitute a proper place for assignment. Thirdly, if the City is being unfairly treated and if there are no other appropriate rate structures in existence, the Commission will determine if a special arrangement would be an appropriate vehicle to use in order to rectify unfair treatment. Lastly, since we will find that a special arrangement is necessary, the Commission will specify its terms and conditions.

After careful examination of the Company's record responses to Staff questions posed at the April 17, 1984 hearing, the Commission concludes that the Memorial Field Complex has minimal usage on the Company's monthly peaks. The response to record request #1 shows that the latest time of system peaks in the relevant months of use is 3:00 p.m. (e.g.

August 1, 1983); a time when the need for outdoor lighting is practically non-existent. The response to record request #2 shows that demand costs are incurred by the Company on the basis of inter alia the highest kilowatt-ampere demand between the hours of 7:00 a.m. and 8:00 p.m. Monday through Friday, exclusive of legal holidays. Since; (1) the maximum demand has not occurred later than 3:00 p.m.; (2) the Company is billed on the basis of maximum demand; and (3) the City's outdoor lighting usage occurs at a time which is later than the maximum demand, we conclude that the City's contribution, if any, to the Company's demand costs is minimal.

The Commission agrees with the Company that the current rate design was intended to promote conservation by placing additional rate burdens on customers with inefficient relationships between energy use and demand. Contrary to the Company view, we recognize that in this specific case, the City is severely limited in its ability to spread its KW usage over a monthly period. Moreover, this type of usage, which does not contribute to the Company's demand costs was not the type of inefficient usage the Commission intended to discourage with

the current rate structure.

Since the City contributes minimally to demand billings from Public Service Company of New Hampshire, the Commission finds that the City has in fact been treated unfairly under the "G" rate structure.

In addition, the City's special circumstances in conjunction with the "G" rate produce inadvertent incentives for increased consumption. Without the ability to spread KW usage over the period, the City is forced to increase consumption if it wants to lower the ratio of total dollars expended on electricity to the number of KWHs of energy consumed. This result is contrary to the Commission commitment to conservation, and, as such, is viewed as undesirable.

The Commission has considered the information received from the City on May 19, 1984 and the Company on June 1, 1984. By employing an actual example of City usage (400 KWH of energy and 123 KW of demand) the Commission compared bills from the previous rate design and from the current rate design. After adjusting for subsequent rate increases, the Commission concludes that the City has been treated unfairly.

The Commission finds that the Company is correct that there are no other existing rate structures that constitute a proper place for assigning the Memorial Field Complex. Thus, a special arrangement is necessary to prevent unfair treatment.

The Commission recognizes the Company's contention that a special arrangement with the City may lead to additional requests by other customers for special treatment. We will address such requests if and when they are presented. It should be noted however, that we are treating this docket as a consumer complaint and not generically. Thus, we cannot ascertain whether other customers exist with outdoor lighting loads similar to that of the Memorial Field Facility. If they do, they have the same opportunity as the City to file complaint. The problem of similar customers, if it exists at all, will be mitigated when the Company moves to marginal cost pricing. Thus, the Company is encouraged to expedite its marginal cost of service study.

In specifying the terms and conditions of the special arrangement, the Commission considered two options.

Option 1 would consist of basing a new rate on the previous rate design. (The

Page 403

Company provided an example of the previous rate design in their letter and calculations dated June, 1984.) The previous rate structure would remain intact, but adjustments would be made for subsequent rate increases.

The main advantage of Option 1 is that the methodology is based on information that is verified by the Company. The disadvantage of Option 1 is that the resulting rate produces revenues that are significantly lower than the revenues received by the Company from the City at present which exacerbates the problem of revenue erosion.

The Commission acknowledges the legitimacy of a concern about revenue erosion by choosing Option 2 as the basis for the special arrangement.

Option 2 is developed empirically. On May 18, 1984 the City provided copies of its bills

from the Company for the interval of May 1981 through November 1982. The information encompasses two distinct time periods. The first period is from May 1981 through September 1982. This period covers a time when the previous rate structure was still in effect. The second period is from October 1, 1981 through November 1982. This period covers a time when the present rate structure was in effect.

The Commission has compared bills under the previous rate design to bills under the present rate design. An effort was made to compare similar time periods and similar simultaneous KWH and KW use. The best data available was for the months of June, July, August, and September for the Softball Field. The 1981 bills for the period were averaged in terms of KWH, KW, and total amount due. The same process was undertaken for the 1982 bills for the same months.

The usage levels for the field during those months of 1981 and 1982 were similar. The 1981 monthly average usage for the period was 2825 KWH and 52.25 KW. The 1982 monthly average usage for the period was 2600 KWH and 50.5 KW.

The 1981 average monthly bill for the Softball Field during the months of June, July, August, and September was $378.81. The corresponding 1982 bill was $603.58.

Before final comparisons can be made, certain adjustments are necessary. These adjustments are as follows:

(1) Increase $378.81 by 3.98% for the rate increase per Order No. 15,145 ([1981] 66 NH PUC 389).

(2) Increase the resulting $393.89 by .88% for the step increase per Order No. 15,960 ([1982] 67 NH PUC 762).

(3) Increase the resulting $397.35 by .66% for the Franchise Tax increase per Order No. 16,524 ([1983] 68 NH PUC 461).

The result is an average "equitable" bill under the previous rate design of $399.98 compared to a $603.58 average bill under the present rate design; noting that these bills cover approximately the same usage over identical time periods for the years 1981 and 1982. Since $399.88 is 66.27% of $603.58, a 33.73% discount is appropriate.

The Commission believes this special arrangement to be reasonable because the calculations were done conservatively. This can be seen in the comparison of the average usages. The 1981 bills were usage levels that are higher than those in 1982. If comparison error was made, it was in favor of the Company since more usage should mean higher total dollar amount charged the City.

The Commission also believes that the discount is reasonable because it is only to be applied to KW usage.

Our Order will issue accordingly.

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SUPPLEMENTAL ORDER

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

ORDERED, that Concord Electric Company shall offer the City of Concord (Recreation and Parks) a special local facilities charge rate at the Memorial Field Facility of $3.36/KW for the first 5 KW and $6.71/KW for all KWs in excess of 5KW; and it is

FURTHER ORDERED, that all rates other than the local facilities charge shall be as set forth in Tariff 8, effective date July 1, 1983, Service Classification G; and it is

FURTHER ORDERED, that Concord Electric Company is encouraged to expedite its marginal cost of service study.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1984.

Commissioner Iacopino Dissenting:

I disagree with the opinion of the majority and would not order the Company to provide the customer with a special local facilities charge rate. Such action is discriminatory. In its attempt to accommodate the customer, the Commission is unfair to the remaining customers in the same rate class who will have to make up lost revenue. My understanding is that the local facilities charge is not limited to recovery of the demand charge the Company pays to its supplier. Thus, by arbitrarily reducing the customer's rate, the Commission would excuse this individual customer from paying its fair share of all costs reflected in the local facilities charge. To me, this is prejudicial to those customers who pay their fair share and who would now pick up an additional share that has been avoided by this customer.

The rates now charged by the Company were approved by this Commission in DR 81-97, the last general rate case. In that proceeding the Commission ordered the Company to alter its rate structure to "reward conservation and efficient use of electricity to a larger extent than Concord Electric's previous rate design". The Commission further stated that the "design of rates will lead to further decreases in rates for commercial customers who have efficient relationships between their overall electric demand and kilowatt-hour usage. Commercial customers that do not demonstrate efficient energy usage will experience increases in rates (Second Supplemental Order No. 15,114 dated October 6, 1981). This customer is one of those customers with a poor demand kilowatthour relationship. Evidence in this proceeding shows that it has a high demand and low kilowatt-hour usage in relation to that demand. In the Company's previous rate case, the Commission carefully constructed a rate to place utility costs upon those customers who create the cost; and secondarily, to promote conservation. It seems to me that the Commission here has compromised those principles by this special discriminatory alteration of the rate structure to benefit one customer. As a Commissioner, I am not unmindful of other customers who fit in the same category, such as churches, municipalities, etc. Nor is the problem limited to the Concord Electric Company's service territory.

As a result of this proceeding, the customer and utility company met to attempt to resolve the problem within the regulatory scheme. Such attempts were unsuccessful. That is all that can reasonably be expected of a utility company who has complied with the mandates of the Commission. We cannot and should not attempt to alter the rate structure for individual customers. If we recognize the

problem as severe, we should notice a proper generic proceeding to consider the effects of such a change upon all customers within the class and other customers of the Company.

The Commission has undertaken to establish the precise rate apparently to be embodied in a special contract between the customer and the Company. The Commission should not substitute itself for the Company or the customers. The Commission's function is to prescribe practices that apply equally and fairly to all concerned.

Lastly, the customer here, the City, has brought this complaint because the users of its facility object to the fee charged by the City, such fee being designed to recover the cost of outdoor lighting. A question of proper standing is raised but not disposed of by the majority opinion.

Based on the above reasons, I would deny the complaint and initiate a generic proceeding.

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NH.PUC*07/20/84*[61483]*69 NH PUC 406*Public Service Company of New Hampshire

[Go to End of 61483]

69 NH PUC 406

Re Public Service Company of New Hampshire

DF 84-121,
Fifth Supplemental Order No. 17,133

New Hampshire Public Utilities Commission

July 20, 1984

Order denying motion for reconsideration of order denying intervenor status.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Campaign For Ratepayers' Rights (CRR) was denied intervention status in this proceeding; and

WHEREAS, the Commission in Second Supplemental Order No. 17,067 ([1984] 69 NH PUC 306) denied a motion by CRR for reconsideration of its order denying intervention; and

WHEREAS, CRR appealed our denial of intervenor status to the New Hampshire Supreme Court; and

WHEREAS, the Commission issued Report and Supplemental Order No. 17,057 ([1984] 69 NH PUC 275) which ruled on the merits of the issues presented in this proceeding; and

WHEREAS, CRR filed a Motion for Reconsideration of Supplemental Order No. 17,057 on June 21, 1984; and

WHEREAS, on June 26, 1984 Public Service Company of New Hampshire filed an objection to the CRR motion for reconsideration; and

WHEREAS, CRR does not have standing to file such a motion; it is therefore

ORDERED, that CRR's Motion for Reconsideration of Supplemental Order No. 17,057 be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of July, 1984.

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NH.PUC*07/23/84*[61484]*69 NH PUC 407*Public Service Company of New Hampshire

[Go to End of 61484]

69 NH PUC 407

Re Public Service Company of New Hampshire

Intervenors: Community Action Program, Campaign for Ratepayers' Rights, and Office of Consumer Advocate

DR 84-132,
Supplemental Order No. 17,134

New Hampshire Public Utilities Commission

July 23, 1984

Order modifying previous order to show appearances and denying motions for rehearing.

APPEARANCES: Sulloway, Hollis & Soden by Eaton W. Tarbell, Esquire for Public Service Company of New Hampshire; Gerald M. Eaton, Esquire for Community Action Program; Larry S. Eckhaus, Esquire for Campaign for Ratepayers' Rights; Michael W. Holmes, Esquire for the Consumer Advocate; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On June 14, 1984 the Commission issued Order No. 17,073 ([1984] 69 NH PUC 317) in this docket. Timely Motions for Rehearing were filed by the Community Action Program ("CAP") and the Campaign for Ratepayers' Rights ("CRR").

We have reviewed the record of this proceeding, Order No. 17,073 and the argument contained in the Motions for Rehearing. We note initially that many of the arguments contained in the Motions for Rehearing are identical to those raised in Docket No. DR 84-115;[1(114)] a related docket opened to investigate Public Service Company of the New Hampshire's ("PSNH" or "Company") coal supply situation. In Report and Second Supplemental Order No. 17,128

([1984] 69 NH PUC 393) the Commission fully considered and rejected those arguments. We need not repeat that analysis here. Thus, to the extent that the Motions for Rehearing raise the same issues as those raised in DR 84-115, we will incorporate herein the analysis in Report and Second Supplemental Order No. 17,128 and we will deny the Motions.

In addition to arguments which have been fully analyzed elsewhere, the CAP raised arguments that were based on the summary nature of Order No. 17,073. Those arguments are that the Order did not identify the parties and the Order ignored evidence of dangerously low oil supplies. We acknowledge that the Order did not identify the parties and by

noting the appearances of the parties in this Report and Supplemental Order we hereby correct that error. With respect to CAP's contention that we ignored evidence of low oil supplies, we acknowledge that the summary nature of Order No. 17,073 does not reflect the full evidentiary analysis carried out by the Commission in rendering its decision. It is important to emphasize that we viewed the scope of our investigation to be the status of PSNH's current and near future oil supply situation. While the evidence will not support a finding that PSNH's conduct has been exemplary, or that its oil inventory levels are ideal, it does support the findings in Order No. 17,073: that current inventories and future inventory projections are adequate.[2](115) Having satisfied ourselves through formal investigation that ratepayers are not likely to be adversely affected, it was appropriate to make the findings and conclusions contained in Order No. 17,073. We will therefore deny the CAP's Motion for Rehearing on this ground.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Order No. 17,073 be, and hereby is, modified to reflect the appearances set forth herein; and it is

FURTHER ORDERED, that the Motions for Rehearing of the Community Action Program and the Campaign for Ratepayers' Rights be, and hereby are, denied in all other respects.

By Order of the Public Utilities Commission of New Hampshire this twentythird day of July, 1984.

Separate Opinion of Commissioner Aeschliman

In Order No. 17,073 (69 NH PUC at p. 318), I attached a separate opinion which set forth the analysis I believed should have been employed. I have reviewed the record and the Motions for Rehearing. I do not believe that I have been presented with sufficient reason to alter my previous analysis. Accordingly, I would have granted the Motions for Rehearing to the extent that they present analysis which is consistent with my separate opinion and I would deny the Motions for Rehearings in all other respects.

FOOTNOTES

[1]Those arguments assert, inter alia, that: 1) the Commission ignored the record arguments of

the CAP and the CRR; 2) the Commission erred in waiving the 14-day notice rule; and 3) the Commission erred in issuing an order prior to the time that the hearing transcript was filed.

[2]We also note that we have examined the cost consequences of the oil inventory situation in our most recent Energy Cost Recovery Mechanism ("ECRM") docket (DR 84-128) and, in Report and Order No. 17,099 [1984] 69 NH PUC 344), we approved an ECRM rate that ensures that ratepayers are not asked to bear any of the consequences of PSNH's financial difficulties on past oil inventories.

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NH.PUC*07/27/84*[61485]*69 NH PUC 409*Nuclear Emergency Planning

[Go to End of 61485]

69 NH PUC 409

Re Nuclear Emergency Planning

DE 84-117,
Supplemental Order No. 17,136

New Hampshire Public Utilities Commission

July 27, 1984

Order directing electric utility to submit assessments for preparation and implementation of radiological emergency response plans in accordance with the approved schedule.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on June 18, 1984, Chairman Paul R. McQuade issued Report and Order No. 17,078 in which Public Service Company of New Hampshire was assessed $747,151 pursuant to RSA 107-B in connection with the New Hampshire Civil Defense Agency's preparation and implementation of radiological emergency response plans for the Seabrook Station Nuclear Power Plant; and

WHEREAS, the New Hampshire Civil Defense Agency and Public Service Company of New Hampshire have agreed that this amount be submitted to the State of New Hampshire Treasurer by Public Service Company of New Hampshire according to the following schedule:

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

September 1, 1984 $180,204.00
January 1, 1985 $214,383.00
April 1, 1985 $215,969.00
July 1, 1985 $136,595.00;
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and

WHEREAS, the Chairman finds this proposed schedule to be reasonable; it is hereby

ORDERED, that Public Service Company of New Hampshire submit $747,151 to the State of New Hampshire Treasurer according to the above stated schedule.

By order of the Public Service Commission of New Hampshire this twentyseventh day of July, 1984.

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NH.PUC*07/27/84*[61486]*69 NH PUC 410*Promulgation of Commission Rules

[Go to End of 61486]

69 NH PUC 410

Re Promulgation of Commission Rules

DRM 84-194, Order No. 17,137

New Hampshire Public Utilities Commission

July 27, 1984

Order reenacting expired commission rules as emergency rules.

By the COMMISSION:

REPORT

On May 4, 1982, in accord with the pertinent provisions of RSA 541-A, the Commission reenacted its rules and regulations (NHPUC 100 - 1600). Because these rules were last reenacted in 1980, this repromulgation was undertaken in order to meet the requirements of RSA 541-A:2 IV which, at that time, provided as follows:

No rule shall be effective for a period of longer than 2 years, but the agency may adopt an identical rule under 541-A:3,I.

In August, 1983, the New Hampshire Legislature enacted a substantial revision of RSA 541-A, which included, inter alia, a lengthening of the time an agency's rules may be in effect from 2 to 6 years.[1(116)] Applying this 1983 revision, the Commission determined that its rules would be in effect until May 4, 1988.

The Commission recently was informed by the Administrative Procedures Division ("APD") of the Office of Legislative Services that, according to its interpretation of the statute, the 6 year time period only applies to rules promulgated subsequent to its August 1983 enactment. Thus, under the APD's interpretation, the Commission's rules expired on May 4, 1984. It is unclear from a reading of the 1983 revision which version of statute is to apply in such a situation. However, we will accept APD's interpretation. Thus, we will reenact our rules in accordance with RSA 541-A:3 through 3-F.

In accepting APD's interpretation, the Commission, has as a practical matter, been without any rules since May 2, 1984. However, the Commission's rules have been enforced as if they were in effect. These rules, totalling several hundred pages, are of vital importance to the

dayto-day functioning of the Commission, regulated utilities and the public. Because these rules contain many important standards, which are vital to the continuing protection to the public health, safety and welfare, we find it necessary to reenact our rules in the first instance as emergency rules under the provisions of RSA 541-A:3-g; which provides in pertinent part as follows:

I. If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule with fewer than 20 days' notice and states in writing its reasons for that finding, it

may proceed to adopt an emergency rule. The rule may be adopted without having been filed in proposed or final proposed form, and may be adopted after whatever notice and hearing the agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to ensure that emergency rules are made known to persons who may be affected by them.

IV. Emergency rules adopted under this section shall include:

(a) as much of the information required for the filing of a proposed rule as is practicable under the circumstances; and

(b) a signed and dated statement by the adopting authority explaining the nature of the imminent peril to the public health, safety or welfare and approving the contents of the rules.

The Commission's rules concern, inter alia, such matters as utility safety standards, adequacy of service standards, customer billing and the termination of service. In the absence of enforcement of these rules, especially with regard to safety, utilities would be free to disregard the numerous standards established therein and could engage in any conduct regardless of the consequences. While we feel such an occurrence is highly unlikely, it is indeed a situation which the public should be protected against. Given this, we conclude that a lack of rules creates an imminent peril to the public health, safety and welfare and we therefore will approve and adopt all the rules which have expired. A copy of this Report and Order and the rules are this day being filed with the Director of Legislative Services and with the Legislative Committee on Administrative Rules pursuant to RSA 541-A:3-g III.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Commission's rules, NHPUC 100 - 1600, be and hereby are approved and adopted as emergency rules pursuant to 541-A:3-g III; and it is

FURTHER ORDERED, that a rulemaking docket be opened for the purpose of adopting regulations pursuant to RSA 541-A:3 through 3-F.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of July, 1984.

FOOTNOTE

[1]RSA 541-A:2 IV now reads as follows:

No rule shall be effective for a period of longer than 6 years, but the agency may adopt an identical rule under RSA 541-A:3 through 3-F.

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NH.PUC*07/30/84*[61487]*69 NH PUC 412*Public Service Company of New Hampshire

[Go to End of 61487]

69 NH PUC 412

Re Public Service Company of New Hampshire

Intervenors: Office of Consumer Advocate, Community Action Program, Business and Industry Association of New Hampshire, Conservation Law Foundation of New England, Inc., Seacoast Anti-Pollution League, and Campaign for Ratepayers' Rights

DF 84-167,
Supplemental Order No. 17,138

New Hampshire Public Utilities Commission

July 30, 1984

Order defining the scope of proceedings and setting hearings.

APPEARANCES: Sulloway, Hollis & Soden by Martin Gross, Esquire for Public Service Company of New Hampshire; Michael W. Holmes, Esquire for the Consumer Advocate; Gerald M. Eaton, Esquire for the Community Action Program; Ransmeier & Spellman by Dom S. D'Ambruoso, Esquire for the Business and Industry Association of New Hampshire; Douglas I. Foy, Esquire and Armond M. Cohen, Esquire for Conservation Law Foundation; Backus, Shea & Meyer by Robert A. Backus, Esquire for Seacoast Anti-Pollution League; Mary Metcalf for the Campaign for Ratepayers' Rights; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On June 29, 1984, Public Service Company of New Hampshire ("PSNH" or "Company") filed a Petition for authority to issue certain securities in an amount not to exceed $425,000,000 and for certain concomitant authority to issue shares of common stock. The Commission issued an Order of Notice on July 2, 1984 which, inter alia, scheduled the matter for hearing on July 24, 1984 and required PSNH to prefile its testimony and exhibits no later than July 10, 1984.[1(117)] A Motion for a continuance by the Consumer Advocate was denied by Report and Order No. 17,109 ([1984] 69 NH PUC 377). Accordingly, the Commission opened the hearing in accordance with the Order of Notice.

At the hearing, the Chairman entertained Motions to Intervene of the Consumer Advocate, the Community Action Program ("CAP"), the Business and Industry Association of New Hampshire ("BIA"), the Conservation Law Foundation ("CLF"), the Seacoast Anti-Pollution League ("SAPL"), the Campaign for Ratepayers' Rights ("CRR"), Paul McEachern, Esquire and Chris Spirou. The Staff of

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the Commission also entered an appearance. The Motions to Intervene of Paul McEachern, Esquire and Chris Spirou were denied. All other Motions to Intervene were granted.[2](118)

After disposing of the Motions to Intervene, the Commission entertained argument on certain requests to define the scope of the proceedings. In response to that argument, the Commission directed the parties to file no later than July 26, 1984 written documents containing a list of issues which they expect to raise, a list of witnesses and the scope of the testimony of each witness. All parties filed such documents and those documents have been fully considered.[3](119)

We have scheduled additional hearings commencing on July 30, 1984. Since those hearings are imminent, the Commission is issuing this Order to clarify scope and dispose of certain procedural matters.

II. PROCEDURAL SCHEDULE

At the outset, it is necessary to address directly the relationship between the scope of the proceedings and the procedural schedule. The Commission is aware that its ruling on the proposed financing will be of critical importance to the ratepayers and investors of PSNH. The Commission is also aware that the timing of its ruling may be a determining factor in the success or failure of the proposed financing. It is thus important to state directly that the Commission does not intend to allow the procedural schedule to act as a de facto ruling on the merits. We intend to allow the parties to pursue all issues which are within the scope of this proceeding, but if our failure to act by a date certain would act as a de facto denial of the Petition, we will establish a truncated schedule to ensure our opportunity to rule on the merits by that date. The Commission stands ready to do its part by holding day and night hearings to meet the deadline.[4](120)

Accordingly, the first order of business at the July 30, 1984 hearing will be to hear evidence on 1) the date by which a Commission Order must be entered so that the failure to issue that Order does not act as a de facto denial; and 2) the feasibility of bifurcating the Petition to allow a "bridge" financing so that the Company can meet its cash needs during the course of extended Commission proceedings. At the conclusion of that evidence, the Commission will issue an appropriate procedural schedule to govern the remainder of the proceedings in this docket.[5](121)

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III. SCOPE

The Commission has carefully reviewed all of the documents on scope filed by the Intervenors and the PSNH response. The Commission has also reviewed the applicable legal

standards governing the scope of financing proceedings including, inter alia, RSA Chapter 369, Re Easton (1984) 124 NH —, 480 A2d 88, and Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 51 PUR4th 298, 454 A2d 435. As a result of these deliberations, we have determined that the following broad issues are within the scope of this proceeding:

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

2) Whether the purpose of the proposed financing is in the public good including inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent dockets;[6](122) and

3) Whether it is financially feasible for the Company to engage in the proposed financing, including a determination of the level of revenues necessary to support the capital structure which would result from the successful completion of the proposed financing.

In the context of the above, we can determine that all issues contained in the parties' written submissions which did not draw a PSNH objection are within the scope of these proceedings. All other issues offered by the parties will be evaluated to determine whether they are consistent with the broad issues listed above.

We cannot state here whether or not particular disputed evidence will be determined to be within the scope of these proceedings. Generally, the issues contained in the parties' filings listed abstract issues. We believe it is better practice to rule on evidentiary matters only after the issue is crystalized; i.e., after particular evidence is offered and a particular objection is interposed.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the scope of proceedings shall be as set forth in the foregoing Report; and it is

FURTHER ORDERED, the hearing on July 30, 1984 will proceed in accordance with the provisions of the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1984.

FOOTNOTES

[1]PSNH prefiled its testimony and exhibits on July 10, 1984 as required by the Order of Notice. The Staff submitted over seventy data requests to the Company and responses to the vast majority of the data requests were provided prior to the opening of the hearing on July 24, 1984.

[2]CLF was directed to act as lead counsel for a group of similarly interested intervenors consisting of CLF, SAPL and CRR. All of the three concerned parties objected on the ground that the Intervenors' interests were not identical. The objections were misplaced. CLF, SAPL and

CRR were grouped to avoid duplication and in the interest of administrative efficiency. If their interests do not conflict, they must participate through lead counsel. As stated earlier, if their interests conflict, they will be given the opportunity to ask to develop their positions through separate cross examination and direct evidence. In all instances, all Intervenors will be permitted to file separate written pleadings and argument.

[3]All filings were timely with the exception of SAPL's, which was filed one day late. In addition, PSNH filed a responsive pleading one day after the due date. In spite of the lack of timeliness, we have considered SAPL's filing and PSNH's response.

[4]The Commission is aware that it is allowing its schedule to be driven by PSNH's financial needs. While we do not appreciate being put in this position, we believe that it is more consistent with the public interest to recognize the realities of the situation as it exists today, and to act accordingly.

[5]In establishing the schedule, we shall attempt to reconcile the vital interests of all parties. We must also be cognizant, however, that PSNH's prefiled testimony and exhibits have been available since July 10, 1984, the Court's opinion in Re Easton 124 NH —, 480 A2d 88, has been available since July 13, 1984 and one round of discovery is substantially completed.

[6]It is important to note that we have here confined our analysis of the "alternatives to Seabrook" issue to the context of incremental cost. This is appropriate for this docket because only the alternatives to the "to go" cost are relevant for financing purposes.

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NH.PUC*07/31/84*[61488]*69 NH PUC 415*Public Service Company of New Hampshire

[Go to End of 61488]

69 NH PUC 415

Re Public Service Company of New Hampshire

Intervenors: Office of Consumer Advocate, Community Action Program, and Business and Industry Association of New Hampshire

DF 84-168,
Supplemental Order No. 17,139

New Hampshire Public Utilities Commission

July 31, 1984

Order approving restructured financing agreements.

Security Issues, § 38 — Necessity of authorization by commission — Restructured financing.

The commission stated that its approval of restructured financing agreements, necessitated by a utility's liquidity crisis, did not carry with it the finding that the cost of the agreements was

reasonable for rate-making purposes. (Aeschliman, commissioner, separate opinion, p.420.)

APPEARANCES: Frederick J. Coolbroth, Esquire and Sulloway, Hollis & Soden by Martin L. Gross, Esquire for Public Service Company of New Hampshire; Michael W. Holmes, Esquire for the Consumer Advocate, Gerald M. Eaton, Esquire for the Community Action Program; James K. Hoeveler for the Business and Industry Association of New Hampshire; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On June 29, 1984, Public Service Company of New Hampshire ("PSNH" or "Company") filed a Petition for Necessary Authority to Enter Restructure Agreements with Certain Creditors ("Petition"). An Order of Notice was issued on July 2, 1984 which, inter alia, required the submission of prefiled testimony and exhibits no later than July 10, 1984 and set a hearing for July 25, 1984.

Pursuant to the terms of the Order of Notice, Motions to Intervene were filed by the Consumer Advocate, the Community Action Program ("CAP"), the Business and Industry Association of New Hampshire ("BIA") the Campaign for Ratepayers' Rights ("CRR"), the Seacoast Anti-Pollution League ("SAPL") and Chris Spirou.[1(123)] The Motions to Intervene of the Consumer Advocate, the CAP and the BIA were granted. All other pending Motions to Intervene were denied. See Tr. at 23-25.

Hearings on the Petition were held on July 25, 1984 and July 26, 1984. The Commission heard the testimony of two company witnesses and the public. In addition, nine exhibits were entered into evidence and certain responses to oral data requests have been filed and reviewed by the Staff.

PSNH offered the testimony of two

witnesses: Mr. Charles Bayless, the Company's Financial Vice President; and Mrs. Kathlyne Hadley. Mrs. Hadley provided technical testimony on certain calculations in the Company's financial runs. Mr. Bayless provided general testimony in support of the Company's Petition. PSNH is seeking the necessary regulatory authority to enter into certain restructured agreements with its creditors. The need to restructure these agreements arose from PSNH's inability to make certain payments when due as a result of its liquidity crisis of the Spring of 1984. In the face of impending defaults that could have lead to the bankruptcy of the Company, PSNH entered into negotiations with its creditors; negotiations which took place over an extended period of time. Those negotiations resulted in the restructured agreements which were the subject of this docket.

According to Mr. Bayless, the Company's creditors imposed certain requirements on the Company in the course of the negotiations. Those requirements included a PSNH commitment to treat all creditors alike. Thus, all of the debt in the restructured agreements carries the same interest rate to a maturity date of May 31, 1985. That interest rate is 116% of the Bank of

Boston's base rate plus 25 basis points.[2](124) In addition, the agreements are interrelated and interdependent to such an extent that a failure to execute one agreement for any reason (including the lack of the requisite regulatory approvals) will constitute a failure to meet the requirements of all of the remaining agreements. Accordingly, the Commission is being asked to view each agreement as one component of a package, as distinguished from a consideration which would allow each agreement to stand or fall on its own merits.

In this context, the agreements that are a part of the package include:

1) A new revolving credit facility in the amount of $35,000,000 secured by the Company's accounts receivable (Exh. 1, Attachment 1);

2) An extension of the Company's $50,000,000 Eurodollar Term Loans (Exh. 1, Attachment 2);

3) An amendment to the Company's Nuclear Material Lease and Security Agreement ("Prulease") which provides additional security in the form of a pledge of certain PSNH General and Refunding bonds (Exh. 1, Attachment 3);

4) An extension of the Company's $25,000,000 Domestic Term Loans (Exh. 1, Attachment 4);

5) A short term obligation to United 20Engineers and Constructors ("UE&C"), the Company's Seabrook Architect and Engineer, in the amount of $20,485,254 (Exh. 1, Attachment 5); and

6) A lease of certain land underlaying the Company's coal pile at the Merrimack Station to Consolidation Coal Company ("Consolidation") so that Consolidation may retain meaningful title to the coal under a new coal purchase agreement.

Prior to the execution of the

above-described agreements, the Company must obtain certain approvals from this Commission. The approvals sought are:

1) Authority to increase the level of short term indebtedness to an amount outstanding at any one time not exceeding $220,500,000;

2) Authority to secure the revolving credit facility with the Company's accounts receivable;

3) Authority to use the LIBOR for the Eurodollar Term Loans;

4) Authority to amend the terms of the Company's $50,000,000 Prulease and to grant additional security therefor;

5) Authority to lease certain real estate and equipment to Consolidation.

The Staff of the Commission demonstrated that the granting of the authority sought could have an impact on rates. Thus, the Staff recommended that the Commission confine its analysis to a review of the approvals sought. Such an analysis must carry with it the implication that any findings and conclusions contained herein will not be applicable for ratemaking purposes.

The CAP, through a written submission filed on July 27, 1984, had certain comments on each restructured agreement. Those comments included:

1) A recommendation that the Commission assign priority to the review of the Domestic Term Loan and the Prulease inasmuch as those are the only agreements which must be expeditiously executed;

2) A recommendation that the Domestic Term Loan be approved;

3) A recommendation (with reservations) that the amended Prulease be approved;

4) A recommendation (with reservations) that the Eurodollar Term Loans be approved;

5) A recommendation that the Commission approve the short term note with UE&C with accompanying encouragement to the Company to repay the note;

6) A recommendation that approval of the revolving credit facility be deferred pending a requirement that PSNH address certain concerns about the collateral;

7) A recommendation that approval of the lease of certain land and equipment to Consolidation be deferred until certain concerns about the new coal contract are addressed; and

8) A recommendation that the Commission adopt the suggestion of the Staff.

COMMISSION ANALYSIS

After review, we find that the authority requested by PSNH is in the public good. This finding is based upon our review of the restructured agreements as a package which saw its genesis in the Company's liquidity crisis of 1984. Our finding is also based on our analysis of each individual approval sought by the Company. That analysis is set forth below.

Short Term Debt Limit

Pursuant to RSA 369:7 (Supp. 1981), the Commission, in Re Public Service Co. of New Hampshire (1981) 66 NH PUC 151, 153, approved a short term debt limit of $190,000,000. If the Company were to fully draw on the short term credit allowed in the restructured agreements, it would incur short term debt at a level of $220,500,000. This increase of $30,500,000 in the short term

debt limit is reasonable for PSNH given its size and its critical need for a modicum of financial flexibility.

Our analysis of the increase in the short term debt limit recognizes the concerns of the parties, as well as our own concerns, with the revolving credit facility and the UE&C Note. The concerns with the revolving credit facility were directed at the security interest in the accounts receivable which will be addressed separately below. The concern with the UE&C Note is not sufficient to cause us to deny the requested approval. We believe that the Company should retain maximum flexibility to manage appropriately the construction of the Seabrook facility. Thus, the UE&C Note balances financial flexibility against construction management flexibility. On the basis of the instant record, we believe that it is appropriate to allow PSNH management to make the initial decision about where the need for flexibility is greatest. However, we also adopt

CAP's recommendation that we encourage PSNH to take advantage of the Note's prepayment terms, if appropriate, so as to attain maximum flexibility in construction management.

Accounts Receivable

As a part of the proposed revolving credit facility, the Company agreed to grant a security interest in its accounts receivable. PSNH is seeking authority pursuant to RSA 369:2 and 7 to enter into the arrangement.

We share the concerns expressed by CAP and others about the pledge of accounts receivable. However, we believe that the realities of the Company's financial situation combined with the practicalities of how the security interest may be utilized are sufficient to allow us to grant the approval in spite of these concerns. This approval should not be construed to mean that the Commission favors this type of transaction. We are aware that in the past utilities and utility regulators did not favor account receivables as security for any debt, although this type of security has frequently been used by nonregulated industries. Since we have no real experience by utilities with this program it is not comforting to be one of the first commissions to approve such a security interest. As a result, we do not approve of this type of transaction on a permanent basis. In future financings we expect the Company to engage in more traditional finance transactions or to submit considerable evidence to support the acceptance of accounts receivable financing on a permanent basis.

Use of the LIBOR for the Eurodollar Term Loans

As described above, the amended Eurodollar Term Loans give the lender the one time option of selecting an interest rate based on the Bank of Boston's Base Rate or a rate based on LIBOR.[3(125)] The rationale for the option is that the lender's own cost of money is often based on LIBOR. Since the two rates are roughly comparable (e.g. Ex. 4) as is the risk that either rate will rise or fall, we find that it is reasonable to approve the option contained in the amended Eurodollar agreement. Pursuant to RSA 369:7 (Supp. 1981), we will grant the requested approval.

Amendment of Prulease

As described above, the Company has amended its Prulease transaction to provide for a higher interest rate and additional security in the form of General and Refunding Bonds. CAP's written submission recommended that the approval

be granted. Our independent analysis is consistent with CAP's argument. In the context of the default which caused the need to renegotiate the Prulease, the new agreement is in the public good. Pursuant to RSA 369:1-4 and 7, we will grant the requested authority.

Consolidation Lease

As described above, PSNH proposes to lease certain equipment and the land underlaying the coal pile at Merrimack Station to Consolidation. This lease is necessary to allow Consolidation to retain title to the coal in accordance with the recently amended coal supply contract entered into between Consolidation and PSNH.

CAP's concerns are directed at the effect of the new arrangement on PSNH's ability to continue to generate low cost electricity at Merrimack Station. These concerns were the subject of Docket No. DR 84-115 which resulted in Report and Supplemental Order No. 17,072 ([1984] 69 NH PUC 312). The concerns are also the subject of continuing Commission monitoring of PSNH's fuel supply situation. Thus, although we share CAP's concerns, we believe that they are more appropriately addressed in other dockets.

After review, we find that approval of the authority sought will not restrict the Commission's ability to ensure adequate inventories of fuel. The transfer will allow Consolidation to retain what is, in effect, a security interest in the coal inventory. That interest will not be exercised as long as PSNH complies with the terms of its current contract with Consolidation. As noted in Supplemental Order No. 17,072, PSNH is on notice that the Commission will take all appropriate action, including segregation of customer revenues, to ensure an adequate supply of fuel. Both the lease considered herein and other steps the Commission can take, if necessary, are directed at the need to ensure adequate fuel supplies. Thus, pursuant to RSA 374:30, we find that the authority sought herein by the Company is in the public good.

CONCLUSION

We have found that the authority requested in the Company's Petition is in the public good. Of necessity, this includes the increased cost of money which forms a part of these transactions. The record indicates that this increased cost could affect rates through the calculation of the rate of return component of the rate formula and through an increased level of capitalized AFUDC. Both the Staff and CAP expressed concerns about the ratemaking implications of the approval of the authority sought. We agree with those concerns.

Our review of the package of restructured agreements is based on an examination of the circumstances which lead to those agreements. Those circumstances dictate a conclusion that the restructured agreements are in the public good; however, that conclusion does not carry with it a finding that the cost of the agreements is reasonable for ratemaking purposes. That determination must be left to the time when the Company seeks to pass the cost of the agreements to ratepayers. We have in this Report expressed some concerns about the agreements; concerns that are more reasonably directed at inter alia ratemaking implications.[4](126) The

existence of those concerns means, inter alia, that the calculation of the cost of senior capital in the next rate case will not be a simple arithmetic exercise. PSNH is hereby placed on notice that the effects of its liquity crisis on rates will be fully explored at the appropriate time. Until that time, the Company is directed to keep the appropriate accounting records so that the cost of the liquidity crisis may be quantified.

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 authority requested by Public Service Company of New Hampshire be,

and hereby is, approved; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire maintain its accounting records as directed in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this thirtyfirst day of July, 1984.

Opinion of Commissioner Aeschliman Concurring in Part and Dissenting in Part

I concur with the decision of the majority relative to granting authority for Public Service Company to enter into restructure agreements with certain creditors and to increase their short term debt limit except that I would grant approval subject to the additional following exceptions and conditions.

I. Authority to increase the level of short term notes, bonds or other evidences of indebtedness to $220,000,000 pursuant to RSA 369:7 should be granted provided that the Agreement between Public Service Company of New Hampshire and United Engineers & Constructors, Inc. is amended to delete Section II(e). (Exhibit 1, Attachment 5, p. 5.) That section reads as follows: SECTION 2. DEFAULT "(e) termination or material reduction of United's service at the Seabrook Project without United's consent."

While the Company does not require individual approval for short term financings and PSNH has not petitioned for approval of the Agreement with United Engineers and Constructors, the testimony in this proceeding indicates that the need to increase the short term borrowing limit is caused by this Agreement.

Given PSNH's extraordinary situation it may be reasonable for the Company to enter into loan agreements with certain contractors and vendors for payment of contract arrearages. However, under no circumstances is it reasonable nor is it in the public interest for PSNH to provide work guarantees to UE&C. This is particularly apparent in light of Public Service Company's own stated position relative to UE&C.

At a press conference when PSNH released the March 1 cost estimate and subsequently in statements before this Commission, Mr. Harrison indicated that PSNH was reviewing all courses of action against UE&C including (1) termination of service; (2) reduction of employee levels; and (3) legal action. It is clear that Section II(e) may serve to prevent or constrain Public Service Company (or any successor — N.H. Yankee) from taking any of these actions.

Mr. Bayless, PSNH Financial Vice President, indicated that UE&C is not interested in providing financing if the Company is terminated. However, UE&C has already provided the financing, even though involuntarily, and now has a substantial interest in recovering their $20.5

million as well as in having the Seabrook project continue It is simply not necessary and it is clearly unreasonable to provide an employment guarantee, including a guarantee against material reduction in employment levels. Furthermore, PSNH should vigorously pursue the prepayment of this agreement in order to obtain the proper arms length relationship with the contractor.

II. Authority to secure short-term revolving credit by granting a security interest in all its

billed and unbilled receivables pursuant to RSA 369:2 and 7 should be denied.

The testimony clearly indicates that the banks have negotiated an arrangement which is unreasonable in its terms and which endangers service to PSNH customers. The arrangement is unreasonable because (1) the revolving credit facility will cost approximately $720,000 on an annual basis for facility and commitment fees alone; (2) use of the facility will add an additional interest expense of 108% of base rate; (3) the facility can only be used when PSNH has less than $10 million in cash or other short-term funds (Exh. 1, Attachment 1, Covenant (b) at 4.); (4) the agreement includes other grounds for default beyond failure to make payments, including cross-default provisions; and (5) one of the covenants of the agreement is the successful accomplishment of at least $200 million of debenture financing. As a consequence of these requirements, this facility is of no use to PSNH unless it is experiencing difficulty in obtaining its long-term financing and is virtually out of cash. This is exactly the time at which using accounts receivable as collateral would most threaten PSNH's ability to provide service. Mr. Bayless has assured the Commission that the Company would not wait until it had run out of cash to file for Chapter 11 protection should that be necessary. Mr. Coolbroth also assures the Commission that a bankruptcy court would surely intercede to protect service to customers by in effect vacating the terms of this revolving credit facility. Nevertheless, it is the Commission's duty to assure that service to customers is protected, and it can not rely upon the Company or a Court to fulfill its responsibility.

The Commission should advise PSNH that it recognizes the need to provide security given its financial situation and that the Commission would approve use of security that is structured so as not to threaten service to customers. However, PSNH has not demonstrated that it has exhausted all other possibilities in obtaining a secured credit line with U.S. banks which will satisfy the European bankers. For example, Mr. Bayless indicated that the European banks had originally wanted a renewal of the Banker's Acceptance Facility. Since PSNH has now paid the $5 million in past default under the Bankers Acceptance Facility and since it must pay its arrearages to Consolidated Coal within a short time frame, reinstituting this facility would appear to be a possibility in conjunction with a Commission order earmarking and segregating funds for fuel bills. The Bankers Acceptance Facility would provide PSNH with much greater benefit by providing financing for its fuel inventories, while the Commission could at the same time be assured that fuel supplies and service to customers were not threatened.

It is apparent that PSNH is hardly in a bargaining position to protect itself let alone its customers. It is the Commission's responsibility in this situation to protect both the Company and its customers. As Community Action Program (CAP) points out, the demands of the

creditors must be logical and the transactions must be reasonable. It is not in the interest of the banks or other creditors to have these agreements collapse or to lose the money they already have at stake. Consequently, it is reasonable for the Commission to require these changes and it is reasonable to anticipate that they would be accepted by the parties to the agreements.

FOOTNOTES

[1]The Motion to Intervene of Chris Spirou was subsequently withdrawn (Tr. at 5).

[2]While the Company's creditors required equal treatment, there is some variation in the costs of the various restructured agreements. Thus, the extension of the Eurodollar Term Loans (Exh. 1, Attachment 2) allows the lenders the one time option of selecting the above described interest rate or a rate based on the London interbank rate ("LIBOR") plus 2 1/2%. In addition, the proposed revolving credit facility (Exh. 1, Attachment 1) requires the Company to pay to the banks an annual sum of approximately $721,000 whether or not the line of credit is utilized (Tr. at 146).

[3]Authority to use LIBOR is necessary because the Commission previously ordered that short term debt rates be based on prime. Re Public Service Co. of New Hampshire (1981) 66 NH PUC 151, 153.

[4]We are particularly concerned with the mechanics of the revolving credit loan and the facility fee associated therewith. The response to Staff crossexamination on the subject suggests that the facility fee will be incurred with only a slight probability that the Company will be able to draw on that line of credit.

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NH.PUC*08/02/84*[61489]*69 NH PUC 422*Public Service Company of New Hampshire

[Go to End of 61489]

69 NH PUC 422

Re Public Service Company of New Hampshire

DF 84-167,
Second Supplemental Order No. 17,141

New Hampshire Public Utilities Commission

August 2, 1984

Order setting the scope of proceedings and scheduling further hearings.

APPEARANCES: As previously noted.

By the COMMISSION:

Public Service Company of New Hampshire ("PSNH" or "Company") initiated this docket on June 29, 1984 by filing a Petition for authority to issue certain securities in an amount not to exceed $425,000,000. On July 30, 1984, the Commission issued Report and Supplemental Order No. 17,138 ([1984] 69 NH PUC 412) ("Procedural Order") which, inter alia, ruled on certain issues of scope and structured the hearings scheduled to commence on July 30, 1984.

The Procedural Order structured the proceedings so that the Commission could hear evidence on how to reconcile several apparently inconsistent procedural constraints. Those constraints were framed by the need to investigate adequately all issues which are properly within the scope

of this financing docket. On the one side was argument submitted by several Intervenors that it would be impossible to resolve the issues in a truncated fashion. It was suggested that a six month investigation is necessary. On the other side was argument submitted by PSNH that an extended procedural schedule would itself act as a de facto denial of the Petition. In order to set a responsible procedural schedule, the Commission provided (69 NH PUC at p. 413):

Accordingly, the first order of business at the July 30, 1984 hearing will be to hear evidence on 1) the date by which a Commission Order must be entered so that the failure to issue that Order does not act as a de facto denial; and 2) the feasibility of bifurcating the Petition to allow a "bridge" financing so that the Company can meet its cash needs during the course of extended Commission proceedings. At the conclusion of that evidence, the Commission will issue an appropriate procedural schedule to govern the remainder of the proceedings in this docket. (Footnote omitted.)

Pursuant to the Procedural Order, the Commission heard evidence on the above

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issues at hearings which took place on July 30, July 31 and August 1, 1984. The Company presented the testimony of Charles Bayless, PSNH's Financial Vice President, and Robert Hildreth, Managing Partner (Public Utility Group) of Merrill, Lynch et al. All parties to the proceeding were allowed the opportunity to engage in extensive cross-examination and the record reflects that the above defined issues have been fully explored.

There was virtually no dispute about the issue of determining "the date by which a Commission Order must be entered so that the failure to issue that Order does not act as a de facto denial." Id. Both Mr. Bayless and Mr. Hildreth testified that if the Commission did not issue an Order by August 31, 1984, the Petition would be effectively denied. Since that evidence was uncontradicted and credible, we will find that a failure to issue an Order by August 31, 1984 will act as a de facto denial. Since we have provided that "... the Commission does not intend to allow the procedural schedule to act as a de facto ruling on the merits," (69 NH PUC at p. 413), the August 31, 1984 deadline must be a factor in any procedural schedule that is established.

The second issue of "the feasibility of bifurcating the Petition to allow a `bridge' financing so that the Company can meet its cash needs during the course of extended Commission proceedings" was highly contested.

The Company's testimony was that it was "boxed" into the proposed financing by four constraints:

1) The commitment to the Company's creditors to market at least $200 million in unsecured debentures prior to October 1, 1984 (See e.g. Re Public Service Co. of New Hampshire [1984] 69 NH PUC 415);

2) The Company's $270 million obligation to allow short term noteholders certain rights of exchange (See e.g., Re Public Service Co. of New Hampshire [1984] 69 NH PUC 275);

3) The critical need to retain credibility in the investment community by adhering to the Merrill Lynch plan; and

4) The need to design a financing so that the risks are shared by different portions of the investment community.

The Company's testimony was the subject of extensive cross-examination. While some of the testimony on cross-examination indicated that an interim financing may be "doable", it also indicated that a Commission Order requiring such a financing carried with it certain significant risks to the Company; risks which would result in higher costs.

Our review of the record leads us to the conclusion that we must hear evidence on the merits of the financing as proposed by the Company in its Petition and that we must hear that evidence within a schedule that will allow us the opportunity to issue an Order prior to August 31, 1984. Such a schedule will be established in this Order.

The above conclusion does not fully resolve the matter, however. We have heard convincing argument that such a truncated procedural schedule will not allow us the opportunity to conduct an adequate investigation into the full scope of issue described in the Procedural Order. Those issues included, inter alia (69 NH PUC at p. 414):

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

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2) Whether the purpose of the proposed financing is in the public good including inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evluation (sic) of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent dockets; and

3) Whether it is financially feasible for the Company to engage in the proposed financing, including a determination of the level of revenues necessary to support the capital structure which would result from the successful completion of the proposed financing. (Footnote omitted.)

Our review of that argument and of the record leads us to a dual conclusion: 1) it would be difficult, if not impossible to conduct an adequate investigation of all of the above issues within a one month time frame; and 2) it is not necessary to include all of the above issues in the scope of the proceedings for the purpose of evaluating the instant Petition. Our conclusion that a narrower scope is permissible is based on both a legal and a factual analysis of the present record.

The legal analysis is based on our reading of the two most recent cases which delineate the limits of our discretion. Those cases are Re Easton (1984) 124 NH —, 480 A2d 88, and Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 51 PUR4th 298, 454 A2d 435. In Re Easton the Court reaffirmed its longstanding holding that:

... the PUC has a duty to determine whether, under all the circumstances, the financing is in the public good — a determination which includes considerations beyond the terms of the proposed borrowing. (Slip opinion at p. 6.)

The factual analysis is based on "all the circumstances" as contained in the record to date. Those circumstances include descriptions of the precarious condition of the Company's finances. Such realities require regulatory responsiveness, unpleasant as that may be to the Commission itself and the parties. The circumstances also include the need to investigate "the purpose or purposes to which the securities or the proceeds thereof are to be applied" (RSA 369:1, cited in Re Easton, slip opinion at p. 4). Here, the record evidence indicates that the proceeds of the proposed financing will be used, for the most part, to support Company obligations which are not related to the "to go" cash cost of Seabrook construction.[1(127)] It is apparent that the Seabrook analysis described in the Procedural Order will only be applicable to a small percentage of the proceeds; however, that analysis accounts for much of the reason why extended hearings would be required. In view of the Company's financial realities, we believe that it is within our discretion to consider the larger issues when they are pertinent to a more substantial portion of a proposed financing.

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The above analysis leads us to the following conclusions. First, we must narrow the scope of the instant docket, to the extent our discretion allows, in order to conduct an adequate investigation. Second, we must not allow ourselves to be placed in an untenable situation by the Company's financial realities. Since we have been advised that the Company will need to complete Seabrook related financing in the near future, we will today open a docket to conduct the appropriate financing investigation. Each of these conclusions will be discussed in turn.

The conclusion to narrow scope requires that we redefine the scope set forth in the Procedural Order. Thus, the scope of the instant docket will be whether the proposed financing is in the public good. This will include consideration of:

1) the terms, conditions and amount of the proposed financing;

2) the purpose of the proposed financing; and

3) the short term effect of the successful completion of the proposed financing on the Company's capital structure.

In view of the narrower scope set forth above, we can establish the following procedural schedule for the remainder of this docket:

August 3, 1984 Data Requests Due
August 7, 1984 Responses to Data Requests Due
August 8 and 9 and thereafter at the call Hearings of the Commission
August 31, 1984 Due Date for Commission Order

As stated above, we have also concluded that it is necessary to commence immediately our investigation into the more complex Seabrook issues. The record indicates that the Merrill Lynch plan includes the completion of the third phase of financing by the end of 1984. The proceeds of

that third phase are to be large enough to complete the construction of the first unit of the Seabrook facility. We understand that the final details of the third phase have not yet been finalized. However, the record also indicates that most of the Seabrook related information is already available as is information on the general financing plan. Since we have accepted the argument that an adequate analysis of this data will take more than one month, it is critical that we start now.

Accordingly, we will, by Order of Notice issued this day, open a docket for the purpose of investigating the Company's plans to finance the construction of the Seabrook facility through to the completion of Unit I. The scope of that investigation will include:

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

2) Whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders; and

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

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from the successful completion of Seabrook Unit I.

As discussed above, information on several of the above issues (e.g., cost to complete Seabrook Unit I) is now available, while information on other issues (e.g., terms and conditions of third phase financing) will not be available for several weeks. Accordingly, the new proceeding will be bifurcated. The first part of the docket will be to investigate issues for which relevant information is now available. The existence of the second part of the proceeding will allow us to defer our investigation until the information is available. Since time is of the essence and since most interested persons are already parties in the instant docket, we believe that it is in the public interest to waive the notice period and schedule a procedural hearing for August 9, 1984.

The creation of the new docket is the only way we can address all of the legitimate concerns that have been presented to us thus far. We recognize that it is not a perfect solution; it is only the best alternative that is open.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the procedural schedule of this docket be as set forth in the foregoing Report; and it is

FURTHER ORDERED, that the scope of this proceeding be narrowed as set forth in the

foregoing Report; and it is

FURTHER ORDERED, that an Order of Notice be issued this day opening a new docket as described in the foregoing Report; and it is

FURTHER ORDERED, that a copy of this Order be made a part of the record in the aforementioned new docket.

By Order of the Public Utilities Commission of New Hampshire this second day of August, 1984.

FOOTNOTE

[1]See e.g., Testimony of both Messrs. Bayless and Hildreth. See also, Exh. 8, Attachment 1-1, p. 1, Assumption No. 1. This assumption reflects total Seabrook project costs at $4 million/week during July and August and $5 million/week for the rest of the year. Thus, the total Seabrook cash requirement prior to the "Newbrook" financing will be approximately $121 million. PSNH's approximate 35% share of that direct cash requirement will be $42.4 million. This is a small portion of the proposed financing; a portion which is well below the level of "bridge" financing acceptable to many Intervenors.

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NH.PUC*08/03/84*[61490]*69 NH PUC 426*New Hampshire Electric Cooperative, Inc.

[Go to End of 61490]

69 NH PUC 426

Re New Hampshire Electric Cooperative, Inc.

DF 83-360,
Sixth Supplemental Order No. 17,143

New Hampshire Public Utilities Commission

August 3, 1984

Order denying motions for rehearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Report and Order No. 17,096 ([1984] 69 NH PUC 339) which inter alia approved the request of the New Hampshire Electric Cooperative, Inc. ("Co-op") for emergency authority to borrow $9 Million out of the

$111 Million previously approved in this docket; and

WHEREAS, Intervenors Roger Easton and Gary McCool have filed Motions for Rehearing; and

WHEREAS, intervenor Gary McCool has filed a Motion to Suspend; and

WHEREAS, the Commission finds that the rationale in Report and Fifth Supplemental Order No. 17,096 continues to be applicable; and

WHEREAS, the intervenors' concerns can be adequately addressed in the remaining proceedings on remand (See Re Easton [1984] 124 NH —, 480 A2d 88); it is therefore

ORDERED, that the Motions for Rehearing of Roger Easton and Gary McCool be, and hereby are, denied; and it is

FURTHER ORDERED, that the Motion to Suspend be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this third day of August, 1984.

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NH.PUC*08/06/84*[61491]*69 NH PUC 427*Plymouth Village Water and Sewer District

[Go to End of 61491]

69 NH PUC 427

Re Plymouth Village Water and Sewer District

Intervenors: Weston, Inc., and New Hampshire Department of Public Works and Highways et al.

DE 84-153, Order No. 17,142

New Hampshire Public Utilities Commission

August 6, 1984

Order granting licenses to cross state-owned railroad property.

APPEARANCES: For the Plymouth Village Water & Sewer District, John R. Wood, Sr.; and Janet Levy, P.E. Project Manager for Weston, Inc.; for the Department of Public Works and Highways, John W. Clement, P.E. Assistant Railroad Administrator.

By the COMMISSION:

REPORT

On June 18, 1984, the Plymouth Village Water & Sewer District filed with the Commission its petition for license to cross state-owned railroad property in Plymouth, New Hampshire for the purpose of jacking sleeves under the tracks at two locations. These sleeves would house sewer pipes being installed under EPA Project C -330132-03, providing separation of storm drains and sanitary sewers. Involved also is a section parallel to the rail.

An order of notice was issued setting the matter for public hearing at the Commission's

Concord offices on July 26, 1984 at 10:a.m. In addition to printed public notice, the Commission directed such notice to the following: Selectmen's Office, Plymouth; John McAuliffe, Railroad

Administrator, Department of Public Works & Highways; Timothy Drew, Principal Planner; Thomas A. Power, Division of Motor Vehicles; John A. Clements, Commissioner, Department of Public Works & Highways; Kelton E. Garfield, Supervisor of Highway Physical Records; and the Office of the Attorney General.

An affidavit filed on July 19, 1984 indicated the public notice appeared in the Record Citizen on July 11, 1984.

At the duly-noticed hearing on July 26, 1984, Mr. Wood entered as Exhibit No. 1 the July 15, 1984 letter of the District with its four attachments. He described the crossing as part of an EPAsupported project for separation of sanitary sewers and storm drains.

Mr. Clement indicated the Railroad Administration was in full agreement with the Town and had prepared preliminary licenses from that office to be executed upon approval by the Commission. These licenses, one for each crossing, were marked as Exhibits 2 to 4. Mr. Clement also indicated that no rail traffic enters Plymouth at this time, so jacking sleeves was no longer mandated, allowing the District to open cut, a much cheaper construction method. Such request will be forthcoming from the District and would result in revised licenses from the Railroad Administration. It does not affect the decision of this Commission; but, should revised licenses be issued, copies were requested for the docket file.

Having no other intervention and all parties being in agreement, the Commission finds the three crossings in the public good and will issue its license accordingly.

ORDER

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

ORDERED, that Plymouth Village Water & Sewer District be, and hereby is, granted licenses for the three crossings of state-owned railroad property in Plymouth, New Hampshire, said crossing described as follows:

a) Under railroad tracks at approximate valuation station 28+50, Map V30/1; and

b) Under four railroad tracks at approximate valuation station 2696+55, Map V21/88; and

c) Along railroad tracks from approximate valuation station 2712+00+, Map V21/88 to station 2730, Map V21/89.

described further in Exhibits 2 and 3 of this docket.

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1984.

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[Go to End of 61492]

69 NH PUC 429

Re White Rock Water Company, Inc.

DE 84-89, Order No. 17,144

New Hampshire Public Utilities Commission

August 7, 1984

Order nisi permitting utility to extend its service territory into a municipality.

By the COMMISSION:

ORDER

WHEREAS, White Rock Water Company, Inc. (the Company) a public utility operating under the jurisdiction of this Commission, by a petition filed April 6, 1984, seeks authority to expand its franchise area further in a limited area in the Town of Bow, New Hampshire; and

WHEREAS, no other water utility has franchise rights in the area sought, and the petitioner submits that the area will be served under its filed tariff; and

WHEREAS, the Office of the Selectmen, Town of Bow, have stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration it is the opinion of this Commission that granting the authority sought is in the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition to the petition before the Commission acts on the petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing on the petition no later than August 25, 1984; and it is

FURTHER ORDERED, that the Company effect said notification by publication of an attested copy of this Order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than August 11, 1984, said publication to be designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI that White Rock Water Company, Inc., be authorized pursuant to RSA 374:22 to extend its mains and service in the Town of Bow to and in an area known as Lot No. 620 on Plan No. 5022 recorded in the Merrimack County Registry of Deeds effective August 31, 1984 unless a request for a hearing is filed with the Commission as provided above or unless the Commission orders otherwise prior to the effective date.

By Order of the Public Utilities Commission of New Hampshire this seventh day of August, 1984.

==========

NH.PUC*08/08/84*[61493]*69 NH PUC 430*Winter Termination Rules

[Go to End of 61493]

69 NH PUC 430

Re Winter Termination Rules

DRM 83-31,
Third Supplemental Order No. 17,145

New Hampshire Public Utilities Commission

August 8, 1984

Order directing utilities to file data on winter termination rules.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, this docket was opened for the purpose of evaluating certain aspects of the Commission's winter termination rules, and

WHEREAS, RSA 374:5 requires every public utility to file with this Commission reports containing facts and statistics as required by the Commission, and

WHEREAS, the Winter Termination Rules Committee (Committee) met on October 4, 1983 and agreed to identify a set of specific data points necessary to facilitate the rules evaluation, and

WHEREAS, the Committee is constituted of the following public utilities: Concord Electric Company, Connecticut Valley Electric Co., Inc., Exeter & Hampton Electric Company, Granite State Electric Company, New Hampshire Electric Cooperative, Inc., Public Service Company of New Hampshire, Claremont Gas Light Company, Concord Natural Gas Corporation, Gas Service, Inc., Keene Gas Corporation, Manchester Gas Company, Northern Utilities, Inc., and

WHEREAS, the Committee was directed to collect this data by the Commission in its Second Supplemental Order No. 16,762 1983 (68 NH PUC 673), and

WHEREAS, a timetable for submission of this data was agreed to by the Committee and confirmed by the Commission in the above cited Supplemental Order, and

WHEREAS, the following data points should now be available for submission:

1. Number of disconnects bypassed due to winter rules (notices not sent due to winter rules).

2. Number of payment arrangements entered into during the winter period; the amount, if any, of the arrearage at the time of customer contact with the utility; date when payment arrangement entered into.

3. Identification of customers entering into payment arrangements as either space heating or non-space heating customers.

4. Number of payment arrangements broken during the winter period.

It is hereby

ORDERED, that this information be filed with the Commission by August 20, 1984; and it is

FURTHER ORDERED, that any company which fails to submit the required data as provided above be ordered by the Executive Director to appear before the Commission to show cause why appropriate sanctions should not be imposed pursuant to RSA 374:17, 374:41, and 365:41 and 42.

By Order of the Public Utilities Commission of New Hampshire this eighth day of August, 1984.

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NH.PUC*08/08/84*[61494]*69 NH PUC 431*Merrimack County Telephone Company

[Go to End of 61494]

69 NH PUC 431

Re Merrimack County Telephone Company

DR 84-195, Order No. 17,146

New Hampshire Public Utilities Commission

August 8, 1984

Order approving customer-owned premises wiring tariffs.

By the COMMISSION:

ORDER

WHEREAS, on July 30, 1984, Merrimack County Telephone Company filed with this Commission Supplement No. 1 to its tariff, NHPUC No. 7 - Telephone; and

WHEREAS, said Supplement documents the procedures under which the Company allows Customer-Owned Premises Wiring (COPW); and

WHEREAS, these procedures follow guidelines established by the Federal Communications Commission (FCC); and

WHEREAS, the Commission finds that allowing COPW is in the public interest; it is

ORDERED, that Supplement No. 1 (Title Page and Original Page 1) to Merrimack County Telephone Company tariff, NHPUC No. 7 - Telephone, be, and hereby is, approved for effect on August 31, 1984.

By order of the Public Utilities Commission of New Hampshire this eighth day of August, 1984.

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NH.PUC*08/08/84*[61495]*69 NH PUC 431*Granite State Electric Company

[Go to End of 61495]

69 NH PUC 431

Re Granite State Electric Company

DR 83-347,
Third Supplemental Order No. 17,147

New Hampshire Public Utilities Commission

August 8, 1984

Order directing utility to file tariff supplement to document refund credit.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order Nos. 16,836 ([1984] 69 NH PUC 1) and 16,850 ([1984] 69 NH PUC 16) implemented the PPCA W-6(I) effective January 1, 1984; and

WHEREAS, subsequent settlements prompted issue of Order No. 17,011 ([1984] 69 NH PUC 233), with the settlement PPCA No. W-6(S) being made effective in June 1984; and

WHEREAS, said settlement, being a lesser rate than that of W-6(I), resulted in an overcollection of $56,210; and

WHEREAS, Granite State Electric Company now proposes to refund said overcollection with interest, and has furnished a plan for such a refund which the Commission finds acceptable; it is

ORDERED, that Granite State Electric Company issue a supplement to its Tariff No. 10 to document the refund credit of $0.00059 per kilowatt-hour for energy billed during the months of September, October, and November 1984; and it is

FURTHER ORDERED, that public notice of this credit be given Granite State Electric Company customers by an explanation of same accompanying the affected billings.

By order of the Public Utilities Commission of New Hampshire this eighth day of August, 1984.

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NH.PUC*08/08/84*[61496]*69 NH PUC 432*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 61496]

69 NH PUC 432

Re Continental Telephone Company of New Hampshire, Inc.

DR 84-184, Order No. 17,148

New Hampshire Public Utilities Commission

August 8, 1984

Order permitting telephone service restriction tariffs to become effective.

By the COMMISSION:

ORDER

WHEREAS, Continental Telephone Company of New Hampshire has filed with this Commission certain revisions of its tariff NHPUC No. 11, said revisions adding a toll restricting service for one-party residential service; and

WHEREAS, the Commission finds that an optional service of restricting "dial 1", "collect", and "third party" calling is in the public interest where central office facilities permit; and

WHEREAS, the Commission also finds that the monthly charge of $2.00 for such service is reasonable; it is

ORDERED, that Section 3, 2nd Revised Contents and Original Sheet 12 of Tariff NHPUC No. 11 be, and hereby are, approved for effect on August 1, 1984; and it is

FURTHER ORDERED, that Continental Telephone Company of New Hampshire give public notice of the availability of such toll restricting service by a one-time mailing (or bill insert) to all eligible customers.

By order of the Public Utilities Commission of New Hampshire this eighth day of August, 1984.

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NH.PUC*08/08/84*[61497]*69 NH PUC 433*Fuel Adjustment Clause

[Go to End of 61497]

69 NH PUC 433

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 84-130,
Supplemental Order No. 17,149

New Hampshire Public Utilities Commission

August 8, 1984

Order permitting fuel surcharge tariffs to become effective without a hearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1984, sent to the New Hampshire Electric Cooperative, Inc., Exeter & Hampton Electric Company, Connecticut Valley Electric Company, Inc., Granite State Electric Company, Wolfeboro Municipal Electric Department, and Littleton Water and 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 be scheduled; it is

ORDERED, that 127th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $1.70 per 100 KWH for the month of July, 1984, be, and hereby is, permitted to become effective July 1, 1984.

By Order of the Public Utilities Commission of New Hampshire this eighth day of August, 1984.

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NH.PUC*08/08/84*[61498]*69 NH PUC 434*Fuel Adjustment Clause

[Go to End of 61498]

69 NH PUC 434

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, and Woodsville Power and Light Department

DR 84-169, Order No. 17,150

New Hampshire Public Utilities Commission

August 8, 1984

Order permitting fuel adjustment clause tariffs to become effective without a hearing.

By the COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of

Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

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

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

FURTHER ORDERED, that 19th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 9 - Electricity, providing for a fuel surcharge credit of ($0.198) per 100 KWH for the months of July, August, and September, 1984, be, and hereby is, permitted to remain in effect for the month of August, 1984; and it is

FURTHER ORDERED, that 19th Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of ($0.074) per 100 KWH for the months of July, August, and September, 1984, be, and hereby is, permitted to remain in effect for the month of August, 1984; and it is

FURTHER ORDERED, that 10th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 -

Electricity, providing for a oil conservation adjustment of 18.7 cents ($0.187) per 100 KWH for the months of July, August, and September, 1984, be, and hereby is, permitted to remain in effect for August, 1984; and it is

FURTHER ORDERED, that 12th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of July, August, and September, 1984 of $0.949 per 100 KWH, be, and hereby is, permitted to remain in effect for August, 1984; and it is

FURTHER ORDERED, that 43rd Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity, providing for a fuel surcharge of $3.42 per 100 KWH for the month of August, 1984, be, and hereby is, permitted to become effective August 1, 1984; and it is

FURTHER ORDERED, that 95th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge of $0.19 per 100 KWH for the month of August, 1984, be, and hereby is, permitted to become effective August 1, 1984; and it is

FURTHER ORDERED, that 92nd Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge of $0.57 per

100 KWH for the month of August, 1984; be, and hereby is, permitted to become effective August 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this eighth day of August, 1984.

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NH.PUC*08/08/84*[61499]*69 NH PUC 435*Newfound Hydroelectric Company

[Go to End of 61499]

69 NH PUC 435

Re Newfound Hydroelectric Company

DE 84-181, Order No. 17,158

New Hampshire Public Utilities Commission

August 8, 1984

Order nisi approving long-term filing and interconnection agreement.

By the COMMISSION:

ORDER

WHEREAS, on July 19, 1984, Newfound Hydroelectric Company ("Newfound") filed a long term rate filing pursuant to Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 61 PUR4th 132; and

WHEREAS, Newfound's filing appears to be consistent with the aforementioned Order in all respects with the exception of the requirement to provide Public Service Company of New Hampshire ("PSNH") with 60 days notice in order to allow sufficient time for the preparation of an interconnection study; and

WHEREAS, it is not necessary in this

instance to provide additional time for the preparation of an interconnection study because Newfound is already interconnected with the PSNH system; and

WHEREAS, the Commission wishes to allow PSNH the opportunity to file comments or exceptions; and

WHEREAS, it is in the public interest to approve long term rate filings expeditiously; it is therefore

ORDERED NISI, that the long term rate filing of Newfound including the Interconnection

Agreement and the rates set forth on the Long Term Rate 10Worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments and exceptions no later than 14 days from the date of this Order; and it is

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

By Order of the Public Utilities Commission of New Hampshire this eighth day of August, 1984.

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NH.PUC*08/09/84*[61500]*69 NH PUC 436*Southern New Hampshire Water Company, Inc.

[Go to End of 61500]

69 NH PUC 436

Re Southern New Hampshire Water Company, Inc.

DE 84-145, Order No. 17,159

New Hampshire Public Utilities Commission

August 9, 1984

Order directing utility to file for expenses incurred in the construction of a water main.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company proposes to install a 12-inch water main crossing the Merrimack River on Taylor Falls Bridge; and

WHEREAS, this water main will provide a connection between the water systems of Southern New Hampshire and Pennichuck Water Works, enhancing the reliability of both systems in emergency situations and providing for future bulk sales; and

WHEREAS, the design of the Taylor Falls Bridge and other imminent utility bridge construction dictate that immediate installation of this water main will be in the best economic interests of the customers of Southern New Hampshire; and

WHEREAS, after investigation and consideration it is the opinion of this Commission that the proposed main construction will be in the public good; it is hereby

ORDERED, that the expense incurred as a result of the construction of the water main connecting Southern New

Hampshire Water Company and Pennichuck Water Works shall be filed in compliance with

this Commission's Report in D-E3138 and Order No. 10,871 ([1973] 58 NH PUC 14).

By order of the Public Utilities Commission of New Hampshire this ninth day of August, 1984.

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NH.PUC*08/13/84*[61501]*69 NH PUC 437*Public Service Company of New Hampshire

[Go to End of 61501]

69 NH PUC 437

Re Public Service Company of New Hampshire

DF 84-168,
Second Supplemental Order No. 17,161

New Hampshire Public Utilities Commission

August 13, 1984

Order denying motion for rehearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Report and Supplemental Order No. 17,139 ([1984] 69 NH PUC 415) ("Decision") which inter alia granted the Petition in the instant docket; and

WHEREAS, the Seacoast Anti-Pollution League ("SAPL") filed a Motion for Rehearing on August 6, 1984; and

WHEREAS, the Motion for Rehearing did not contain new facts or any argument which was not fully considered by the Commission in reaching the Decision; and

WHEREAS, SAPL was not a party to the instant proceeding; and

WHEREAS, the Commission finds that SAPL lacks standing to file Motion for Rehearing; and

WHEREAS, the Commission considered SAPL's Motion despite its lack of standing; and

WHEREAS, after review, the Commission finds that the Decision is not unlawful or unreasonable; it is therefore

ORDERED, that the Motion for Rehearing be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1984.

Separate Opinion of Commissioner Aeschliman

In Order No. 17,139 (69 NH PUC at p. 420), I attached a separate opinion which set forth the analysis I believed should have been employed. Consistent with that opinion, I would have

granted the Motion for Rehearing.

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[Go to End of 61502]

69 NH PUC 438

Re Public Service Company of New Hampshire

DF 84-167, Order No. 17,162

New Hampshire Public Utilities Commission

August 13, 1984

Order denying motion for disqualification of commission chairman.

APPEARANCES: As previously noted.

Opinion of Paul R. McQuade, Chairman

On July 26, 1984, the Seacoast AntiPollution League ("SAPL") filed a Motion for Disqualification of Public Service Commission Chairman McQuade. That Motion contained identical argument to the Motion to Recuse filed by the Consumer Advocate on July 13, 1984. By Report and Order No. 17,127 ([1984] 69 NH PUC 391), I denied the Motion to Recuse of the Consumer Advocate. The analysis, findings and conclusions contained in Report and Order No. 17,127 are equally applicable to the Motion for Disqualification filed by SAPL.

On July 24, 1984, I made an oral ruling on the SAPL Motion. There, I stated:

I have reviewed the motions [to disqualify] and find that they contain the same arguments asserted by the Consumer Advocate and CAP in other dockets. After review, I have decided to deny the SAPL and CRR motions for the reasons set forth in my Order No. 17,127 dated July 18, 1984. A written ruling confirming this decision will be issued shortly. (Docket No. DF 84-167, Tr. at 1-121).

This opinion and Order will constitute the written confirmation described above.

In addition to requesting Disqualification in the instant docket, the SAPL Motion requests the Chairman to disqualify himself in Docket Nos. 84-168 (PSNH Restructured Agreements), DE 83-152 (PSNH Rate Shock Investigation), DR 83-398 (PSNH Pilgrim II Recovery) and DF 83-331 (PSNH Seabrook Cost Containment). The analysis, findings and conclusions contained in this Opinion and Order are equally applicable to those dockets. Accordingly, the SAPL Motion will be denied as it pertains to all dockets listed therein. I will direct that a copy of this Opinion and Order be placed in the file of all of the above listed dockets.

ORDER

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

ORDERED, that the Motion for Disqualification of Public Utilities Commission Chairman

McQuade filed by the Seacoast Anti-Pollution League be, and hereby is, denied; and it is

FURTHER ORDERED, that a copy of this Order be placed in the file of Docket Nos. DF 84-168, DE 83-152, DR 83-398 and DF 83-331.

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NH.PUC*08/14/84*[61503]*69 NH PUC 439*Mountain Springs Water Company

[Go to End of 61503]

69 NH PUC 439

Re Mountain Springs Water Company

Intervenors: Mountain Lakes Community Association, Inc., and Mountain Lakes Village District

DE 6481, Order No. 17,163

New Hampshire Public Utilities Commission

August 14, 1984

Order setting rate base and rate of return for a water utility.

Valuation, § 174 — Charges to capital — Customer compensation for equipment.

Contributions in aid of construction were deducted from the total cost of a water utility's physical plant to derive a rate base. [1] p.444.

Return, § 26 — Reasonableness — Cost of capital.

According to standard rate-making principles, interest on debt is allowed in the rate of return component of the rate-making formula and is not rated as an item of current expense for rate-making purposes. [2] p.444.

APPEARANCES: Daniel A. Laufer, Esquire on behalf of Mountain Springs Water Company; Laurence F. Gardner, Esquire on behalf of The Mountain Lakes Community Association, Inc. and Mountain Lakes Village District; Larry Smukler, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On November 10, 1981, the Commission issued Report and Eighth Supplemental Order No. 15,287, Re Mountain Springs Water Co. (1981) 66 NH PUC 487 ("Decision") in which permanent rates were set and other issues determined regarding Mountain Springs Water Company ("Company") and its customers, Mountain Lakes Village District and the Mountain Lakes Community Association ("Intervenors"). The Commission denied the parties' motions for

rehearing in Report and Twelfth Supplemental Order No. 15,392, Re Mountain Springs Water Co. (1981) 66 NH PUC 589 and Report and Fifteenth Supplemental Order No. 15,460 ([1982] 67 NH PUC 158), and each thereafter appealed various aspects of the Decision to the Supreme Court. On Au- gust 31, 1983, in Re Mountain Springs Water Co. (1983) 123 NH 653, the Court affirmed certain of the Commission's findings and remanded others for further consideration consistent with its decision.

Thereafter, on December 15, 1983, the Commission issued Sixteenth Supplemental Order No. 16,804 which reopened the instant docket for the purpose of resolving the issues remanded by the Court and scheduled a procedural hearing for January 24, 1984. After considering the parties' arguments at that hearing, the Commission issued Report and Seventeenth Supplemental Order No. 16,895, Feb. 2, 1984, which established the scope of the remand proceedings, set a schedule for the filing of data requests and testimony and set dates for further

hearings. With regard to the issue of scope, the Commission stated as follows:

... The scope of this docket is to resolve only those issues remanded to the Commission by the Court in Re Mountain Springs Water Co. Inc. (1983) 123 NH —, specifically: 1) the extent to which customer contributions offset rate base investment, and (2) the steps to be taken in view of the reversal of the Commission's "special policy" on service terminations; ...,

In accordance with the Commission's procedural schedule, the Staff submitted the prefiled testimony of the Commission Finance Director, Eugene F. Sullivan. The Company submitted the prefiled testimony of two witnesses, its President, Mary Taber, and Robert Mancini, the employee of the contractor who built the Company's water system and who now is employed on a frequent basis as an independent contractor to repair and maintain the system.[1(128)] On March 30, 1984, the Intervenors filed a Motion To Strike Mountain Springs Water Company Prefiled Testimony ("Motion"). In response thereto, the Company filed an Objection to the Motion on April 6, 1984. On May 3, 1984 the Commission held a further procedural hearing to consider the parties' arguments with respect to the Motion. On May 11, 1984, the Commission issued Eighteenth Supplemental Order No. 17,025 ([1984] 69 NH PUC 239) which granted the Motion with respect to the testimony of Robert Mancini; in all other respects it was denied.

An evidentiary hearing on the remanded issues was held on May 17, 1984 at which time Mr. Sullivan and Mrs. Taber provided further testimony. Seven (7) exhibits were submitted by the parties.

II. ISSUES TO BE DETERMINED ON REMAND

In its Decision, the Commission established a "unique policy" to enable the Company to handle customer refusals to pay bills. In its filing, the Company requested that it be allowed $9,909 for customer billing costs, $6,000 of which reflected legal expenses the company maintained were necessary to collect the unpaid bills. The Commission disallowed any legal fees as a part of customer billing costs and instead instituted a policy of automatic, permanent disconnection of any customer who refuses, in the future, to pay the rates and fees as established by the Commission. The Commission found that need for legal fees would therefore be

eliminated.

In Re Mountain Springs Water Co. (1983) 123 NH 653, the Supreme Court struck down this "unique policy" because it was not adopted in accordance with proper rule-making procedures as outlined in RSA 541-A, the Administrative Procedures Act, and because sufficient consideration was not given to due process concerns. Re Mountain Springs Water Co., supra, 123 NH at p. 657. In remanding this issue for further consideration, the Court stated as follows (123 NH at p. 657):

If the commission is of the opinion that the well-being of the water company and its customers requires extraordinary enforcement measures, it must develop them in accordance with appropriate rule-making procedures. See RSA 541-A:3, I (Supp. 1981).

Because the Court found this "unique

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policy" to be without legal effect, it therefore held that the Commission's reliance thereon to eliminate the aforementioned legal expenses was also in error. The Court directed the Commission to consider whether already approved rate case legal expenses, amortized over two years, "should be increased to include any portion of the $6,000 requested specifically for legal expenses associated with customer billing." (123 NH at 658.)

The Court also remanded for further consideration the Commission's determination of the Company's rate base in an amount of $109,814. The Court upheld the Commission's reliance upon a detailed staff audit of Company documents which found $509,814 to be the amount directly attributable to the cost of the water system. However, the Court held that the Commission gave no reasons for finding $400,000 as the amount representing contributions in aid of construction, contributions which the Court recognized "... `must be deducted from the rate base as these are funds upon which investors are not entitled to any return.' Windham Estates Asso. v New Hampshire (1977) 117 NH 419, 422, 374 A2d 645, 647." The Court found that the Commission had not articulated its reasoning for adopting the $400,000 figure instead of $593,517, another calculation of customer contributions discussed in the Decision. The Court remanded the issue so that the Commission could "articulate its position and reasoning." Re Mountain Springs Water Co. (1983) 123 NH 653, 657, 658.

Lastly, the Court questioned the Commission's treatment of the Company's request for interest expense on the claimed loans. The Court stated as follows (123 NH at p. 659):

The commission's stated reasons for denying the recovery of any interest expenses are inconsistent. In addition, since the commission found a rate base of $109,814, it appears that it did recognize some investment on the part of the water company. The commission should therefore have specifically examined whether this investment ws financed by the loans in question. Should the commission, on remand, determine that the customers did not contribute the entire cost of the water system and affirm its prior rate base allowance of $109,814, it must clearly explain its "methods, findings, and order" with respect to this issue. Legislative Utility Consumers' Council v Public Service Co. of New Hampshire (1979) 119 NH 332, 341, 31 PUR4th 333, 402 A2d 626, 632.

III. POSITION OF THE PARTIES

A. Contributions In Aid Of Construction

The Company takes the position that no contributions in aid of construction should be deducted from the physical plant cost of $509,184. In support of its position, it cites the following language of Re Mountain Springs Water Co., supra, 123 NH at pp. 659, 660:

In addition to their claim that the commission's calculation of the company's rate base was factually inaccurate and insufficiently explained, the customers have argued that the company's rate base should be zero as a matter of law. They ask this court to declare that where a water company and a builder-developer have a common ownership, and where, in addition, the developer has agreed to provide a water system as part of its construction obligations vis-a-vis the buyers, the utility which ultimately operates the water

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plant should not, as a matter of law, be entitled to any rate of return because its capital investment is zero. We are not persuaded by this argument in the context of the facts of the present case.

The Company asserts that this language establishes as a matter of law and fact that amounts paid to purchase lots cannot be included in the calculation of customer contributions. In addition, Company contends that the amounts paid by lot owners as hook-up fees cannot be included as customer contributions because they were not included in the cost of the plant as established by the staff audit. According to the Company, since the lot owner paid only for work and materials used to connect him to the system, and the work and materials were not included in the calculation of the cost of the physical plant, then no hook-up fees can be considered customer contributions. Thus, for these reasons, the Company argues that there are no contributions in aid of construction and that its rate base should be $509,814.

The Intervenors contend that the Commission erred in finding contributions in aid of construction of $400,00 based on the figures contained in the Company's financial statement for the period ending August 31, 1977 prepared by John E. Rich Company, CPA (Intervenor's Exhibit 5, original proceeding). In support thereof, they point out that this financial report was prepared in connection with a petition for emergency rates filed by the Company in 1977 and was not contained in any Company document relating to the permanent rate hearing in 1980. The Intervenors point to the testimony at the original hearing of David L. Connors, Certified Public Accountant, a partner in the John E. Rich Company and the person responsible for preparing that financial statement. Mr. Connors testified that no one at the Company provided any figures regarding contributions. He stated that the $400,000 figure was an evaluation he made to reflect upon the financial statement the approximate costs of the assets employed. Intervenors argue therefore that the $400,000 is merely an accountant's creation and entitled to no weight by the Commission.

The Intervenors would instead have the Commission adopt the figure of $593,517 found in another of the Company's financial statements and submitted as Exhibit 39 at the original hearings. This financial statement was submitted by the Company in the fall of 1974 to the Small

Business Administration ("S.B.A.") in connection with the Company's application for an S.B.A. guaranteed loan. The financial statement contains a figure of "donated equity" in an amount of $593,517. The Intervenors argue that a fair and reasonable construction of "donated equity" is that the Company paid no consideration for assets having a value of $593,517. They contend that unlike the $400,000 figure, the $593,517 is not an accountant's creation, but rather a figure furnished by the Company to which it should be bound. Based on a figure of $593,517 of contributions in aid of construction, the Intervenors argue that the Company's rate base should be zero.

Staff, through the testimony of Mr. Sullivan, contends that at least $400,000, and probably a higher figure, should be deducted from the $509,184 asset base. Included in Mr. Sullivan's calculation is approximately $385,000 listed on the Company's balance sheet dated February 28, 1983 as "capital surplus." According to Mr. Sullivan, this figure represents the value of the water system transferred from Town and Country Homes, Inc. ("TCH")

to the Company in exchange for 1,000 shares of the Company's stock in April, 1973 when the Company was incorporated. In addition, Mr.Sullivan contends that the money in the TCH "water escrow account" and the $21,000 collected by the Company for hook-up fees should be considered contributions in aid of construction.[2(129)]

B. Unique Policy and Interest Expense

The Company contends that the $6,000 legal expense rejected by the Commission when it adopted the "unique policy" of permanent termination should be allowed as a collectible expense given that it is again beginning litigation to collect standby fees. In addition, the Company also requests that the Commission allow additional rate case expenses of $11,646.88 for legal fees for the Supreme Court appeal and the further Commission proceedings and $1,309.30 for transcripts. With regard to the issue of the Company's loans and the interest thereon, the Company argues that the City Bank and Dunnan and Taber loans be approved and interest thereon made a collectible expense. In the alternative, the Company requests that if the Commission finds the Dunnan and Taber loans to be equity, a return on equity for said amounts be fixed at 11-1/2%. Neither Staff nor the Intervenors took a position regarding these issues in connection with the remand proceedings. However, it should be noted both Staff and the Intervenors strongly dispute the Company's assertions, discussed at length in its brief, that the Dunnan and Taber notes were used to purchase the water system from TCH.

IV. COMMISSION ANALYSIS

In the original proceedings in this docket, the Commission was faced with the seemingly impossible task of making sense of the financial data submitted by the Company; financial data which was characterized by the Commission's Finance Director as a "morass" (Tr. at page 12). As we stated in Report and Twelfth Supplemental Order No. 15,392 (1981) 66 NH PUC 589, 591, which denied the Company's motion for rehearing,

[T]he company never demonstrated adequate records for rate base. There are more offered rate base calculations in this proceeding than in any other in memory. They are all inconsistent

with one another and all demonstrate poor accounting procedures, especially in underestimating consumer contributions.

Nothing we have seen in either our further review of this date or the testimony and exhibits submitted by the parties at the remand hearing convinces us that our earlier assessment was in error. If anything, the contradictory nature of the Company's figures has become more pronounced.

Despite the inherent unreliability of the Company's figures, the Commission must determine the amount of contributions in aid of construction (and therefore the Company's rate base) on the basis of the record before it. Both the Company and the Intervenors have done a credible job in fashioning logical and persuasive arguments in this record. As in all matters affecting rates, the Company has the burden of proving by a preponderance of the evidence the facts

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it seeks to establish. RSA 378:8.[3(130)] Given that we find both arguments to be equally persuasive, the Company has therefore failed to sustain its burden.[4(131)] The persuasiveness of both arguments does not allow us to choose either one.

[1] If, as Intervenors contend, the contributions in aid of construction exceed the cost of the physical plant ($509,184), then deducting such contributions from rate base would lead to a zero rate base. However, based upon our analysis of the record, we do not believe that the contributions in aid of construction exceed $509,184. Yet, given the unreliability of the Company's figures, we have no way of making an accurate determination.

We are left with Staff's analysis. Eugene F. Sullivan, the Commission's Finance Director and Staff expert witness, who provided testimony in the remand proceedings, determined that contributions in aid of construction are at least $400,000.[5(132)] Mr. Sullivan, a neutral third party, reached this conclusion after analyzing the contradictory data in light of his considerable experience and expertise. In his expert judgment, the data submitted supports a figure of at least $400,000. We will accept Mr. Sullivan's expertise and therefore find contributions in aid of construction to be $400,000. Thus, deducting this amount from $509,184, the established cost of the plant, leaves a rate base of $109,184.

With respect to the "unique policy" which the Court found to be without legal effect, we find that extraordinary enforcement measures are not necessary at this time. We therefore will not invoke our rulemaking power under RSA 541-A to institute such a policy. Because the Court disallowed the "unique policy", it directed the Commission to determine whether the $6,000 in legal expenses associated with customer billing should now be allowed. These expenses were originally disallowed in reliance on the "unique policy." We have decided to defer consideration of these expenses until the Company's next rate case. We note that on June 13, 1984 the Company filed with the Commission a Notice of Intent to File Rate Schedules. This issue, as well as the Company's request for legal fees pertaining to this appeal, will therefore be addressed in the not too distant future.

Lastly, we address the issue of interest on the claimed loans. The Court states as follows (123 NH at p. 659):

The commission's lack of clarity and specificity on this issue (rate base) extends also to its disposition of the company's argument that interest on the claimed loans should have been allowed for in its rates. The commission disallowed this interest expense.

What follows is an attempt to clarify the Commission's treatment of the Company's interest expense.

[2] According to standard ratemaking principles, interest on debt is allowed for in the rate of return component of the ratemaking formula. A company's rate of return is the composite of the cost of several classes of capital utilized by a utility, such as debt, preferred stock and common stock. Interest costs are therefore

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not treated as an item of current expense for ratemaking purposes.

In this case, in determining the Company's rate of return, the Commission stated as follows (66 NH PUC at p. 498):

The Commission will use the composite debt rate of 11.5 per cent to arrive at a rate of return of 11.5 per cent.

The Commission then applied this rate of return to the rate base figure of $109,814 and allowed the Company a return on rate base in the amount of $12,629. Thus, the Commission did in fact allow the Company to include recovery through its rates of the interest on its loans. In so doing, it directly recognized that the investment in rate base of $109,184 was financed by some or all of the loans in question.

We acknowledge the parties' strong disagreement over the purpose, use and validity of the following company debts:

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

Small Business Administration
Loan $202,000
Dunnan Note 134,040
Taber Note 67,021
$403,061
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In prior reports in this docket the Commission recognized that these debts had never been formally approved by the Commission as required by RSA 369 and that the Company had failed to maintain records sufficient for the Commission to evaluate the validity and appropriateness of the debt. Nonetheless, the Commission recognized some of these debts in formulating the Company's rate of return. The Commission never made a finding, however, as to which of the loans were included in the composite debt rate and thus financed the acquisition of the physical plant. However, since all the notes have an identical interest rate of 11.5%, we find it unnecessary to resolve this issue. Inclusion of any or all of the notes would still yield the same rate of return.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the rate base of Mountain Springs Water Company is $109,184; and it is

FURTHER ORDERED, that consideration of the Company's original request for $6,000 in legal expenses associated with customer billing and its request for legal fees pertaining to its Supreme Court appeal be deferred until the Company's next rate case; and it is

FURTHER ORDERED, that the Company's rate of return is 11.5% based upon a composite debt rate of 11.5%; and it is

FURTHER ORDERED, that this docket is closed.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of August, 1984.

FOOTNOTES

[1]The Intervenors did not submit any prefiled testimony. None of the parties submitted data requests of any other party.

[2]The Intervenors also maintain that the transfer of the water system valued at $385,000 plus the escrow funds expended constitute contributions in aid of construction.

[3]See also: Legislative Utility Consumers' Council v Public Service Co. of New Hampshire (1979) 119 NH 332, 31 PUR4th 333, 402 A2d 626; Legislative Utility Consumers' Council v New Hampshire Pub. Utilities Commission (1977) 117 NH 972, 23 PUR4th 128, 380 A2d 1083.

[4]We also reach this conclusion based upon the Company's failure to provide accurate and reliable information. As stated above, the information submitted by the Company contains so many internal contradictions that it is difficult to have confidence in any of the data contained in the record.

[5]His position and analysis are set forth in detail above.

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NH.PUC*08/15/84*[61504]*69 NH PUC 446*Public Service Company of New Hampshire

[Go to End of 61504]

69 NH PUC 446

Re Public Service Company of New Hampshire

Intervenors: Conservation Law Foundation of New England, Inc., Seacoast Anti-Pollution League, Campaign for Ratepayers' Rights, Community Action Program, Office of Consumer Advocate, Business and Industry Association of New Hampshire, New Hampshire Electric Cooperative, Inc., and Calcogen, Inc.

DF 84-200, Order No. 17,164

New Hampshire Public Utilities Commission

August 15, 1984

Order adopting procedural schedule for commission investigation.

APPEARANCES: D. Pierre G. Cameron, Jr., Esquire and Sulloway, Hollis & Soden by Martin L. Gross, Esquire for Public Service Company of New Hampshire; Douglas I. Foy, Esquire and Armond Cohen, Esquire for the Conservation Law Foundation of New England, Inc.; Robert A. Backus, Esquire for the Seacoast Anti-Pollution League; Mary Metcalf for the Campaign for Ratepayers' Rights; Gerald M. Eaton, Esquire for the Community Action Program; Michael W. Holmes, Esquire for the Consumer Advocate; Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire for the Business and Industry Association of New Hampshire; Hall, Morse, Gallagher & Anderson by Mayland Morse, Esquire and Jeffrey Zellers, Esquire for the New Hampshire Electric Cooperative, Inc.; John Hilberg for Calcogen, Inc.; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

By Order of Notice dated August 2, 1984, the Commission opened this docket for the purpose of investigating, inter alia, the financing plans of Public Service Company of New Hampshire ("PSNH" or "Company") to complete the construction of Unit I of the Seabrook plant. See also, Re Public Service Co. of New Hampshire (1984) 69 NH PUC 422. Pursuant to the Order of Notice, a procedural hearing was convened on August 9, 1984 for the purpose of, inter alia, resolving matters of intervention and scheduling. After review of the argument presented at the hearing, the Commission is hereby issuing this procedural order.

INTERVENTION

Timely Motions to Intervene were filed by the Conservation Law Foundation of New England, Inc. ("CLF"), the Seacoast Anti-Pollution League ("SAPL"), the Campaign for Ratepayers' Rights ("CRR"), the Community Action Program ("CAP"), the Business and Industry Association of New Hampshire ("BIA"), the New Hampshire Electric Cooperative, Inc. ("NHEC")

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and Calcogen, Inc. ("Calcogen"). A decision on the Motion to Intervene of Calcogen was reserved pending evaluation of an offer of proof. All other Motions to Intervene were granted.[1(133)]

SCHEDULE

After resolving issues of intervention, the Commission proposed a recess to allow the parties to confer on recommendations for a procedural schedule. The parties requested that prior to the recess, the Commission provide guidance on when an Order is expected to be issued. Accordingly, the Commission entertained argument on the length of the proceedings.

The Company argued that the schedule must provide for the issuance of an order by December 31, 1984 in order to allow PSNH to comply with certain agreements negotiated with

the Seabrook joint owners. PSNH contended that if the Commission contemplated lengthier proceedings, it would be required to renegotiate its agreements with the joint owners.

Many of the Intervenors argued that a December 31, 1984 Order date would not allow for the thorough review of the issues required by the Commission. It was claimed that the timing of the availability of data and the complexity of the issues require a schedule which will extent to at least March of 1985.

All parties represented in argument that if the Commission set an ending date, an agreement on recommended interval dates could be reached.

After review, the Commission determined that it could not set a date for the issuance of a Commission Order. However, since the parties would not be able to come to an agreement without Commission guidance, we directed the parties to develop a recommended schedule that ended with a December 15, 1984 briefing date. The hearing was then recessed in order to provide an opportunity for the parties to confer.

When the hearing was reconvened, the Commission was informed that several of the parties decided not to participate in the discussions. Those parties were CLF, SAPL, CRR and CAP. Those parties informed the Commission that, in their opinion, it was not useful for them to participate in proceedings scheduled around a December 15, 1984 briefing date. The remainder of the parties, who had complied with the Commission directive to develop recommendations, proposed the following schedule:

> August 31, 1984 First Prefiling (PSNH Issues 2 and $3^{2(134)}$, Calcogen Offer of Proof).
>
> September 15, 1984 Staff and Intervenor (with the exception of the Consumer Advocate) testimony on Issue 2b to the extent that such testimony is affirmative and not dependent on PSNH data.
>
> October 1, 1984 Data Requests
>
> October 5, 1984 Objections to Data Requests and Requests for Protective Orders.

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> October 15, 1984 a) Responses to Data Requests b) Prefiled testimony (PSNH on Issue 1 and Consumer Advocate on Issue 2b)
>
> October 22, 1984 Data Requests on Consumer Advocate's testimony
>
> October 26, 1984 Data Responses of Consumer Advocate
>
> November 1, 1984 Responsive Prefiled Testimony (Including PSNH testimony on Issue 2b)
>
> November 15, 1984 Data Requests
>
> November 21, 1984 Responses to Data Requests
>
> Week of November 26, Hearings 1984 and December 3, 1984
>
> December 15, 1984 Briefs

We have evaluated the arguments and recommendations of the parties, the proposed schedule of the Intervenors who did not participate in the schedule discussions and the Commission's own scheduling requirements. After review, we have determined that we cannot fully accept the recommendations of the parties. Accordingly, this Order will establish an amended procedural schedule. Our analysis of each of the three points discussed above will be set forth below.

The starting point of our analysis is the Commission's own policies and procedures. This docket was opened at our initiative in order to allow us a full and fair opportunity to investigate the Company's financing plans.[3(135)] Thus, we must state directly that the following policies will govern the conduct of these proceedings: we will control the schedule of this docket in order to move the proceedings along expeditiously; and our requirement of expeditious proceedings will be tempered by the further requirement that we conduct a full, fair and thorough investigation.

The Commission will experience the same restraints as the other parties to this proceeding. The Commission will attempt to move the proceeding expeditiously and a tight procedural schedule will aid in that endeavor. We cannot guarantee that a tight schedule will be maintained but our experience leads us to conclude it is necessary to adopt a tight schedule to conduct the proceeding to the end that it is concluded with a time frame that is consistent with Report and Second Supplemental Order No. 17,141 dated August 2, 1984. Unforeseen circumstances will have to be addressed when or if such circumstances arise. In order to provide for a thorough analysis, we

have undertaken to engage a reputable financial consultant. The consultant will assist us in our evaluation of the technical data that will become part of the record in this proceeding. We expect to finalize our arrangements shortly. However, the current proposed workplan requires the consultant to provide a draft report by November 1, 1984 and a final report by November 15, 1984. We cannot state at this point what recommendations will be contained in those reports. However, we cannot exclude the possibility that the record testimony of our consultants will be required. We shall hold all parties to act in the same expeditious manner.

Our next point of analysis was the recommended schedule of the parties. We recognize that the Commission established the initial parameters of the schedule when it directed the inclusion of a December 15, 1984 briefing date. However, we have a responsibility to evaluate whether our constraints allowed for reasonable interval dates. We have determined that the level of uncertainty is too high to establish herein several of the interval dates proposed by the parties. As is the case with most proceedings, the level of uncertainty increases as we move further into the future. Here, however, much of the uncertainty is caused by the need for information that does not yet exist. Until that information is submitted to the Commission, we cannot determine the complexity of the analysis which will be required. Since PSNH is the party responsible for developing the above information, our ability to move this proceeding along will depend upon the Company's ability to include a thorough presentation in its prefiled testimony. To the extent that information can be developed and presented in the early stages of this proceeding, the Commission's ability to act expeditiously will be increased.

Finally, we evaluated the schedule proposed by many of the intervenors who did not participate in the scheduling discussions. That schedule was:

August 31, 1984 Company Direct Case (Issues 2 & 3)

September 30, 1984 Data Requests

October 15, 1984 Company Direct Case (Issue 1)

October 31, 1984 Intervenor Direct Case (Issues 2 & 3)

November 15, 1984 Data Requests on PSNH Issue 1 Filing

November 30, 1984 PSNH Data Requests of Intervenor Testimony on Issues 2 & 3

December 15, 1984 Intervenor Direct on Issue 1

December, 1984 Hearings on Issues 2 & 3

January 15, 1985 PSNH data requests on Issue 1

January 15 — February, 1985 Hearings on Issue 1

February 15, 1985 — March, 1985 Rebuttal

March 15, 1985 Briefs

It is remarkable that the initial interval dates in the above proposal coincide in all material respects with the initial interval dates proposed by the remainder of the parties. Much of the variance in the latter portion of the schedule is due

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to increased time for PSNH to perform its own analysis (e.g., time for PSNH discovery).

The comparison of the two schedules combined with the placement of the burden on PSNH to provide adequate and timely information convinces us that the initial intervals proposed by the parties are reasonable. Since the level of uncertainty about how this proceeding will develop increases rapidly, the latter dates in the procedural schedule, to the extent that they are established at all, will be tentative.

The new schedule will be as follows:

August 31, 1984 First Prefiling (Calcogen Offer of Proof, PSNH direct on Issues 1, 2 & 3)[4(136)]

September 15, 1984 Staff and Intervenor (except Consumer Advocate) testimony on Issue 2b.[5(137)]

October 1, 1984 Data Requests Due

October 5, 1984 Objections to Data Requests and Request for Protective Orders

October 15, 1984 a) Responses to Data Requests b) Prefiled testimony (PSNH — Information on Issue 1 not submitted on August 31, 1984; Consumer Advocate — Issue 2b).

October 22, 1984 Data Requests on Consumer Advocate's Testimony

October 26, 1984 Data Responses of Consumer Advocate

November 15, 1984 Responsive Prefiled Testimony (Including PSNH testimony on Issue 2b)[6](138)

November 21, 1984 Data Requests

December 7, 1984 Responses to Data Requests

December 3, 1984, et seq. Hearings[7](139)

As noted above, the schedule is designed to move the proceedings in an attempt to avoid any further delays in the construction project. It would not be in the public interest for the Commission to cause a delay by gratuitously extending the proceeding beyond the date negotiated by the management of the companies that comprise the joint owners. If the project is to be completed, it should

be done as soon as possible. If the facts determine that the project should not receive further approvals for financing, then action should be taken as soon as possible. This docket was initiated by the Commission. It is not driven by the Company. It is driven by circumstances which were made known to the Commission during the past year and the necessity to bring some final conclusion to the Seabrook controversy. At best, the Commission has set a schedule for itself, the Company, Intervenors and Staff that attempts to devote adequate time to accomplish an investigation. As noted above, the adequacy of the time period will be highly dependent on PSNH's ability to provide the necessary information early in the process. To the extent that PSNH cannot supply timely information or meet the deadlines established herein, an extension may be appropriate. However, PSNH should be on notice that any granted extensions will have the effect of extending the entire procedural schedule.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the procedural schedule shall be as set forth in the foregoing Report.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of August, 1984.

Opinion of Commissioner Aeschliman

I supported the procedural schedule adopted in DF 84-167 (Report and Order No. 17,141 [69 NH PUC 422]) because I believed an extended investigation of the Newbrook plan was necessary and the immediate opening of this docket was the only means to achieve that end. It was apparent to me then, that a three week investigation in DF 84-167, given the initial scope set by the Commission, would have resulted in findings and conclusions based upon an inadequate investigation and record; that those findings subsequently would have been applied in the

Newbrook financing docket as well; and that no comprehensive evaluation would ever have been done. It is clear from the procedural hearing of August 9th that it may be difficult to accomplish a comprehensive investigation in this docket.

I have carefully reviewed the proposed procedural schedules and the arguments made at the procedural hearing and have concluded that the Commission should not adopt the proposed schedule at this time. The intervenors have a legitimate argument that a PSNH filing of the Newbrook financing plan on October 15th along with data responses on the first filing, does not allow for adequate discovery and preparation of intervenor testimony. The Commission Staff is faced with the same problems.

If the Commission is to allow for reasonable discovery periods and preparation of testimony it can not allow PSNH to dictate the schedule. PSNH must be required to provide the basic information relative to its Newbrook proposal — the structure of Newbrook Company, the arrangement with New Hampshire Electric Cooperative, the types and amounts of debt securities and collateral (TIGR) involved — with the first filing August 31st. The burden should be placed upon the Company to produce the information in a timely fashion*(140) , and given the complexity of the proposal, a filing in

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mid-October relative to Newbrook will simply not allow time for proper analysis if a decision is to be made by year end.

Furthermore, the Commission is charged with finding the public good. It is the Commission's responsibility to insure that it has properly investigated this proposal, and the complexity of PSNH's financing proposal requires the assistance of an expert financial consultant. The Commission is in the process of hiring this consultant and can not realistically set the second phase of the schedule (which includes the filing of Staff or consultant testimony) until a consultant is chosen and a work schedule is established with the consultant. It will do us little good to have the evaluation of the consultant after the proceeding is concluded.

Consequently, the Commission should set the first phase of the procedural schedule through October and should require PSNH to provide information relative to the structure and amount of the Newbrook financing by August 31st. The Newbrook filing of October 15th, should relate only to the final details of terms and conditions. The dates for the filing of Staff or consultant and intervenor direct testimony and the balance of the schedule should not be set until PSNH has filed the required information relative to Newbrook and until the availability of the financial consultant's analysis is determined.

The December 31 deadline posed by PSNH should not be allowed to prevent this Commission from doing its job. This date is an arbitrary date adopted by the Joint Owners and does not have the urgency of earlier deadlines when the Company could establish a legitimate cash crisis. It may indeed be possible to finish this case by December 31st, and the Commission should move the case as expeditiously as possible. But the commission and not PSNH should be determining the proper schedule.

Attachment A

Informational Requests to Public Service Company of New Hampshire that have not been responded to:

A. Financial Forecasts

1. A request of May 28th for a listing of all financial forecasts performed using the March 1st cost estimate and all forecasts performed since that time.

On June 1 Mr. Cameron sent to the Commission a listing of financial forecasts by date of solution and identification number which were supplied externally by the Company. By letter of June 7, I wrote to Mr. Cameron indicating that the Response was inadequate and that the request included all financial forecasts which have been performed using the March 1st cost estimate and all forecasts performed since that time. In addition, I indicated that a listing of forecasts by code name was not sufficient for me or our Staff to determine which forecasts would be most informative to us. Therefore, in requested that the face sheets — detailing the purpose of each forecast and the major assumptions — be provided. Despite several assurances that the information would be provided promptly, it has yet to be received.

2. At the July 23rd informational hearing PSNH indicated that financial forecasts reflecting Newbrook were being developed and would be available the next week. The Commission has not received a response to the request for the Newbrook financial scenarios.

B. Regulatory Approvals Required for New Hampshire Yankee and Newbrook

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The original schedule adopted by the Joint Owners on May 14th called for a plan of obtaining regulatory approvals by June 15th. (Resolution p. 1, item 2.) At the July 3rd informational meeting, the Commission was informed that this information could hopefully be provided that week. (Trans. p. 135.) By letter of July 27, Mr. Cameron indicated a response would be forthcoming early next week. The Commission has received no response to date.

C. Amount of Newbrook Financing

At the July 23rd informational hearing PSNH indicated they would review with the Joint Owners the amount to be required in the Newbrook financing and respond to the Commission. (Trans. p. 145.) No response has been received. If the Joint Owners require PSNH to do a financing through Newbrook at a level higher than the projected $350 million a financial forecast incorporating the new amount was also requested.

FOOTNOTES

[1]This includes the granting of full intervenor status to the Consumer Advocate pursuant to his statutory authority to participate in Commission proceedings.

[2]The issue numbers employed here are the same as those used in the August 2, 1984 Order of Notice. Those numbered issues are:

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

2) Whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders; and

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

[3]The argument reveals the discouraging fact that in the absence of Commission initiative, we would have once again been presented with a truncated time frame to review a financing Petition. It would not have been appropriate to wait until late October to file the "Newbrook" Petition if Commission action by December 31, 1984 is required.

[4]The need to move expeditiously requires PSNH to provide as much information as can be developed as quickly as possible. PSNH may not know as of August 31, 1984 precisely what the securities' indentures will contain. However, it should know at least the structure and amount of the "Newbrook" financing. By requiring the submission of this information early, we will be able to conduct an expeditious review.

[5]The Commission's understanding is that this testimony is affirmative in that it stands alone and does not depend on analysis of PSNH data. To the extent that Staff and Intervenor testimony on Issue 2b is dependent upon information contained in the August 31, 1984 filing, it will be included in the Responsive Prefiling due on November 15, 1984.

[6]The Commission recognizes that this deadline extends the schedule recommended by the parties. However, this extension is necessary to allow the Commission adequate time to determine whether the recommendations of its consultants, if any, should be presented in the form of public testimony.

[7]We recognize that hearings will commence before PSNH receives responses to its data requests. However, since the initial business of the hearings will be to receive public input and to hear crossexamination of PSNH witnesses, we believe that the December 3, 1984 commencement date is reasonable. Cross-examination of Staff and Intervenor witnesses will commence after the data responses are provided on December 7, 1984.

[*]Public Service Company has not been responsive to the information requests of the Commission. Attachment A lists requests that have not been responded to in a timely fashion.

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NH.PUC*08/16/84*[61505]*69 NH PUC 453*New Hampshire Electric Cooperative, Inc.

[Go to End of 61505]

DF 83-360,
Seventh Supplemental Order No. 17,165

New Hampshire Public Utilities Commission

August 16, 1984

Order clarifying borrowing authority of utility and denying motion for reconsideration.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On June 27, 1984, the Commission issued Report and Fifth Supplemental Order No. 17,096 (69 NH PUC 339) which, inter alia, approved the request of the New Hampshire Electric Cooperative Inc. ("Co-op") for emergency authority to borrow $9,000,000 out of the $111,000,000 previously approved in this docket. Motions for Rehearing were filed by Roger Easton and Gary McCool and a Motion for Suspension was filed by Gary McCool. Those Motions were denied in Sixth Supplemental Order No. 17,143 ([1984] 69 NH PUC 426). On August 13, 1984, Gary McCool filed a Motion for Reconsideration of Denial of Motions to Suspend ("Motion"). Since the Motion reflects a fundamental misunderstanding about the status of our previous Orders, we will respond by issuing this clarifying Order. This Order will also deny the Motion.

The subject of the Motion is the authority granted the Co-op to borrow up to $111,000,000 by Report and Supplemental Order No. 16,915 ([1984] 69 NH PUC 137). After the Commission denied Intervenor Motions for Rehearing, the

matter was appealed to the New Hampshire Supreme Court. Subsequently, the Commission asked the Court to remand the matter so that the Commission could reevaluate its findings and conclusions. The reevaluation became necessary because of Co-op submitted information which indicated that it proposed to use the proceeds of the financing for a new purpose. The Court segregated the portion of the financing to be devoted to the new purpose ($57,000,000) and remanded that portion to the Commission. The remainder of the financing ($54,000,000) continued to be subject of the appeal.

As a result of the above situation, the Co-op determined that its continued authority to draw on its financing was in doubt. Accordingly, it requested interim authority to borrow $9,000,000. The Co-op represented that such authority was necessary in order to avoid default until the Commission has an opportunity to adjudicate all issues on remand. After due notice and hearing, the Commission issued Report and Fifth Supplemental Order No. 17,096 which approved the interim financing.

Since the issuance of Report and Fifth Supplemental Order No. 17,096, the Court took the action of remanding the remaining financing authority to the Commission. Re Easton (1984) 124 NH —, 480 A2d 88. In addition, the proceedings to examine the $57,000,000 amount initially

remanded were continued. Report and Fourth Supplemental Order No. 17,132 ([1984] 69 NH PUC 384). Those proceedings are to be reconvened at the call of the Commission.

The instant Motion rests on the assumption that the Co-op continues to have the authority to engage in $111,000,000 of financing. That assumption is incorrect, although the above history indicates that the error is not unreasonable. It is therefore necessary to issue this Order to clarify the status of the Co-op's financing authority which has been the subject of this docket.

Since the full $111,000,000 financing authority has now been remanded, the matter is currently before the Commission. In Report and Fifth Supplemental Order No. 17,096, we allowed the Co-op to utilize $9,000,000 of that authority for the purpose of, inter alia, maintaining the status quo until the proceeding could be concluded. The authority to borrow $9,000,000 continues to be in full force and effect and the Co-op continues to be authorized to engage in financing pursuant thereto. The remaining authority which was remanded in two portions should be consolidated for the remaining proceedings in this docket inasmuch as the issues are substantially similar. This authority to borrow $102,000,000 must be treated as suspended because it cannot be deemed approved until the Commission completes its consideration of the issues on remand.

On the basis of the above clarification, it becomes apparent that Gary McCool's Motion to Suspend was not necessary to the extent that it pertained to the remaining $102,000,000 in authority. To the extent that the Motion pertained to the approved $9,000,000, it was denied in Sixth Supplemental Order No. 17,143. We have been presented with no reason here to reconsider that denial. Thus, the August 13, 1984 Motion for Reconsideration of Denial of Motions to Suspend will also be denied.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the status of the authority of the New Hampshire Electric Cooperative, Inc. to borrow $111,000,000 is clarified as set forth in the foregoing Report; and it is

FURTHER ORDERED, that the Motion for Reconsideration of Denial of Motions to Suspend of Gary McCool be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of August, 1984.

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NH.PUC*08/20/84*[61506]*69 NH PUC 455*Public Service Company of New Hampshire

[Go to End of 61506]

Re Public Service Company of New Hampshire

DF 84-168,
Third Supplemental Order No. 17,166

New Hampshire Public Utilities Commission

August 20, 1984

Order denying reconsideration of order denying intervention.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Seacoast Anti-Pollution League ("SAPL") filed a Motion for Reconsideration of Order Denying Intervention requesting that the Order of the Chairman entered on July 25, 1984 denying Intervention status to SAPL (Tr. 23-25) be reconsidered; and

WHEREAS, the Commission has reviewed the arguments set forth in the Motion and Objection of Public Service Company of New Hampshire; and

WHEREAS, the Commission finds that the Chairman acted in full compliance with RSA 541-A:17; and

WHEREAS, the Commission finds that the Motion was untimely in that it should have been made immediately following the Chairman's ruling and prior to the hearing in this matter; it is therefore

ORDERED, that the Motion of SAPL for Reconsideration of Order Denying Intervention be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentieth day of August, 1984.

Separate Opinion of
Lea H. Aeschliman, Commissioner

I concur with the decision to deny the Motion, but only on the basis of the finding that the Motion was untimely.

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NH.PUC*08/20/84*[61507]*69 NH PUC 456*Public Service Company of New Hampshire

[Go to End of 61507]

69 NH PUC 456

Re Public Service Company of New Hampshire

DF 84-167,
Third Supplemental Order No. 17,168

New Hampshire Public Utilities Commission

August 20, 1984

Order denying motion for rehearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on August 2, 1984 the Commission issued Report and Second Supplemental Order No. 17,141 (69 NH PUC 422) ("Decision") which, inter alia, established the schedule and scope of the instant proceedings; and

WHEREAS, on August 8, 1984, the Seacoast Anti-Pollution League ("SAPL") filed a Motion for Rehearing on the Decision; and

WHEREAS, on August 9, 1984, the Public Service Company of New Hampshire ("PSNH") filed an Objection to the SAPL Motion for Rehearing; and

WHEREAS, the Commission has reviewed the record, the SAPL Motion and the PSNH Objection; and

WHEREAS, the SAPL Motion contains no information or argument that was not fully considered by the Commission in reaching the Decision; and

WHEREAS, the Commission finds that the Decision is not unlawful or unreasonable; it is therefore

ORDERED, that the August 8, 1984 Motion of SAPL for a Rehearing on Order of August 2, 1984 be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentieth day of August, 1984.

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NH.PUC*08/20/84*[61508]*69 NH PUC 456*Public Service Company of New Hampshire

[Go to End of 61508]

69 NH PUC 456

Re Public Service Company of New Hampshire

DF 84-167,
DF 84-168, Order No. 17,169

New Hampshire Public Utilities Commission

August 20, 1984

Order denying motion to disqualify commission chairman.

By the COMMISSION:

ORDER

WHEREAS, the Campaign for Ratepayers' Rights ("CRR") filed on July 23, 1984 a Motion for Disqualification of Public Utilities Commission Chairman McQuade; and

WHEREAS, the Motion was denied by the Chairman in Docket No. DF 84-167 (Tr. at 1-121); and

WHEREAS, the Chairman provided that his ruling would be followed by a written confirmation; and

WHEREAS, CRR lacks standing in Docket No. DF 84-168 inasmuch as its Motion to Intervene was denied; and

WHEREAS, such written confirmation on a substantially similar Motion was provided to another party to Docket No. DF 84-167 in Opinion and Order No. 17,162 (August 13, 1984); and

WHEREAS, Opinion and Order No. 17,162 ([1984] 69 NH PUC 438) inadvertently did not contain a reference to the CRR Motion; and

WHEREAS, the analysis, findings and conclusions contained in Opinion and Order No. 17,162 are applicable to the CRR Motion as it pertains to Docket No. DF 84-167; and

WHEREAS, the analysis, findings and conclusions in Opinion and Order No. 17,162 would also be applicable to the CRR Motion as it pertains to Docket No. DF 84-168 if the CRR had standing in that proceeding; it is therefore

ORDERED, that Opinion and Order No. 17,162 be, and hereby is, incorporated herein by reference; and it is

FURTHER ORDERED, that the Motion of the CRR for Disqualification of Public Utilities Commission Chairman McQuade be, and hereby is, denied.

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NH.PUC*08/24/84*[61509]*69 NH PUC 457*Public Service Company of New Hampshire

[Go to End of 61509]

69 NH PUC 457

Re Public Service Company of New Hampshire

DF 84-200,
Supplemental Order No. 17,177

New Hampshire Public Utilities Commission

August 24, 1984

Motion for reconsideration of denial of intervenor status; denied.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Calcogen, Inc. ("Calcogen") filed a Motion to Intervene in the instant proceedings; and

WHEREAS, Public Service Company of New Hampshire interposed an objection to Calcogen's Motion; and

WHEREAS, the decision on Calcogen's Motion was reserved pending evaluation of an offer of proof (See e.g., Report and Order No. 17,164 [(1984) 69 NH PUC 446, 447]); and

WHEREAS, Calcogen filed a Motion

for Reconsideration requesting inter alia that Intervenor status be granted without a requirement to submit an offer of proof; and

WHEREAS, the Motion for Reconsideration does not contain information which, when considered, provides sufficient reason to disturb the ruling which reserved the decision; it is therefore

ORDERED, that the Motion for Reconsideration of Calcogen be, and hereby is, denied.

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[Go to End of 61510]

69 NH PUC 458

Re New England Telephone and Telegraph Company

DE 83-377, Order No. 17,178

New Hampshire Public Utilities Commission

August 24, 1984

Order directing telephone company to improve and expand its services.

By the COMMISSION:

REPORT

On March 1, 1984 this Commission issued a Report in the above mentioned docket. The docket was opened in response to a November 30, 1983 petition filed by Mr. Richard W. Corning on behalf of residents of the Town of Northwood, New Hampshire requesting a public

hearing concerning the level of telephone service available to subscribers in Northwood. That petition signed by 249 persons complained that service provided to the Northwood area does not allow subscribers any toll-free service to any urban area in New Hampshire and does not provide modern services such as touch-tone dialing.

As noted in the initial report, a hearing was held on January 11, 1984 at the Northwood Town Hall. Eighteen customers spoke at the hearing. An analysis of their concerns revealed three primary issues; 1. Toll-free calling to Concord, Rochester, and/or Manchester; 2. Quality of Service Complaints; 3. Request for new central office in order to receive custom calling features. Our original Order addressed each of these issues, and the Company was required to take further action in each of the three issues. The Commission concluded its report as follows:

The Commission will continue to monitor the Company's activities. We direct the Company to commit themselves to the specific actions outlined in this Report and we will require that a project status report be submitted to the Commission by July 1, 1984 in order that we may prepare a final Report and Order in the matter. (DE 83-377, Report March 1, 1984)

The Company has provided the Commission with the requested status reports. We are prepared to address each of the

three primary issues. We will address each separately.

TOLL-FREE CALLING

The petitioner originally requested that toll-free calling be explored from Northwood to Manchester, from Northwood to Rochester, and from Northwood to Concord. We found, on the basis of studies performed by the Company, that there was inadequate telephone traffic between Northwood and Rochester or Northwood and Manchester to provide toll-free service to those locations. Since the Northwood to Concord study had passed a portion of the test at the date of the Commission's first Report, however, the Commission directed the Company to poll every Northwood customer as to his willingness to pay any higher costs associated with providing toll-free service to Concord. If over half of the customers voted in the affirmative, then one-way toll-free calling would have been instituted, in accordance with guidelines approved by this Commission in an earlier docket.

On May 14, 1984 the Company advised us that the results of the ballot were negative. On March 6, 1984 ballots were sent to all exchange customers, and only 27.1% responded in favor of the proposal. Since 51% of the customers must respond favorably in order [to] implement the service, there is no justification for providing the service. The Company has advised each customer of the alternative service offerings which may provide reduced cost calling to areas outside the local exchange area.

We are satisfied that the Company has followed the Commission's guidelines on behalf of Northwood customers in this matter. We are satisfied that they have adequately notified local customers of the other opportunities for alternative calling services. We will not direct the Company to provide toll-free calling from Northwood to Concord.

QUALITY OF SERVICE

Two issues remained unresolved in this matter at the date of our earlier order. The Company was required to investigate alternative methods which would allow customers the opportunity of touchtone calling and was directed to advise the Commission of the results of that investigation by May 1, 1984. In conjunction with that issue we also required that they investigate whether or not the absence of electronic offices does in fact limit or prohibit exchange customers from availing themselves of the opportunities afforded by other carriers, and directed the Company to advise us on that issue by April 15, 1984. The second issue involved the steps the Company was in the process of taking in improving its transmission facilities in order to improve long distance calling. Since only a portion of the committed projects was completed at the date of the order, we required a project status report to be submitted by July 1, 1984 in order to assure that the projects continued on schedule.

With regard to the ability of customers to utilize other common carriers, the Company has assured us that they can do so. On April 13, 1984 they advised that, although touch-tone capability is not available in Northwood, attachments may be procured either form the desired other common carrier (OCC) or by numerous vendors of telecommunications equipment which will allow customer access to the OCC market. Customers of the Goffstown and New Boston exchanges, which are served by switching equipment similar to that in Northwood, now have the opportunity of utilizing those devices. Since customers appear to be able to avail

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themselves of that service, we find no evidence to direct them to replace their existing central office on that basis alone.

With regard to the issue of custom calling, the Company has advised that there appears to be no equipment available which is compatible with the type of switching equipment in Northwood that would allow specialized services such as call waiting and call forwarding. The Company has located equipment which is partially compatible but, because of the differences in features, customers would not be getting the same service as are now provided by their other electronic switching offices and the Company fears considerable confusion would result if the conversion were made. The Company also notes that this equipment is no longer manufactured.

The Commission said in its previous Order that it would not order the Company to revise the Northwood Central Office to a higher priority replacement date. On the basis that there are other exchanges which provide less services than does Northwood's and whose customers deserve replacement offices in order to improve basic telephone service, we will not change that decision. In view of the Company's investigation into the opportunities for alternative methods of adding supplemental equipment to existing central offices, we cannot find that an investment in the equipment located by the Company would substantially benefit its customers. We will not require them to add that supplemental equipment.

With regard to the status of improvements to the Company's transmission facilities, we have been advised by Company letter of June 29, 1984 that the projects identified in the original order continue to be progressing on schedule, as follows:

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

Scheduled
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Project	Location	Completion	Cost
T-Carrier Expansion Order #226869 (Completed)	Deerfield/Northwood Epsom/Northwood	3/30/84	$ 94,000.00
T-Carrier Expansion Order #229269 (Completed)	Chichester/Pittsfield (Concord/Pittsfield)	10/19/84	429,000.00
T-Carrier Expansion (Completed)	Epsom/Pittsfield	6/15/84	318,000.00
New Cable for Local Route 4/East 303 Exchange Growth & Modernization Order #227539		9/30/84	250,000.00
New Cable for Local Route 4 West Exchange Growth & Modernization Order #901127		11/30/84	47,000.00
New Cable for Local Route 4/152 Exchange Growth & Modernization Order No. 933631		8/30/84	18,000.00
Terminal Replacement Routine Splicing Pole Replacement Cable Maintenance	Northwood Ongoing		50,000.00
Stepper Central Office Tester (SCOT) Interface Unit	Northwood (Completed)	4/30/84	1,300.00
Associated SCOT Microprocessor	Northwood	4/30/84	11,000.00

We continue to hold the Company to its commitment to meet its schedule.

SUMMARY

We find that the Company has been properly responsive to the needs of its Northwood customers in regard to their concerns for improved telephone service. We note that the Company has contacted each of the individual customers who spoke at the public hearing of January 11, 1984 and we further note that, upon review of our own record, there are no outstanding customer complaints in that area.

We remain sensitive to the desires of those Northwood customers who will not be satisfied by this Order because of their continuing inability to reach adjoining exchanges on a toll-free basis. We encourage them to explore the opportunities of the alternate service opportunities afforded by the Selective Calling, Circle Calling, and Granite State Calling services. We will hold the Company to its commitment to replace the central office with an electronic office on its scheduled replacement date of 1987.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Company commit itself to the programs cited herein; and it is

FURTHER ORDERED, that this docket is closed.

By Order of the Public Utilities Commission of New Hampshire this twentyfourth day of August, 1984.

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NH.PUC*08/24/84*[61511]*69 NH PUC 461*Concord Natural Gas Corporation

[Go to End of 61511]

69 NH PUC 461

Re Concord Natural Gas Corporation

Intervenor: Community Action Program

DR 83-206,
Third Supplemental Order No. 17,179

New Hampshire Public Utilities Commission

August 24, 1984

Stipulation agreement concerning rate design for a natural gas utility; approved.

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Rates, § 276 — Declining block rates — Marginal costs — Natural gas.

A declining block rate for natural gas service was approved by the commission pending a long-term review of the issue where the utility was found to be promoting efficient consumption through its conservation program; however, the commission expressed reservation stating that the marginal costs of gas increase with consumption and therefore a declining block rate structure is an inappropriate reflection of these characteristics of cost incurrence.

APPEARANCES: Orr and Reno by David W. Marshall, Esquire for Concord Natural Gas Corporation; Gerald Eaton, Esquire for Community Action Program; Kenneth Traum, Melinda Rafter and Larry Smukler, Esquire for the Staff.

By the COMMISSION:

Procedural History

On January 18, 1984, the Commission issued its Report and Supplemental Order No. 16,862 (69 NH PUC 27) which, inter alia reviewed the procedural history of this case and accepted the agreement of the parties concerning the revenue deficiency of Concord Natural Gas Corporation

("Company"). The agreement is expressed in Stipulation Agreement Number One which was submitted at the hearing on January 12, 1984. Report and Supplemental Order No. 16,862 allowed the Company to recover additional revenues of $265,389 (net of franchise tax) and provided that the Company could file for a step adjustment at the appropriate time. The Commission also granted a request by the parties for more time to prepare the rate structure aspects of the case through the completion, examination, and discussion of a cost of service study.

On June 13 and 14, 1984, hearings were held addressing the remaining issues of rate structure and the step adjustment.

Rate Structure

As a result of numerous discussions, the parties reached an agreement on the rate structure and design issues. Stipulation Agreement Number Two, (Exhibit Number 7) addresses all outstanding issues.

The agreement includes inter alia:

(1) the redesignation of the Company's rate classes.

(2) changes in the inter-class and intraclass revenue allocations which reflect a movement away from flat rate structure.

(3) the permanent rate structure which is consistent with the provisions of Stipulation Agreement Number One, (amended by the appropriate step adjustment and chosen to implement the appropriate reconciliation and recoupment.)

In support of Stipulation Agreement Number Two, the Company presented the testimony of Ronald Bisson, Assistant Treasurer, Concord Natural Gas and Russell Feingold of Stone and Webster Management Consultants.

Three analytical tools were provided by the Company for addressing the rate structure and design issues: (1) the embedded cost of service study update; (2) the marginal cost of service study; and (3) the bill frequency analysis.

The marginal cost of service study and the bill frequency analysis were performed by Stone and Webster. The embedded cost of service study update was performed by the Company based on a study by Stone and Webster originally completed in 1981 and presented to the Commission in DR 82-48.

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Testimony by Russell Feingold included a discussion of embedded cost of service study methodology, marginal cost of service study methodology and rate design considerations.

Feingold explained that the methodology of the embedded cost of service study and its update were consistent with the principles recognized throughout the industry. In reference to the marginal cost of service study and the concerns expressed by Staff, Feingold stressed that cost of service analysis is not a precise science and that the results are dependent on the specific analyst who performs the study. He added that even these differences in perspective should not effect the results in terms of the direction of the costs.

In regard to rate design, Feingold stated that customer impact and customer equity should be considered in designing the rate structure. In addition he believes that the Company should be moving towards cost based rates on an inter-class basis.

Upon Commission acceptance of the Stipulation Agreement Number Two, the Company requested that the new permanent rate design found in Schedule 3 of the agreement be applied to the Company's revenue requirement as amended by the first step adjustment.

The Staff also supported Stipulation Agreement Number Two and recommended its acceptance by the Commission. Staff presented the testimony of Melinda Rafter of the Economics Department to clarify its position.

Ms. Rafter said the Staff viewed the embedded cost of service update as utilizing an identical methodology as the Company's previous study which had been rejected by the Commission. Ms. Rafter also noted that the original study and updated version did not give proper recognition to the increasing marginal costs of gas.

Ms. Rafter recommended that the marginal cost of service study be neither accepted or rejected. Staff believes that the following practices distorted the study's results: (1) the failure to vary the heat load factor by class; (2) the failure to measure main extension marginal costs by class; and (3) the assumption that marginal capacity costs are zero.

Even though Staff did not recommend the acceptance of either the embedded cost of service study update or the marginal cost of service study, Ms. Rafter recognized both studies as being useful in providing information that indicated the direction to be taken in designing rates.

On the issue of rate structure, Staff focused primarily on cost of service considerations. Increases in customer charges were supported by the marginal customer cost data in the Company supplied marginal cost of service study. Ms. Rafter emphasized Staff's reliance on the marginal cost of service study for directional purposes.

Ms. Rafter explained that Staff supported the Company's request for a declining block rate structure for the following reasons. First, Staff believed that the marginal cost of service study did not provide conclusive evidence in opposition to a declining block and, in the absence of such data, the Company should be treated as all other gas companies in the state and allowed a modest declining block. Second, the current Company conservation program should offset any negative consequences of the declining block rate structure such as increasing consumption or purchases of inefficient appliances. Third, since the marginal cost of gas does increase because of the need for supplemental fuels, Staff suggested that it may

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be more appropriate to address the issue of increasing marginal costs through a reexamination of the cost of gas adjustment procedure.

The Community Action Program recommended that the Commission open a generic hearing addressing the assumptions and methodologies employed in a proper gas marginal cost of service study.

After review, the Commission accepts Stipulation Agreement Two as being in the public

good. Our findings are based upon our evaluation of the proposed rate structure, including the proposed customer charges and the declining block rate design. We have also evaluated the embedded cost of service study update and the marginal cost of service study. Finally, the Commission has considered opening a generic docket to investigate the quantification of the marginal costs of gas.

The Commission accepts the proposed customer charge for the Commercial and Industrial General Class because it corresponds to that charged by another gas company in this state and as such, sets no precedent. The Commission also accepts the proposed customer charges for the Commercial and Industrial High Volume Class, the Seasonal Class, and the Outdoor Lighting Class.

The Commission notes its reservations with the proposed customer charges for Residential General and the Residential Water and Space Heating Classes because they are higher than those of any other gas company in the state. The parties have justified the level of the charges by demonstrating that they are no greater than the true marginal customer costs. Thus, in this instance, a customer charge which is slightly higher than that allowed other companies is acceptable pending a long term review.

The customer charge is also related to the intraclass rate structure. To the extent that fixed costs are not recovered in the customer charge, they must be recovered in the initial block of usage. This results in a steeper declining block rate structure. Thus, in this case, a declining block rate structure was proposed in part to allow the Company to recover in the initial block those fixed costs not allocated to the customer cost component of the rate.

The Commission has reviewed the proposed declining block rate and accepts with reservation the arguments made by Staff in support of that structure. The Commission believes that the marginal costs of gas increase with consumption and that a declining block rate structure is inappropriate reflection of these characteristics of cost incurrance. However, in this instance, the proposed rate structure is acceptable pending a long term review because the Company is promoting efficient consumption through its conservation program and because the movement away from the declining block for all New Hampshire gas companies should be done in a deliberate, uniform fashion, rather than on an ad hoc basis.

The Commission has carefully considered Staff's recommendation that the embedded cost of service study update be rejected and that the marginal cost of service study be neither accepted or rejected. The Commission recognizes and commends the Company's attempt to provide useful and legitimate information, but acknowledges the methodological flaws in the marginal cost of service study. Thus, with the aforementioned concerns, the Commission accepts both the embedded cost of service study update and the marginal cost of service study as directional indicators, but not for purposes of absolute measurement.

Recognizing the need for additional

investigation into the questions of rate design and the role of marginal cost methodologies for gas companies, the Commission will open a generic docket to assess:

(1) whether marginal cost of service studies should be required of all gas companies requesting rate relief.

(2) what constitutes the proper marginal cost of gas methodology and the likelihood of its achievement.

(3) the feasibility of a uniform policy of customer charge restraint.

(4) the appropriateness (or lack thereof) of a declining block rate structure.

(5) the Cost of Gas Adjustment and its possible application to marginal cost recovery.

By opening this generic docket, the Commission intends to spread the costs of pursuing these generic questions over all the gas companies and achieve efficiency by pooling the companies' valuable professional resources.

Step Adjustment

On January 12, 1984 the parties in the instant docket entered into a Stipulation Agreement, which was presented to the Commission on the same date, and later accepted in Report and Order No. 16,862.

This Stipulation Agreement, marked as Exhibit 5, on page 9, Article VII, outlined the provisions to be included in a June 1, 1984 Step Adjustment. These items included adjustments for:

Article VII

STEP ADJUSTMENTS

7.0 The revenue increase provided for under Article II above includes no provision for attrition. The parties also hereby stipulate that the Company is entitled to and shall be allowed two step adjustments to the Company's permanent rates, one effective June 1, 1984 and the other, January 1, 1985. The parties also agree that each step adjustment shall include the entire amount of any increase or decrease in the following items, subject to exceptions where noted:

A. June 1, 1984:

a. Wages, excluding adjustments attributable to changes in the number of employees from that number proformed for the purpose of calculating the net utility operating income in Section 2.2 herein.

b. FICA taxes based upon the level of wages calculated pursuant to Section 7.0(A)(a) above.

c. Liability insurance premiums, excluding adjustments attributable to changes in the level of protection from that level as of December 31, 1983.

d. Employee medical, dental and life insurance premiums, excluding adjustments attributable either to changes in the level of protection from that level as of December 31, 1983 or in the proformed number of employees from that used in Section 7.0 (A)(a) above.

e. Depreciation expense, based upon the methodology used during the test year, as applied to the total utility plant as of May 31, 1984.

f. A decrease in working capital due to any actual reimbursement payment received by the Company prior to May 31, 1984 from Concord sewer project contractor, Lisbon Contractors, Inc.

g. Non-revenue producing rate base additions, calculated by summing the full year end amount (as of May 31, 1983) of, and the 13-month

average as of May 31, 1984 of, all non-revenue producing rate base items not fully included in the rate base for the test year.

h. Cost of debt capital that is attributable to a change in the rate of interest on the company's long term variable rate bond series from the rate used in calculating the rate of return in Section 2.2 (A) herein, as adjusted pursuant to Section 5.0 (B) herein. The base rate for the 2003 series shall be the rate used in the Commission's Permanent Rate Order. See Section 5.0 (B) herein. Accompanying adjustments to interest expense and federal income taxes shall also be made.

i. Net revenue adjustments that are specifically attributable to each change of at least 75,000 therms in the actual sales to a particular customer of the Company during the year ending May 31, 1984 from the actual sales to that same customer during the test year ending May 31, 1983. In the event that such a change in customer load necessitates additional utility plant to supply or service that load, such additional plant shall be included in the Company's rate base.

On May 7, 1984, the utility filed a Step Adjustment of $161,199 on an annual basis, the balance of the adjustment relates to item 9, Nonrevenue Producing Rate Base Additions. Due to PUC staff concerns, questions, an audit of the filing, and an update of the company's liability insurance premiums, the company on June 11, 1984 filed for a revised Step Adjustment of $161,162 which netted all of these concerns.

This amount was unopposed, and the Commission, after analysis of the filing, finds it complies with the Step Adjustment as previously approved. We will therefore approve the proposed Step Adjustment.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Stipulation Agreement No. 2 (Exhibit 7) be, and hereby is, accepted and adopted by the Commission; and it is

FURTHER ORDERED, that the proposed step adjustment of $161,162, be, and hereby is approved; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation file revised tariff pages to reflect the approved rate structure at a revenue level which incorporates the approved step adjustment; and it is

FURTHER ORDERED, that an Order of Notice be issued within 15 days opening a generic docket for the purpose of investigating, inter alia, the application of marginal cost principles to rate design issues for gas companies as described in the foregoing Report.

By Order of the Public Utilities Commission of New Hampshire this twentyfourth day of August, 1984.

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NH.PUC*08/27/84*[61512]*69 NH PUC 467*Public Service Company of New Hampshire

[Go to End of 61512]

69 NH PUC 467

Re Public Service Company of New Hampshire

Intervenor: Seacoast Anti-Pollution League

DF 84-167 et al., Order No. 17,180

New Hampshire Public Utilities Commission

August 27, 1984

Motion for a rehearing of an order denying disqualification of commission chairman; denied.

By the COMMISSION:

ORDER

WHEREAS, the Seacoast Anti-Pollution League ("SAPL") filed a Motion for Disqualification of Public Utilities Commission Chairman McQuade in the instant dockets; and

WHEREAS, the SAPL Motion was denied by Opinion and Order No. 17,162 [1984] 69 NH PUC 438); and

WHEREAS, on August 16, 1984, SAPL filed a Motion for a Rehearing on Order Denying Disqualification ("Motion for Rehearing"); and

WHEREAS, the Motion for Rehearing contains no assertion of fact and no argument that was not fully considered as a part of Opinion and Order No. 17,162. See also Report and Order No. 17,127 ([1984] 69 NH PUC 391); and

WHEREAS, the Motion for Rehearing contains insufficient reason to reconsider the findings and conclusions in Opinion and Order No. 17,162 and Report and Order No. 17,127; it is therefore

ORDERED, that the Motion of SAPL for a Rehearing on Order Denying Disqualification be, and hereby is, denied.

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NH.PUC*08/28/84*[61513]*69 NH PUC 467*Connecticut Valley Electric Company, Inc.

[Go to End of 61513]

69 NH PUC 467

Re Connecticut Valley Electric Company, Inc.

DR 83-200,
Fourth Supplemental Order No. 17,182

New Hampshire Public Utilities Commission

August 28, 1984

Order authorizing recovery by an electric utility of the difference between permanent and temporary rates.

Page 467

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, under this docket this Commission authorized temporary rates for Connecticut Valley Electric Company, Inc., effective on September 23, 1983; and

WHEREAS, said Company was granted permanent rates under the cited docket, effective on June 20, 1984; and

WHEREAS, recovery or reimbursement of any differences between permanent and temporary rates is authorized by RSA 378:29; and

WHEREAS, Connecticut Valley Electric Company, Inc. advises the Commission that such revenue differences amount to $217,560 with the following adjustments:

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

Amount equal to 1984 payroll charges
charged during the period October
through December 31, 1983 (17,026)
Recovery of 1982 Abandoned Plant
— DR 82-67 51,189
Adjustment — DR83-372 65,622
Overbilling of Recoupment —
DR82-67 (2,426)
Rate of Return settlement (16,871)
1983 RS-2 Contract true-up (478,848)
```

for a net recovery of $180,800; and

WHEREAS, the Commission finds such recovery in the public interest; subject to validation by future audit; it is

ORDERED, that 5th Revised Page 14, Connecticut Valley Electric Company, Inc. tariff NHPUC No. 4 be, and hereby is, rejected; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company, Inc. file 6th Revised Page 14, issued in lieu of 5th Revised Page 14 rejected, said page to reflect the calculation for the surcharge per kilowatt-hour for recovery of $180,800; and it is

FURTHER ORDERED, that said 6th Revised Page 14 also include a notation that it is issued in compliance with this Order, and bear an effective date of September 1, 1984; and it is

FURTHER ORDERED, that public notice of this filing be given customers by a bill insert

accompanying the first two bills in which the recovery surcharge is included; copy of said insert to be filed with this Commission, with appropriate affidavit.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of August, 1984.

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NH.PUC*08/28/84*[61514]*69 NH PUC 469*Public Service Company of New Hampshire

[Go to End of 61514]

69 NH PUC 469

Re Public Service Company of New Hampshire

Intervenors: Office of Consumer Advocate, Community Action Program, Business and Industry Association of New Hampshire, Conservation Law Foundation of New England, Inc., Seacoast Anti-Pollution League, and Campaign for Ratepayers' Rights

DF 84-167,
Fourth Supplemental Order No. 17,183

New Hampshire Public Utilities Commission

August 28, 1984

Proposed issuance and sale of securities by an electric utility; granted with conditions.

Security Issues, § 18 — Scope of commission supervision — Investigation of collateral matters.

While reviewing a proposed financing arrangement for an electric utility, the commission examined not only the terms and conditions of the proposed financing but also the purpose the proceeds would be devoted to and the short-term effect on the company's capital structure; due to the company's unstable financial condition the commission rejected requests to broaden its investigation to include collateral issues. [1] p.474.

Security Issues, §18 — Scope of commission supervision — Conditions on proposed financing plan.

The commission has a duty to examine financing proposed by a utility to determine whether, under all the circumstances, the financing is in the public good, and has authority to attach reasonable conditions it finds necessary to protect the public interest. [2] p.474.

Security Issues, § 49 — Factors affecting authorization — Financial condition — Stock issued at cost higher than existing senior capital.

Where the commission found that an electric utility was in a "precarious financial situation" and therefore its securities were difficult to sell, it approved a financing plan with costs significantly higher than the costs of the utility's currently outstanding senior capital to ensure that the utility would remain solvent and have the funds necessary to continue operations. [3]

p.475.

Security Issues, § 87 — Amount issued — Need for cash in excess of operational requirements — Concerns about future liquidity.

While approving a controversial financing plan for an electric utility experiencing "a liquidity crisis" the commission allowed a level of funds that could exceed the bare minimum necessary to continue operations in order to "settle" the financial market and commission and ratepayer concern about liquidity; the commission established priorities for use of the excess cash and a quarterly reporting requirement to aid investigation of future ratemaking implications. [4] p.477.

Security Issues, § 52 — Necessity for issuance — Bankruptcy as an alternative.

Discussion, in a concurring opinion, in a proceeding to investigate a proposed financing plan concerning the threat of bankruptcy for a financially troubled electric utility, the unknown rate-making implications of such an occurrence, and the immediate need to bolster both the company's finances and investor confidence. p.480.

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Security Issues, § 18 — Scope of commission supervision — Relevance of construction obligations.

Discussion, in a dissenting opinion, concerning the scope of the commission's investigation of a proposed financing plan for an electric utility experiencing a liquidity crisis; the dissenting commissioner stated that if collateral matters such as a large construction project conducted by the utility were not considered as part of the investigation then the appropriate amount to be approved could only be determined by examining: (1) the exact cash-flow needs of the company, (2) financial flexibility and costs, (3) the relevance of conditions in other security issues and agreements, (4) marketability, and (5) the need to retain commission regulatory control. p.482.

(Iacopino, commissioner, concurs, p.480; Aeschliman, commissioner, dissents, p.482.)

APPEARANCES: Sulloway, Hollis, & Soden by Martin L. Gross, Esquire of Public Service Company of New Hampshire; Michael W. Holmes, Esquire for the Consumer Advocate; Gerald M. Eaton, Esquire for the Community Action Program; Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire for the Business and Industry Association of New Hampshire; Douglas I. Foy, Esquire and Armand M. Cohen, Esquire for the Conservation Law Foundation of New England, Inc.; Backus, Shea & Meyer by Robert A. Backus, Esquire for the Seacoast AntiPollution League; Mary Metcalf for the Campaign for Ratepayers' Rights; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of the New Hampshire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On June 29, 1984, Public Service Company of New Hampshire ("PSNH" or "Company")

filed a Petition for Authority (1) to raise not more than $425,000,000 through the issuance of and sale of units (consisting of debentures and warrants to purchase shares of common stock), and (2) to issue shares of common stock in satisfaction of warrants. After due notice, the proceedings opened on July 24, 1984.[1(141)]

At the hearing, the Motions to Intervene of the Consumer Advocate, the Community Action Program ("CAP"), the Business and Industry Association of New Hampshire ("BIA"), the Conservation Law Foundation of New England, Inc. ("CLF"), the Seacoast Anti-Pollution League ("SAPL") and the Campaign for Ratepayers' Rights ("CRR") were granted.[2(142)] The Staff of the Commission ("Staff") also entered an appearance.

Following written and oral arguments on both the proposed scope and schedule of the proceedings, the Commission issued the First Procedural Order which, inter alia, directed the parties to address: "(1) the date by which a Commission Order must be entered so that the failure to issue that Order does not act as a de facto denial; and (2) the feasibility of bifurcating the Petition to allow a `bridge' financing so that the Company can meet its cash needs during the course of extended Commission proceedings." (69 NH PUC at p. 413.) Evidence on the above issues was taken at hearings held on July 30, July 31 and August 1, 1984.

The commission's analysis of the evidence taken at the initial hearings was

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set forth in Report and Second Supplemental Order No. 17,141 ([1984]69 NH PUC 422) ("Second Procedural Order.)[3(143)] The Second Procedural Order, inter alia, concluded that an Order issued after August 3, 1984 would be a de facto denial. Accordingly, the Commission unanimously, after hearing arguments, narrowed the scope of the proceeding, established the remaining issues and opened a new docket (DF 84-200) for the purpose of examining the broader Seabrook related issues more commonly known as the "Newbrook Plan".

A hearing on the merits of the Petition was held on August 8, 1984. At the conclusion of testimony, the Commission set August 17, 1984 as the due date for the submission of briefs. Timely briefs were filed by PSNH, the Consumer Advocate, and the intervenors.

II. THE PROPOSED FINANCING

The Company is seeking authority pursuant to RSA Chapter 369 to issue and sell securities in an amount not to exceed $425,000,000. The securities are to be marketed through two principal offerings: the "Public Offering" and the Exchange Offering."

A. Public Offering

The Public Offering will consist of up to 155,000 "Units" of investment consisting of debentures and warrants for the purchase of PSNH common stock. The Units would have a price of $1,000 each; thus the maximum authorization sought for the Public Offering is $155,000,000. The debentures, unsecured debt obligations of PSNH, would carry a coupon rate of interest which, when compared to the market rate of interest, would result in a value lower than face value. At this time, the Company expects that the debentures would mature in 2004, with a sinking fund designed to return 10% of the original principle amount commencing in 1995, producing an average life of the issue of 15.5 years. The difference between the value resulting

from the coupon rate and the face value of the debentures would be made up with a number of warrants to purchase PSNH common stock. While the number of warrants to be included in each Unit depends on pricing considerations to be evaluated by the Company's underwriter, PSNH is seeking authority here to issue up to 22,500,000 additional shares of $5.00 par value common stock, which has already been authorized by this commission in a unanimous decision.

B. Exchange Offering

The Exchange Offering was designed to conform to the terms of the $90,000,000 principal amount of short term notes issued by the Company in June of 1984. See, Re Public Service Co. of New Hampshire ([1984] 69 NH PUC 326, [1984] 69 NH PUC 275.) The exchange offering as proposed consists of two components: (1) $90,000,000 of Units in exchange for $90,000,000 principal amount of short term notes; and (2) $180,000,000 of debentures offered in satisfaction of debenture purchase warrants which were issued as part of the sale of the June, 1984 Notes.

The $90,000,000 of Units will be identical to the Units which comprise the public offering in all respects other than price. The price may be less than the $1,000 price of the public offering Units because, under the Note Purchase Agreement, noteholders will be entitled to at least a 21% yield to maturity on the debenture portion of the exchange Unit.

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In the event the exchange Units are offered at a price lower than $1,000 to satisfy the yield requirement, noteholders electing to exchange will be entitled to take the difference between the face value of their notes and the price of the exchange Units in cash, in additional Units, or in additional debentures. Thus, the Company is seeking specific authorization to issue exchange Units or debentures to make up this difference.

The $180,000,000 debentures are proposed to be issued in satisfaction of debenture purchase warrants issued as a part of the June, 1984 note sale as approved by this Commission. Two debenture warrants were issued with each $1,000 principal amount of June, 1984 Notes. Each debenture purchase warrant entitles the holder to purchase $1,000 principal amount of the warrant debentures for cash. The authorization of $180,000,000 in principal amount of warrant debentures is sought in this proceeding to cover the potential tender of all debenture purchase units. The warrant debentures would be identical in form to the debentures which are a part of the Public Offering Units; however, they would be priced to yield at least 21% to maturity, in accordance with the requirement of the Note Purchase Agreement.

C. Summary

The Public Offering authorization of $155,000,000 combined with the two components of the Exchange Offering ($90,000,000 and $180,000,000 respectively) yield the requested authorization of $425,000,000. The Company's portion of the $425,000,000 long term financings will be reduced by commissions and other closing expenses.

III. POSITION OF THE PARTIES

PSNH claims that the proposed financing is a vital component in a plan to the reestablish the Company's financial integrity. The first part of the plan was the June, 1984 issuance of the $90,000,000 in short term notes. See, Re Public Service Co. of New Hampshire, 69 NH PUC

326, supra. The second part of the plan is the instant financing which is designed to prefinance Company operations through the end of 1986. The third part of the plan, proposed for late 1984, is the socalled "Newbrook" financing, which is designed to pre-finance the construction cost of Seabrook Unit I through commercial operation. PSNH contends that any deviation from the plan would upset the Company's remaining credibility with investors because the plan had been publicized and a deviation would be perceived as a set-back.

PSNH acknowledges that its cash needs for the applicable period are a minimum of $210,000,000 in new funds.[4](144) However, the Company contends that it must seek authority to finance at least $425,000,000. There are two reasons for this. First, PSNH is required by its agreement with certain short term noteholders to issue the Exchange Offering prior to or concurrent with any other long term offering. Thus, the Company is obligated to go to the market for at least $270,000,000. Second, the Company argues that the two offerings are interdependent because the various sets of investors do not wish to be alone with the risks involved. The

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exchange offering investors will not buy the PSNH securities unless the public is also involved and the Public Offering investors will not buy PSNH securities unless the noteholders are involved. PSNH also cites a need in the market place to establish a value for future trading and exchange for listed and negotiable instruments. PSNH argues that if the proposed financing is completely successful, the amount of funds raised which exceed the minimum requirements will be useful to enhance the Company's financial flexibility and to address various contingencies.

PSNH also acknowledges that the projected interest rate of 19% - 21% is high. However, the Company contends that the projected rate is consistent with the current cost capital to PSNH given its financial situation. Thus, given all the circumstances, the proposed offerings are consistent with the public good for the purpose of obtaining the requisite financing authority from the Commission.

The Consumer Advocate argues that the Commission should approve only the absolute minimum amount of financing necessary to keep the Company afloat. The Consumer Advocate bases this argument on the narrower scope of the proceedings established by the Commission. To the extent that the Commission has put the Seabrook issues on the agenda of another docket, conditions should be placed on the instant financing to control the application of the proceeds to the Company's construction program. The Consumer Advocate contends that the Company change its direct presentation to its advantage. Thus, the Commission should not have confidence in the Company's assertion that the proceeds will, for the most part, be applied to nonSeabrook purposes.

The BIA argues that the evidence supports a finding that the amount of the financing is reasonably requisite for the purposes specified, that the terms of the proposed financing are reasonable under all circumstances and that consequently the Commission should enter its Order finding that the proposed financing is in the public good. Additionally, the Commission in its order, should require a detailed accounting of the disposition of the proceeds of the sale of securities and should seriously consider attaching any reasonable condition on the use of any

excess over $300,000,000, if the attachment of such a condition can reasonably result in a reduction of PSNH costs which ultimately may become a part of rates.

CLF argues that the evidence does not support an authorization for the issuance of the full $425,000,000 securities. This argument is based on the assumption that the Commission should approve the minimum amount of financing necessary to maintain the status quo while the Commission engages in a more extensive investigation. CLF's analysis of the evidence leads it to suggest that a financing in the amount of $125,800,000 would accomplish the above objective in that it would carry the Company through May of 1985. Such a financing is feasible, in spite of PSNH arguments to the contrary, because the Company did not meet its burden of demonstrating that a financing smaller than $425,000,000 cannot be accomplished. This is because certain PSNH requirements, such as the financing obligations in the restructured agreements with creditors and the exchange agreement with noteholders are subject to Commission revision or disapproval. In addition CLF argues that the Company has failed to demonstrate that a financing of less $425,000,000 would not be marketable. Accordingly, CLF argues that financing

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authority for the smaller amount be approved, that the proceeds be placed in escrow so that they may be applied only to non-Seabrook purposes (other than the amount necessary to maintain the status quo pending completion of the Commission's Seabrook investigation) and that the Commission explicitly provide that it is not approving Seabrook or Newbrook expenditures in this docket.

SAPL also contends that Commission approval of a smaller amount is warranted by the evidence. SAPL assumes that a bare minimum should be approved pending the Commission's Seabrook investigation. SAPL rests its argument on an attack on the need to maintain the PSNH plan. That plan, SAPL contends, is the creation of Merrill Lynch, an organization that has a direct financial stake in the outcome. Thus, Merrill Lynch has not analyzed alternatives that may reduce the benefit it derives from the plan. SAPL suggests that such alternatives exist and that they will ultimately result in lower cost debt. SAPL also suggests that approval of the PSNH Petition would mean that the Commission is delegating authority to Merrill Lynch to manage PSNH's financial crisis. Accordingly, SAPL requests that the Commission established deadline for an Order of August 31, 1984 be extended, if necessary; that a smaller amount of financing, if any, be approved by the Commission; that conditions be applied to the financing so that no money could be expended on Seabrook prior to the completion of Docket No. DF 84-200; that PSNH be required to seek approval from the Commission for any dividend payments; and that the Commission provide that approval of the financing not be construed as approval for ratemaking purposes.

The CRR argues that the Company failed to justify the necessity to borrow $425,000,000 and that the Company failed to prove that it would not use the proceeds of the financing for Seabrook construction purposes. Accordingly, the CRR requests that the Commission engage is a broader investigation prior to ruling on the Company's Petition.

IV. COMMISSION ANALYSIS

A. Introduction

The Commission has engaged in a thorough review of the evidence of record and the arguments of the parties. All arguments have been fully considered and, to the extent they are not directly addressed herein, they have been rejected. We have concluded that the Company's financing, as proposed, is in the public good. Accordingly, we will approve the Petition. However, we have also determined that we must attach certain conditions to the financing in order to ensure that it remains in the public good. Our analysis herein will start with a discussion of the applicable law. We will then address the merits of the proposed financing. Lastly, we will discuss the conditions which must be imposed.

B. Legal Analysis

[1, 2] The Company is seeking financing approval pursuant to RSA Chapter 369. The Commission's authority in RSA Chapter 369 proceedings was recently addressed by the New Hampshire Supreme Court in Re Easton (1984) 124 NH —. There, the Court provided:

... [T]his court long has held that the PUC has a duty to determine whether, under all the circumstances, the financing is in the public good — a determination which includes considerations beyond the terms of the proposed borrowing. We have held that the PUC

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may "attach reasonable conditions as it finds to be necessary in the public interest." (Emphasis supplied.) (Slip opinion at p. 6.)

In the Second Procedural Order, the Commission established the scope of the instant proceedings pursuant to the standard set forth above after due notice, hearing and deliberation. In addition to the terms and conditions of the proposed financing, the Commission included as issues the amount of the proposed financing, the purpose to which the proceeds would be devoted and the short term effect on the Company's capital structure. Second Procedural Order at 6, which was supported unanimously by this Commission.

Many of the Intervenors have argued, in effect, that the scope should be broader in that certain Seabrook issues must be addressed. They correctly argue that a portion of the proceeds will be devoted to Seabrook purposes. After consideration, we continue to believe that the scope established in the Second Procedural Order is appropriate. Those circumstances must include the serious nature of the Company's financial difficulties which, at times, appeared to be unsurmountable. We have not seen any Intervenor argument to the effect that the status quo should not be maintained pending a broad Commission investigation. Since the Company's contention that an Order issued subsequent to August 31, 1984 would be a de facto denial of the Petition is unrefuted, we must balance the adverse effect on the Company and its ratepayers of a denial against the advantage of maintaining the status quo. The evidence of the amount of cash to be devoted to Seabrook construction in the interim period has not been seriously challenged. See, 69 NH PUC at p. 424. Given that the amount of Seabrook cash is small when compared to the total amount of the proposed financing, we conclude that the public interest is best served if we maintain the status quo while we consider the Seabrook issues in DF 84-200. This evaluation of the circumstances is consistent with the Commission's obligations as set forth in Re Easton, supra.

We have also stated that we intend to attach reasonable conditions to the financing. The Commission's authority to attach such conditions has been explicitly recognized by the Court in Re Easton, supra.

C. The Proposed Financing

[3] The Company through the testimony of its Financial Vice President, Charles Bayless, and the representative of underwriter Merrill Lynch, Robert Hildreth, presented testimony on the issues defined in the Second Procedural Order.

With respect to the terms and conditions of the proposed financing, the testimony indicated that the structure of the financing was dictated by the nature of the market for PSNH securities. Because of its precarious financial situation, the Company's securities are difficult to sell and a comprehensive plan for the financial survival of PSNH is needed. Investors must be offered attractive terms and conditions or they will not buy as shown in the June sale of 90,000,000 short-term notes at 21% maturing in May of 1985. A failure to market the Companies securities would have an adverse impact on the Company's ability to stay solvent.

The Company's witnesses also stated that the amount of the financing is reasonable because of the nature of the Merrill Lynch Plan, the continuing obligations of the Company to its creditors and

noteholders, and the need to maintain credibility with investors.

We also heard direct testimony on the purpose to which the proceeds will be applied. As a part of the Merrill Lynch plan, PSNH intends to use the proceeds to support company operations through December 1986. These operational pur- poses include the fuel procurement, conversion of the Schiller facility from oil burning to coal burning and the servicing debt. Company witnesses also testified that the direct construction cost of Seabrook will not exceed $5,000,000 per week until the Commission's Seabrook investigation is completed.[5(145)] Thus, a small amount of the proceeds will be devoted to maintaining the status quo pending the outcome of the investigation.

Additionally, PSNH presented evidence on the short term effect of the financing on the Company's capital structure. The financing would increase the Company's debt ratio by 5.48% to 48.48%. The resulting ratio for preferred equity and common equity is 14.41% and 37.8% respectively. Such a capital structure is not significantly different from the "standard" capital structure for electric utilities of 50% debt, 15% preferred equity and 35% common equity.[6(146)] This analysis did not include the effect of the exercise of the warrants to purchase common stock which is assumed to take place seven years hence. This is because such an effect will not occur in the short term and the parties and Commission are unable to quantify the results accurately at this time.

The Intervenors did not present direct evidence to support any of their positions. They relied on cross-examination of the Company's witnesses as the basis for argument that PSNH failed to meet its burden of proof. We have reviewed the cross-examination of the witnesses and evaluated the evidence that other plans may be "doable", that Merrill Lynch has a financial stake

in the outcome, that certain agreements are subject the Commission review and that the Company had changed its testimony on the purpose of the financing. We do not believe that such evidence is sufficient in this instance to rest a conclusion that the proposed financing is not in the public good.

In Grafton County Electric Light & Power Co. v New Hampshire, 77 NH 539, 540, PUR1915C 1064, 1067, 94 Atl 193, the court construed the term "public good" for financing approval purposes as follows:

This is equivalent to a declaration that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the circumstances of the case. If it is reasonable that a person or a corporation have liberty to take a certain course with his or its property, it is also for the public good. It is the essence of free government that liberty be not restricted save for sound reason. Stated conversely: it is not for the public good that public utilities be unreasonably restrained of liberty of action, or unreasonably denied the rights as corporations which are given to corporations not engaged in the public service.

This language was cited with approval by the Court in Re Easton, supra (slip opinion at p. 5) and Re Public Service Co. of New Hampshire (1982) 122 NH 1062, 1067, 51 PUR4th 298, 454 A2d 435.

In the instant proceeding, the evidence supports a finding that the actions proposed by PSNH are not forbidden by law and that the proposed financing is reasonable under the circumstances currently confronting the Company. We have relied on not just the evidence of the Company's in-house witnesses, but also the evidence of Mr. Hildreth, an expert in financial marketing. The doubts raised by the Intervenors are simply not sufficient to undermine the support for the reasonableness of the proposal under the current circumstances. Accordingly, we will conclude that the proposed financing is in the public good.

The testimony of a Fred Potter, a member of the Merrill Lynch firm, given at a Department of Public Utilities hearing in Massachusetts was submitted to the Commission to support the position that a smaller financing was originally contemplated and feasible. This Commission did not have the opportunity to examine Mr. Potter. However, Mr. Hildreth was examined extensively about the statements of Mr. Potter. Mr. Hildreth did not consider the statement to be inconsistent with the Merrill Lynch plan but stressed that Mr. Potter was attempting to explain the plan. Mr. Potter was not attempting to state what financing PSNH could or could not do.

We must rely on the record compiled in our proceeding. Mr. Potter was not before us and was not subject to crossexamination by the parties to this proceeding. Mr. Hildreth, who was before us, stood firm during vigorous crossexamination that the total financing of $425,000,000 was necessary to be approved if PSNH was to survive the financial crisis in the long run.

There were also concerns expressed regarding the possibility that PSNH could use any or all of the proceeds for the construction of Seabrook. Although Mr. Bayless admitted to that possibility, he stated that the chances of PSNH doing so was 1000 to 1. The Commission accepts that the Company does not intend to use the proceeds of this financing for Seabrook, but, we will address that issue under conditions.

C. Conditions

[4] We have concluded that PSNH's proposed financing is in the public good. However, we must note that the authority sought is for a financing that results from a liquidity crisis and that exceeds by a significant amount past financings approved by the Commission. The cost of the proposed financing will also be significantly higher than the cost of the Company's currently outstanding senior capital. Given the potential exposure of ratepayers and investors which may result from this financing, reasonable conditions are appropriate.[7](147)

The conditions to be imposed herein are tied to the following factors: (1) the proposed financing is intended to carry the Company's operations through December of 1986; (2) the proposed financing is designed so that more cash may be raised that the bare minimum necessary thus settling down the financial market and Commission and ratepayers concerns about liquidity; and (3) the proposed financing will have ratemaking implications which go beyond the findings necessary to determine that the Company's proposal in this docket is in the public good.

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Since the Company is intending to raise sufficient funds to carry its operations through the commercial operation date of Seabrook Unit I, it is probable that further financing proceedings (other than DF 84-200) will not occur for the next two years. It is customary for the Commission to require an accounting of the proceeds of a financing pursuant to RSA 369:12. In this instance an accounting which states that the proceeds have been temporarily invested will be insufficient. The long term nature of the use of the proceeds requires that the accounting be updated periodically. Thus, we will require PSNH to provide quarterly reports which depict and update the application of the proceeds of the financing. The Company is hereby placed on notice that the Commission will open appropriate investigatory dockets if concerns develop about how the proceeds are applied.

The record also indicates that the proposed financing could raise funds which exceed the bare minimum necessary to carry the Company's operations. We believe that certain priorities must be assigned to the use of such excess cash, should it exist, and that it is proper to condition the approval of the financing on the Company's adherence to the following priorities:

(1) To maintain the status quo of construction at Seabrook at the expenditure level of $5,000,000 per week pending the outcome of the Commission's broader investigation in DF 84-200. Since it is possible that the investigation could extend beyond the December 31, 1984 date projected by the Company, additional direct expenditures may be required after review by this Commission.

(2) The retirement of the Company's debt to United Engineers and Constructors ("UE&C"). That obligation was approved in Re Public Service Co. of New Hampshire (1984) 69 NH PUC 415. There we stated (69 NH PUC at p. 418):

Our analysis of the increase in the short term debt limit recognizes the concerns of the parties, as well as our own concerns, with ... the UE&C Note. ... The concern with the UE&C Note is not sufficient to cause us to deny the requested approval. We believe that the Company should retain maximum flexibility to manage appropriately the construction of the Seabrook

facility. Thus, the UE&C Note balances financial flexibility against construction management flexibility. On the basis of the instant record, we believe that it is appropriate to allow PSNH management to make the initial decision about where the need for flexibility is greatest. However, we also adopt CAP's recommendation that we encourage PSNH to take advantage of the Note's prepayment terms, if appropriate, so as to attain maximum flexibility in construction management.

The existence of excess cash, if any, affects the balance of financial flexibility with construction management flexibility as discussed above. Since construction flexibility should be reflected in lower construction costs, it must assume the higher priority if capital exists to retire the UE&C Note. Thus, we will direct the Company to apply any available capital to such a purpose. This action will help reestablish the arm's length agreement between PSNH and its prime contractor that is essential if integrity is to be maintained.

(3) The timely completion of the Schiller conversion. There has been no dispute that an expeditious completion will lower ongoing costs to customers and that the completion of the conversion was

delayed by the lack of capital resulting from the Company's liquidity crisis. The Company should be required to devote the necessary capital to apply to the shortest schedule possible if that capital is available.

In addition to the above priorities caused by the need to apply excess cash, if any, the Commission cannot ignore the fact that the proposed financing will have an effect upon rates. We have discussed the short term effect of the financing on the Company's capital structure. We must also acknowledge that the existence of the common stock warrants could have a rate effect for a considerable future period. The language used in Re Public Service Co. of New Hampshire, supra, is equally applicable here. There we stated (69 NH PUC at pp. 419, 420):

We have found that the authority rerequested in the Company's Petition is in the public good. Of necessity, this includes the increased cost of money which forms a part of these transactions. The record indicates that this increased cost could affect rates through the calculation of the rate of return component of the rate formula and through an increased level of capitalized AFUDC. Both the Staff and CAP expressed concerns about the ratemaking implications of the approval of the authority sought. We agree with those concerns.

Our review of the package of restructured agreements is based on an examination of the circumstances which led to those agreements. Those circumstances dictate a conclusion that the restructured agreements are in the public good; however, that conclusion does not carry with it a finding that the cost of the agreements is reasonable for ratemaking purposes. That determination must be left to the time when the Company seeks to pass the cost of the agreements to the ratepayers. We have in this Report expressed some concerns about the agreements, concerns that are more reasonably directed at inter alia ratemaking implications. The existence of those concerns means, inter alia that the calculation of the cost of senior capital in the next rate case will not be a simple arithmetic exercise. PSNH is hereby placed on notice that the effect of its liquidity crisis on rates will be fully explored at the appropriate time. Until that time, the

Company is directed to keep the appropriate accounting records so that the cost of the liquidity crisis may be quantified. (Footnote omitted.)

In the instant case, ratemaking concerns were also raised by several parties, including the BIA and SAPL. The instant case involves a situation where our concerns are more reasonably directed at ratemaking implications.

8(148) Thus, we must put the Company on notice here, as we did in DF 84-168, that the finding that granting the PSNH Petition is in the public good is only applicable for financing purposes; no inferences applicable to ratemaking are proper. The effect of the instant financing on rates will be investigated at the appropriate time. Until then, the Company is directed to keep the appropriate accounting records so that the ratemaking implications may be quantified.

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Our Order will issue accordingly.

Vincent J. Iacopino, Commissioner: I concur with Chairman McQuade's opinion, but think that it is appropriate to comment on the financial plan and purpose of the loan more extensively.

The record in this proceeding and other proceedings along with the actions of the stock market, has clearly demonstrated the serious financial condition that the Company was in. The loss of short term credit placed the Company in a precarious financial position and a severe liquidity crisis. For a full description of the events that occurred during that period, see page 15 of Exhibit 6 Liquidity Crisis.

The events that occurred dictated that a financial plan had to be designed and developed to restore the Company's ability reasonably to access the capital markets for needed funds.

To overcome the financial crisis the Company sought the aid of financial experts and consultants. With the aid of Merrill Lynch, a big eight accounting and financial firm, a financial plan was designed to meet the Company's needs until the end of its major construction project. The plan addressed short term borrowing, non Seabrook borrowings, and Seabrook borrowings. It had to be designed to address the problem of restoring investors' confidence so that access would be available to the capital markets now and in the future.

There is no doubt that the liquidity crisis was real. It is absolutely necessary for public utilities to have access to the capital markets to maintain their cash flow. The cash flow from lenders and customers has been said to be the life's blood of a utility. In an effort to solve its problem the Company engaged one of the most recognized financial experts available.

The three phase financial plan is being implemented by the Company with the advice and recommendations of Merrill Lynch. The first phase of the plan was successfully executed. (see DF 84-121).

No one has proffered or offered any other reasonable alternatives although some have suggested that it is in the public good to allow this liquidity crisis to escalate to the point that the Company must resort to the protection of the Bankruptcy Court. There is much being said in legal publications, industry publications and in the general press as to the pros and cons of a

utility going bankrupt, however, there are no definitive answers and opinions vary drastically. It is my view that the problem is not whether to resort to the Bankruptcy Court but to find a proper solution to restore the financial viability of the utility. The rebuilding of investor confidence and the consequent increased access to the capital markets will ensure the Company's ability to render safe and proper service to its present and future customers. One of the more important functions of the proposed financial plan is that it is designed to develop and nurture the rebirth of this vital investor confidence. For this reason, I would make the appropriate finding that the financial plan adopted by the Company is a reasonable means of accomplishing a legitimate and critical purpose.

Having considered the financial plan, the purpose of the financing, the terms and conditions, conditions to be attached to the financing, some consideration must be made regarding the proposed financings on the capitalization of the Company. As mentioned in the foregoing opinion, the proposed capital structure which consists of debt 48.48%, preferred

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stock at 14.41% and equity at 38.88%, falls within accepted ranges for electric utilities. Additionally, the Commission must consider what the effect will be if the Company is successful in issuing an additional 22,500,000 shares of common stock pursuant to the warrants rights attached to the offered unit. Although the request is to issue an additional 22,500,000 shares of common stock, there is no dispute that said warrants would not be exercised until the end of a seven year period. Therefore, the short term effect is minimal. However, the Commission must monitor the Company's capitalization on a regular basis to encourage the Company to make every effort to minimize any long term effect on ratepayers. Based on the foregoing, I would find the present capitalization is reasonable under all of the circumstances.

As to the conditions to be imposed on this financing, I would add, that the Company shall not use any of the proceeds realized from this financing for the construction of Seabrook without first obtaining approval of the Commission, other than what was set forth to maintain the status quo until docket DF 84-200 is concluded.

In conclusion, I concur with the Chairman's opinion that the approval of the petition is in the public interest and for the public good.

SUPPLEMENTAL ORDER

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 raise not more than $425,000,000 through the issuance and sale of warrant debentures and Units consisting of debentures and warrants to purchase shares of common stock; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue and sell shares of the Company's common stock, $5.00 par value, in satisfaction of the Unit warrants; 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 on said securities, following which a supplemental order will issue approving 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 the foregoing approval is subject to the conditions set forth in the foregoing Report including, inter alia, the reporting requirements, the priorities for the application of excess cash if such excess cash should be raised, and the requirement to maintain the status quo in the construction of the Company's Seabrook facility; and it is

FURTHER ORDERED, that, subject to the conditions adopted above, the proceeds from the issuance and sale of the Units and warrant debentures shall be used for the purposes set forth in the foregoing Report; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire file quarterly with this Commission a detailed statement, duly sworn to by its Treasurer, or Assistant Treasurer, showing the disposition of the proceeds of the 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 twentyeighth day of August, 1984.

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Dissenting Opinion of Commissioner Lea H. Aeschliman

In this proceeding, PSNH seeks authorization to issue up to $425 million in securities through two offerings — the Exchange Offering and the Public Offering. The Exchange Offering consists of two components: 90,000 Units in exchange for $90 million principal amount of short term notes issued in June 1984; and (2) $180 million of debentures offered in satisfaction of debenture purchase warrants which were issued as part of the sale of $90 million of Notes in June, 1984. If fully subscribed, this Offering would raise $180 million in new money for the Company.

The Public Offering consists of 155,000 Units to be issued to the public. Each unit consists of a debenture in the face amount of $1,000 plus a number of warrants to purchase shares of PSNH common stock.

From my review of the evidence in the proceeding and all of the circumstances relative to the Company's situation, I have concluded that authority to issue the Public Offering should not be granted at this time. Authority to issue the Exchange Offering should be granted subject to the following conditions:

(1) Proceeds from the financing in excess of $125 million shall be invested in an escrow account to be drawn upon only with approval of the Commission.

(2) Payment of preferred stock dividends is prohibited without the express approval of the Commission.

(3) Authorization to issue shares of common stock in satisfaction of the terms of the Exchange Units is granted up to a maximum of 6,750,000 shares.

In addition, the approval of the Exchange Offering should not be interpreted to convey any approval of the terms of the financing for ratemaking purposes, nor should it be interpreted as in

any manner granting approval of the Newbrook financing plan.

Scope and Burden of Proof

The Commission on July 30, 1984 issued its first procedural order in this docket in which it determined that the appropriate scope of this docket included the following broad issues:

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

(2) Whether the purpose of the proposed financing is in the public good including inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; b) an evaluation of the long term alternatives to completion of Seabrook I in the context of the above determined incremental cost and assumptions found by the Commission to be reasonable in recent dockets; and

(3) Whether it is financially feasible for the Company to engage in the proposed financing, including a determination of the level of revenues necessary to support the capital structure which would result from the successful completion of the proposed financing.

As a first order of business, the Commission on July 30th heard evidence on 1) the date by which a Commission Order must be entered so that the failure to issue that Order does not act as a de facto denial; and 2) the feasibility of bifurcating the Petition to allow a "bridge"

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financing so that the Company could meet its cash needs during the course of extended Commission proceedings.

After hearing evidence on these issues, the Commission issued a second procedural order on August 2, 1984. In that report and order the Commission determined that the Company had made a prima facie case for the need for an order on the financing by August 31st, so that the failure to issue an Order would not act as a de facto denial. The Commission reserved a determination on the issue of amount until evidence was heard on the merits of the financing proposal.

In that procedural order, the Commission also determined that the "truncated procedural schedule will not allow us the opportunity to conduct an adequate investigation into the full scope of issues" set forth in the original procedural order, ([1984] 69 NH PUC at p. 423). In order to reconcile the need for responsiveness due to the cash flow requirements of the Company and the need for an appropriate financing investigation, the Commission narrowed the scope of the instant financing proceeding and opened a separate investigation for the purpose of investigating the Company's plans to finance the construction of the Seabrook facility through to the completion of Unit I.

I concurred in Procedural Order No. 17,141 because, given all of the circumstances, I felt that it was the only practical means to deal with the time constraint in this docket and to provide for an extended investigation of PSNH's financing plans. However, as the Commission recognized, it is not a perfect solution. Legitimate concerns which the Commission recognized should have been considered in this financing have not been considered. It is important for the Commission to recognize these limitations forthrightly and to recognize their reliance to the

Company's burden of proof.

In justifying the narrowing of the scope in this docket, the Commission relied upon record evidence that only a small portion of the proceeds of the proposed financing were intended to finance Seabrook construction. Thus, the Commission determined that it was possible to narrow issue number two under scope which related to the purpose for which the proceeds were to be used. However, this reliance was based upon the estimated construction budget through yearend. PSNH has steadfastly maintained in this proceeding, and in all other proceedings before this Commission, that dollars cannot be traced and that all funds including the proceeds of this financing will go into the general corporate account and be used for general corporate purposes. (Trans. 5-20, 21) Thus, it is entirely possible that post-1984 Seabrook expenditures could be funded from these proceeds if the proposed Newbrook financing does not occur or if the Newbrook financing should prove to be inadequate.

The difficulty presented in narrowing the scope is even clearer in relation to issue number three which deals with financial feasibility. There is a great deal of evidence that PSNH's financing plans are interrelated and that this financing cannot be easily separated from the third phase financing. PSNH itself stresses the interrelationship of the financings as part of a three-step plan. (PSNH Brief, p. 9) In fact, it is not clear whether the "Newbrook Plan" means the entire threephase financing plan or only the third phase of the plan.

The size of the financing itself—$425 million when PSNH's previous largest financing was $100 million—makes it difficult to postpone questions of financial

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feasibility, including a determination of the level of revenues necessary to support the capital structure. It is legitimate to ask whether consideration of the shortterm effect of a financing of this size and complexity meets the legal requirement set forth in Re Easton (1984) 124 NH —, slip opinion at pp. 4, 5, and fulfills the Commission's duty to protect the consuming public by ascertaining the effects of a utility's proposed new capitalization. Re New Hampshire Gas & E. Co. (1936) 88 NH 50, 16 PUR NS 322, 184 Atl 602.

The difference between a short term analysis of the effect of the successful completion of the proposed financing on the Company's capital structure and a long term analysis is particularly dramatic in this case. As Public Service Company's brief indicates, the short term capital structure ratios resulting from this financing — 37.8% common equity, 14.41% preferred equity, and 48.48% debt — are close to the standard for electric utilities of 50% debt, 15% preferred stock and 35% common stock. (PSNH Brief, pp. 16, 17) However, the short term effect does not include any exercise of the common stock purchase warrants. The Company's petition requests authorization to issue up to 22,500,000 shares of common stock purchase warrants. The present number of shares of common stock outstanding is 37 million.

While the exact number of common stock warrants which may be issued cannot be determined until the pricing,[1(149)] and while the number of warrants that ultimately may be exercised is also somewhat difficult to estimate, the exhibits and testimony show the dramatic effects on the capital structure that may be expected. Exhibit 8, which assumes that $300,000,000 of the financing is completed and that 10,000,000 shares worth of warrants are

exercised, shows a resulting common stock component of the capital structure of 47.88% in 1989 (Trans. 5-208) and of 55% in 1991 (Trans. 5-209). Mr. Bayless testified that with a $400,000,000 financing, an assumption that 20,000,000 shares would be exercised was more appropriate. (Trans. 5-213) In this event, the common stock ratio would be higher. (Trans. 5-213) While it is clear that the exercise of the common stock warrants will have a dramatic effect on the capital structure in the future, neither the rate effects nor the dilution effects have been analyzed.[2](150)

It is clear to me that the legal and factual basis for narrowing the scope of this docket is justified only to the extent that the Commission approves that amount of financing necessary to alleviate the present precarious financial condition of the Company while the Commission completes its review in DF 84-200. A determination of the amount of financing necessary for this purpose must include a consideration of the following issues: (1)

the amount required to meet actual cash flow needs; (2) financial flexibility and cost; (3) the relevance of conditions in other securities issues and agreements ($90 million notes and restructure agreements); (4) marketability; and (5) the need to retain Commission regulatory control. Each of these issues is addressed in turn below.

Cash Flow Requirements

Testimony indicates that PSNH requires approximately $112 million to meet its requirements through February 1985. (Trans. 2-100, 2-190, 2-198) Conservation Law Foundation (CLF) in its brief suggests adding a "cushion" of roughly $14 million to carry the Company through any delay in completing the investigation in DF 84-200. (CLF Brief p. 7)

PSNH contends that it requires $210 million in new funds and $90 million to retire the Notes issued in June 1984 or a total of $300 million to carry the Company through the end of 1986 and completion of Seabrook 1. (PSNH Brief, pp. 10-13) The Company argues that given its financial circumstances, PSNH could not reasonably expect to be able to obtain funds from financial markets on a periodic basis during the period. (Trans. 2-21) However, when asked what would happen if Seabrook were not completed until a later date and the Company required additional financing, Mr. Hildreth indicated that he would just have to change his plan and that he had the ability to sell the requisite financing. (Trans. 3-126, 127)

Furthermore, another Merrill Lynch official, Frederick Potter, testifying before the Massachusetts Department of Public Utilities, indicated that Merrill Lynch only expected to sell $200-$300 million of financing and that this amount reflected their expectation of market acceptance. (Trans. 3-101, 102) In addition, Mr. Potter specifically indicated that this amount was all that was necessary to issue at this time.[3](151)

The Company has not met its burden of proof that it requires a minimum of $300 million in financing at this time to meet its cash flow needs for two reasons. First, the Commission has not evaluated or accepted the premises on which the Company bases its financing plan, but has reserved these issues for the investigation in DF 84-200. Thus, it has not been determined whether a financing plan premised on a Seabrook I completion date of August 1986 is reasonable

or feasible. The Commission has before it evidence from the Company's prospectus indicating that the Joint Owners Executive Committee has adopted a date of October 1987 for financial planning purposes. (Exhibit 6, pp. 5, 17) The Commission has yet to hear evidence from the Company justifying a financing plan which uses different assumptions than those approved and adopted by the Joint Owners. Second, Mr. Hildreth's testimony itself indicates the belief that Merrill Lynch can raise additional funds for PSNH prior to the completion of Unit I. Thus, it is fair to conclude that Merrill Lynch can raise additional funds if the Commission approves a smaller financing.

It is clear on the basis of cash flow requirements alone that the evidence does not support the need for authorization of $425 million in financing by August 31st. On the basis of cash flow requirements, CLF's figure of $125 million is a reasonable figure for the amount that is needed

prior to the completion of the Commission's review in DF 84-200.

Financial Flexibility and Cost

PSNH and the BIA argue that it is reasonable for PSNH to raise as much money as possible in this financing to increase PSNH's financial flexibility. It is argued that the $125 million "cushion" that would result from full subscription is reasonable to allow for possible variations and delay in rate base treatment. (PSNH Brief, p. 11, BIA Brief, p. 15) Putting aside for the moment the question of providing only sufficient funds to alleviate the precarious financial condition of the Company, is it reasonable to be raising funds now that are not required until late 1986 or 1987? Put in succinct terms, the question is how much prefinancing is reasonable or cost effective?

There is considerable reason to believe that financing at this time will carry the highest cost rates and most expensive conversion options because of the continued uncertainty over the ultimate completion of Seabrook I. Much of this uncertainty will be resolved one way or another within the next few months as all of the New England Commissions act on petitions of their companies. If Seabrook survives this review and the Newbrook financing is completed, financing costs for PSNH can be expected to decrease significantly. This is particularly true if Seabrook is brought to commercial operation.

The evidence also indicates that once PSNH satisfies the exchange requirements of the $90 million Notes issued in July, it will have the flexibility to undertake a G & R bond financing. (Trans. 5-217) Since the amount of G & R bonds the Company can issue is restricted by coverage requirements, the Company is only able to issue unsecured debentures at this time. When the exchange requirements are satisfied, the $135 million in G & R bonds which were issued and pledged as collateral in the $90 million note financing, will be released. This would make it possible for the Company to pursue a secured debt financing in 1985, which would likely be at a cheaper cost rate and not require the stock conversion features.

Thus, the prefinance the general needs of the Company to the extent proposed has not been justified. Prefinancing is very expensive because funds not immediately needed are reinvested, but at a much lower rate of interest than the cost rate of the funds. In this case, due to the extraordinarily high rates, the premium for prefinancing is very high indeed. Furtheremore,

financing the debt service and operating needs of the Company is not the same as a project financing for a construction program. While the need to alleviate the precarious financial situation of the Company may justify approving some additional financing beyond minimum cash needs to provide financial flexibility, the Company simply has not demonstrated the reasonableness of financing the Company's general corporate needs two or more years in advance.

Conditions of Other Issues and Agreements

Two provisions are cited by the Company as requiring a larger amount of financing at this time. First, the June, 1984 Note Purchase Agreement (Exhibit 7) contains the following provision:

Before May 31, 1985, the Company will not issue or sell any unsecured debt instruments having a maturity greater than one year, unless it shall have offered to the holders of the Notes the prior opportunity to exchange the Notes and to exercise the Warrants.

...

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PSNH argues that because it cannot issue secured debt this provision effectively requires the Company to make the Exchange Offering if it is going to do any long term financing prior to May 31, 1985. (PSNH Brief, p. 13)

In addition, PSNH cites the requirement in the secured revolving credit agreement with certain banks obligating PSNH to sell a minimum of $200 million in unsecured debentures by September 30, 1984. (PSNH Brief, p. 12) Since this requirement relates to the total amount sold and not to "new" funds, this requirement would be satisfied by the Exchange Offering. (Trans. 4-138, 9)

CLF argues that the Commission is not legally bound by either of these conditions. It points out that the June Note Purchase Agreement states that it is "understood that further regulatory action will be required for the issuance by the Company of the Warrant Debentures and the Units" in exchange for the Notes. (Exhibit 7) In fact, the Commission Order approving the $90 million in notes emphasizes the conditional nature of the approval. It is clear that the Commission is not legally bound by this condition. Whether PSNH could market other securities before this condition has been fulfilled is another consideration addressed in the next section.

As to the condition in the restructure agreements, CLF argues that the Company offered no evidence that these agreements could not be revised to permit a delay in fulfilling this requirement. Whether the Company could renegotiate this provision is unclear as Mr. Bayless candidly admitted (Trans. 5-22) Again the question arises whether PSNH could market a financing that did not fulfill this requirement.

Marketability

The first question to answer relative to marketability is whether PSNH could successfully undertake a smaller financing than the Exchange Offering. Although the testimony does not support a conclusion that a smaller financing is impossible, neither does it support a conclusion

that it is possible. The Company is unable to undertake a secured debt financing at this time. Given market expectations that an unsecured debenture financing would honor the provisions in the June 1984 Note Purchase Agreement, there is doubt whether an issue which did not meet these requirements would be marketable. Since it is clear that the Company does not have the cash flow flexibility to withstand an unsuccessful financing, the Company has reasonably justified the need to complete the Exchange Offering at this time.

The next question is whether the Public Offering is essential to marketing the Exchange Offering. PSNH contends that the Public Offering is a necessary inducement to convince the exchange holders to exercise their conversion rights. Mr. Hildreth testified that it was Merrill Lynch's judgment that significant participation in the Exchange Offer by June, 1984 Noteholders is unlikely unless it is accompanied by the Public Offering. (PSNH Brief, p. 14) However, PSNH has not made a convincing case that the Public Offering is required. Mr. Hildreth himself testified that $200-$300 million could be sold for PSNH this summer, but that this was not his plan. (Trans. 4-12, 13) In fact, both the testimony relative to marketability and the testimony relative to what the plan was for the phase 2 financing is sufficiently inconsistent that it is simply not convincing.

During the May 28th hearing on the $90 million Note issuance, Mr. Bayless

testified at length about the "bells and whistles" that were needed to induce investors to buy the notes and to later convert into long-term debt. His testimony continually emphasized that the terms and conditions of the Note financing were designed to insure success in the subsequent debenture financing to take place during the summer. At no time during the May 28th testimony did Mr. Bayless mention the need for a Public Offering as an additional inducement. Yet he was specifically asked about the components of each part of the financing plan. (Trans. 5-141)

The testimony of the Company and of Mr. Hildreth in this regard is inconsistent and troubling. When Mr. Hildreth was asked whether the Public Offering was part of the plan as it was originally developed in April, he was very definite in his response that it was. (Trans. 4-165, 166) Yet Mr. Bayless did not inform the Commission of the Public Offering at the May 28th hearing and he was not able in this proceeding to testify when it was determined that a Public Offering was necessary. (Trans. 5-137-142) However, his testimony seems to indicate that prior to the final determination of the design of the financing during the week of June 20-29th, that the Public Offering portion was a "contingency plan". (Trans. 5-138)

What is clear from all of this is that Merrill Lynch's financing plan for PSNH has undergone a number of changes and that investors have accepted these changes. In fact, Mr. Hildreth explicitly testified to this fact. (Trans. 4-164, 165) There is no reason for the Commission to decide now that the present version of the plan is cast in concrete and that no changes can be made. The evidence is simply not sufficient to satisfy PSNH's burden of proof that the Public Offering is necessary at this time.

Need to Retain Commission Regulatory Control

If PSNH completes $300,000,000 of this financing, it will not need to return to this Commission for financing of its general corporate needs until at least the summer of 1986; if the

entire $425,000,000 is raised, this would carry the Company into 1987. The Commission must still approve Seabrook construction financing in DF 84-200. However, the theory of the Newbrook financing is to place PSNH's share of Seabrook construction costs in an escrow account which would be available regardless of PSNH's fate. Should the Commission approve the Newbrook financing, it is doubtful how much control, if any, the Commission could retain. In addition, PSNH has indicated that it does not intend to file a rate case prior to Seabrook I completion.

Given all of these circumstances, it is critical for the Commission to ensure its future regulatory control through conditions on the use of the proceeds of this financing which are in excess of the Company's cash needs through completion of the DF 84-200 investigation. Otherwise, it is possible, if the Commission approves the Newbrook financing, that it has given up any meaningful regulatory control through mid-1986 or later.

This is clearly not an acceptable situation. The Commission as a regulatory agency has a duty to require management accountability. Given the circumstances of the Company and the present requests for what must be termed extraordinary approvals, now is the time to exert regulatory control.

The importance of the management accountability issue was raised specifically in this proceeding in relation to the payment of preferred stock dividends. If the Company misses the payment of four

consecutive preferred stock dividends, the preferred stockholders have a right to elect a majority of the Board of Directors. (Trans. 5-157) Although the Company's financial runs do not project the payment of preferred stock dividends, the proceeds of this financing could be used to pay preferred dividends. (Trans. 5-37-39) Mr. Bayless indicates that the management of the Company is very concerned about this situation (Trans. 5-159) and has not made a decision about the payment of preferred dividends. However, it is not difficult to conclude that a substantial "cushion" from this financing would increase the likelihood that dividends would be paid. (Trans. 5-39) The Commission should not leave this decision to management discretion for two reasons. First, the Commission should not be shielding the management and the directors of the Company from accountability through the preferred shareholders until the Commission itself has demanded accountability and assured itself of confidence in the Company's management. Either in DF 84-200 or in a separate investigation the Commission should be requiring PSNH to address questions of management competence particularly in relation to strategic planning and financial decision-making. The findings of the Commission in DF 82-141, July 1982 (67 NH PUC 490, 47 PUR4th 167) and DE 81-312, April 1983 (68 NH PUC 257) have raised substantial questions about the management decision making in these areas,[4(152)] which should be addressed before the Commission issues its final order in DF 84-200.

The kind of management investigation that needs to be undertaken at this time is quite different from the kind of historical prudency review that needs to be done in conjunction with a request to recover Seabrook costs in rates. Rather than a review of past events, the Commission should now be evaluating the Company's management prior to granting any approval to go

forward. When a regulated Company has reached the brink of bankruptcy and is requesting extraordinary support from a regulatory body, this kind of review and insistence on accountability is clearly a proper and necessary regulatory function.[5(153)] The Supreme Court has indicated in Re Easton that abuse of management discretion is a proper area of inquiry in a proceeding pursuant to RSA 369. Re Easton, supra (slip opinion at p. 9) It may well be that an investigation would entirely satisfy the Commission that appropriate changes have already been made and no further action is necessary. However, regulatory responsibility as well as public confidence require that the Commission address the management issue.

The second issue that is raised relative to the payment of preferred stock dividends is the question of whether this would reduce the Company's ability to absorb a write-off of cancelled plant or of rate base disallowances. The level of common stock equity and particularly the level of retained earnings is a critical

factor in this regard, and the payment of preferred dividends would have the effect of reducing retained earnings. Testimony indicated that the Company is currently escrowing preferred dividends within the retained earnings account. (Trans. 5-153-157) In response to Commission inquiry, the Company has indicated that this accounting treatment does not affect retained earnings relative to a write-off or disallowance unless the funds are paid out.

Conclusion

This review and analysis of the record in this proceeding supports the following conclusions. To be consistent with the narrowing of the scope in this docket, the Commission should authorize only that amount of financing which is necessary at this time to alleviate the Company's precarious financial situation until the Commission has completed its review in DF 84-200. On the basis of cash flow requirements alone, the evidence supports a financing in the amount of $125 million. Taking into account conditions in other securities issues and agreements as well as evidence related to marketability, the Company has reasonably justified the need to undertake the Exchange Offering at this time.

The Company has not met its burden of proof that the Public Offering is required at this time. The testimony offered by Mr. Hildreth that the Merrill Lynch plan for the phase 2 financing requires authorization of the full $425 million and that any change would make the financing unmarketable is simply not convincing. It is clear that Merrill Lynch's financing plan for PSNH has undergone a number of changes and that investors have accepted these changes. To the extent possible, the public interest requires limiting the issuance of common stock warrants and limiting the amount of debt issued at interest rates in the 20% range while an evaluation of the financial feasibility of the overall plan is completed.

The Exchange Offering if fully subscribed would raise $270 million, $90 million of which represents a roll-over of the Notes issued in June. Since the Exchange Offering may raise as much as $180 million in new funds, an amount which exceeds that justified by cash flow requirements, the Commission should condition its approval to insure control over the use of these funds and, in particular, to insure that the amount of the proceeds used for Seabrook construction is consistent with Commission findings in Report and Second Supplemental Order

No. 17,141 (69 NH PUC at p. 424). The conditions and explicit statements of intent which I believe are appropriate are listed on pages one and two of this opinion.

FOOTNOTES

[1]See, Order of Notice of July 2, 1984 and Report and Order No. 17,109 ([1984] 69 NH PUC 377) (Denial of Motion for Continuance filed by the Consumer Advocate).

[2]See also, Report and Supplemental Order No. 17,138 ([1984] 69 NH PUC 412, 413) ("First Procedural Order").

[3]A Motion for Rehearing on the Second Procedural Order was denied in Third Supplemental Order No. 17,168 ([1984] 69 NH PUC 456).

[4]See e.g., Brief of PSNH at 11. In addition to meeting its cash requirements, the Company is required by its commitment to creditors in its restructured agreements to raise at least $200,000,000 in external long term capital no later than October 1, 1984. See, Re Public Service Co. of New Hampshire (1984) 69 NH PUC 415.

[5]PSNH's share of these Seabrook expenditures is approximately 36%.

[6]2 Priest, Principles of Public Utility Regulation 474 (1969).

[7]As noted above, the ability of the Commission to impose reasonable conditions has been explicitly recognized by the Court. See e.g. Re Easton, supra (slip opinion at p. 6). See also, RSA 369:1.

[8]Those concerns include, inter alia, the genesis of the circumstances that led to the financing as proposed, the cost of the proposed financing and the effect of the exercise of the common stock warrants on the Company's capital structure.

Dissenting Opinion of Commissioner
Lea H. Aeschliman

[1]The terms outlined in the Company's petition and testimony indicate that each Unit will include 25 to 75 common stock warrants depending upon the final pricing terms. Thus, the 90,000 Units in the Exchange Offering may include anywhere from 2,250,000 warrants to 6,750,000 warrants. The 155,000 Units in the Public Offering may include anywhere from 3,875,000 warrants to 11,625,000 warrants. Each warrant is convertible into one share of common stock. Since the Company has requested authorization to issue up to 22,500,000 shares of common stock in satisfaction of the warrants, an authorization of this amount would exceed the maximum of 18,375,000 per the terms outlined in the petition. Thus, it is possible that at the time of pricing the Company could request that the number of warrants per Unit be increased.

[2]Since on a dollar-for-dollar basis equity is twice as expensive to ratepayers as debt financing due to taxes, it is clear that the long term effects on rates may be very great indeed.

Similarly, Mr. Bayless indicated that this financing will result in dilution with a capital D. (Trans. 5-205) The effect on present shareholders will be to substantially reduce future earnings per share. (Trans. 5-210)

[3]The Commission took administrative notice of the testimony of Frederick Potter. (Trans. 4-63) See Testimony of Frederick Potter, Commonwealth of Massachusetts Department of Public Utilities. 1627-A, Vol. 6, p. 40.

[4]See also Dissenting Opinion of Commissioner Aeschliman, DR 82-333, January 1984 (69 NH PUC 67, 93, 57 PUR4th 563, 588).

[5]As part of my duty to keep informed, (RSA 374:4) I am aware of other regulatory actions and events which have relevance to this issue. The FDIC has recently required the top management of Continental Illinois Bank to resign as a condition to providing relief to the Bank. The Staff of the Michigan Commission has indicated that the resignation of the Chairman and senior officers of Consumer Power Company is likely to be a central recommendation of the Staff in the Company's request to recover costs from the cancelled Midland nuclear power project. At Long Island Lighting Company the problems surrounding the Shoreham nuclear project led to an internal management change.

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NH.PUC*08/30/84*[61515]*69 NH PUC 491*Concord Electric Company

[Go to End of 61515]

69 NH PUC 491

Re Concord Electric Company

DR 83-256,
Second Supplemental Order No. 17,189

New Hampshire Public Utilities Commission

August 30, 1984

Motion for rehearing of an order resolving an electric service billing dispute; denied.

Discrimination, § 29 — Special rate arrangement — Deviation from schedule — Remedy for billing dispute — Customer usage characteristics.

A commission order which established a lower rate for electric service for a commercial user than the rate offered to users within the same service classification was not an unreasonable preference in violation of a state statute where the change in the rate ordered by the commission was based on a finding that the customer had usage characteristics that caused it to impose significantly lower cost on the utility's system than users who typically fall within the relevant rate class. [1] p.491.

Discrimination, § 26 — Special rate contract — Remedy for billing dispute — Commission authority.

A commission decision resolving an electric service dispute by allowing a lower rate for one

customer than for others in the same service class did not "specify a special contract" in violation of state law because the parties did not come to a voluntary arrangement and therefore, there was no "contract" but rather a special arrangement established by the commission in accordance with the applicable statute. [2] p.495.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On July 19, 1984, the Commission issued Report and Supplemental Order No. 17,131 ([1984] 69 NH PUC 401) ("Decision") which inter alia resolved a billing dispute between the City of Concord, Recreation and Parks ("City") and Concord Electric Company ("Company"). The Company filed a timely Motion for Rehearing and a Motion for Suspension of Order Pending Further Consideration. Pursuant to RSA 541:3, 4 and 5, those Motions aver, inter alia, that the Decision is unlawful and unreasonable.

We have reexamined our Order, the record and the arguments contained in the Motions. We have determined that we have not been presented with information that had not been previously considered and we have not been presented with sufficient information to cause us to reconsider the Decision. Accordingly, the Motions will be denied. Our analysis of several of the particular matters raised in the Motions follows.

MOTION FOR REHEARING

[1] The Company claimed that the Decision is unlawful and unreasonable because, inter alia: 1) it grants an unreasonable preference to the City thereby prejudicing other customers who have to make up the difference; 2) it arbitrarily reduces a rate for one customer based on erroneous findings; 3) the findings are not supported by the evidence of record; 4) it amends the Company's rate design without supporting data; 5) it establishes the relationship of the City's demand to

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Company load without data; 6) it specifies a special contract in violation of RSA 378:18; 7) it considers the claim of a complainant who lacks standing; and 8) it unreasonably reduces the level of revenues recovered by the Company from ratepayers. We shall address the above assertions in turn.

Unreasonable Preference

The Company contends that the Decision grants an undue and unreasonable preference to the City in violation of RSA 378:10. After review, we believe that the Company's assertion is incorrect. RSA 378:10 prohibits preferences which are undue or unreasonable. In the instant situation, we have established a rate for the City which differs from the rate offered to persons who fall within Service Classification G. However, the change in the rate ordered by the Commission was based on the finding that the City had usage characteristics that caused it to impose significantly lower costs on the Company's system than persons who typically fall within

the Rate G class. Since the lower rate established by the Commission is more of a cost based rate than the tariff rate for Service Classification G customers and since this is so because the City's usage characteristics differ significantly from those of Service Classification G customers, a preference, if it exists at all, cannot be undue or unreasonable. Thus, the Decision is consistent with RSA 378:10.

The Company also contends that the Commission mandated arrangement will result in lost revenues which must either be recovered from other ratepayers (Motion for Rehearing at paragraph 1) or construed as an arbitrary lowering of the Company's revenue requirement (Motion for Rehearing at paragraph 8). We acknowledge that the arrangement lowers revenues; however, the revenue loss may be offset by the fact that the City does not impose the cost on the system which formed the basis of recovery.[1](154) In any event, we have decided to treat this case as a customer complaint.[2](155) If the Company wishes to propose a change in either its revenue requirement or its rate structure for any reason, including our findings in this docket, it may file the appropriate tariff revisions pursuant to RSA 378:1 et seq.

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Analysis of Record Evidence

The Company contends that the Commission's findings were not supported by the record evidence and, in fact, the findings are against the weight of the evidence. In particular, the Company objected to the findings: 1) that the City's maximum demand has not occurred later than 3:00 P.M.; 2) that the City's outdoor lighting usage occurs at a time which is later than maximum demand; and 3) that the City has been treated unfairly because it contributes minimally to demand billing from Public Service Company of New Hampshire. After due consideration, we will reject the Company's assertions.

The first assertion listed above was that "[t]he Commission finding (69 NH PUC at p. 402) that the Department's `maximum demand has not occurred later than 3:00 p.m. is erroneous and against the record evidence."[3](156) Motion for Rehearing at 2, par. (3)(a). This assertion reflects a fundamental misunderstanding of the Decision. We did not find that the City's maximum demand has not occurred later than 3:00 p.m.; that finding was directed at the maximum demand on the Company's system (i.e., the system peak). We would have to agree with the Company if, in fact, our finding had been directed at the City; its maximum demand has consistently occurred after 3:00 p.m. given the nature of its outdoor lighting load. However, such a finding highlights the mismatch between the Company's system peak and the City's maximum demand; a mismatch that conclusively establishes that the City was being charged for a cost it did not impose on the system.[4](157)

The second assertion listed above was that "[t]he Commission finding (69 NH PUC at p. 402) that the Department's `outdoor lighting usage occurs at a time which is later than the maximum demand' is erroneous and against the record evidence." Motion for Rehearing at 2, paragraph (3)(b). The Company contends that the Commission ignored evidence that the City's football field and tennis courts have a high probability of coincident use. This assertion is inconsistent with the Company's previous assertion of paragraph (3)(a). Our review of the Company's assertion leads us to conclude that it is without merit. It is true that the Company's

witness stated his belief that some of the City's outdoor use is coincident with the Company's peak. However, the witness also readily admitted that he did not have the data to support his conclusion. When that data was later supplied (Response to Data Request 1), it indicated that the Company's system peak has generally not occurred later than 3:00 P.M. during the applicable time period.[5](158) Thus, our analysis of the weight of the evidence continues to lead us to the finding that the probability that the City's outdoor lighting use will be coincident with the company's summer system peaks is significantly lower than the average probability of coincidence of the general electrical use (including air conditioning) of members of the Rate G class.

The third assertion listed above was

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that the Commission's finding that the City has been treated unfairly because it contributes minimally to demand billings from Public Service Company of New Hampshire reflects a misunderstanding of the components of the Company's demand charge. In support of its assertion, the Company presented documents from its last rate case (Re Concord Electric Co. Docket No. DR 81-97). Those documents reflect that purchase demand for commercial customers represents only 24.57% of the Company's local facilities charge ("LFC"). We have examined the attached documents in spite of the fact that they were not a part of the instant record. We have also examined other pertinent documents in DR 81-97 to establish the context of the proffered attachment. The attachment proffered by the Company establishes that the demand billing is 24.57% of the LFC for the commercial class. A similar calculation for the residential class reveals that demand billing represents approximately 40% of the LFC.[6](159) Since we have found that the City's outdoor lighting usage characteristics do not reflect typical commercial class usage, we do not believe that the documents proffered by the Company are sufficient to cause us to reevaluate the Decision. The 33.73% LFC discount required by the Decision falls between the demand billings percentage of the commercial class and the residential class. This indicates that our calculations, while not exact, are reasonably accurate given the nature of the instant proceeding.

Data Support

The Company contends that the Decision amends the Company's rate structure and purports to establish the relationship of the City's demand with Company load without appropriate load data. Motion for Rehearing at 3-4, paragraphs (4) and (5). We understand that the Company is in the process of developing load data and, thus, such data do not yet exist. However, we must resolve the instant matter on the basis of the record evidence before us. That evidence convinced us that an outdoor lighting load has a low probability of being coincident with the Company's summer peaks because those peaks typically occur between the midmorning and mid-afternoon hours (Response to Data Request No. 1). It is possible that the Company's load study, when it is completed, will support results which are inconsistent with the Commission's findings in this docket. However, since that study has yet to be completed, it is speculative to depart from the evidence contained in the instant record.[7](160) As discussed above, that evidence supports the Commission findings set forth in the Decision.

We have also evaluated the Company's assertion that we have somehow changed its rate structure. As noted previously, this case has been treated as a consumer complaint. Thus, we have not required any revision in the Company's tariffs and, accordingly, the Company's rate structure has not been changed. Our finding was that the rate structure as applied to only one customer's usage characteristics does not result in just and reasonable rates to that customer. We have therefore remedied the injustice by providing for an arrangement outside the rate structure; a mechanism that is not new to this Commission. See e.g. Re Public Service Co. of New Hampshire, supra, footnote 1. Contrary to the company's assertion, we have not found that the rate structure, as applied to the remaining customers, results in rates which are not just and reasonable.

Special Contract

[2] The Company contends that the Decision violates RSA 378:18 in that it "specifies" rather than "allows" a special contract. The Company's assertion reflects a misunderstanding of the Decision in that the Decision did not purport to specify a special "contract". The use of the term "contract" would have indicated that the parties had come to a voluntary arrangement (i.e., that there was a meeting of the minds). In the instant situation, there was no voluntary meeting of the minds; thus, there could be no contract. That is the reason why the Decision employs the term special "arrangement" rather than special "contract". The arrangement established by the Commission is a rate which was set upon complaint and after hearing pursuant to RSA 378:7. The Company's assumption that we relied upon RSA 378:18 is incorrect.[8(161)]

Standing

The Company asserts that the City did not have standing to bring the instant complaint. The Company bases this claim on the fact that the City imposes a charge on certain users of the memorial field facility to compensate it for electricity costs. We do not agree with the Company's analysis. The City is the customer of record and it is the entity which is responsible for the payment of bills rendered by the Company. In the event of non-payment, it would be the City that would be liable and subject to termination of service. We would have been presented with a more difficult standing decision if the complaint had been filed by the persons who use memorial field rather than the customer of record. Since the complaint was filed by the customer of record, we will affirm its standing to pursue its complaint.

MOTION FOR SUSPENSION

In our Decision, we found that justice demands that we adjust a rate for a customer who is asked to shoulder a charge which is grossly disproportionate to cost. After review of that Decision, we have decided to deny the Company's Motion for Rehearing. The Motion for Suspension seeks to have us reimpose upon the City a rate which is not just and reasonable pending the completion of the

Company's load study and its subsequent formal presentation of the study for adjudication.

The completion of the load study and the filing of a request for a change in rates is a matter which is completely within the control of the Company. Accordingly, we do not believe that it is fair to require the customer to pay a higher non-cost based rate in the interim period. Rather, fairness and justice dictate that we continue the cost based rates established in the Decision until the Company meets its burden of proving that a new rate is more appropriate. We will therefore deny the Motion to Suspend.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion for Rehearing of Concord Electric Company be, and hereby is, denied; and it is

FURTHER ORDERED, that Motion for Suspension of Order Pending Further Consideration be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1984.

FOOTNOTES

[1]The Commission recognizes that the Company's rates were established on the basis of average cost (Motion for Rehearing at paragraph (3)(d)). Under averaging, a particular customer's rates may be slightly higher or lower than the cost imposed on the system by that customer since the rates of the class as a whole do match costs. However, the averaging mechanism rests on the assumption that members of a class have similar usage characteristics which impose similar levels of cost on the system. Here, the record indicates that the usage characteristics of the City are different from class characteristics in a manner and degree unanticipated at the time the rates were established. Since the City is wrongly classified as a Service Classification G customer (even though there currently exists no other class that is more appropriate), the tariff rates as applied to that customer are not just and reasonable. In the past, the Commission has provided that individual customers may be entitled to individual non-tariff rates when warranted by the circumstances. Cf. e.g. Re Public Service Co. of New Hampshire (1984) 69 NH PUC 67, 91, 92, 57 PUR4th 563, 587, 588 (Adoption of Special Industrial Contract Policy sponsored by the Business and Industry Association of New Hampshire).

[2]The nature of the proceeding was an issue directly addressed at the outset. The Staff suggested that it would be most appropriate to treat this docket as a generic rate structure investigation (Tr. of Sept. 22, 1983 at 4-5). The Company suggested that the matter be treated as a consumer complaint (Tr. of Sept. 22, 1983 at 8-17). After comments by one Commissioner suggesting that he viewed the case as a customer complaint (Tr. of Sept. 22, 1983 at 19, 20), the Commission directed the parties initially to attempt to resolve the matter informally (Tr. of Sept. 22, 1983); an action consistent with our treatment of this matter as a consumer complaint.

[3]In its Motion for Rehearing, the Company used the term "Department" as a label for the City. Motion for Rehearing at 1, paragraph 1.

[4]As noted in the Decision, the Company, as a wholesale purchaser of electricity, is billed for demand on the basis of the highest numbers of kilovoltamperes (KVA) of demand during a thirty minute interval in the billing period which occurs between the hours of 7:00 A.M. and 8:00 P.M. Monday through Friday, exclusive of holidays (Response to Data Request 2). Since any outdoor lighting KVAs consumed by the City do not contribute to the number of KVAs calculated at the time of system peak, the Company is not billed by its wholesaler for those outdoor lighting KVAs.

[5]It is true that the Company experienced a six o'clock system peak on October 26, 1981; a time when certain memorial field facilities were in use. (See, Tr. of April 17, 1984 at 10: City facilities are not used after November 15th plus one week. All other system peaks which occurred later than 3:00 P.M. set forth in response to data request No. 1 occurred after November 22nd.) However, one instance in three years of data of possible coincident use does not support the Company's assertion that the City has a high probability of coincident use; rather, the record supports a finding that the probability of coincident use is low.

[6]See, Re Concord Electric Co. DR 81-97, Exhibit 5D (C504), which sets forth a residential purchased power cost of $1,242,424. This cost is 39.93% of the $3,111,431 settled capacity charge developed in that docket.

[7]We note that the Decision encouraged the Company to expedite its marginal cost of service study. We also note that the Company represented in its Motion for Suspension that it is in the process of completing a load study in preparation for a rate proceeding. We will, of course, entertain the presentation of the Company's cost of service study if and when it is completed. If such a study supports an additional change in the City's rate, we will make the appropriate finding in the appropriate proceeding.

[8]Cf. Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 355, 61 PUR4th 132, 135 ("This Order ... requires certain rates, terms and conditions for those qualifying SPPs who elect to avail themselves of the ... rates, terms and conditions approved herein. Nothing in this Order will prevent any person from negotiating and entering into a contract for the purchase and sale of electric energy at rates and on terms and conditions other than those or in addition to those contained herein."

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NH.PUC*08/30/84*[61516]*69 NH PUC 496*Fuel Adjustment Clause

[Go to End of 61516]

69 NH PUC 496

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, and Woodsville Power and Light Department

DR 84-186, Order No. 17,190

New Hampshire Public Utilities Commission

August 30, 1984

Order setting fuel adjustment clause rates for electric utilities without a hearing.

By the COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), notified the

utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

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

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

FURTHER ORDERED, that 19th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 9 - Electricity, providing for a fuel surcharge credit of ($0.198) per 100 KWH for the months of July, August, and September, 1984, be, and hereby is, permitted to remain in effect for the month of September, 1984; and it is

FURTHER ORDERED, that 19th Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of ($0.074) per 100 KWH for the months of July, August, and September, 1984 be, and hereby is, permitted to remain in effect for the month of September, 1984; and it is

FURTHER ORDERED, that 12th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of 18.7 cents ($0.187) per 100 KWH for the months of July, August, and September, 1984, be, and hereby is, permitted to remain in effect for September, 1984; and it is

FURTHER ORDERED, that 12th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of July, August, and September, 1984 of $0.949 per 100 KWH, be, and hereby is, permitted to remain in effect for September, 1984; and it is

FURTHER ORDERED, that 44th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity, providing for a fuel surcharge of $3.35 per 100 KWH for the month of September, 1984, be, and hereby is, permitted to become effective September 1, 1984; and it is

FURTHER ORDERED, that 95th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge of $0.19 per 100 KWH for the month of August, 1984, be, and hereby is, permitted to become effective August 1, 1984; and it is

FURTHER ORDERED, that 92nd Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge of $1.39 per 100 KWH for the months of August, 1984; be, and hereby is, permitted to become effective September 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1984.

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NH.PUC*09/10/84*[61517]*69 NH PUC 498*Northern Utilities, Inc.

[Go to End of 61517]

69 NH PUC 498

Re Northern Utilities, Inc.

DR 84-179, Order No. 17,195

New Hampshire Public Utilities Commission

September 10, 1984

Order approving special contract for the sale of natural gas.

Rates, § 381 — Natural gas — Competitive fuels — Special contract rates — Discounts on gas purchases to recover costs of dual fuel conversion.

Where it was found that the promotion of interruptible sales of natural gas by a distributor reduced the cost of gas adjustment for firm gas customers, the commission approved a special contract for interruptible gas service that allowed pay back of investment to obtain dual-fuel capability in the form of discounts on gas purchases.

By the COMMISSION:

ORDER

WHEREAS, on July 16, 1984, Northern Utilities, Inc. filed with this Commission its Special Contract No. 65 by which it proposes to serve gas on an interruptible basis to Phillips Exeter Academy; and

WHEREAS, said contract differed from others which Northern Utilities, Inc. had implemented, by its provision to allow pay back of capital investment needed to obtain dual-fuel capability, such pay back to be in the form of discounts on gas purchases; and

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

ORDERED, that Special Contract No. 65 of Northern Utilities, Inc. be, and hereby is, approved for effect on the date of this order; and it is

FURTHER ORDERED, that Northern Utilities, Inc. provide this Commission, by letter, a detailed listing of actual capital expenses for the implementation of the dual-fuel capability required by this contract; and it is

FURTHER ORDERED, that Northern Utilities, Inc. provide the Commission a monthly report showing the current calculation of the Developmental Gas Rate; and it is

FURTHER ORDERED, that Northern Utilities, Inc. provide on a monthly basis through December 1984, and thereafter quarterly, a brief report on sales under this contract and resulting pay back of the capital investment; and it is

FURTHER ORDERED, that sale of gas under this contract shall be limited to periods when the gas demands of Northern Utilities, Inc. are met by natural gas supplied by the company's major supplier, except as follows:

1) Periods during which Northern Utilities, Inc. is engaged in start-up and/or testing of its supplemental fuel supply equipment, or

2) Periods not exceeding 48 hours during which supplemental fuel is being used.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1984.

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NH.PUC*09/10/84*[61518]*69 NH PUC 499*Public Service Company of New Hampshire

[Go to End of 61518]

69 NH PUC 499

Re Public Service Company of New Hampshire

DF 84-167,

DF 84-200, Order No. 17,196

New Hampshire Public Utilities Commission

September 10, 1984

Order appointing a special commissioner upon recusal of commission chairman.

By the COMMISSION:

ORDER

WHEREAS, on September 7, 1984 the Court issued its opinion in Re Seacoast Anti-Pollution League (124 NH —, 480 A2d 88) which inter alia vacated Commission report and Second Supplemental Order No. 17,141 ([1984] 69 NH PUC 422) and Report and Fourth Supplemental Order No. 17,183 ([1984] 69 NH PUC 469) in Docket No. DF 84-167; and

WHEREAS, both of the instant dockets are in progress with imminent deadlines; and

WHEREAS, in compliance with the Court Order, the Chairman has decided not to participate in Dockets Nos. DF 84-167 and DF 84-200; and

WHEREAS, there is a need to establish certainty as to who will be the presiding officer in the instant proceeding; and

WHEREAS, it is necessary for a third commissioner to participate in the instant proceeding; and

WHEREAS, RSA 363:20 provides

363:20 Special Commissioner. If at any time a commissioner shall be disqualified or unable to perform the duties on his office, the governor upon application of the commission may, with the consent of the council, appoint a special commissioner to act in his place during the period of the commissioner's disqualification or inability to act; and

WHEREAS, RSA 363:21 provides for compensation of the special commissioner; it is therefore

ORDERED, that Commissioner Iacopino be appointed as the presiding officer in Dockets Nos. DF 84-167 and DF 84-200 until further ordered by the Commission; and it is

FURTHER ORDERED, that pursuant to RSA 363:20 and 21, the

Commission apply to the Governor for appointment of a special commissioner in the instant dockets.

By Order of the Public Utilities Commission of New Hampshire this tenth day of September, 1984.

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NH.PUC*09/10/84*[61519]*69 NH PUC 500*Public Service Company of New Hampshire

[Go to End of 61519]

69 NH PUC 500

Re Public Service Company of New Hampshire

DF 84-167,
DF 84-200, Order No. 17,197

New Hampshire Public Utilities Commission

September 10, 1984

Recusal by commission chairman pursuant to court order.

By the COMMISSION:

ORDER

In compliance with the Court's Order in Re Seacoast Anti-Pollution League, 124 NH —, 480 A2d 88, I hereby recuse myself from Docket No. DF 84-167. In addition, I am taking the action of recusing myself from Docket No. DF 84-200.

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NH.PUC*09/10/84*[61520]*69 NH PUC 500*Granite State Telephone Company

[Go to End of 61520]

69 NH PUC 500

Re Granite State Telephone Company

DE 84-240, Order No. 17,198

New Hampshire Public Utilities Commission

September 10, 1984

Order approving tariff allowing telephone users to provide and install customer-owned premises wiring.

By the COMMISSION:

ORDER

WHEREAS, On August 15, 1984 Granite State Telephone Company filed with this Commission proposed supplement number 6 to its tariff NHPUC No. 6 Telephone which would provide

customers the opportunity to provide and install inside wiring; and

WHEREAS, this opportunity would extend to all one and two line business and residential customers; and

WHEREAS, the filing is in compliance with the Federal Communications Commission's first Report and Order in Docket 84-128 dated April 26, 1984; and

WHEREAS, the filing provides that in all cases customers must notify the telephone company of their intent to provide and install their own premises wire, and upon notification, the telephone company will provide and install an appropriate network interface device which will serve as the "demarcation point" between the company's and the customer's facilities; and

WHEREAS, applicable service charges would apply for the installation of that device; and

WHEREAS, the filing is similar, but not identical, to filings submitted by other regulated telephone companies; and

WHEREAS, the Commission finds that, although the concept of allowing customers to install their own wiring should be approved, that there are issues which should be investigated further before granting the filing; it is

ORDERED, that the portion of the filing which allows customers to provide and install one and two line business and residential customer owned premises wiring be, and hereby is, approved; and it is

FURTHER ORDERED, that that portion of the filing which requires that customers must notify the telephone company of their intent to provide and install their own premises wiring be, and hereby is, approved; and it is

FURTHER ORDERED, that that portion of the filing which provides that the telephone company will provide and install a network interface device, and charge applicable service charges for the installation, be, and hereby is, denied pending further investigation; and it is

FURTHER ORDERED, that the Commission will, at a later date, open a docket to consider, among other things, the following issues:

1. Whether network interface devices should be mandated wherever customer owned premises wiring exists.

2. Whether the company should be allowed to charge for such installations.

3. Whether it is necessary for a customer to notify the company of their intent to provide and install their own premises wiring.

4. Whether a customer should become responsible for future maintenance of all inside wiring at the time that customer owned premises wiring is installed.

5. If the company ceases to be responsible for inside wiring maintenance, whether rate decreases should result.

6. Whether any changes are necessary to the manner in which inside wire is accounted for in the utilities chart of accounts.

7. Any other issues which appropriately relate to this filing.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1984.

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NH.PUC*09/11/84*[61521]*69 NH PUC 502*Fuel Adjustment Clause

[Go to End of 61521]

69 NH PUC 502

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, and Woodsville Power and Light Department

DR 84-186,
Supplemental Order No. 17,199

New Hampshire Public Utilities Commission

September 11, 1984

Supplemental order approving revisions to a previous fuel adjustment clause order.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, it has come to the Commission's attention that certain matters in Order No. 17,190 ([1984] 69 NH PUC 496) require corrections and/or clarification; and

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

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

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

FURTHER ORDERED, that 19th Revised Page 19A of Concord Electric Company tariff,

NHPUC No. 9 - Electricity, providing for a fuel surcharge credit of ($0.198) per 100 KWH for the months of July, August, and September, 1984, be, and hereby is, permitted to remain in effect for the month of September, 1984; and it is

FURTHER ORDERED, that 19th Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of ($0.074) per 100 KWH for the months of July, August, and September, 1984, be, and hereby is, permitted to remain in effect for

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the month of September, 1984; and it is

FURTHER ORDERED, that 10th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of 18.7 cents ($0.187) per 100 KWH for the months of July, August, and September, 1984, be, and hereby is, permitted to remain in effect for September, 1984; and it is

FURTHER ORDERED, that 12th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of July, August, and September, 1984 of $0.949 per 100 KWH, be, and hereby is, permitted to remain in effect for September, 1984; and it is

FURTHER ORDERED, that 44th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity, providing for a fuel surcharge of $3.35 per 100 KWH for the month of September, 1984, be, and hereby is, permitted to become effective September 1, 1984; and it is

FURTHER ORDERED, that 96th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge of $0.78 per 100 KWH for the month of September, 1984, be, and hereby is, permitted to become effective September 1, 1984; and it is

FURTHER ORDERED, that 93rd Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge of $1.39 per 100 KWH for the month of September, 1984; be, and hereby is, permitted to become effective September 1, 1984; and it is

FURTHER ORDERED, that upon approval of this order, Order No. 17,190 be, and hereby is, cancelled.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of September, 1984.

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NH.PUC*09/12/84*[61522]*69 NH PUC 503*Public Service Company of New Hampshire

[Go to End of 61522]

69 NH PUC 503

Re Public Service Company of New Hampshire

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

DF 84-200,
Supplemental Order No. 17,201

New Hampshire Public Utilities Commission

September 12, 1984

Order clarifying language in previous order concerning procedural deadline for staff and intervenor testimony.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On August 15, 1984, the Commission issued Report and Order No. 17,164 (69 NH PUC 446) which, inter alia, established a procedural schedule in this docket. The schedule included a September 15, 1984 deadline for Staff and Intervenor testimony on Issue 2b.[1(162)] The report contained an explanatory note on the September 15, 1984 deadline which stated (69 NH PUC at p. 450, Footnote 5):

The Commission's understanding is that this testimony is affirmative in that it stands alone and does not depend on analysis of PSNH data. To the extent that Staff and Intervenor testimony on issue 2b is dependent upon information contained in the August 31, 1984 filing, it will be included in the Responsive Prefiling due on November 15, 1984.

The above language has been the subject of differing interpretations reflected in correspondence received from Public Service Company of New Hampshire ("PSNH") President Robert Harrison on August 27, 1984 and responses from Conservative Law Foundation of New England, Inc. ("CLF") and Seacoast AntiPollution League ("SAPL") on August 31, 1984. The difference was crystallized in a Motion for Reconsideration and Clarification of Procedural Schedule filed by PSNH on September 6, 1984.

After review, we have determined that Report and Order No. 17,164 means exactly what it says. At this point in time, we cannot determine whether testimony which we have not seen should be filed to meet the September deadline or is more appropriately filed on November 15, 1984. That determination will be made if an objection is interposed after the evidence is proferred.

Since we have decided that Report and Order No. 17,164 is to be taken at face value, we will

deny without prejudice PSNH's Motion for Reconsideration and Clarification to Procedural Schedule. We will, however, take this opportunity to clarify the Order in a manner not requested by any of the parties. As noted above, the deadline for the submission of certain Staff and Intervenor 2b testimony is September 15, 1984. Unfortunately, the establishment of that deadline was an error because it falls on a Saturday. The Commission intended that the deadline be established for Friday, September 14, 1984.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire's Motion for Reconsideration and Clarification of Procedural Schedule be, and hereby is, denied without prejudice; and it is

FURTHER ORDERED, that Report and Order No. 17,164 be, and hereby is, amended to provide that the deadline for certain Staff and Intervenor prefiled testimony on issue 2b is September 14, 1984.

By order of the Public Utilities

Commission of New Hampshire this twelfth day of September, 1984.

Concurring Opinion of Commissioner Aeschliman

I concurred with the early portion of the procedural schedule established in Report and Order No. 17,164. In my separate opinion attached to that Order, I reserved judgement on any procedural deadlines established after October 31, 1984. Since the instant Order pertains to events scheduled in September, 1984 and since I recognize the need to clarify that schedule expeditiously, I am concurring in the instant Order. However, I do not wish my signature to be construed as a change from my separate opinion of August 15, 1984. I will continue to reserve judgement on the post-October, 1984 schedule pending my review of PSNH's initial submissions, PSNH's responses to data requests and the input of the Special Commissioner to be appointed pursuant to RSA 363:20.

FOOTNOTE

[1]As defined in the Order of Notice in this docket, issue 2b is "an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders."

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NH.PUC*09/13/84*[61523]*69 NH PUC 505*Connecticut Valley Electric Company, Inc.

[Go to End of 61523]

Re Connecticut Valley Electric Company, Inc.

DR 83-200,
Fifth Supplemental Order No. 17,200

New Hampshire Public Utilities Commission

September 13, 1984

Supplemental order revising terminology used in a previous electric rate order.

By the COMMISSION:

SUPPLEMENTAL ORDER

So much of Order No. 17,182 ([1984] 69 NH PUC 467) that reads "... recovery ..." is amended to read "... refund ..."; and

So much of said Order referring to "... surcharge ..." is amended to read "... credit ...".

By order of the Public Utilities Commission of New Hampshire this thirteenth day of September, 1984.

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NH.PUC*09/13/84*[61524]*69 NH PUC 506*New England Telephone and Telegraph Company

[Go to End of 61524]

69 NH PUC 506

Re New England Telephone and Telegraph Company

DE 84-189, Order No. 17,202

New Hampshire Public Utilities Commission

September 13, 1984

Petition for a license to place and maintain a submarine plant across stateowned public waters; granted.

APPEARANCES: For the petitioner, Wayne Snow, Engineering Manager.

By the COMMISSION:

REPORT

On July 23, 1984 the New England Telephone Company filed with this Commission a petition to obtain authority to place and maintain submarine plant crossing state owned public waters in Tuftonboro, New Hampshire under Lake Winnipesaukee.

The Commission issued an Order of Notice on July 27, 1984 directing all interested parties to appear at a public hearing at 10:00 a.m. on August 22, 1984 at the Concord offices of the Commission. The petitioner was directed to publish a public notice in a newspaper having

general circulation in the area concerned. In addition to the publication of said notice copies of the hearing notice were directed to the Department of Resources and Economic Development; Robert Danos, Director, Safety Services; and the Office of the Attorney General.

An affidavit of publication indicating that publication was made in the Union Leader on August 6, 1984 was received at the Commission's office at Concord, New Hampshire on August 8, 1984.

Wayne Snow, Engineering Manager, explained that the petition results from customer requests for initial telephone service to his summer residence on Thompson Island in Tuftonboro, New Hampshire. The Company proposes to install a submarine wire from an existing utility pole number 87CG/5-1 on Cow Island to an existing pole 87CG/5-2 on Thompson Island, both of which are the property of the New Hampshire Electric Cooperative and which provide overhead electric service to the customer, Mr. William Tetoldi. The proposed telephone line will be buried underground approximately fifty feet on Cow Island between the pole and the water, and will be buried approximately three feet between the water and the pole on Thompson Island. Approximately 245 feet of cable will be installed under Lake Winnipesaukee. The five pair cable will serve a single house on Thompson Island and will be capable of year round service.

The Company offered revised topographic map which it filed with the Commission on August 20, 1984. All maps and supporting documents were made exhibits in the case.

The petition was properly publicized and proper notification was given to the public as to the proposed installation. The Commission notes that no objections were filed or expressed at the hearing.

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In fact no intervenors or interested parties were in attendance.

The Commission finds the petition for a license to place and maintain a submarine plant across state owned public waters at Tuftonboro, New Hampshire under Lake Winnipesaukee to be in the public interest.

Our order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company's petition for a license to place and maintain a submarine plant across state owned public waters at Tuftonboro, New Hampshire under Lake Winnipesaukee is found to be in the public interest and is hereby approved.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of September, 1984.

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69 NH PUC 507

Re Wilton Telephone Company

DR 84-235, Order No. 17,203

New Hampshire Public Utilities Commission

September 13, 1984

Order approving a telephone company's revised tariffs and optional calling services.

By the COMMISSION:

ORDER

WHEREAS, on August 24, 1984, Wilton Telephone Company filed with this Commission certain revisions to its Tariff No. 5 by which it proposed to add the following optional services:

Circle Calling

Granite State Calling

Billed Number Screening

and

WHEREAS, the Commission finds such service in the public interest and consistent with those allowed for other telephone utilities; it is

ORDERED, that the following revisions to the Wilton Telephone Company Tariff No. 5 be, and hereby are, approved for effect on September 20, 1984:

CIRCLE CALLING SERVICE

PART V — TOLL

Section 5

Original Pages 1, 2 and 3

GRANITE STATE SERVICE

PART V — TOLL

Section 6

Original Pages 1 and 2

BILLED NUMBER SCREENING

SERVICE

PART V — TOLL

Section 7

Original Page 1

and, it is

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FURTHER ORDERED, that Wilton Telephone Company give public notice of the availability of these offerings by means of bill inserts or newspaper notice.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of September, 1984.

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NH.PUC*09/13/84*[61526]*69 NH PUC 508*Southern New Hampshire Water Company, Inc.

[Go to End of 61526]

69 NH PUC 508

Re Southern New Hampshire Water Company, Inc.

DE 84-251, Order No. 17,204

New Hampshire Public Utilities Commission

September 13, 1984

Order granting authority to establish a water utility.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc., (the Company) a public utility operating under the jurisdiction of this Commission, by a petition filed August 21, 1984, seeks authority to establish a water utility in a limited area in the Town of Derry, New Hampshire; and

WHEREAS, no other water utility has franchise rights in the area sought, and the petitioner submits that the area will be served under its filed tariff; and

WHEREAS, the Office of the Selectmen/Water Commissioners, Town of Derry, have stated that they support the petition; and

WHEREAS, after investigation and consideration it is the opinion of this Commission that granting the authority sought is in the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition to the petition before the Commission acts; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing on the matter no later than September 21, 1984; and it is

FURTHER ORDERED, that the Company effect said notification by publication of an

attested copy of this order to be published once, in a newspaper having general circulation in that portion of the State in which operations are to be conducted, such publication to be no later than September 14, 1984; said publication to be designated in an affidavit to be made on a copy of this order and filed with this office; and it is

FURTHER ORDERED, Nisi that Southern New Hampshire Water Company, Inc., be authorized pursuant to RSA 374:22 to extend its mains and service in the Town of Derry to and in an area

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known as the Demig subdivision and as shown on a plan entitled Subdivision Plan of Land in Derry, New Hampshire for Demig, Inc., approved by the Derry Planning Board on May 7, 1984, and more specifically including lots on such plan designated 2-11-1A, 2-11-1B, and 2-11-19 through 2-11-33 inclusive, unless a request for hearing is filed with the Commission as provided above or unless the Commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of September, 1984.

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NH.PUC*09/14/84*[61527]*69 NH PUC 509*Fuel Adjustment Clause

[Go to End of 61527]

69 NH PUC 509

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 84-169,
Supplemental Order No. 17,205

New Hampshire Public Utilities Commission

September 14, 1984

Order revising fuel surcharges without formal fuel adjustment clause hearings.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), notified the utilities that the Commission will not

automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly FAC requested a hearing be scheduled; and

ORDERED, that 128th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $1.16 per 100 KWH for the month of August, 1984, be, and hereby is, permitted to become effective August 1, 1984.

By Order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1984.

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NH.PUC*09/14/84*[61528]*69 NH PUC 510*Dunbarton Telephone Company

[Go to End of 61528]

69 NH PUC 510

Re Dunbarton Telephone Company

DR 84-253, Order No. 17,206

New Hampshire Public Utilities Commission

September 14, 1984

Proposal by a telephone company for the installation of a network interface device; denied.

Service, § 294 — Telephone connections and instruments — Inside wiring — Customer ownership.

Pursuant to orders by the Federal Communications Commission, a telephone company was allowed to give its customers the opportunity to provide and install their own inside wiring, but a proposal for the company to install a network interface device where customer-owned premises wiring is located was denied pending further investigation.

By the COMMISSION:

ORDER

WHEREAS, on August 10, 1984 Dunbarton Telephone Company filed with this Commission proposed Supplemental Number 1 to its Tariff NHPUC No. 5 - Telephone which would provide customers the opportunity to provide and install inside wiring; and

WHEREAS, this opportunity would extend to all one- and two-line business and residential customers; and

WHEREAS, the filing is in compliance with the Federal Communications Commission's first

Report and Order in Docket 84-182 dated April 26, 1984; and

WHEREAS, the filing provides for the installation by the telephone company of a Network Interface Device (NID) in all cases where COPW is installed, such NID is to be the demarcation point between facilities of the Company and those of the customer; and

WHEREAS, applicable service charges are proposed for the installation of that device; and

WHEREAS, the filing is similar, but not identical, to filings submitted by other regulated telephone companies; and

WHEREAS, the Commission finds that, although the concept of allowing customers to install their own wiring should be approved, that there are issues which should be investigated further before granting the filing; it is

ORDERED, that the portion of the filing which allows customers to provide and install one- and two-line business and residential customer-owned premises wiring be, and hereby is, approved; and it is

FURTHER ORDERED, that that portion of the filing which provides that the telephone company install a network interface device, and charge applicable service charges for the installation, be and hereby is, denied pending further investigation; and it is

FURTHER ORDERED, that the Commission will, at a later date, open a docket to consider, among other things, the following issues:

1. Whether network interface devices should be mandated wherever

customer-owned premises wiring exists.

2. Whether the company should be allowed to charge for such installations.

3. Whether it is necessary for a customer to notify the company of their intent to provide and install their own premises wiring.

4. Whether a customer should become responsible for future maintenance of all inside wiring at the time that customer-owned premises wiring is installed.

5. If the company ceases to be responsible for inside wiring maintenance, whether rate decreases should result.

6. Whether any charges are necessary to the manner in which inside wire is accounted for in the utilities chart of accounts.

7. Any other issues which appropriately relate to this filing.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1984.

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NH.PUC*09/14/84*[61529]*69 NH PUC 511*Meriden Telephone Company

[Go to End of 61529]

69 NH PUC 511

Re Meriden Telephone Company

DR 84-225, Order No. 17,207

New Hampshire Public Utilities Commission

September 14, 1984

Application by a telephone company for permission to install demarcation devices between customer-owned and company-owned facilities; denied.

Service, § 294 — Telephone connections and instruments — Customer-owned wiring — Demarcation devices.

Pending further investigation, a telephone company was not allowed to install network interface devices as demarcation points between customer-owned wiring and companyowned facilities.

By the COMMISSION:

ORDER

WHEREAS, on August 15, 1984 Meriden Telephone Company filed with this Commission proposed Supplemental Number 1 to its Tariff NHPUC No. 4 Telephone which would provide customers the opportunity to provide and install inside wiring; and

WHEREAS, this opportunity would extend to all one- and two-line business and residential customers; and

WHEREAS, the filing is in compliance with the Federal Communications Commission's first Report and Order in Docket 84-182 dated April 26, 1984; and

WHEREAS, the filing provides for the installation by the telephone company of a Network Interface Device (NID) in all cases where COPW is installed, such NID to be the demarcation point between facilities of the Company and those of the customer; and

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WHEREAS, applicable service charges are proposed for the installation of that device; and

WHEREAS, the filing is similar, but not identical, to filings submitted by other regulated telephone companies; and

WHEREAS, the Commission finds that, although the concept of allowing customers to install their own wiring should be approved, that there are issues which should be investigated further before granting the filing; it is

ORDERED, that the portion of the filing which allows customers to provide and install one- and two-line business and residential customer-owned premises wiring be, and hereby is, approved; and it is

FURTHER ORDERED, that that portion of the filing which provides that the telephone company install a network interface device, and charge applicable service charges for the installation, be, and hereby is, denied pending further investigation; and it is

FURTHER ORDERED, that the Commission will, at a later date, open a docket to consider, among other things, the following issues:

1. Whether network interface devices should be mandated wherever customer owned premises wiring exists.

2. Whether the company should be allowed to charge for such installations.

3. Whether it is necessary for a customer to notify the company of their intent to provide and install their own premises wiring.

4. Whether a customer should become responsible for future maintenance of all inside wiring at the time that customer-owned premises wiring is installed.

5. If the company ceases to be responsible for inside wiring maintenance, whether rate decreases should result.

6. Whether any changes are necessary to the manner in which inside wire is accounted for in the utilities chart of accounts.

7. Any other issues which appropriately relate to this filing.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1984.

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NH.PUC*09/14/84*[61530]*69 NH PUC 512*Kearsarge Telephone Company

[Go to End of 61530]

69 NH PUC 512

Re Kearsarge Telephone Company

DR 84-220, Order No. 17,208

New Hampshire Public Utilities Commission

September 14, 1984

Order disallowing the installation of network interface devices to differentiate between customer-owned and company-owned telephone plant.

By the COMMISSION:

ORDER

WHEREAS, on August 15, 1984 Kearsarge Telephone Company filed with this Commission proposed Supplemental Number 1 to its Tariff NHPUC No. 5 - Telephone which would provide customers the opportunity to provide and install inside wiring; and

WHEREAS, this opportunity would extend to all one- and two-line business and residential customers; and

WHEREAS, the filing is in compliance with the Federal Communications Commission's first Report and Order in Docket 84-182 dated April 26, 1984; and

WHEREAS, the filing provides for the installation by the telephone company of a Network Interface Device (NID) in all cases where COPW is installed, such NID to be the demarcation point between facilities of the Company and those of the customer; and

WHEREAS, applicable service charges are proposed for the installation of that device; and

WHEREAS, the filing is similar, but not identical, to filings submitted by other regulated telephone companies; and

WHEREAS, the Commission finds that, although the concept of allowing customers to install their own wiring should be approved, that there are issues which should be investigated further before granting the filing; it is

ORDERED, that the portion of the filing which allows customer to provide and install one- and two-line business and residential customer-owned premises wiring be, and hereby is, approved; and it is

FURTHER ORDERED, that that portion of the filing which provides that the telephone company install a network interface device, and charge applicable service charges for the installation, be, and hereby is, denied pending further investigation; and it is

FURTHER ORDERED, that the Commission will, at a later date, open a docket to consider, among other things, the following issues:

1. Whether network interface devices should be mandated wherever customer owned premises wiring exists.

2. Whether the company should be allowed to charge for such installation

3. Whether it is necessary for a customer to notify the company of their intent to provide and install their own premises wiring.

4. Whether a customer should become responsible for future maintenance of all inside wiring at the time that customer owned premises wiring is installed.

5. If the company ceases to be responsible for inside wiring maintenance, whether rate decreases should result.

6. Whether any charges are necessary to the manner in which inside wire is accounted for in the utilities chart of accounts.

7. Any other issues which appropriately relate to this filing.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1984.

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NH.PUC*09/14/84*[61531]*69 NH PUC 514*Wilton Telephone Company

[Go to End of 61531]

69 NH PUC 514

Re Wilton Telephone Company

DR 84-226, Order No. 17,209

New Hampshire Public Utilities Commission

September 14, 1984

Order disallowing the installation of network interface devices to differentiate between customer-owned and company-owned telephone plant.

By the COMMISSION:

ORDER

WHEREAS, on August 15, 1984 Wilton Telephone Company filed with this Commission proposed Supplemental Number 1 to its Tariff NHPUC No. 5 Telephone which would provide customers the opportunity to provide and install inside wiring; and

WHEREAS, this opportunity would extend to all one- and two-line business and residential customers; and

WHEREAS, the filing is in compliance with the Federal Communications Commission's first Report and Order in Docket 84-182 dated April 26, 1984; and

WHEREAS, the filing provides for the installation by the telephone company of a Network Interface Device (NID) in all cases where COPW is installed, such NID to be the demarcation point between facilities of the Company and those of the customer; and

WHEREAS, applicable service charges are proposed for the installation of that device; and

WHEREAS, the filing is similar, but not identical, to filings submitted by other regulated telephone companies; and

WHEREAS, the Commission finds that, although the concept of allowing customers to install their own wiring should be approved, that there are issues which should be investigated further before granting the filing; it is

ORDERED, that that portion of the filing which allows customers to provide and install one- and two-line business [and] residential customer-owned premises wiring be, and hereby is, approved, and it is

FURTHER ORDERED, that the portion of the filing which provides that the telephone

company install a network interface device, and charge applicable service charges for the installation, be, and hereby is, denied pending further investigation; and it is

FURTHER ORDERED, that the Commission will, at a later date, open a docket to consider, among other things, the following issues:

1. Whether network interface devices should be mandated wherever customer-owned premises wiring exists.

2. Whether the company should be allowed to charge for such installations.

3. Whether it is necessary for a customer to notify the company of their intent to provide and install their own premises wiring.

4. Whether a customer should become responsible for future maintenance of all inside wiring at the time that

customer-owned premises wiring is installed.

5. If the company ceases to be responsible for inside wiring maintenance, whether rate decreases should result.

6. Whether any changes are necessary to the manner in which inside wire is accounted for in the utilities chart of accounts.

7. Any other issues which appropriately relate to this filing.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1984.

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NH.PUC*09/14/84*[61532]*69 NH PUC 515*Chichester Telephone Company

[Go to End of 61532]

69 NH PUC 515

Re Chichester Telephone Company

DR 84-252, Order No. 17,210

New Hampshire Public Utilities Commission

September 14, 1984

Order disallowing the installation of network interface devices to differentiate between customer-owned and company-owned telephone plant.

By the COMMISSION:

ORDER

WHEREAS, on August 15, 1984 Chichester Telephone Company filed with this Commission proposed Supplemental Number 1 to its Tariff NHPUC No. 3 - Telephone which would provide customers the opportunity to provide and install inside wiring; and

WHEREAS, this opportunity would extend to all one- and two-line business and residential customers; and

WHEREAS, the filing is in compliance with the Federal Communications Commission's first Report and Order in Docket 84-182 dated April 26, 1984; and

WHEREAS, the filing provides for the installation by the telephone company of a Network Interface Device (NID) in all cases where COPW is installed, such NID to be the demarcation point between facilities of the Company and those of the customer; and

WHEREAS, applicable service charges are proposed for the installation of that device; and

WHEREAS, the filing is similar, but not identical, to filings submitted by other regulated telephone companies; and

WHEREAS, the Commission finds that, although the concept of allowing customers to install their own wiring should be approved, that there are issues which should be investigated further before granting the filing; it is

ORDERED, that the portion of the filing which allows customers to provide and install one- and two-line business and residential customer-owned premises wiring be, and hereby is, approved; and it is

FURTHER ORDERED, that that portion of the filing which provides that the

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telephone company install a network interface device, and charge applicable service charges for the installation, be, and hereby is, denied pending further investigation; and it is

FURTHER ORDERED, that the Commission will, at a later date, open a docket to consider, among other things, the following issues:

1. Whether network interface devices should be mandated wherever customer-owned premises wiring exists.

2. Whether the company should be allowed to charge for such installations.

3. Whether it is necessary for a customer to notify the company of their intent to provide and install their own premises wiring.

4. Whether a customer should become responsible for future maintenance of all inside wiring at the time that customer-owned premises wiring is installed.

5. If the company ceases to be responsible for inside wiring maintenance, whether rate decreases should result.

6. Whether any changes are necessary to the manner in which inside wire is accounted for in the utilities chart of accounts.

7. Any other issues which appropriately relate to this filing.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1984.

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NH.PUC*09/14/84*[61533]*69 NH PUC 516*Union Telephone Company

[Go to End of 61533]

69 NH PUC 516

Re Union Telephone Company

DR 84-255, Order No. 17,211

New Hampshire Public Utilities Commission

September 14, 1984

Order disallowing the installation of network interface devices to differentiate between customer-owned and company-owned telephone plant.

By the COMMISSION:

ORDER

WHEREAS, on August 15, 1984 Union Telephone Company filed with this Commission proposed Supplement Number 2 to its Tariff NHPUC No. 7 - Telephone which would provide customers the opportunity to provide and install inside wiring; and

WHEREAS, this opportunity would extend to all one- and two-line business and residential customers; and

WHEREAS, the filing is in compliance with the Federal Communications Commission's first Report and Order in Docket 84-182 dated April 26, 1984; and

WHEREAS, the filing provides that in all cases customers must notify the telephone company of their intent to provide and install their own premises wire, and upon notification, the telephone company will provide and install an appropriate network interface device which will serve as the "demarcation point" between the company's and the customer's facilities; and

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WHEREAS, applicable service charges would apply for the installation of that device; and

WHEREAS, the filing is similar, but not identical, to filings submitted by other regulated telephone companies; and

WHEREAS, the Commission finds that, although the concept of allowing customers to install their own wiring should be approved, that there are issues which should be investigated further before granting the filing; it is

ORDERED, that the portion of the filing which allows customers to provide and install one-

and two-line business and residential customer-owned premises wiring be, and hereby is, approved; and it is

FURTHER ORDERED, that that portion of the filing which requires that customers must notify the telephone company of their intent to provide and install their own premises wiring be, and hereby is, approved; and it is

FURTHER ORDERED, that that portion of the filing which provides that the telephone company will provide and install a network interface device, and charge applicable service charges for the installation be, and hereby is, denied pending further investigation; and it is

FURTHER ORDERED, that the Commission will, at a later date, open a docket to consider, among other things, the following issues:

1. Whether network interface devices should be mandated wherever customer-owned premises wiring exists.

2. Whether the company should be allowed to charge for such installations.

3. Whether it is necessary for a customer to notify the company of their intent to provide and install their own premises wiring.

4. Whether a customer should become responsible for future maintenance of all inside wiring at the time that customer owned premises wiring is installed.

5. If the company ceases to be responsible for inside wiring maintenance, whether rate decreases should result.

6. Whether any changes are necessary to the manner in which inside wire is accounted for in the utilities chart of accounts.

7. Any other issues which appropriately relate to this filing.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1984.

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NH.PUC*09/17/84*[61534]*69 NH PUC 517*Public Service Company of New Hampshire

[Go to End of 61534]

69 NH PUC 517

Re Public Service Company of New Hampshire

DF 84-200, Order No. 17,212

New Hampshire Public Utilities Commission

September 17, 1984

Order granting motion to intervene.

By the Commission:

ORDER

Pursuant to Report and Order No 17,164 ([1984] 69 NH PUC 446, 450) Calcogen, Inc. ("Calcogen") submitted an Offer of Proof on August 31, 1984. I have reviewed the Offer of Proof and find that it does not contain sufficient information about Calcogen's proposed alternatives to make any evidentiary rulings at this time. Such evidentiary rulings will be made, if appropriate, at the time evidence is proffered. However, the standard for an Offer of Proof for the purposes of supporting a Motion to Intervene is less strict than the comparable standard for the submission of evidence. Thus, I will grant Calcogen's Motion to Intervene.

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NH.PUC*09/19/84*[61535]*69 NH PUC 518*New England Telephone and Telegraph Company

[Go to End of 61535]

69 NH PUC 518

Re New England Telephone and Telegraph Company

DR 84-246, Order No. 17,214

New Hampshire Public Utilities Commission

September 19, 1984

Petition by a telephone company for authority to expand its measured service territory; granted.

By the Commission:

ORDER

WHEREAS, New England Telephone and Telegraph Company has filed with this Commission its Supplement No. 14 to tariff NHPUC No. 75 said supplement proposing the expansion of measured service options to nine additional exchanges; and

WHEREAS, said filing conforms to previous directions and format for such optional service offerings, and documents the availability of same for exchanges added during the final quarter of 1984; and

WHEREAS, the Commission finds said filing in the public interest; it is

ORDERED, that Supplement No. 14, comprising a Title Page and Original Pages 1-17, to New England Telephone and Telegraph Company tariff, NHPUC No. 75, be, and hereby is, approved for effect on September 30, 1984; and it is

FURTHER ORDERED, that public notice providing timely notice of the availability of these options be given affected customers by letter or bill insert.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of

September, 1984.

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[Go to End of 61536]

69 NH PUC 519

Re Whitefield Power and Light Associates

DR 84-219, Order No. 17,215

New Hampshire Public Utilities Commission

September 19, 1984

Order approving a long-term electric rate filing and interconnection agreement.

By the Commission:

ORDER

WHEREAS, on August 17, 1984, Whitefield Power and Light Associates ("Whitefield") submitted a long-term rate filing pursuant to Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 61 PUR4th 132; and

WHEREAS, Whitefield's filing appears to be consistent with the aforementioned Order; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire ("PSNH") the opportunity to file comments or exceptions; and

WHEREAS, it is in the public interest to approve long term rate filings expeditiously; it is therefore

ORDERED NISI, that the long term rate filing of Whitefield, including the interconnection agreement and the rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments or exceptions no later than 14 days from the date of this Order; and it is

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

By order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 1984.

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[Go to End of 61537]

69 NH PUC 519

Re Franconia Power and Light Associates

DR 84-20,
Supplemental Order No. 17,216

New Hampshire Public Utilities Commission

September 19, 1984

Order approving an electric utility's long-term rate filing for a preexisting interconnection arrangement.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, the Commission approved certain long term rates for Franconia Power & Light Associates ("Franconia") by Order No. 16,874 ([1984] 69 NH PUC 37); and

WHEREAS, on August 15, 1984, Franconia submitted a long-term rate filing seeking to amend its rates to those approved in Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 61 PUR4th 132; and

WHEREAS, there is no need to adhere to the requirement that Franconia provide 45 days notice to Public Service Company of New Hampshire ("PSNH") because the purpose of the notice period is to allow sufficient time for the preparation of an interconnection study and Franconia has an existing interconnection arrangement with PSNH (See, Order No. 17,022 [(1984) 69 NH PUC 234]); and

WHEREAS, Franconia's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra; and

WHEREAS, the Commission wishes to allow PSNH the opportunity to file comments or exceptions; and

WHEREAS, it is in the public interest to approve long-term rate filings expeditiously; it is therefore

ORDERED NISI, that the long term filing of Franconia, including the interconnection agreement and the rates set forth on the long-term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments and exceptions no later than 14 days from the date of this Order; and it is

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

By order of the Public Utilities Commission of New Hampshire this nineteenth day of

September, 1984.

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[Go to End of 61538]

69 NH PUC 520

Re Sunapee Power and Light Associates

DR 84-97,
Supplemental Order No. 17,217

New Hampshire Public Utilities Commission

September 19, 1984

Order approving an electric utility's long-term rate filing for a preexisting interconnection arrangement.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission approved certain long term rates for Sunapee Power & Light Associates ("Sunapee") by Order No. 17,022 ([1984] 69 NH PUC 234); and

WHEREAS, on August 15, 1984, Sunapee submitted a long-term rate filing seeking

to amend its rates to those approved in Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 61 PUR4th 132); and

WHEREAS, there is no need to adhere to the requirement that Sunapee provide 45 days notice to Public Service Company of New Hampshire ("PSNH") because the purpose of the notice period is to allow sufficient time for the preparation of an interconnection study and Sunapee has an existing interconnection agreement with PSNH (See, Order No. 17,022); and

WHEREAS, Sunapee's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra; and

WHEREAS, the Commission wishes to allow PSNH the opportunity to file comments or exceptions; and

WHEREAS, it is in the public interest to approve long-term rate filings expeditiously; it is therefore

ORDERED NISI, that the long term filing of Sunapee, including the interconnection agreement and the rates set forth on the long-term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments and exceptions no later than 14 days

from the date of this Order; and it is

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

By order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 1984.

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NH.PUC*09/19/84*[61539]*69 NH PUC 521*Blodgett Landing Water Company

[Go to End of 61539]

69 NH PUC 521

Re Blodgett Landing Water Company

DF 84-149, Order No. 17,221

New Hampshire Public Utilities Commission

September 19, 1984

Order closing an investigation into a water company's failure to file an annual report.

By the Commission:

ORDER

WHEREAS, RSA 374:5 requires every public utility to file with the Commission reports containing facts and statistics as required by the Commission; and

WHEREAS, the New Hampshire Code of Administrative Rules, PUC 607.06 and PUC 609.05 requires inter alia the filing with the Commission of annual reports which contain specified facts and statistics; and

WHEREAS, Blodgett Landing Water Company did not file the F-16 Annual Report for the year ended December 31, 1983 on or before March 31, 1984 as required by the above-stated Commission rules; and

WHEREAS, on June 22, 1984, the Commission issued an Order of Notice which established this docket for the purpose of

determining whether Blodgett Landing Water company should be fined $100 per day for failure to file the required annual report; and

WHEREAS, thereafter Blodgett Landing Water Company filed the said annual report; and

WHEREAS, the Commission has determined that Blodgett Landing Water Company should not be fined; it is hereby

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

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 1984.

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NH.PUC*09/21/84*[61540]*69 NH PUC 522*Public Service Company of New Hampshire

[Go to End of 61540]

69 NH PUC 522

Re Public Service Company of New Hampshire

Intervenors: Office of Consumer Advocate, Community Action Program, Business and Industry Association of New Hampshire, Conservation Law Foundation of New England, Inc., Seacoast Anti-Pollution League, and Campaign for Ratepayers' Rights

DF 84-167,
Seventh Supplemental Order No. 17,222

New Hampshire Public Utilities Commission

September 21, 1984

Petition by an electric utility for additional financing for its nuclear power project; granted with certain restrictions.

Security Issues, § 58 — Purposes — Construction projects — Effect of issuance on prudency proceedings.

The commission affirmed an earlier order approving additional financing for a nuclear power project, holding that such approval would not affect any later proceedings designed to investigate the prudence of continuing the construction project or the need to disengage from the project. [1] p.525.

Security Issues, § 58 — Purposes — Construction projects — Emergency versus longterm needs — Public good.

An electric utility was authorized to issue and sell additional debentures and warrants as a financing mechanism for the continued construction of a nuclear power unit even though the amount authorized was greater than the company's immediate emergency capital needs where the commission found the entire issuance was for the public good because it would: (1) protect the status quo of the unit's construction; (2) protect investments already sunk in the unit; (3) restore the utility's financial integrity; (4) allow the utility to regain access to capital markets for its external financing needs; and (5) maintain the company's ability to meet its service obligations until the unit could be completed and placed into commercial operation. [2] p.531.

Security Issues, § 120 — Conditions and restrictions — Additional construction financing —

Expenditure limits — Dividend restrictions.

Additional financing for a nuclear power project in excess of an electric utility's emergency funding needs was conditioned upon: (1) less than 10 per cent of the funds being

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used for direct expenditures on the plant; (2) nonaccrual of an allowance for funds used during construction for the unit pending a final order; (3) not distributing dividends on common or preferred stock; and (4) the filing of monthly progress reports rather than semiannual updates. [3] p.539.

Security Issues, § 58 — Purposes — Construction projects — Emergency versus longterm needs — Prudency proceedings.

Statement, in dissenting opinion, that the commission should authorize only that level of additional financing necessary for tiding over a utility when it petitions for emergency funding for a nuclear power project, especially when the issues of prudence and possible disengagement are to be considered in a separate investigation. p.541.

(Aeschliman, commissioner, dissents, p. 541.)

Appearances: As previously noted.

By the Commission:

REPORT

I. PROCEDURAL HISTORY

On June 29, 1984, Public Service Company of New Hampshire ("PSNH" or "Company") filed a Petition for authority to: 1) raise not more than $425,000,000 through the issuance of and sale of Units (consisting of debentures and warrants to purchase shares of common stock); and 2) issue shares of common stock in satisfaction of the warrants. The Commission accordingly issued an Order of Notice on July 2, 1984 which inter alia opened this docket and established an initial procedural schedule.

The initial phases of this proceeding involved several critical procedural issues including intervention, the disqualification of a Commissioner, the establishment of a schedule and the scope of the docket.

With respect to intervention, the Presiding Officer granted the Motions to Intervene of the Consumer Advocate, the Community Action Program ("CAP"), the Business and Industry Association of New Hampshire ("BIA"), the Conservation Law Foundation of New England, Inc. ("CLF"), the Seacoast Anti-Pollution League ("SAPL") and the Campaign for Ratepayers' Rights ("CRR"). See e.g., Report and Supplemental Order No. 17,138 ([1984] 69 NH PUC 412) ("First Procedural Order").

Motions for the Disqualification of the Chairman were filed by the Consumer Advocate, SAPL and CRR. The basis of the Motions was an allegation that the Chairman had indicated

prejudgement of certain facts which are the subject of this docket in a speech delivered to the Greater Portsmouth Chamber of Commerce on June 28, 1984. Those Motions were denied by the Chairman in Report and Order No. 17,127 ([1984] 69 NH PUC 391), Opinion and Order No. 17,162 ([1984] 69 NH PUC[1(163)] 438) and Order No. 17,169 ([1984] 69 NH PUC 456).

The issues of schedule and scope were interrelated. Several intervenors argued that a broad inquiry by the Commission is required by Re Easton (1984) 124 NH —, 480 A2d 88, and that such a broad inquiry required a procedural schedule which would span a period of four to six months. The Company argued that timely approval of its Petition was essential to its ability to avoid a severe liquidity

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crisis and that Easton did not mandate a broad Seabrook oriented investigation. The Commission initially established a broad scope of investigation, but warned that the broader investigation should be accomplished within a schedule which would address the Company's concerns for timely action. Accordingly hearings were scheduled on the issues of determining the date by which the matter must be adjudicated in order to avoid a de facto denial of PSNH's Petition and the feasibility of a "bridge" financing to carry the Company through extended proceedings. (69 NH PUC at p. 413.)

Pursuant to the First Procedural Order, the Commission heard evidence during three days of hearing. That evidence was analyzed in Report and Second Supplemental Order No. 17,141 ([1984] 69 NH PUC 422) ("Second Procedural Order"). The Commission found that an Order issued after August 31, 1984 would be a de facto denial of the Company's Petition and that a "bridge" financing was not feasible for the purposes of the procedural analysis. The Commission also found that a broad investigation into the Seabrook related issues could not be accomplished within that time frame. Based on evidence which indicated that less than 10% of the proceeds of the proposed financing would be devoted to direct Seabrook expenditures and that the Company planned to finance Seabrook through an upcoming project financing known as "Newbrook," the Commission excluded the Seabrook related issues from the instant docket and opened a new docket to address those issues in the context of the upcoming "Newbrook" project financing.[2(164)] Thus, the scope of the instant docket was defined as (69 NH PUC at p. 425):

... whether the proposed financing is in the public good. This will include consideration of:

1) the terms, conditions and amount of the proposed financing; and

2) the purpose of the proposed financing; and

3) the short term effect of the proposed financing on the Company's capital structure.

A hearing was held on August 8, 1984 as scheduled in the Second Procedural Order. All evidence proffered was admitted

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and no limitations were imposed on crossexamination. Briefs were filed on August 17, 1984. On August 28, 1984, the Commission issued Report and Fourth Supplemental Order No. 17,183

(69 NH PUC 469) ("Final Order"), conditionally granting the Company's Petition.

On August 28, 1984, SAPL filed an appeal based on allegations that the Commission erred by issuing the Second Procedural Order and the Chairman erred in denying SAPL's Motion for Disqualification. The Court accepted the appeal and heard the matter on an accelerated schedule. On September 7, 1984, the Court issued its order in Re Seacoast AntiPollution League, supra, which inter alia, vacated and remanded the Second Procedural Order and the Final Order. The Court also reversed Report and Order No. 17,127. The Order was based on the Court's holding that the Chairman should have disqualified himself in the instant proceeding. The Court explicitly stated that the Second Procedural Order would have been a proper exercise of Commission discretion in the absence of the error of denying the Motions to Disqualify.

Pursuant to the Court's decision in Re Seacoast Anti-Pollution League, supra, the Chairman recused himself from the instant proceeding in Order No. 17,197 ([1984] 69 NH PUC 500). Additionally, the Commission issued Order No. 17,196 which inter alia designated Commissioner Iacopino as the Presiding Officer until further ordered by the Commission and applied to the Governor for appointment of a Special Commissioner pursuant to RSA 363:20. On September 13, 1984 after nomination by the Governor and approval by the Council, Special Commissioner John N. Nassikas was sworn in.

On September 17, 1984, SAPL filed a Motion to Determine Scope of Proceeding and Reopen Record which requested inter alia that the Commission "as reconstituted" (Motion at 2) schedule a hearing on the issue of whether the scope of the instant proceeding should be narrowed to the extent it was in the Second Procedural Order. PSNH filed an objection to SAPL's Motion later on the same day. On September 20, 1984, CLF filed a letter request for de novo proceedings.

In this Order, the Commission will reexamine the Second Procedural Order and the Final Order, both of which were vacated by the Court and remanded to the Commission. We will also rule on SAPL's Motion of September 17, 1984 and CLF's September 20, 1984 letter request.

II. SECOND PROCEDURAL ORDER

[1] Since we are the only state body empowered to adjudicate a request for RSA Chapter 369 financing approval, we are permitted to consider and, if appropriate, readopt the Second Procedural Order under the rule of necessity, Re Lathrop (1982) 122 NH 262, 266.

We have reviewed the evidence presented to the Commission during the proceedings of July 24, 30 and 31, 1984 and August 1, 1984 as well as the argument presented by the parties at that time. We have also reviewed the argument presented to the Court by the parties in their Briefs and the Court's opinion in Re Seacoast Anti-Pollution League, supra. Our evaluation leads us to conclude that we must readopt the Second Procedural Order.

In Re Seacoast Anti-Pollution League, supra, the Court held that the Chairman should not have participated in the decision-making process which culminated in the issuance of the Second Procedural Order. Accordingly, the Court provided that "... the August 2, 1984 Order must be vacated and the issue reconsidered by the remaining commissioners, and by any

substitute, if one is needed. See RSA 363:20." (Slip opinion at p. 7.) The Court, however,

went on to provide its analysis on the issue of whether the Second Procedural Order was a proper exercise of Commission discretion. The Court stated: "Nevertheless, since this second issue will be before the commission again, we will address its merits in this appeal." (Id.)

In its analysis of the merits, the Court examined SAPL's argument that the Second Procedural Order is inconsistent with the Court's holding in Re Easton (1984) 124 NH —, 480 A2d 88. Easton provides that "... the PUC has a duty to determine whether, under all the circumstances, the financing is in the public good — a determination which includes considerations beyond the terms of the proposed borrowing." (Slip opinion at p. 6.) SAPL contended that the decision to exclude Seabrook related issues from the scope of proceedings excluded a matter which, in this instance, was a mandatory element in a finding of public good. The Court rejected the SAPL argument when it stated (slip opinion at p. 9):

If the record before us demonstrated that the present financing proceeding provided the only opportunity to assess the alternatives to completing the first Seabrook Unit, the order eliminating that inquiry would be inconsistent with our holding in Easton. The record indicates otherwise, however. It is undisputed that a further proceeding to consider the ultimate merits of the "Newbrook" proposal will be necessary, and in fact its scheduling has already been established. This will provide an appropriate context to assess alternatives to the completion of Seabrook and the PUC has ordered such an assessment to be made. While there was only one opportunity for such an inquiry in Easton, there are two in this case. There was no error of law in the Commission's decision to chose the second opportunity, unless that was not a realistic opportunity at all.

After reviewing the arguments and the record evidence pertinent to the finding that the second opportunity represented by the DF 84-200 proceeding is realistic, the Court concluded that SAPL failed to meet its burden of demonstrating a lack of meaningful opportunity to address Seabrook related issues. The Court stated (Id., slip opinion at p. 10):

There is no question that in a perfect world it would be preferable to make the inquiry into alternatives before another penny is spent. There is apparently no question, as the appellants argue, that the object of this financing includes the ultimate completion of the first Seabrook Unit. These two conclusions, however, do not carry the appellants' burden to demonstrate that the approval of this financing effectively eliminates a realistic consideration of alternatives to the completion of Seabrook.

The Court sustained the finding in the Commission's report of August 2, 1984 that approximately 90% of the present funding will be required for purposes other than new construction at Seabrook and said (Id., slip opinion at p. 10):

Further, the transcript contains testimony that the further Newbrook proceeding will include a request to approve a further $350 million of financing, some of which will be requested for new construction. it simply cannot be said, therefore, that approval of this financing is either approval of $425

million in new construction or final approval in fact of plans to complete Seabrook construction. The possibility that Seabrook may not be completed is therefore a risk that

investors must bear when they buy the proposed financing instruments. We therefore conclude that the PUC did not act unlawfully or unreasonably in limiting the scope of the present financing.

Our review of the instant record and of the orders issued to date in DF 84-200 leads us to conclude that the "Newbrook" docket will offer a realistic opportunity to investigate alternatives to the completion of the first Seabrook Unit. The approval of the instant financing cannot and will not carry over to our review of the evidence in DF 84-200; our decision on whether PSNH should continue to engage in its construction program will be based on the evidence of record in that proceeding. Accordingly, if we continue to be satisfied with the findings which formed the basis of our decision to narrow the scope of the instant proceedings, we must readopt the Second Procedural Order, affirmed on the merits in Re Seacoast Anti-Pollution League, supra.

After review, we believe that the record evidence supports the findings which were made in the Second Procedural Order. Those findings included the need for expeditious action to avoid a de facto denial of the Company's Petition,[3](165) the inability to adjudicate the broader Seabrook related issues in such an accelerated time frame,[4](166) the lack of feasibility of confining the scope to a "bridge" financing[5](167) and the fact that less than 10% of the financing will be directed to direct Seabrook purposes.[6](168) Because it was the Seabrook issues which would occupy most of the procedural time, the Commission found that it was appropriate to address those issues in a context where the timeliness of a decision would not be so critical.

Since we believe: 1) that our previous findings are as applicable now as they were when the Second Procedural Order was issued; 2) that the proceeding at DF 84-200 will provide a meaningful opportunity to address the issues excluded the instant docket; and 3) that SAPL and other Intervenors have had an adequate opportunity to submit argument on scope, we will readopt the findings and conclusions of the Second Procedural Order which are pertinent to scope.[7](169) Accordingly, SAPL's September 17, 1984 Motion to Determine Scope of Proceeding and Reopen Record will be denied.

III. FINAL ORDER

Having determined that the scope of our review will be as set forth in the Second Procedural Order, it remains to conduct a de novo review of the record in order to decide the merits. Our review

has lead us to conclude that the Company's Petition must be conditionally granted. The conditions which will be imposed will be designed to maintain the status quo at Seabrook and ensure that our decision in DF 84-200 will be meaningful. In this Report, we will initially review the PSNH proposal. We will then examine the positions of the parties. Finally, we will set forth the analysis which forms the foundation of our conclusions.

A. The Company's Proposal

In this docket, PSNH is seeking authority pursuant to RSA Chapter 369 to issue and sell securities in an amount not to exceed $425,000,000. The financing is proposed to be accomplished through two offerings. As the Court stated in Re Seacoast Anti-Pollution League,

supra (Slip opinion at p. 3): "It is agreed that the public offering sought by the Company is to authorize $155 million in debentures and warrants for purchase of PSNH stock. An exchange offering of $90 million and $180 million rounds out the requested $425 million." We shall describe each of the two offerings identified by the Court in turn.

1. The Public Offering

The Public Offering is proposed to consist of 155,000 Units with a price of $1000 each. Each Unit would consist of a debenture with a face amount of $1000, plus a number of warrants to purchase shares of PSNH common stock. The debentures, unsecured debt obligations of PSNH, would carry a coupon rate of interest which, when compared to the market rate, would result in a value which is lower than face value. The Company expects that the debentures would mature in 2004, with a sinking fund designed to return 10% of the original principal amount each year commencing in 1995. This produces an average life of the issue of 15.5 years. The debentures would be redeemable after 1994.

The difference between the face value and the market value of the debentures would be made up by the warrants to purchase common stock. PSNH's proposal is to allow Unit holders to exercise the warrants within seven years. The price of the warrants will depend on several factors including the exercise price of the warrant, investor perception of the future price volatility of PSNH shares and future interest rates. Once the price of the warrants is determined, that price would be divided into the difference between the face value of the debentures and the market value of the Units to produce the number of warrants to be issued with each Unit.

As described above, the Units will include warrants for the purchase of shares of common stock. It is expected that all or a portion of those warrants will be exercised and PSNH will be required to issue shares of common stock in satisfaction of the warrants. Thus, in addition to the authority to issue and sell the warrants, PSNH is seeking the concomitant authority to issue and sell shares of common stock.

2. The Exchange Offering

The Exchange Offering is designed to satisfy the terms of the $90,000,000 principal amount of short term notes issued by the Company in June of 1984. See Re Public Service Co. of New Hampshire, (1984) 69 NH PUC 326; (1984) 69 NH PUC 275. The proposed Exchange Offering is made up of two components: 1) $90,000,000 of Units in exchange for the $90,000,000 principal amount of short term notes; and 2) $180,000,000 of debentures offered in satisfaction of debenture purchase warrants which were issued as a

part of the sale of the $90,000,000 principal amount of short term notes. Thus, the total potential proceeds of the Exchange Offering would be $270,000,000.

The $90,000,000 of units to be offered in exchange for the June, 1984 short term notes are intended to satisfy conversion rights contained in the Purchase Agreement for Secured Exchangeable Promissory Notes of June 19, 1984 (Exhibit 7). The face amount of the Units corresponds to the face amount of the short term notes to be tendered for exchange.

The exchange Units will be identical to the Public Offering Units described above in all

aspects excepts price. The price may be less than the $1000 price of the Public Offering Units because, under the Note Purchase Agreement, noteholders are entitled to at least a 21% yield to maturity on the debenture portion of the Unit. If the Public Offering Units contain debentures with a lower yield to maturity, the price of the Exchange offering Units will be adjusted downward to increase the yield to the required level.

If the Exchange Units are offered at a price lower than $1000, noteholders electing the exchange will be entitled to take the difference between the price and the face value in cash, additional Units or additional debentures. Thus, PSNH is requesting specific authorization to issue and sell the requisite securities to satisfy this requirement.

The second component of the Exchange Offering is the $180,000,000 of debentures offered in satisfaction of debenture purchase warrants issued as part of the June, 1984 note sale (See, Exhibit 7). Two debenture purchase warrants were issued with each $1000, principal amount of June, 1984 notes. Each debenture purchase warrant entitles the holder to purchase $1000 principal amount debentures for cash. The Exchange Offering warrant debentures will be identical to the Public Offering Unit debentures in all aspect except price. Pursuant to the terms of the Note Purchase Agreement (Exhibit 7), the debentures must be priced to yield at least 21% to maturity. PSNH is seeking authority to issue and sell $180,000,000 of the warrant debentures to cover the potential tender of all debenture purchase warrants.

B. Positions of the Parties

We have reviewed the positions of the parties as set forth in the record, the argument submitted in the August 17, 1984 trial briefs and the briefs submitted to the Court in Re Seacoast Anti-Pollution League, supra. All parties have had a full opportunity to submit their positions and we have not been informed of any change in position during the pendency of our review on remand. Upon our independent review of those positions here, we conclude that the description of the positions of the parties set forth in the Final Order (69 NH PUC at pp. 472-474) is accurate and adequate. For convenience, we will reproduce that description here.

PSNH claims that the proposed financing is a vital component in a plan to reestablish the Company's financial integrity. The first part of the plan was the June, 1984 issuance of the $90,000,000 in short term notes. See, Re Public Service Co. of New Hampshire, Docket No. 84-121, supra. The second part of the plan is the instant financing which is designed to prefinance Company operations through the end of 1986. The third part of the plan, proposed for late 1984, is the socalled "Newbrook" financing, which is designed to pre-finance the construction cost of Seabrook Unit I through commercial operation. PSNH contends that any deviation from the plan would upset

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the Company's remaining credibility with investors because the plan had been publicized and a deviation would be perceived as a set-back.

PSNH acknowledges that its cash needs for the applicable period are a minimum of $210,000,000 in new funds.[8(170)] However, the Company contends that it must seek authority to finance at least $425,000,000. There are two reasons for this. First, PSNH is required by its

agreement with certain short term noteholders to issue the Exchange Offering prior to or concurrent with any other long term offering. Thus, the Company is obligated to go to the market for at least $270,000,000. Second, the Company argues that the two offerings are interdependent because the various sets of investors do not wish to be alone with the risks involved. The exchange offering investors will not buy the PSNH securities unless the public is also involved and the Public Offering investors will not buy PSNH securities unless the noteholders are involved. PSNH argues that if the proposed financing is completely successful, the amount of funds raised which exceed the minimum requirements will be useful to enhance the Company's financial flexibility and to address various contingencies.

PSNH also acknowledges that the projected interest rate of 19% - 21% is high. However, the Company contends that the projected rate is consistent with the current cost of capital to PSNH given its financial situation. Thus, given all the circumstances, the proposed offerings are consistent with the public good for the purpose of obtaining the requisite financing authority from the Commission.

The Consumer Advocate argues that the Commission should approve only the absolute minimum amount of financing necessary to keep the Company afloat. The Consumer Advocate bases this argument on the narrower scope of the proceedings established by the Commission. To the extent that the Commission has put the Seabrook issues on the agenda of another docket, conditions should be placed on the instant financing to control the application of the proceeds to the Company's construction program. The Consumer Advocate contends that the Company changed its direct presentation to its advantage. Thus, the Commission should not have confidence in the Company's assertion that the proceeds will, for the most part, be applied to nonSeabrook purposes.

The BIA argues that the evidence supports a finding that the amount of the financing is reasonably requisite for the purposes specified, that the terms of the proposed financing are reasonable under all circumstances and that consequently the Commission should enter its Order finding that the proposed financing is in the public good. Additionally, the Commission in its Order, should require a detailed accounting of the disposition of the proceeds of the sale of securities and should seriously consider attaching any reasonable condition on the use of any excess over $300,000,000, if the attachment of such a condition can reasonably result in a reduction of PSNH costs which ultimately may become a part of rates.

CLF argues that the evidence does not support an authorization for the issuance of the full $425,000,000 securities. This

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argument is based on the assumption that the Commission should approve the minimum amount of financing necessary to maintain the status quo while the Commission engages in a more extensive investigation. CLF's analysis of the evidence leads it to suggest that a financing in the amount of $125,800,000 would accomplish the above objective in that it would carry the Company through May of 1985. Such a financing is feasible, in spite of PSNH arguments to the contrary, because the Company did not meet its burden of demonstrating that a financing smaller than $425,000,000 cannot be accomplished. This is because certain PSNH requirements, such as

the financing obligations in the restructured agreements with creditors and the exchange agreement with noteholders are subject to Commission revision or disapproval. In addition, CLF argues that the Company has failed to demonstrate that a financing of less than $425,000,000 would not be marketable. Accordingly, CLF argues that financing authority for the smaller amount be approved, that the proceeds be placed in escrow so that they may be applied only to non-Seabrook purposes (other than the amount necessary to maintain the status quo pending completion of the Commission's Seabrook investigation) and that the Commission explicitly provide that it is not approving Seabrook or Newbrook expenditures in this docket.

SAPL also contends that Commission approval of a smaller amount is warranted by the evidence. SAPL assumes that a bare minimum should be approved pending the Commission's Seabrook investigation. SAPL rests its argument on an attack on the need to maintain the PSNH plan. That plan, SAPL contends, is the creation of Merrill Lynch, an organization that has a direct financial stake in the outcome. Thus, Merrill Lynch has not analyzed alternatives that may reduce the benefit it derives from the plan. SAPL suggests that such alternatives exist and that they will ultimately result in lower cost debt. SAPL also suggests that approval of the PSNH Petition would mean that the Commission is delegating authority to Merrill Lynch to manage PSNH's financial crisis. Accordingly, SAPL requests that the Commission established deadline for an Order be extended, if necessary; that a smaller amount of financing, if any, be approved by the Commission; that conditions be applied to the financing so that no money could be expended on Seabrook prior to the completion of Docket No. DF 84-200; that PSNH be required to seek approval from the Commission for any dividend payments; and that the Commission provide that approval of the financing not be construed as approval for ratemaking purposes.

The CRR argues that the Company failed to justify the necessity to borrow $425,000,000 and that the Company failed to prove that it would not use the proceeds of the financing for Seabrook construction purposes. Accordingly, the CRR requests that the Commission engage in a broader investigation prior to ruling on the Company's Petition.

C. Commission Analysis

[2] We have reconsidered de novo all of the evidence of record and the arguments of all parties. We have determined that further proceedings in this docket are not required and not necessary. Since no party was restricted in presenting evidence of engaging in cross-examination, there can be no claim that the record was adversely affected by the participation of a Commissioner who should have been disqualified. It is not required that the Special Commissioner actually hear the

evidence presented; a review of the record is sufficient. RSA 541-A:19 (Supp. 1983).[9(171)] After a complete review of the record and accompanying argument, the Special Commissioner has determined that he does not need to vote for the Commission to exercise its discretionary authority to schedule further proceedings. It is the independent judgment of the Special Commissioner that the existing record forms an adequate basis of review and that further proceedings would adversely affect the Commission's ability to issue a timely Order. Accordingly, we will deny CLF's September 20, 1984 letter request that we reopen the record to

conduct additional hearings as if no evidence had been previously taken.

Our review has led us to conclude that the proposed financing is in the public good and, accordingly, we will conditionally grant the Company's Petition. The analysis which forms the basis of our conclusion follows. As we did in the Final Order, we will initially discuss the legal standards to be applied in the instant proceeding. We will then apply those standards to the PSNH proposal. Finally, we will discuss the conditions which must be imposed.

1. Legal Analysis

The Company is seeking the authority to issue and sell its securities pursuant to RSA Chapter 369. The standard of review for such authority is set forth at RSA 369:1 which provides, inter alia: "The proposed issue and sale of securities will be approved by the Commission where it finds that the same is consistent with the public good." See also, RSA 369:4. Thus, we must find that PSNH has met its burden of proving that the proposed financing is in the public good.

The nature of a finding of public good was described by the Court in Grafton County Electric Light & P. Co. v New Hampshire, 77 NH 539, 540, PUR1915C 1064, 1067, 94 Atl 193, 194, as follows:

This is equivalent to a declaration that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the circumstances of the case. if it is reasonable that a person or a corporation have liberty to take a certain course with his or its property, it is also for the public good. It is the essence of free government that liberty be not restricted save for sound reason. Stated conversely: it is not for the public good that public utilities be unreasonably restrained of liberty of action, or unreasonably denied the rights as corporations which are given to corporations not engaged in the public service.

Cited with approval in Re Easton, supra (slip opinion at p. 5); Re Public Service Co. of New Hampshire (1979) 122 NH 1062, 1067, 51 PUR4th 298, 300, 454 A2d 435.

Recent judicial decisions have further defined the ambit of the Commission's regulatory authority to determine public good. In Public Service Co. of New Hampshire, supra, the Court held, inter alia, that PSNH has a vested right to engage in the construction of the Seabrook facility because it was granted a Certificate of Site and Facility pursuant to RSA Chapter 164-F. See Re Public

Service Co. of New Hampshire (1974) 59 NH PUC 127. Thus, the Commission could not indirectly interfere with management's ability to continue construction by restricting the application of proceeds in a RSA Chapter 369 financing.

In Re Easton, supra, the Court reviewed a Commission decision to restrict the scope of a financing proceeding. In that proceeding, the Commission concluded that, since the purpose of the financing was, inter alia, to complete the construction of the Seabrook facility, Re Public Service Co. of New Hampshire prohibited the expansion of the scope of proceedings beyond the terms, conditions and amount of the proposed financing. The Court held that the Commission had misconstrued Re Public Service Co. of New Hampshire and remanded the matter for further consideration. The Court stated (slip opinion at p. 6):

Re Public Service Company of New Hampshire does not stand for the proposition that the PUC's authority under RSA Chapter 369 is limited to the determination of whether the terms of the proposed financing are in the public good. On the contrary, this court long has held that the PUC has a duty to determine whether, under all the circumstances, the financing is in the public good—a determination which includes considerations beyond the terms of the proposed borrowing. We have held that the PUC "attach reasonable conditions as it finds to be necessary in the public interest." (Emphasis in original.)

The limitations on Commission discretion were further clarified in Re Seacoast Anti-Pollution League, supra. There, the Court stated that even where the primary object of a financing is the construction of a facility which the Company has a vested right to build, the Commission must re-examine prior determinations of public interest before approving a financing.

When and how such a determination [of public good] must be made will necessarily vary with the circumstances. On the one hand the PUC need not allow relitigation of such a determination when there is not reason to believe that there has been a material change of facts from the time of a prior determination. On the other hand, when there are reasonable grounds to believe that such facts have changed, the commission has a duty to reconsider prior determinations of the public interest that may have been rendered obsolete. When such reasonable grounds exist, the PUC cannot refuse to make the required inquiry by postponing it until after a financing decision that would render it academic. (Slip opinion at pp. 8-9.)

The Court went on the apply its analysis to the scope established in the instant proceeding and found that the record supported the Commission's determination. An important element of the Court's decision was the existence of a realistic opportunity to adjudicate Seabrook related issues in the context of DF 84-200.

From the above cases, we conclude that the scope established in this proceeding is proper. That scope is (69 NH PUC at p. 425):

[W]hether the proposed financing is in the public good. This will include consideration of:

1) the terms, conditions and amount of the proposed financing;

2) the purpose of the proposed financing; and

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3) the short term effect of successful completion of the proposed financing on the Company's capital structure.

In the context of this definition of scope, we will examine whether the Company's proposal is lawful and whether it should reasonably be permitted under all the circumstances. Grafton County Electric Light & Power Co. v New Hampshire, supra. The circumstances pertinent to the proposed financing we defined as those contained in the evidence of record in this proceeding.

We are also mindful of our ability to impose reasonable conditions. RSA 369:1; Re Easton, supra. Given the requirement that we preserve a realistic opportunity to adjudicate the Seabrook related issues in DF 84-200, Re Seacoast Anti-Pollution League, supra, we shall consider the

imposition of conditions designed to ensure that the Company's application of the proceeds of the instant financing to its Seabrook facility is restricted to the extent feasible.

2. The Proposed Financing

It is undisputed that the proposed financing is the second phase of a threephase plan to reestablish the Company's financial integrity. It is also undisputed that "the object of this financing includes the ultimate completion of the first Seabrook unit". Re Seacoast Anti-Pollution League, supra (slip opinion at p. 10). The circumstances surrounding the development of this plan are the basis of our finding that the terms, conditions, amount and purpose of this financing, as well as its short term effect on the Company's capital structure, are in the public good. For this reason, it is useful to begin our analysis with a discussion of the circumstances which form the foundation of our decision.

Liquidity Crisis

Shortly after the release of the updated cost and schedule estimates for the completion of PSNH's Seabrook facility, the Company's commercial banks indicated that they would not allow the Company to draw on its $160,000,000 Revolving Credit Agreement. This action precipitated what has become known as the liquidity crisis of the spring of 1984.[10(172)] That crisis is described in the Company's prospectus, which is a part of this record as Exhibit 6, as follows:

Liquidity Crisis. Following announcement of the substantial increase in the estimated cost of the Seabrook Plant on March 1, 1984, the Company's commercial banks indicated that they were unwilling to make advances under their $160,000,000 Revolving Credit Agreement with the Company (under which no amounts were outstanding) unless the Company obtained back-up sources of credit. Because funds were no longer available to the Company under the Revolving Credit Agreement, it was necessary for the Company to commence strict cash conservation measures which included a vote by the Board of Directors on April 19, 1984 to omit the

quarterly dividends payable on May 15, 1984 on shares of common and Preferred Stocks and suspension on April 18, 1984 of payment of the Company's share of Seabrook Plant Construction costs. The Company reduced nonSeabrook construction, began a program of reducing the number of nonSeabrook employees and reduced the salaries of executive officers and certain other salaried employees. The Company ceased the oil-to-coal conversion of three 50 MW units at its Schiller Station, which had been scheduled to be completed by the end of 1984. The payment of principal in the amount of $5,000,000 was not made when due under the Company's Acceptance and Stand-By Revolving Credit Facility Agreement with certain banks. Consequently, the banks terminated their commitments to provide further loans under this Agreement. As a result of the foregoing nonpayment, the commercial banks terminated their commitment to make loans under the Revolving Credit Agreement. The Company did not pay when due the May 1, 1984 installment on its Nuclear Material Lease and Security Agreement with PruLease, Inc. under which a borrowing of $50,000,000 was outstanding secured by a lien on the Company's interest in nuclear fuel for the Seabrook Plant. In consequence, PruLease, Inc. terminated the Agreement and demanded payment of all outstanding unpaid rents, the outstanding principal of all borrowings and all additional losses, damages and expenses

associated with the Company's actions. The foregoing payment defaults were cured when on June 20, 1984 the Company sold $90,000,000 principal amount of its Secured Exchangeable Promissory Notes 20% due 1985 and applied a portion of the proceeds toward the payment of outstanding debts.

The Company also deferred paying half of a New Hampshire franchise tax payment in the amount of approximately $2,000,000 for 30 days and deferred certain other payments, including payments to contractors for the Seabrook Plant and for the Schiller Station coal conversion and payments to its coal supplier.

Also on June 20, the Company concluded negotiations with its existing lenders on the principal terms and conditions of a restructuring of the Company's indebtedness held by banks and PruLease. This restructuring is subject to satisfactory documentation and regulatory approval and will extend the maturity of an aggregate of $75 million of bank debt maturing in 1984 to May 31, 1985, provided that the Company sells an aggregate of $200 million of units and debentures by September 30, and that a financing plan for completing construction of Seabrook Unit 1 described below under Newbrook Plan is successfully implemented by January 1, 1985, or by February 28, 1985 if the Joint Owners should so extend their January 1 deadline for such financing and the Company sells an aggregate of $250 million of units and debentures. If these conditions are not met, payment of the bank debt may be immediately demanded by the banks. The $50 million of restructured financing by PruLease, Inc. will have the same conditions and rights of acceleration. Extension of the maturity of any of these financings is dependent upon extension of the others on terms satisfactory to each financing institution.

In addition, the Company has an agreement, subject to regulatory approval, on the principal terms and

conditions for a $35 million revolving credit facility secured by the Company's accounts receivable. This facility will be available to May 31, 1985, has the same conditions as the other agreements described above, and has in addition numerous conditions to the making of any loans under the facility. The Company does not anticipate making significant use of this facility.

Each of the foregoing restructured agreements and the revolving credit facility will contain a prohibition on additional short-term indebtedness, a negative pledge clause and a covenant by the Company not to redeem or purchase any of its capital stock (including the making of sinking fund payments on its Preferred Stocks) unless the company has retired all of its loans from the financing institutions and terminated the revolving credit facility. The effect of this latter restriction is to prevent the Company from paying dividends on its Common Stock until the financing institutions' debt is repaid, since, under the Company's Articles of Agreement, no dividends on Common Stock may be paid so long as any arrearage exists in respect of dividends on or sinking fund payments in respect of the Company's Preferred Stocks Exhibit 6 at 15-16. See also, Re Public Service Co. of New Hampshire (1984) 69 NH PUC 275, 277, 278.

As is apparent from the above discussion, the liquidity crisis created severe difficulties for the Company in terms of, inter alia, its ability to market its securities. It is the critical need to reestablish the Company's access to the financial markets, at least for the period of time over

which we conduct our investigation in DF 84-200, which frames our evaluation of the terms and conditions and the other issues included within the scope of this proceeding.

Seabrook Investment

An additional circumstance affecting our evaluation is the amount of capital already sunk in the company's Seabrook facility and the need to protect that investment until the propriety of going forward with the project can be evaluated. At May 31, 1984, the Company had invested in Unit I and common facilities approximately $1,063,600,000 (including AFUDC and excluding uranium fuel). The Company's estimate in July 1984 of total cost upon completion of Unit I is between $4.2 billion and $4.4 billion. The Company's share of $4.4 billion would be $1,650,300,000, including AFUDC but excluding uranium fuel. The Company's July estimate of the total cost to complete Unit I of approximately $750 million would require the Company's share of such cost to be $267 million. (Exhibit 6 at 10)[11(173)] It would do little good to find in DF 84-200 that the Company should go forward with its construction program if the sunk capital was not adequately protected in the interim. This is just the type of de facto decisionmaking that we are attempting to avoid in this docket. We cannot view the financing contemplated in this proceeding without reference to its tension with the Company's overall commitment to date in Seabrook. The law abhors a vacuum. New England Teleph. &

Teleg. Co. v New Hampshire (1949) 95 NH 353, 362, 78 PUR NS 67, 64 A2d 9. The regulatory process involves a constant process of re-appraisal, re-assessment and review to serve the public interest in the light of changing circumstances. In our search for a reasonable resolution of the Seabrook issue related to a decisional process for timely and correct judgments based on the evidence, we must examine the Seabrook issue in depth in DF 84-200.

Financing Plan

In the context of the above, we find that the purpose of restoring PSNH's financial integrity by regaining its access to the capital markets for external financing of its capital needs to provide service to approximately 75% of the ratepayers of New Hampshire is lawful and reasonable under the circumstances. We also find that the objective of the Company to raise sufficient funds to fulfill its public utility responsibilities until the anticipated commercial operation date of the first Seabrook unit, currently estimated to be between May and August, 1986 (see e.g., Exhibit 6 at 10), is reasonable under the circumstances. Grafton County Electric Light & Power Co. v New Hampshire, supra.

The purpose of the financing application in this docket is to avoid exacerbation of the liquidity crisis. Approval of the instant financing, which is Phase 2 of the Company's plan, should not be construed as pre-judgment of issues in Phase 3 awaiting ultimate determination by this Commission based upon an evidentiary record in DF 84-200.

The issuance of $90 million principal amount of short term notes deferred the immediate liquidity crisis. The $425 million financing in this proceeding is designed to raise funds to enable PSNH to meet all general corporate purposes through the end of 1986 with the exception of Seabrook construction financing. Seabrook construction financing is contemplated by Phase 3,

Newbrook.

The public purposes of the proposed financing may be summarized as follows:

1) to reduce the possibility of the recurrence of a liquidity crisis;

2) to finance the corporate purposes of PSNH to provide electric utility service in New Hampshire;

3) to provide funds for PSNH's share of cash expenditures for Seabrook for the approximate period October 1 - December 31, 1984.[12(174)]

4) Other cash needs for the proposed financing would include Millstone III construction costs and Schiller conversion expenses. Exhibit 8, Scenario PIA-3.

A minimum of $210 million in new funds is required on the basis of assumptions underlying PSNH's financial scenario, Exhibit 8, PIA-3, Rev. 1. The financing in this proceeding proposes to raise new cash in a maximum amount of $335 million ($425 million less $90 million exchange for notes). Any excess amount of the minimum required will mitigate needs for financing in companion docket DF 84-200 (if Seabrook I goes forward) and subsequent financing in 1987 following the commercial operation of Seabrook I.

We recognize that funds in excess of $210 million may be raised by the combination of the exchange offering of $180 million and the public offering of $155

million. However, market uncertainties and costs may diminish expectations of a full subscription of the offered securities and there must accordingly be some leeway for the actual acceptance by investors of less than the amount of the offering.

The terms and conditions of the proposed financing establishing a yield of 21% through interest and warrants were necessitated by the exigencies of the market in the light of PSNH's relative unattractiveness for an investor in comparison to other utility and alternative investments in the market-place. As a public utility's rate of return is based in part upon a comparison of investments bearing corresponding risk, Federal Power Commission v Hope Nat. Gas Co. (1944) 320 US 591, 51 PUR NS 193, 88 L Ed 333, 64 S Ct 281, a public offering of the securities of a utility with impaired access to capital markets and a financial crisis may not be expected to attract investment based upon a comparison of the cost of capital for financially liquid utilities. Whether the proposed financing in the order of magnitude of $425 million will be successful is dependent upon compensation to investors for the risk undertaken. The proposed return on the investment is PSNH's estimate based upon its analysis and Merrill Lynch's recommendation for a prospective return to investors equivalent to the risk of the investment. The law of compensation is applicable to economics as well as philosophy. The Company presented the testimony of its Financial Vice President, Charles Bayless, and the representative of underwriter Merrill Lynch, Robert Hildreth, in this proceeding. There was no independent evidence presented by any other litigant to offer a reasonable alternative to the plan presented by Merrill Lynch, which the Commission could consider as a rational preliminary resolution of the financial problems confronting PSNH.

In the light of the evidence presented, we have concluded that the requested authorization of $425 million is reasonable and necessary to enable PSNH to meet its obligations as a public utility to provide electric service to the ratepayers of this State. The amount of financing authorized by this Order could not be reduced without incurring the risk of jeopardizing the overall financing since we believe that a financing is critical to minimize the financial crisis over a time frame to permit operations to continue and enable the Company to engage in strategic planning for its future, such a risk is unwarranted.

PSNH is rigidly restricted from the sale of secured debt instruments and is obligated by the June 1984 note purchase agreement, Exhibit 7, to first offer to holders of the $90 million of notes the opportunity to exchange those notes and exercise warrants before the Company issues or sells any additional unsecured debt instruments. The issuance and sale of secured instruments is not a realistic option. Thus, before PSNH may engage in public long term financing, authorization must first be obtained for the exchange promised to the June, 1984 $90 million principal amount noteholders. The exchange offering, if fully subscribed, will produce $180 million of new cash proceeds, a net of about $168 million after expenses. It was the considered judgment of Merrill Lynch that the June 1984 noteholders would probably not participate significantly in the exchange offering unless that exchange offer was accompanied by the public offering ostensibly because the investment risk would be diluted. It is unlikely that the full authorization of $425 million will be subscribed to yield $335 million in new money. The relationship of the exchange

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offering and the public offering to share market risk will be an inducement to investment, but it is in the realm of clairvoyance to predict precisely the net cash return to PSNH from the full offering. Under the circumstances, the proposed offering, as conditioned herein, is reasonable.

CAPITAL STRUCTURE

The short term impact of the proposed offering on the Company's capital structure is minimal. The following table shows a comparison of capital structure before and after the proposed sale of units and debentures assuming full subscription of the entire $425,000,000.

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

COMPARATIVE CAPITAL STRUCTURE 5/31/84
ACTUAL AND PRO-FORMA

	Actual %	Pro Forma %
Debt	38.31	48.48
Preferred Stock	17.63	14.41
Common Stock Equity	44.91	37.80
Capital Stock Expense	(0.85)	(0.69)
	100.00%	100.00%

Source: Ex. 1, Attachment 3

The above ratios will be modified when common shares are issued upon exercise within seven years of the common stock purchase warrants. However, the warrants may not be tendered until the latter part of the seven-year period when investors' expectations of a higher stock price

may develop. The impact of the issuance of up to 22,500,000 shares of common stock or the equity ratio is probably a long term effect which may be effectively excluded in Docket DF 84-200.

The short term effect of the proposed offering on capital structure is reasonably consistent with the benchmark capital structure accepted as a norm in the electric utility industry for many years; 50% debt, 15% preferred stock, and 35% common stock. 2 Priest, Principles of Public Utility Regulation.

Until the securities offering authorized herein has been marketed and we know the results of the financing, we cannot determine a definitive resulting capital structure. The infusion of capital authorized in this proceeding will improve PSNH's financial condition enabling the Company to mitigate its liquidity problems for the near term. Weighing the restoration of financial stability for PSNH through pre-financing its general utility operations pending ultimate resolution of the Seabrook issue against the limited short term impact on the Company's capital structure impels the conclusion that the proposed financing is reasonably consistent with the public good.

The level of rates required to support the Company's capital structure and to provide a reasonable return on property devoted to the public use is not an issue in this proceeding. Authorization of prefinancing for corporate purposes does not imply that rate support will follow.

3. Conditions

[3] As noted above, we have found that the proposed financing is in the public good; a finding based principally on the need of the Company to regain access to the financial markets, protect its investment pending a further review and our reliance on the marketing judgment of the Company's advisors. We are also mindful that the instant financing is designed to maintain the status quo pending a thorough analysis of the Seabrook related issues in DF 84-200. The need to maintain the status quo is critical; the court has emphasized that the scope of the instant proceeding is only proper if we provide a realistic opportunity of review in the second proceeding. Re Seacoast Anti-Pollution League, supra. Thus, the

conditions imposed on the instant financing are designed to ensure that our Order In DF 84-200 can be implemented whether or not we determine that the Company should continue with its construction program. Accordingly, the following conditions will be attached to the granting of the Company's Petition.

First, we believe that it is critical that we have up-to-date information on the application of proceeds. The usual system of January and July reporting is insufficient because we will not receive our first Report until January 1, 1985; the date the Company contends that the third phase Newbrook financing must be completed. Thus, as a condition to the proposed financing, we will require monthly reports on the application of the proceeds.

Second, we must maintain the status quo at Seabrook. The validity of our approval of the instant financing is tied to the fact that less than 10% of the proceeds will be used for direct Seabrook expenditures pending the Order in DF 84-200. We must take steps to ensure that this

remains the case. Thus, as a condition to the proposed financing, we are ordering the Company not to increase the level of Seabrook construction beyond the $5,000,000 level

13(175) until authorized by a further Order issued by this Commission in DF 84-200.

Third, we must recognize that the proceeds of the instant financing will be applied to meet debt service obligations on capital already obtained for Seabrook construction purposes. This is a legitimate corporate purpose; however, if we should determine in DF 84-200 that the project should be abandoned, we may not wish to allow Seabrook debt to continue to be serviced. Thus, as a means of maintaining the status quo, we will condition the grant of the Company's Petition on certain limitations on PSNH's ability to service its long term debt. PSNH will be permitted to apply the proceeds from the instant financing to service its Seabrook related capital instruments at current levels (including the instant financing) until the Commission issues its Order in DF 84-200. In addition, the Company is prohibited from accruing AFUDC and servicing Seabrook capital instruments after the issuance of the Commission's Order in DF 84-200 unless specific authorization is contained in that Order.

Fourth, we are mindful of the fact that the Company is not currently paying dividends on preferred or common stock. Until the adjudication in DF 84-200, we believe the cash resources of the Company should be conserved to the extent practicable. Thus, as a condition to the granting of the Company's Petition, we will prohibit the distribution of common or preferred stock dividends pending a further Order of this Commission.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to raise not more than $425,000,000 through the issuance and sale of warrant debentures and Units consisting of debentures and warrants to purchase shares of common stock; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire be, and hereby is, authorized to issue and sell shares of the Company's common

stock, $5.00 par value, in satisfaction of the Unit warrants; 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 on said securities, following which a supplemental order will issue approving 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 the foregoing approval is subject to the following conditions:

1. Public Service Company of New Hampshire must file monthly with this Commission a detailed statement, duly sworn to by its Treasurer, or Assistant Treasurer, showing the disposition of the proceeds of the securities being authorized until the expenditure of the whole

of said proceeds shall have been fully accounted for; and

2. Public Service Company of New Hampshire is prohibited from spending or contributing cash for the purpose of constructing Seabrook at a level that exceeds 35.56942% of $5,000,000 per week until specifically authorized by a further order issued by this Commission in DF 84-200; and

3. Public Service Company of New Hampshire may service Seabrook related debt and accrue Seabrook related AFUDC at current levels until an order is issued in DF 84-200; and

4. Public Service Company of New Hampshire is prohibited from accruing Seabrook AFUDC or servicing Seabrook related debt after the issuance of the Commission's Order in DF 84-200 unless specific authorization is contained in that order; and

5. Public Service Company of New Hampshire is prohibited from declaring or paying preferred and common stock dividends unless such a declaration or payment is specifically authorized by further order of this Commission; and it is

FURTHER ORDERED, that the Motion of the Seacoast Anti-Pollution League to Determine Scope of Proceeding and Reopen Record be, and hereby is, denied; and it is

FURTHER ORDERED, that the letter request of the Conservation Law Foundation of New England, Inc. to convene to hear the instant docket de novo and receive evidence from all parties be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this twentyfirst day of September, 1984.

Dissenting Opinion of Commissioner Lea H. Aeschliman

Following the Supreme Court decision in Re Seacoast Anti-Pollution League (1984) 124 NH —, 482 A2d 509, vacating and remanding the Second Procedural Order and the Final Order in this case, I have reviewed the record, the parties' arguments submitted in briefs, the Court's opinion in Re Seacoast Anti-Pollution League, and the analysis of Commissioner Iacopino and Special Commissioner Nassikas. My reevaluation of the record leaves me convinced that the commission properly exercised its discretion in issuing the Second Procedural Order and that the analysis contained in my dissent of August 28, 1984 in this docket is correct.

I concurred in Second Procedural Order No. 17,141 ([1984] 69 NH PUC 422) because, given all the circumstances, I felt that it was the only practical means to deal with the time constraint in this

docket and to provide for an extended investigation of PSNH's financing plans. It was apparent to me then that a three or four week investigation in this docket, given the initial scope set by the Commission, would have resulted in findings and conclusions based upon an inadequate investigation and record; that those findings subsequently would have been applied in the Newbrook financing docket as well; and that no comprehensive evaluation would ever have been done. I find no reason to change my opinion in this regard, and consequently concur with the majority in readopting the scope in the Second Procedural Order.

However, since the Commission has premised its narrowing of the scope in this docket on the Company's claim of financial emergency, I believed then and I continue to believe that the Commission must limit itself to approving only that amount of financing necessitated by the emergency until the proper review is completed in DF 84-200. It is important to note that questions of financial feasibility, as well as the issues of Seabrook cost and alternatives, have been reserved until the DF 84-200 docket. Therefore, the Commission can not reasonably base approval of this financing upon a finding that it is adopting part of a plan to reestablish the Company's financial integrity when it has reserved consideration of the feasibility of the plan to restore the Company's financial health to another docket. My review of the evidence leaves me convinced that approval of the entire $425 million requested in this docket can not be justified in the context of an emergency proceeding.

While I am pleased that the majority decision adopts my condition relative to the prohibition of dividend payments,[1(176)] I continue to feel that the majority decision does not exercise adequate regulatory control over the funds which may be raised through this financing that are not required for as much as two or more years. It is important to note that the Company has failed to provide a financial break-out of the proposed application of the proceeds from this financing. While the record is relatively clear on the cash requirements through February, 1985, the evidence relative to the cash requirements beyond that time is very general. By requiring that excess funds be invested in an escrow account, the Commission can require the presentation of a detailed financial plan prior to approving the release of additional funds.

Furthermore, the majority opinion does not provide for any review of management competence, particularly in relation to strategic planning and financial decision-making. I continue to believe that the Commission must address the management issue either through a management audit or other mechanism(s) that the Commission determines to be appropriate.

For these reasons, I believe that the findings and analysis set forth in my opinion of August 28, continue to be appropriate. Therefore, I am readopting that opinion. For convenience, the readopted opinion is reproduced and made a part of this report as set forth below.[2(177)]

In this proceeding, PSNH seeks authorization to issue up to $425 million in securities through two offerings—the Exchange Offering and the Public

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Offering. The Exchange Offering consists of two components: 90,000 Units in exchange for $90 million principal amount of short term notes issued in June 1984; and (2) $180 million of debentures offered in satisfaction of debenture purchase warrants which were issued as part of the sale of $90 million of Notes in June, 1984. If fully subscribed, this Offering would raise $180 million in new money for the Company.

The Public Offering consists of 155,000 Units to be issued to the public. Each unit consists of a debenture in the face amount of $1,000 plus a number of warrants to purchase shares of PSNH common stock.

From my review of the evidence in this proceeding and all of the circumstances relative to the Company's situation, I have concluded that authority to issue the Public Offering should not

be granted at this time. Authority to issue the Exchange Offering should be granted subject to the following conditions:

(1) Proceeds from the financing in excess of $125 million shall be invested in an escrow account to be drawn upon only with approval of the Commission.

(2) Payment of preferred stock dividends is prohibited without the express approval of the Commission.

(3) Authorization to issue shares of common stock in satisfaction of the terms of the Exchange Units is granted up to a maximum of 6,750,000 shares.

In addition, the approval of the Exchange Offering should not be interpreted to convey any approval of the terms of the financing for ratemaking purposes, nor should it be interpreted as in any manner granting approval of the Newbrook financing plan.

The Commission on July 30, 1984 issued its first procedural order in this docket in which it determined that the appropriate scope of this docket included the following broad issues:

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

(2) Whether the purpose of the proposed financing is in the public good including inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; b) an evaluation of the long term alternatives to completion of Seabrook I in the context of the above determined incremental cost and assumptions found by the Commission to be reasonable in recent dockets; and

(3) Whether it is financially feasible for the Company to engage in the proposed financing, including a determination of the level of revenues necessary to support the capital structure which would result from the successful completion of the proposed financing.

As a first order of business, the Commission on July 30th heard evidence on 1) the date by which a Commission Order must be entered so that the failure to issue that Order does not act as a de facto denial; and 2) the feasibility of bifurcating the Petition to allow a "bridge" financing so that the Company could meet its cash needs during the course of extended Commission proceedings.

After hearing evidence on these issues, the Commission issued a second procedural order on August 2, 1984. In that report and order the Commission

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determined that the Company had made a prima facie case for the need for an order on the financing by August 31st, so that the failure to issue an Order would not act as a de facto denial. The Commission reserved a determination on the issue of amount until evidence was heard on the merits of the financing proposal.

In that procedural order, the Commission also determined that the "truncated procedural schedule will not allow us the opportunity to conduct an adequate investigation into the full scope of issues" set forth in the original procedural order. Report and Second Supplemental Order No. 17,141 (69 NH PUC at p. 423). In order to reconcile the need for responsiveness due

to the cash flow requirements of the Company and the need for an appropriate financing investigation, the Commission narrowed the scope of the instant financing proceeding and opened a separate investigation for the purpose of investigating the Company's plans to finance the construction of the Seabrook facility through to the completion of Unit I.

I concurred in Procedural Order No. 17,141 because, given all of the circumstances, I felt that it was the only practical means to deal with the time constraint in this docket and to provide for an extended investigation of PSNH's financing plans. However, as the Commission recognized, it is not a perfect solution. Legitimate concerns which the Commission recognized should have been considered in this financing have not been considered. It is important for the Commission to recognize these limitations forthrightly and to recognize their relevance to the Company's burden of proof.

In justifying the narrowing of the scope in this docket, the Commission relied upon record evidence that only a small portion of the proceeds of the proposed financing were intended to finance Seabrook construction. Thus, the Commission determined that it was possible to narrow issue number two under scope which related to the purpose for which the proceeds were to be used. However, this reliance was based upon the estimated construction budget through yearend. PSNH has steadfastly maintained in this proceeding, and in all other proceedings before this Commission, that dollars cannot be traced and that all funds including the proceeds of this financing will go into the general corporate account and be used for general corporate purposes. (Trans. 5-20, 21) Thus, it is entirely possible that post-1984 Seabrook expenditures could be funded from these proceeds if the Newbrook financing should prove to be inadequate.

The difficulty presented in narrowing the scope is even clearer in relation to issue number three which deals with financial feasibility. There is a great deal of evidence that PSNH's financing plans are interrelated and that this financing cannot be easily separated from the third phase financing. PSNH itself stresses the interrelationship of the financings as part of a three-step plan. (PSNH Brief, p. 9) In fact, it is not clear whether the "Newbrook Plan" means the entire threephase financing plan or only the third phase of the plan.

The size of the financing itself — $425 million when PSNH's previous largest financing was $100 million — makes it difficult to postpone questions of financial feasibility, including a determination of the level of revenues necessary to support the capital structure. It is legitimate to ask whether consideration of the shortterm effect of a financing of this size and complexity meets the legal requirement set forth in Re Easton (1984) 124 NH -, 480 A2d 88, Slip Opinion at pp. 4-5, and

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fulfills the Commission's duty to protect the consuming public by ascertaining the effects of a utility's proposed new capitalization. Re New Hampshire Gas & E. Co. (1936) 88 NH 50, 16 PUR NS 322, 184 Atl 602.

The difference between a short term analysis of the effect of the successful completion of the proposed financing on the Company's capital structure and a long term analysis is particularly dramatic in this case. As Public Service Company's brief indicates, the short term capital structure ratios resulting from this financing—37.8% common equity, 14.41% preferred equity,

and 48.48% debt—are close to the standard for electric utilities of 50% debt, 15% preferred stock and 35% common stock. (PSNH Brief, pp. 16, 17) However, the short term effect does not include any exercise of the common stock purchase warrants. The Company's petition requests authorization to issue up to 22,500,000 shares of common stock. The present number of shares of common stock outstanding is 37 million.

While the exact number of common stock warrants which may be issued cannot be determined until the pricing,[3](178) and while the number of warrants that ultimately may be exercised is also somewhat difficult to estimate, the exhibits and testimony show the dramatic effects on the capital structure that may be expected. Exhibit 8, which assumes that $300,000,000 of the financing is completed and that 10,000,000 shares worth of warrants are exercised, shows a resulting common stock component of the capital structure of 47.88% in 1989 (Trans. 5-208) and of 55% in 1991 (Trans. 5-209). Mr. Bayless testified that with a $400,000,000 financing, an assumption that 20,000,000 shares would be exercised was more appropriate. (Trans. 5-213) In this event, the common stock ratio would be higher. (Trans. 5-213) While it is clear that the exercise of the common stock warrants will have a dramatic effect on the capital structure in the future, neither the rate effects nor the dilution effects have been analyzed.[4](179)

It is clear to me that the legal and factual basis for narrowing the scope of this docket is justified only to the extent that the Commission approves that amount of financing necessary to alleviate the present precarious financial condition of the Company while the Commission completes its review in DF 84-200. A determination of the amount of financing necessary for this purpose must include a consideration of the following issues: (1) the amount required to meet actual cash flow needs; (2) financial flexibility and costs; (3) the relevance of conditions in other securities issues and agreements ($90 million notes and restructure agreements); (4) marketability; and (5) the need to retain Commission regulatory control. Each of these issues is addressed in turn below.

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Cash Flow Requirements

Testimony indicates that PSNH requires approximately $112 million to meet its requirements through February 1985. (Trans. 2-100, 2-190, 2-198) Conservation Law Foundation (CLF) in its brief suggests adding a "cushion" of roughly $14 million to carry the Company through any delay in completing the investigation in DF 84-200. (CLF Brief p. 7)

PSNH contends that it requires $210 million in new funds and $90 million to retire the Notes issued in June 1984 or a total of $300 million to carry the Company through the end of 1986 and completion of Seabrook 1. (PSNH Brief, pp. 10-13) The Company argues that given its financial circumstances, PSNH could not reasonably expect to be able to obtain funds from financil markets on a periodic basis during the period. (Trans. 2-21) However, when asked what would happen if Seabrook were not completed until a later date and the Company required additional financing, Mr. Hildreth indicated that he would just have to change his plan and that he had the ability to sell the requisite financing. (Trans. 3-126, 127)

Furthermore, another Merrill Lynch official, Frederick Potter, testifying before the

Massachusetts Department of Public Utilities, indicated that Merrill Lynch only expected to sell $200-$300 million of financing and that this amount reflected their expectation of market acceptance. (Trans. 3-101, 102) In addition, Mr. Potter specifically indicated that this amount was all that was necessary to issue at this time.[5](180)

The Company has not met its burden of proof that it requires a minimum of $300 million in financing at this time to meet its cash flow needs for two reasons. First, the Commission has not evaluated or accepted the premises on which the Company bases its financing plan, but has reserved these issues for the investigation in DF 84-200. Thus, it has not been determined whether a financing plan premised on a Seabrook I completion date of August 1986 is reasonable or feasible. The Commission has before it evidence from the Company's prospectus indicating that the Joint Owners Executive Committee has adopted a date of October 1987 for financial planning purposes. (Exhibit 6, pp. 5, 17) The Commission has yet to hear evidence from the Company justifying a financing plan which uses different assumptions than those approved and adopted by the Joint Owners. Second, Mr. Hildreth's testimony itself indicates the belief that Merrill Lynch can raise additional funds for PSNH prior to the completion of Unit I. Thus, it is fair to conclude that Merrill Lynch can raise additional funds if the Commission approves a smaller financing.

It is clear on the basis of cash flow requirements alone that the evidence does not support the need for authorization of $425 million in financing by August 31st. On the basis of cash flow requirements, CLF's figure of $125 million is a reasonable figure for the amount that is needed prior to the completion of the Commission's review in DF 84-200.

Financial Flexibility and Cost

PSNH and the BIA argued that it is reasonable for PSNH to raise as much money as possible in this financing to increase PSNH's financial flexibility. It

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is argued that the $125 million "cushion" (funding in excess of that required through the third quarter of 1986) is reasonable to allow for possible variations and delay in rate base treatment. (PSNH Brief, p. 11, BIA Brief, p. 15) Putting aside for the moment the question of providing only sufficient funds to alleviate the precarious financial condition of the Company, is it reasonable to be raising funds now that are not required until late 1986 or 1987? Put in succinct terms, the question is how much prefinancing is reasonable or cost effective.

There is considerable reason to believe that financing at this time will carry the highest cost rates and most expensive conversion options because of the continued uncertainty over the ultimate completion of Seabrook I. Much of this uncertainty will be resolved one way or another within the next few months as all of the New England Commissions act on petitions of their companies. If Seabrook survives this review and the Newbrook financing is completed, financing costs for PSNH can be expected to decrease significantly. This is particularly true if Seabrook is brought to commercial operation.

The evidence also indicates that once PSNH satisfies the exchange requirements of the $90 million Notes isued in July, it will have the flexibility to undertke a G & R bond financing.

(Trans. 5-217) Since the amount of G & R bonds the Company can issue is restricted by coverage requirements, the Company is only able to issue unsecured debentures at this time. When the exchange requirements are satisfied, the $135 million in G & R bonds which were issued and pledged as collateral in the $90 million note financing, will be released. This would make it possible for the Company to pursue a secured debt financing in 1985, which would likely be at a cheaper cost rate and not require the stock conversion features.

Thus, to prefinance the general needs of the Company to the extent proposed has not been justified. Prefinancing is very expensive because funds not immediately needed are reinvested, but at a much lower rate of interest than the cost rate of the funds. In this case, due to the extraordinarily high rates, the premium for prefinancing is very high indeed. Furthermore, financing the debt service and operating needs of the Company is not the same as a project financing for a construction program. While the need to alleviate the precarious financial situation of the Company may justify approving some additional financing beyond minimum cash needs to provide financial flexibility, the Company simply has not demonstrated the reasonableness of financing the Company's general corporate needs two or more years in advance.

Conditions of Other Issues and Agreements

Two provisions are cited by the Company as requiring a larger amount of financing at this time. First, the June, 1984 Note Purchase Agreement (Exhibit 7) contains the following provision:

Before May 31, 1985, the Company will not issue or sell any unsecured debt instruments having a maturity greater than one year, unless it shall have offered to the holders of the Notes the prior opportunity to exchange the Notes and to exercise the Warrants.

...

PSNH argues that because it cannot issue secured debt this provision effectively requires the Company to make the Exchange Offering if it is going to do any long term financing prior to May 31, 1985. (PSNH Brief, p. 13)

In addition, PSNH cites the

requirement in the secured revolving credit agreement with certain banks obligating PSNH to sell a minimum of $200 million in unsecured debentures by September 30, 1984. (PSNH Brief, p. 12) Since this requirement relates to the total amount sold and not to "new" funds, this requirement would be satisfied by the Exchange Offering. (Trans. 4-138, 9)

CLF argues that the Commission is not legally bound by either of these conditions. It points out that the June Note Purchase Agreement states that it is "understood that further regulatory action will be required for the issuance by the Company of the Warrant Debentures and the Units" in exchange for the Notes. (Exhibit 7) In fact, the Commission Order approving the $90 million in notes emphasizes the conditional nature of the approval. It is clear that the Commission is not legally bound by this condition. Whether PSNH could market other securities before this condition has been fulfilled is another consideration addressed in the next section.

As to the condition in the restructure agreements, CLF argues that the Company offered no evidence that these agreements could not be revised to permit a delay in fulfilling this requirement. Whether the Company could renegotiate this provision is unclear as Mr. Bayless candidly admitted (Trans. 5-22) Again the question arises whether PSNH could market a financing that did not fulfill this requirement.

Marketability

The first question to answer relative to marketability is whether PSNH could successfully undertake a smaller financing than the Exchange Offering. Although the testimony does not support a conclusion that a smaller financing is impossible, neither does it support a conclusion that it is possible. The Company is unable to undertake a secured debt financing at this time. Given market expectations that an unsecured debenture financing would honor the provisions in the June 1984 Note Purchase Agreement, there is doubt whether an issue which did not meet these requirements would be marketable. Since it is clear that the Company does not have the cash flow flexibility to withstand an unsuccessful financing, the Company has reasonably justified the need to complete the Exchange Offering at this time.

The next question is whether the Public Offering is essential to marketing the Exchange Offering. PSNH contends that the Public Offering is a necessary inducement to convince the exchange holders to exercise their conversion rights. Mr. Hildreth testified that it was Merrill Lynch's judgment that significant participation in the Exchange Offer by June, 1984 Noteholders is unlikely unless it is accompanied by the Public Offering. (PSNH Brief p. 14) However, PSNH has not made a convincing case that the Public Offering is required. Mr. Hildreth himself testified that $200-$300 million could be sold for PSNH this summer, but that this was not his plan. (Trans. 4-12, 13) In fact, both the testimony relative to marketability and the testimony relative to what the plan was for the phase 2 financing is sufficiently inconsistent that it is simply not convincing.

During the May 28th hearing on the $90 million Note issuance, Mr. Bayless testified at length about the "bells and whistles" that were needed to induce investors to buy the notes and to later convert into long-term debt. His testimony continually emphasized that the terms and conditions of the Note financing were designed to insure success in the subsequent debenture financing to take place

during the summer. At no time during the May 28th testimony did Mr. Bayless mention the need for a Public Offering as an additional inducement. Yet he was specifically asked about the components of each part of the financing plan. (Trans. 5-141)

The testimony of the Company and of Mr. Hildreth in this regard is inconsistent and troubling. When Mr. Hildreth was asked whether the Public Offering was part of the plan as it was originally developed in April, he was very definite in his response that it was. (Trans. 4-165, 166) Yet Mr. Bayless did not inform the Commission of the Public Offering at the May 28th hearing and he was not able in this proceeding to testify when it was determined that a Public Offering was necessary. (Trans. 5-137-142) However, his testimony seems to indicate that prior to the final determination of the design of the financing during the week of June 20-29th, that the

Public Offering portion was a "contingency plan". (Trans. 5-138)

What is clear from all of this is that Merrill Lynch's financing plan for PSNH has undergone a number of changes and that investors have accepted these changes. In fact, Mr. Hildreth explicitly testified to this fact. (Trans. 4-164, 165) There is no reason for the Commission to decide now that the present version of the plan is cast in concrete and that no changes can be made. The evidence is simply not sufficient to satisfy PSNH's burden of proof that the Public Offering is necessary at this time.

Need to Retain Commission Regulatory Control

If PSNH completes $300,000,000 of this financing, it will not need to return to this Commission for financing of its general corporate needs until at least the summer of 1986; if the entire $425,000,000 is raised, this would carry the Company into 1987. The Commission must still approve Seabrook construction financing in DF 84-200. However, the theory of the Newbrook financing is to place PSNH's share of Seabrook construction costs in an escrow account which would be available regardless of PSNH's fate. Should the Commission approve the Newbrook financing, it is doubtful how much control, if any, the Commission could retain. In addition, PSNH has indicated that it does not intend to file a rate case prior to Seabrook I completion.

Given all of these circumstances, it is critical for the Commission to ensure its future regulatory control through conditions on the use of the proceeds of this financing which are in excess of the Company's cash needs through completion of the DF 84-200 investigation. Otherwise, it is possible, if the Commission approves the Newbrook financing, that it has given up any meaningful regulatory control through mid-1986 or later.

This is clearly not an acceptable situation. The Commission as a regulatry agency has a duty to require management accountability. Given the circumstances of the Company and the present requests for what must be termed extraordinary approvals, now is the time to exert regulatory control.

The importance of the management accountability issue was raised specifically in this proceeding in relation to the payment of preferred stock dividends. If the Company misses the payment of four consecutive preferred stock dividends, the preferred stockholders have a right to elect a majority of the Board of Directors. (Trans. 5-157) Although the Company's financial runs do not project the payment of preferred stock dividends, the proceeds of this financing could be

used to pay preferred dividends. (Trans. 5-37-39) Mr. Bayless indicates that the management of the Company is very concerned about this situation (Trans. 5-159) and has not made a decision about the payment of preferred dividends. However, it is not difficult to conclude that a substantial "cushion" from this financing would increase the likelihood that dividends would be paid. (Trans. 5-39) The Commission should not leave this decision to management discretion for two reasons. First, the Commission should not be shielding the management and the directors of the Company from accountability through the preferred shareholders until the Commission itself has demanded accountability and assured itself of confidence in the Company's management. Either in DF 84-200 or in a separate investigation the Commission should be requiring PSNH to

address questions of management competence particularly in relation to strategic planning and financial decision-making. The findings of the Commission in DF 82-141, July 1982 and DE 81-312, April 1983 have raised substantial questions about the management decision making in these areas,[6](181) which should be addressed before the Commission issues its final order in DF 84-200.

The kind of management investigation that needs to be undertaken at this time is quite different from the kind of historical prudency review that needs to be done in conjunction with a request to recover Seabrook costs in rates. Rather than a review of past events, the Commission should now be evaluating the Company's management prior to granting any approval to go forward. When a regulated Company has reached the brink of bankruptcy and is requesting extraordinary support from a regulatory body, this kind of review and insistence on accountability is clearly a proper and necessary regulatory function.[7](182) The Supreme Court has indicated in Easton that abuse of management discretion is a proper area of inquiry in a proceeding pursuant to RSA 369. Re Easton, supra, (slip opinion at p. 9). It may well be that an investigation would entirely satisfy the Commission that appropriate changes have already been made and no further action is necessary. However, regulatory responsibility as well as public confidence require that the Commission address the management issue.

The second issue that is raised relative to the payment of preferred stock dividends is the question of whether this would reduce the Company's ability to absorb a write-off of cancelled plant or of rate base disallowances. The level of common stock equity and particularly the level of retained earnings is a critical factor in this regard, and the payment of preferred dividends would have the effect of reducing retained earnings. Testimony indicated that the Company is currently escrowing preferred dividends within the retained earnings account. (Trans. 5-153-157) In response to Commission inquiry, the Company has indicated that this accounting treatment does not affect retained earnings relative to a

write-off or disallowance unless the funds are paid out.

Conclusion

This review and analysis of the record in this proceeding supports the following conclusions. To be consistent with the narrowing of the scope in this docket, the Commission should authorize only that amount of financing which is necessary at this time to alleviate the Company's precarious financial situation until the Commission has completed its review in DF 84-200. On the basis of cash flow requirements alone, the evidence supports a financing in the amount of $125 million. Taking into account conditions in other securities issues and agreements as well as evidence related to marketability, the Company has reasonably justified the need to undertake the Exchange Offering at this time.

The Company has not met its burden of proof that the Public Offering is required at this time. The testimony offered by Mr. Hildreth that the Merrill Lynch plan for the phase 2 financing requires authorization of the full $425 million and that any change would make the financing unmarketable is simply not convincing. It is clear that Merrill Lynch's financing plan for PSNH has undergone a number of changes and that investors have accepted these changes. To the

extent possible, the public interest requires limiting the issuance of common stock warrants and limiting the amount of debt issued at interest rates in the 20% range while an evaluation of the financial feasibility of the overall plan is completed.

The Exchange Offering if fully subscribed would raise $270 million, $90 million of which represents a roll-over of the Notes issued in June. Since the Exchange Offering may raise as much as $180 million in new funds, an amount which exceeds that justified by cash flow requirements, the Commission should condition its approval to insure control over the use of these funds and, in particular, to ensure that the amount of the proceeds used for Seabrook construction is consistent with Commission findings in Report and Second Supplemental Order No. 17,141 (69 NH PUC at p. 424). The conditions and explicit statements of intent which I believe are appropriate are listed on page four of this opinion.

FOOTNOTES

[1]SAPL filed a Motion for Rehearing on Order No. 17,162 on August 16, 1984. That Motion was denied in Order No. 17,180 ([1984] 69 NH PUC 467), rev'd. Re Seacoast Anti-Pollution League (1984) 124 NH —, 482 A2d 509.

[2]In accordance with the terms of the Second Procedural Order, the Commission issued an August 2, 1984 Order of Notice which "pursuant to inter alia RSA 365:5, RSA 365:19, RSA 365:37, RSA 369:1-4, RSA 374:3-4, RSA 374:18, RSA 374:30, and RSA Ch. 366 ... [opened] DF 84-200 ... for the purpose of investigating, inter alia, the Company's financing plan to complete the construction of Unit I of the Seabrook facility" (Order of Notice at 1). The Commission explicitly provided: "that issues within the scope of the docket will include inter alia: 1) whether the terms, conditions and amount of the proposed third phase financing are in the public good; 2) whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined cost and the assumptions found by the Commission to be reasonable in recent Orders; and 3) whether it is financially feasible for the company to engage in its proposed construction program, including an evaluation of the level of revenues necessary to support the capital structure which would result from the successful completion of Unit I." (Order of Notice at 1). Pursuant to the Order of Notice, a procedural hearing in DF 84-200 was held on August 9, 1984 which resulted in Report and Order No. 17,164 ([1984] 69 NH PUC 446), see also, Report and Supplemental Order No. 17,201 ([1984] 69 NH PUC 503) (clarifying procedural schedule), Order No. 17,212 ([1984] 69 NH PUC 517) (Recusal of the Chairman), Order No. 17,196 ([1984] 69 NH PUC 499 (Designation of Commissioner Iacopino as Presiding Officer and Application to Governor for appointment of Special Commissioner pursuant to RSA 363:20 and 21). Currently, DF 84-200 is progressing in accordance with the established procedural schedule.

[3]We are aware that the August 31, 1984 date used in the Second Procedural Order has come and gone. However, we continue to believe that the evidence supports a finding that an untimely Order would act as a de facto denial of the Petition. While we cannot precisely pinpoint when a de facto denial would be triggered, the record supports the finding that such a consequence

becomes more imminent with each passing day.

[4]See e.g., Tr. at 2-231 to 2-232, 2-225 to 2-226. c.f., Re Public Service Co. of New Hampshire (1984) 69 NH PUC 446 (Establishment of a procedural schedule for purpose of investigation of Seabrook issues of at least a five-month duration).

[5]See e.g., Tr. 2-18 to 2-26 and 3-26 to 3-42.

[6]See e.g., Exhibit 8, Attachment 1-1, p. 1, Assumption 1.

[7]In view of the events which have taken place since August 2, 1984, we will revalidate the scheduling provisions of the Second Procedural Order. However, since the schedule has already been accomplished, it would serve no purpose to readopt it here.

[8]See, e.g., Brief of PSNH at 11. In addition to meeting its cash requirements, the Company is required by its commitment to creditors in its restructured agreements to raise at least $200,000,000 in external long term capital no later than October 1, 1984. See Re Public Service Co. of New Hampshire, (1984) 69 NH PUC 415.

[9]There has been no timely request for the full Commission to sit on the instant proceeding pursuant to RSA 363:17. Even if such a request had been received, it would not be necessary to schedule further proceedings because a quorum of the Commission was present at the hearings already held. See, RSA 363:16.

[10]By making this statement, we are not making a finding that Company management is or is not blameless in creating the circumstances which precipitated the liquidity crisis. There has been no notice that this is an issue in the instant proceeding and, accordingly, we do not have a record which is sufficient to allow us to make such a finding. Thus, we are here only describing events which occurred and the Company's response to those events. The assignment of responsibility for the occurrence of those events is a matter which must be addressed in a properly noticed docket. To the extent that management's response to those events is pertinent to our review of the proposed financing, it is the subject of the instant evaluation.

[11]In its Preliminary Prospectus dated September 4, 1984 filed with the SEC, the Company estimated the cost to complete Seabrook I at $4.5 billion. The estimate of completion costs was increased to $4.5 billion and the Company's share of the costs at $1,782,700,000. Based on this estimated total cash cost to complete Unit I of approximately $830 million, the Company's share of such costs would be $295,300,000 (excluding AFUDC of approximately $451,100,000).

[12]Cash construction expenditures were estimated at the rate of $4-5 million per week for the thirteenweek period with PSNH's share approximating $23 million. The balance of $425 million would be devoted to non-Seabrook corporate purposes.

[13]The $5,000,000 level is applicable to total construction. PSNH's share will be 35.56942% of this amount.

Dissenting Opinion of Commissioner
Lea H. Aeschliman

[1]The prohibition on the payment of preferred stock dividends also automatically precludes the payment of any common stock dividends under the requirements of the Company's Articles

of Agreement.

[2]Minor corrections to the text of my August 28th opinion have been incorporated in the reproduction.

[3]The terms outlined in the Company's petition and testimony indicate that each Unit will include 25 to 75 common stock warrants depending upon the final pricing terms. Thus, the 90,000 Units in the Exchange Offering may include anywhere from 2,250,000 warrants to 6,750,000 warrants. The 155,000 Units in the Public Offering may include anywhere from 3,875,000 warrants to 11,625,000 warrants. Each warrant is convertible into one share of common stock. Since the Company has requested authorization to issue up to 22,500,000 shares of common stock in satisfaction of the warrants, an authorization of this amount would exceed the maximum of 18,375,000 per the terms outlined in the petition. Thus, it is possible that at the time of pricing the Company could request that the number of warrants per Unit be increased.

[4]Since on a dollar-for-dollar basis equity is twice as expensive to ratepayers as debt financing due to taxes, it is clear that the long term effects on rates may be very great indeed.

Similarly, Mr. Bayless indicated that this financing will result in dilution with a capital D. (Trans. 5-205) The effect on present shareholders will be to substantially reduce future earnings per share. (Trans. 5-210)

[5]The Commission took administrative notice of the testimony of Frederick Potter. (Trans. 4-63) See Testimony of Frederick Potter, Commonwealth of Massachusetts Department of Public Utilities. 1627-A, Vol. 6, p. 40.

[6]See also Dissenting Opinion of Commissioner Aeschliman, DR 82-333, January 1984.

[7]As part of my duty to keep informed, (RSA 374:4) I am aware of other regulatory actions and events which have relevance to this issue. The FDIC has recently required the top management of Continental Illinois Bank to resign as a condition to providing relief to the Bank. The Staff of the Michigan Commission has indicated that the resignation of the Chairman and senior officers of Consumer Power Company is likely to be a central recommendation of the Staff in the Company's request to recover costs from the cancelled Midland nuclear power project. At Long Island Lighting Company the problems surrounding the Shoreham nuclear project led to an internal management change.

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NH.PUC*09/21/84*[61541]*69 NH PUC 551*New Hampshire Electric Cooperative, Inc.

[Go to End of 61541]

69 NH PUC 551

Re New Hampshire Electric Cooperative, Inc.

DE 84-182, Order No. 17,223

New Hampshire Public Utilities Commission

September 21, 1984

Order granting license to construct and maintain power cables under public waters.

Appearances: for the Petitioner, Earl Hansen, Plant Manager.

By the Commission:

REPORT

On July 13, 1984 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 Pawtuckaway in the Town of Nottingham, New Hampshire.

The Commission issued an order of notice on August 7, 1984 directing all interested parties to appear at public hearings at 10:00 a.m. on September 4, 1984 at the Commission's Concord offices. Notices were sent to Earl Hansen, Plant Manager, New Hampshire Electric Cooperative, Inc., for publication; Department of Resources and Economic Development; Robert S. Danos, Director, Safety Services; John Clements, Commissioner, Department of Public Works and Highways; and the Office of the Attorney General. An affidavit of publication was received in the Commission's offices on August 21, 1984 confirming that notice was made in the Union Leader on August 15, 1984.

The Company's witness Hansen testified that an existing overhead crossing would be replaced by a submarine cable in order to continue to serve customers on the shore of Lake Pawtuckaway. Rerouting of an overhead line along the shore is impractical because of easement problems with adjoining landowners.

At the point of crossing, the lake width is approximately 590 feet. Cable will extend from pole 13C/30 approximately 65 feet to the shore of the lake, it will enter the water in the vicinity of the Dollof Dam and be laid on the lake's bottom, which reaches a depth of approximately 23 feet. The installation will be in accordance with the National Electric Safety Code.

Exhibits were offered and received detailing the installation. The Company submitted an approved permit by the State of New Hampshire Wetlands Board dated July 24, 1984.

No objections were filed or expressed either prior to or at the public hearing. In fact, no intervenors or interested parties were in attendance.

The Commission finds that approval for license to construct and maintain submarine power cables under the public waters of Lake Pawtuckaway in the Town of Nottingham, New Hampshire, as specifically identified in the Exhibit, to be in the public interest.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petition for authority to install and maintain submarine cable under the public waters of Lake Pawtuckaway in Nottingham, New Hampshire, be and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of September, 1984.

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[Go to End of 61542]

69 NH PUC 553

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 84-186,
Supplemental Order No. 17,226

New Hampshire Public Utilities Commission

September 25, 1984

Order approving fuel adjustment clause rate.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

ORDERED, that 129th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $1.19 per 100 KWH for the month of September, 1984, be, and hereby is, permitted to become effective September 11, 1984.

By Order of the Public Utilities Commission of New Hampshire this twentyfifth day of September, 1984.

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[Go to End of 61543]

69 NH PUC 553

Re New England Telephone and Telegraph Company

DF 84-178, Order No. 17,227

New Hampshire Public Utilities Commission

September 26, 1984

Order granting local exchange carrier authority to accept equity contributions.

Security Issues, § 62 — Capitalization — Contributions — Parent company.

A dominant local exchange carrier that was a wholly owned subsidiary of a parent corporation was authorized to accept periodic equity contributions of up to $200 million from the parent corporation, with the stipulation that the carrier provide the commission with advance notice of each proposed equity contribution.

Appearances: for the petitioner: Christopher M. Bennett, Esquire and Phillip M. Huston, Esquire; for the staff: Eugene F. Sullivan, Finance Director and Karl Kraemer, Economist.

By the Commission:

By this unopposed petition, filed July 18, 1984, New England Telephone & Telegraph Company (the Company) seeks authority, pursuant to RSA 369, insofar as the proceeds of same pertain to property or expenditures of said Company in this State, to accept an equity contribution of $200,000,000 from its parent company, NYNEX Corporation (NYNEX), and to issue and sell its debt securities, up to an aggregate amount of $300,000,000, and to participate in the NYNEX Employee Stock Ownership Plan (the Plan).

At the hearing on the application, following due notice, in Concord on August 30, 1984, the Company submitted that it is a corporation duly organized under the laws of the State of New York engaged in the telecommunications business in the States of Maine, New Hampshire, Massachusetts, Rhode Island and Vermont, and by means of interconnection with the facilities of other telephone companies, furnishing telephone service between said states and other places outside thereof. It has been operating as a telephone public utility throughout New Hampshire prior to, on, and since July 1, 1911. The Company is duly qualified under the statutes of this State and is presently authorized to do business herein, and, in respect so such operations, is subject to the jurisdiction of this Commission.

Under its Restated Certificate of Incorporation, as amended, the Company's authorized stock is one common share without par value. The sole issued and outstanding share is owned by NYNEX and the Company's capital stock account on May 31, 1984 was $1,618,937,273.

The Company expects, and intends to accept, periodic equity contributions from NYNEX

during calendar years 1984 and 1985 in an aggregate amount not to exceed $200,000,000. Furthermore, the Company expects to request and accept additional equity contributions from NYNEX beyond years 1984 and 1985. Therefore, the Company is requesting approval by the Commission of an ongoing arrangement whereby it could, from time to time, when in need of equity capital, notify this Commission of its proposal to request and accept equity contributions. The Company commits to notify this Commission in advance of each such specific proposed equity contribution. The Company further commits that no such equity contribution will be accepted unless the company remains a wholly owned subsidiary of NYNEX with one share of no-par value stock issued and outstanding.

The Company cannot undertake financing of any type without advance approval of the Board of Directors or its Executive Committee. The company's advance notice to this Commission of each such proposed equity contribution by NYNEX shall include: (1) a copy of the resolutions of the Board of Directors requesting an equity contribution, (2) a pro forma balance sheet reflecting the proposed financing, and a statement of the purposes

Page 554

for which the equity contribution will be used, and (3) a final report of the disposition of the financing within sixty days after its receipt. In addition, the Company will provide any required certificates and/or By-Laws of the company in full force and effect and any other documents that the Commission may request concerning the Company's financing plans.

The Company proposes to obtain standing approval to issue long and intermediate term (i.e., maturing within ten years) securities during the 1984 and 1985 time period, in an amount not to exceed $300,000,000. A determination of the type of issue will be made by the Company prior to each individual debt security issuance on the basis of market and other considerations. The Company seeks approval in advance of the actual financing in order to allow flexibility in its financing decisions.

When the Company proposes to proceed with such a debt security issuance, it will provide advance notice to the Commission concerning the type(s) of securities and the precise maturity date(s), and it will provide any prospectus and Registration statements and all other information and/or documents which it has committed above to provide to this Commission with respect to any proposed equity contribution.

The Company also commits that, in the event that a specific proposal is made to undertake debt financing and the spread between the proposed Company debentures and Treasury Bonds of similar maturities is greater than 150 basis points, it will seek specific approval from the Commission with respect to such proposed debt financing. The Company further commits that it will seek specific Commission approval of any proposed debt financing where the interest rate exceeds 15% for both long and intermediate-term debentures.

The debt obligations will be issued pursuant to the terms of an Indenture between the Company and a Trustee who will be designated by a vote of the Board of Directors, a copy of which will be filed with this Commission in accordance with the commitments set forth herein. If publicly offered, the Idenure for the proposed debt obligations will incorporate by reference the current Standard Indenture Provisions which are included in Exhibit 2 and will contain

substantially the same provisions except that the date to be contained therein will relate to the terms of the proposed issue. A copy will be filed with this Commission in accordance with the commitments contained herein. If the issuance is to be a private placement, a copy of the proposed agreement will be provided prior to any such sale.

Although the requested financing authority totals $500,000,000 for both equity contributions and debt securities, the Company commits that its aggregate net long-term financing will not exceed $350,000,000 for years 1984 and 1985.

The Company now participates in the NYNEX Employee Stock Ownership Plan. Such participation is similar to the Company's former participation in the Bell System Employee Stock Ownership Plan. The company is seeking authority for financings related to participation in the NYNEX Employee Stock Ownership Plan similar to the approval granted by the NHPUC in Docket DF 77-121, Order No. 12,888 ([1977] 62 NH PUC 233) as amended. Specifically, the Company seeks authorization to receive equity contributions from NYNEX in an amount equal to the additional investment tax credit available to the Company by reason of its participation in the Plan, in its

present form or as it may hereafter be amended. Furthermore, the Company requests standing approval of its participation in the NYNEX ESOP on a basis similar to that requested with respect to the equity contribution above.

The Company represents that from time to time it has made expenditures in the States of Maine, Massachusetts, New Hampshire, Rhode Island and Vermont for the acquisition of property, the construction, completion, extension and improvement of its facilities in said States, and for the improvement and maintenance of telephone service, all of which expenditures have been necessary and requisite for present or future use in the conduct of its business. In order to meet these continuing expenditures, the Company obtains new moneys temporarily through the issuance of commercial paper with maturity at time of issuance of not more than nine months, bank loans with dates of maturity for a specified period up to twelve months after date or less time at the option of the Company, and private placement notes due less than one year after issuance, or has expended from its treasury moneys other than moneys obtained from the sale of securities or equity contributions.

As of May 31, 1984, the Company had outstanding unsecured Short-Term Obligations in the aggregate amount of $214,700,000, the proceeds of which have been used for corporate purposes as aforesaid in the five states in which the Company operates. It is estimated that, unless refunded or repaid from the proceeds of the proposed equity contributions or from sale of permanent securities, the amount of such Short-Term Obligations would be increased to approximately $518,000,000 by December 31, 1984. The proposed financing aggregate will be applied toward the repayment and discharge of unsecured Short-Term Obligations outstanding at the time said contributions are received, and the balance, if any, of such funds shall be used for such lawful corporate purposes as need therefore arises. Future equity financing similarly will be applied toward the repayment and discharge of unsecured Short-Term Obligations outstanding at the time said contributions are available, and for other lawful corporate purposes as need

therefore arises.

The Commission notes that the Company represents that it is not seeking approval of any capital structure for rate making purposes, but it is looking to lower its debt ratio so that it can attain a double A credit rating.

The Commission, upon consideration of the evidence submitted, is satisfied that the continued receipt of equity contributions from NYNEX for lawful purposes, and the issuance and sale of the debentures proposed herein is consistent with the public good. The Commission is also satisfied that it is in the public interest for the Company to continue in the NYNEX Employee Stock Ownership Plan. The Commission will take the request for the Company to accept similar contributions to equity in the future under advisement and will issue a further report and appropriate order at a later time.

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 (the Company) be, and hereby is, authorized insofar as the same pertains to the property or expenditures in the State of New Hampshire, and so long as the Company remains a wholly owned subsidiary of

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NYNEX Corporation (NYNEX) with one share of no part value stock issued and outstanding, to request and accept additional equity contributions from its parent, NYNEX, periodically through the 1984 and 1985 time frame, not to exceed $200,000,000; and it is

FURTHER ORDERED, that the Company provide advance notice to this Commission of each such equity contribution along with a copy of the resolutions of the Board of Directors requesting an equity contribution, a pro forma balance sheet reflecting the proposed financing, and a statement of the purposes for which the equity contributions will be used, and a final report of the disposition of the financing within sixty days after its receipt; and it is

FURTHER ORDERED, that the Company be, and hereby is, authorized, insofar as said issue pertains to property or expenditures in the State of New Hampshire, to issue and sell debt securities, not to exceed $300,000,000, during the 1984 and 1985 time frame; and it is

FURTHER ORDERED, that the Company will submit to this Commission the type(s) of securities, precise maturity date(s), the principal amount, purchase price and rate of interest of said debt. 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 Company will provide the Commission with copies of the debt obligations if publicly offered and/or a copy of the proposed agreement if private offering is to take place; and it is

FURTHER ORDERED, that the Company will not exceed $350,000,000 aggregate net

long-term financing even though the requested financing authority totals $500,000,000 for the years 1984 and 1985; and it is

FURTHER ORDERED, that the Company participate in the NYNEX Employee Stock Ownership Plan, annually, to receive equity contributions from NYNEX in an amount equal to the additional investment tax credit available to the Company by reason of its participation in the Plan. The Company is directed to file such reports with respect to its participation as the Commission may find appropriate; and it is

FURTHER ORDERED, that the proposed financing aggregate will be applied toward the repayment and discharge of unsecured Short-Term Obligations outstanding at the time said contributions are received, and the balance, if any, of such funds shall be used for such lawful corporate purposes as need therefore arises.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of September, 1984.

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NH.PUC*09/26/84*[61544]*69 NH PUC 558*Public Service Company of New Hampshire

[Go to End of 61544]

69 NH PUC 558

Re Public Service Company of New Hampshire

DF 84-167,
Eighth Supplemental Order No. 17,228

New Hampshire Public Utilities Commission

September 26, 1984

Order granting authority to issue and sell securities.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, our Report and Seventh Supplemental Order No. 17,222 dated September 21, 1984 (69 NH PUC 522), authorized Public Service Company of New Hampshire to raise not more than $425,000,000 through the issuance and sale of warrant debentures and Units consisting of debentures and warrants to purchase shares of Common Stock and to issue shares of Common Stock from time to time in satisfaction of the warrants; and

WHEREAS, following negotiations with underwriters, the Company has submitted to this Commission details concerning the sale of said securities as follows:

STRUCTURE OF UNITS

Each Unit shall consist of (1) a debenture with a principal amount of $1,000 maturing in 2004 and bearing interest at a rate of 17% per annum (the "Debentures") and (2) 75 warrants,

each warrant entitling the holder to purchase one share of Common Stock at a price of $5 per share payable in cash or by surrender of Debentures, such exercise price to be subject to adjustment upon the occurrence of certain events, including stock dividends, stock splits or combinations, reclassifications, certain rights offerings of shares of Common Stock and certain mergers or reorganizations (the "Unit Warrants").

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

OFFERING OF UNITS TO THE PUBLIC

Maximum Number of Units to be Offered: 149,500

Price to the Public per Unit: $950

Price to the Company per Unit $902.50

Allocated to Debentures $813.44

Allocated to Warrants $ 89.06

OFFERING TO THE HOLDERS OF SECURED EXCHANGEABLE PROMISSORY NOTES

Maximum Number of Units to be Offered in

One-for-One Exchange: 90,000

Price to Noteholders Per Unit $930.15

Allocated to Debentures $836.40

Allocated to Warrants $ 93.75

Merrill Lynch Commission per Unit $ 35.00

Maximum Number of Units or Principal Amount of Debentures to be Offered in lieu of cash Payment for difference between price per Unit and principal amount owed for Secured Exchangeable Promissory Notes (No commission payable to Merrill Lynch)

Maximum Number of Units 6,759

Maximum Principal Amount of Debentures: $ 7,516,141

Maximum Principal Amount of Debentures to be offered in satisfaction of Debenture Purchase Warrants $180,000,000

Price per Debenture to Holders of Debenture Purchase Warrants

83.64% of principal amount

Merrill Lynch Commission per Debenture 5% of principal amount

TOTAL SECURITIES OFFERED

Maximum Aggregate Principal Amount of Debentures Offered: $425,000,000

Maximum Aggregate Number of Unit Warrants Offered: 18,469,425

Maximum Aggregate Number of Shares of

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Common Stock Reserved for Issuance
upon Exercise of Unit Warrants:    18,469,425
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AND WHEREAS, said Order No. 17,222 imposed five conditions on Public Service Company of New Hampshire in connection with the authorization therein granted; and

WHEREAS, Conditions 3 and 4 of said Order are intended to place certain limitations on the use of the proceeds of this issuance (but not other funds of the Company) to service "Seabrook related debt" and in order to facilitate identification of such portion of the proceeds of this issuance which may fall into the category of "Seabrook related debt", Public Service Company of New Hampshire has stated its intention to deposit the proceeds of this issuance in a segregated account (at least until the issuance of an order in Docket DF 84-200), the disposition of which shall be accounted for during that period in accordance with Condition 1 of said Order; and

WHEREAS, after due consideration, it appears that the issue and sale of the above-described securities, in the amounts and upon the terms hereinabove set forth and with the conditions imposed in this Docket, 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 the abovedescribed securities in the amounts and upon the terms hereinabove set forth and with the conditions imposed in this Docket; and it is

FURTHER ORDERED, that until otherwise ordered by this Commission in Docket DF 84-200, Public Service Company of New Hampshire shall deposit the proceeds of this issuance in a segregated account, the disposition of which shall be accounted for in accordance with Condition 1 of said Order No. 17,222; and it is

FURTHER ORDERED, that all other

provisions of said Order No. 17,222 of this Commission are incorporated herein by reference.

By Order of the Public Utilities Commission of New Hampshire this 26th day of September, 1984.

Separate Opinion of Commissioner Lea H. Aeschliman

As reflected in my separate opinion in Report and Seventh Supplemental Order No. 17,222 ([1984] 69 NH PUC 522) I would approve the authority to issue and sell the Exchange Offering and deny the authority to issue and sell the Public Offering. In accordance with that opinion, I would authorize the Company to issue and sell the securities in the Exchange Offering in the amounts and upon the terms set forth in the majority order and with the conditions imposed in my opinion and I would deny the authority to issue and sell the securities in the Public Offering.

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69 NH PUC 560

Re Pembroke Hydroelectric Project

DR 84-233, Order No. 17,229

New Hampshire Public Utilities Commission

September 27, 1984

Order granting petition for 20-year rate order.

By the Commission:

ORDER

WHEREAS, on August 28, 1984, Pembroke Hydroelectric Project ("Pembroke") filed a Petition for a twenty-year rate order; and

WHEREAS, the Petition requested inter alia exemption from the requirement in Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 61 PUR4th 132, that long term rates be established for the first three years of an arrangement no higher than a ceiling of 90% of the levelized rates; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, supra, such an exemption will be granted when the Small Power Producer proves that such an exemption is necessary in order to bring the proposed project on line; and

WHEREAS, Pembroke has averred that such an exemption is necessary in order to bring the proposed project on line; and

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

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

ORDERED NISI, that the Petition for Twenty-Year Rate Order for Pembroke, including the interconnection agreement

and the rates set forth on the long term worksheet are approved; and it is

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

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

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of September, 1984.

69 NH PUC 561

Re Greggs Falls Hydroelectric Project

DR 84-234, Order No. 17,230

New Hampshire Public Utilities Commission

September 27, 1984

Order granting petition for 20-year rate order.

By the Commission:

ORDER

WHEREAS, on August 28, 1984, Greggs Falls Hydroelectric Project ("Greggs Falls") filed a Petition for a twenty-year rate order; and

WHEREAS, the Petition requested inter alia exemption from the requirement in Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 61 PUR4th 132, that long term rates be established for the first three years of an arrangement no higher than a ceiling of 90% of the levelized rates; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, supra, such an exemption will be granted when the Small Power Producer proves that such an exemption is necessary in order to bring the proposed project on line; and

WHEREAS, Greggs Falls has averred that such an exemption is necessary in order to bring the proposed project on line; and

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

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

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

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

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

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of September, 1984.

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NH.PUC*09/27/84*[61547]*69 NH PUC 562*Public Service Company of New Hampshire

[Go to End of 61547]

69 NH PUC 562

Re Public Service Company of New Hampshire

Intervenor: Seacoast Anti-Pollution League

DF 84-167,
Ninth Supplemental Order No. 17,231

New Hampshire Public Utilities Commission

September 27, 1984

Order denying motion for rehearing.

Security Issues, § 132 — Scope of proceedings — Conditional authority.

The state public utilities commission properly refused to schedule additional hearings on granting an electric utility conditional authority to issue and sell securities because the limited scope of the proceedings had been established in a previous commission order and because immediate financing was necessary to enable the utility to survive, pending consideration of fundamental issue in another docket. [1] p.563.

Security Issues, § 44 — Authorization — Utility witnesses.

The state public utilities commission did not err in relying solely on the testimony of witnesses for an electric utility in granting the utility conditional authority to issue and sell securities. [2] p.564.

Evidence, § 3 — Matters outside the record — Illustration.

A decision of the state commission was not improperly based on a document that had not been admitted into evidence; the document was included in the decision as a footnote for the purpose of illustration only and therefore omission of the document would not have changed the decision. [3] p.566. (Aeschliman, commissioner, separate opinion, p. 567.)

Appearances: As previously noted.

By the Commission:

REPORT

On June 29, 1984, Public Service Company of New Hampshire ("PSNH" or "Company") filed a Petition seeking authorization to issue and sell certain securities in the amount of $425,000,000. On September 21, 1984 the Commission issued Report and Seventh Supplemental Order No. 17,222 (69 NH PUC 522) ("Decision") conditionally granting the Company's Petition.[1](183) On September 26, 1984, the Seacoast Anti-Pollution League

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("SAPL"), a full party intervenor in the instant proceeding, filed a timely Motion for Rehearing ("Motion") pursuant to RSA 541:3.[2](184)

We have reviewed the allegations contained in the Motion as well as our Decision and the record. We have determined that the Decision is lawful and reasonable, that the Motion fails to provide any good reason for rehearing, (See, RSA 541:4) and, accordingly, we will deny the Motion. The analysis on which we rest our conclusion follows. Each of SAPL's contentions, as set forth in its Motion, will be discussed in turn.

I. The finding that an order issued subsequent to August 31, 1984 would be a de factor denial.

[1] SAPL argued that the Commission erred in refusing to schedule further hearings in view of the fact that the August 31, 1984 date, found to be a deadline for a de facto denial in Opinion and Order No. 17,141 ([1984] 69 NH PUC 422) has passed without the consequent failure of the financing. According to SAPL, this demonstrates that the Commission was incorrect in its finding that an Order issued subsequent to the August 31, 1984 date would be a de facto denial. Since the Commission was faced with a situation where a critical finding was incorrect, it should have scheduled further hearings to take testimony so that it could make a new finding. SAPL contends that without such further hearings, the Commission could not have had a sufficient record on which to base its findings and conclusions on scope and on the merits. We disagree.

Our comprehensive review of the testimony of Mr. Charles E. Bayless, Financial Vice President of Public Service Company of Robert G. Hildreth, Jr., Vice President of Merrill Lynch and Associated exhibits compel the conclusion that the project financing would serve the public good. The imperative necessity of that financing to avert the liquidity crisis confronting the Company was an essential consideration in our conclusion to adhere to the limited scope of the proceeding in the Commission's August 2, 1984 Order affirmed in Re Seacoast AntiPollution League (1984) 124 NH —, 482 A2d 509. The record was and is abundantly clear that time is of the essence to complete a successful financing to enable the Company to survive and carry out its public utility obligations to its ratepayers pending consideration of the fundamental issues deferred to DF 84-200. (See Decision, e.g., Liquidity Crisis, [69 NH PUC at p. 534]; Seabrook Investment, [69 NH PUC at p. 536]; Financing Plan [69 NH PUC at p. 537], et seq.)

The effect of the passage of the August 31, 1984 date was an issue which was seriously

considered in the Decision. There, we stated (69 NH PUC at p. 527, Footnote 3):

We are aware that the August 31, 1984 date used in the Second Procedural Order has come and gone. However, we continue to believe that the evidence supports a finding that an

untimely Order would act as a de facto denial of the Petition. While we cannot precisely pinpoint when a de facto denial would be triggered, the record supports the finding that such a consequence becomes more imminent with each passing day.

Our review of the record continues to lead us to the conclusion that a timely Order was and is critical. The August 31, 1984 date was established in order to enable the Company a reasonable amount of time to market to proposed financing. Thus, the critical date was not August 31, 1984, but rather on or about October 1, 1984. The evidence supported a finding that the Company was faced with a serious liquidity crisis (See, 69 NH PUC at pp. 534-536) and that, indeed, the Company would run out of cash in October, 1984 (See e.g. Exhibit 7 in Docket No. DF 84-168, which was administratively noticed in this proceeding at Tr. 2-18). Additionally, the record supported a finding that the restructure "work out" agreements with the Company's creditors required that at least $200 million in long term financing be completed no later than October 1, 1984. See e.g., Report and Second Supplemental Order No. 17,141 (69 NH PUC at p. 423) ("Second Procedural Order"). See also Re Public Service Co. of New Hampshire (1984) 69 NH PUC 415. Finally, the record supported a finding that the successful and timely completion of the proposed financing would aid the Company in reestablishing its credibility with and access to the financing markets. Based on substantial evidence we concluded that such an effort is a reasonable means of addressing the Company's financial difficulties. (69 NH PUC at p. 537.

Since the critical time frame for an opportune financing to serve the public good was within the September-October, 1984 period the evidence supports the finding that the August 31, 1984 date was not a pin-pointed time which would trigger adverse consequences. Rather, the record indicates that the August date was selected in order to allow a reasonable time to market the securities. Since that date has passed, the company is hard pressed to perform this marketing function within the time constraints to finance essential obligations.

We affirm our conclusion that it is reasonable to defer our inquiry into Seabrook alternatives and further financing requirements to the hearing scheduled in DF 84-200.[3(185)]

II. The finding that it was not necessary to hear additional evidence.

[2] SAPL argued that the Commission erred because it relied solely upon the testimony of PSNH's witnesses; testimony which, according to SAPL, was proved to be inaccurate by subsequent events. Since the Commission has an affirmative duty to ensure that a proper record is developed, further evidence should have been required.

The issue of whether it was necessary to hear additional evidence was given serious consideration after the appointment of the Special Commissioner. After a full review of the evidence, we determined that the record was sufficiently developed. Our review of the Motion for Rehearing leaves us convinced that the Decision was and is supported by substantial

evidence. (69 NH PUC at p. 532.) It was legally proper and necessary to rely on the existing record without further proceedings as a foundation for the Decision. See e.g., Re Opinion of the Justices (1977) 117 NH 390, 393. After review of the entire record, including the crossexamination by intervenors and the documentary support contained in the exhibits, we determined that the testimony sponsored by the Company was credible and that a de novo hearing was not necessary in order for the Special Commissioner to observe the demeanor of the witnesses. Rather, the evaluation of the credibility of the witnesses was a function of logical analysis, credentials, data base and other factors readily discernible to one who reads the record. See, New England Coalition v Nuclear Regulatory Commission (CA1st 1978) 582 F2d 87, 99, 100. See also, Decision (69 NH PUC at p. 527) (Denial of SAPL Motion to Determine Scope of Proceeding and Reopen Record).

Subsequent events do not undermine the credibility of testimony grounded upon the necessity to mitigate PSNH's financial crisis by timely marketing of the proposed securities. SAPL's Motion cites the testimony of Mr. Hildreth to the effect that he would not engage in the marketing of the securities absent an authorizing Commission Order. Motion at p. 2. However, Mr, Hildreth's testimony also indicates the critical need to complete the marketing of the securities in a timely manner so that a further financial crisis may be averted. Given the events subsequent to the issuance of Report and Fourth Supplemental Order No. 17,183 ([1984] 69 NH PUC 469), we do not believe that Mr. Hildreth's conduct is inconsistent with his testimony taken as a whole. If averting a financial crisis is balanced against a preference to avoid preliminary marketing absent a Commission Order, it is not unreasonable for an expert in the financial markets to choose what he believes to be the least onerous alternative of engaging in preliminary marketing. This is entirely consistent with uncontroverted testimony regarding the critical need to issue and sell the proposed securities in the September-October, 1984 time frame.

Accordingly, we conclude that the Decision is supported by substantial evidence. We continue to be satisfied that the issuance and sale of the proposed securities in a timely manner is in the public good. See, Report and Eighth Supplemental Order No. 17,228. We also note that PSNH continues to be subject to protective limitations on the use of the proceeds of the proposed financing to service Seabrook related debt. Id. Thus, the ultimate determination of whether it is in the public good to authorize the financing of Seabrook to commercial operation awaits our analysis and order in 10DF 84-200. (69 NH PUC at p. 524 Footnote 2.) We will therefore deny SAPL's Motion on this ground.

III. The finding that it was not necessary for the Special Commissioner to hear the evidence de novo.

SAPL argues that the Commission erred when it denied the parties the opportunity to address the Commission as reconstituted by the appointment of the Special Commissioner in a hearing. We disagree.

As stated above, there is no requirement that additional hearings be scheduled. Re Opinion of the Justices, supra; New England Coalition v Nuclear Regulatory Commission, supra (69 NH PUC pp. 531, 532. Thus, in exercising our discretion, we had to balance what would be gained from an additional hearing

against the critical need of the Company for expeditious relief. In the instant proceeding, all parties were afforded a full opportunity to aid in the development of the record. The record reflects that all parties either took advantage of that opportunity or explicitly declined to present direct evidence. "It [was] the independent judgment of the Special Commissioner that the existing record forms an adequate basis of review and that further proceedings would adversely affect the Commission's ability to issue a timely Order." (69 NH PUC at p. 532.) After review, we continue to be convinced that the balance was properly evaluated. There was little to be gained from taking additional testimony, a serious risk of adverse financial consequences to the Company and a record which was adequate to support findings and conclusions. SAPL has not presented new argument in its Motion and we continue to believe that we properly exercised our discretion. Accordingly, SAPL's Motion will be denied on this ground.

IV. The finding that it was unnecessary to reopen the proceedings in light of subsequent developments.

SAPL argued that subsequent events, which were brought to the Commission's attention by documents filed with the Commission, should have caused the Commission to reopen the proceedings. We have examined all the events set forth in SAPL's Motion. After review, we find that each and every event is relevant to an issue we deferred for consideration in DF 84-200. We agree with SAPL that those events merit the full consideration of the Commission; however, the instant docket is not the place for such consideration. The financing requirements of the socalled "Newbrook" Financing (Motion at p. 3, Par IV.A.), the ramifications of the decision to keep Seabrook expenditures at the level of $4 million per week (Id., at Par IV.B.), the effect of the increased Seabrook cost estimates (Id., at Par IV.C.), and the decision by several of the Company's wholesale customers to terminate their existing power purchase contracts (Id., at Par IV.D.) are all matters which will be fully considered in DF 84-200; a proceeding that is in progress. Accordingly, SAPL's Motion will be denied on this ground.

V. The reliance on a document not in evidence.

[3] SAPL contends that the Commission erred in relying on the Prospectus of September 4, 1984 to support the decision; a document which was not in evidence in this proceeding.

4(186) Our review of this argument leads us to conclude that it reflects a fundamental misunderstanding of the Decision. We did not rely on evidence contained in the September 4, 1984 prospectus to support the Decision. The applicable factual analysis of investment in Seabrook, set forth in the Decision (69 NH PUC at p. 536), was based on Exhibit 6. The protection of sunk investment in Seabrook pending the decision in DF 84-200 was a legitimate concern of the Commission. The additional reference to the September 4, 1984 document is contained in a footnote which was included for the purposes of illustration only, noting updated figures. It must be stated directly that our conclusions do not depend on information in the September 4, 1984 document and, thus, the Decision would not change if note 11 was

omitted. Accordingly, SAPL's Motion will be denied on this ground.

VI. The finding that authorization of the issuance and sale of all securities proposed is in the public good.

SAPL contends that the Commission erred in approving the entire financing. SAPL argues that the record supports only its position that the Company should only be granted the authority it needs to carry it through February of 1985. We disagree.

Our analysis of the record is fully set forth in the Decision. SAPL's Motion presents no new relevant information. Our review of the record for the purpose of evaluating the Motion reinforces our conclusion that the financing as proposed should be conditionally approved. PSNH must be provided with sufficient cash so that it may continue to meet its obligations as a public utility. The record reflects that the proposed financing would address a cash deficiency which would exist whether or not the Company goes forward with Seabrook. The record also supports the finding that approval of only a partial amount of the proposed financing would require the Company to incur an undue risk that it would fail to market the securities. Since our conditions preserve the Seabrook issue to DF 84-200, we continue to believe that our findings and conclusions are supported by substantial evidence and are lawful and reasonable. Re Seacoast Anti-Pollution League (1984) 124 NH —. Accordingly, SAPL's Motion will be denied on this ground.

VII. The finding that financial feasibility should be considered in DF 84-200.

SAPL argues that the Commission erred in granting the Company's Petition because we declined to consider financial feasibility. As discussed in the decision, we believe that this issue was one which was appropriately deferred to DF 84-200. We have imposed conditions which will allow us a realistic opportunity to adjudicate this issue in the upcoming docket. (69 NH PUC at pp. 539, 540; 69 NH PUC 558.) Report and Eighth Supplemental Order No. 17,228. The Court has held that such an exercise of Commission discretion is proper. Re Seacoast Anti-Pollution League, supra. SAPL's Motion presents no information which justifies a different conclusion. Accordingly, SAPL's Motion will be denied on this ground.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that SAPL Motion for Rehearing pursuant to RSA 541:3 be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this twentyseventh day of September, 1984.

Separate Opinion of Commissioner Lea H. Aeschliman

In accordance with my previous opinions in this docket, I would deny SAPL's motion on the grounds raised in points number I, II, III and V; and I would grant the motion relative to the grounds raised in points number IV, VI and VII.

Points I and II raised by SAPL address the credibility of testimony of Mr. Bayless and Mr. Hildreth relative to the necessary date for decision in light of subsequent events and deserve additional comment. Although I would not grant a motion for rehearing on these grounds because I agree with the majority that the procedural order and scope were

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determined based upon the need for an extended investigation requiring several months and that the addition of one or two weeks time for deliberation in this docket would not have been determinative,[1](187) the apparent discrepancies are nevertheless disturbing.[2](188)

The Commission should also be assured that it has time to hold one additional hearing that I believe is required as outlined below.

SAPL raises a valid ground for hearing in point IV as it relates to points VI and VII. Since the record in this proceeding was closed PSNH has disclosed information material to this financing in two additional prospectuses dated September 4 and September 14. Of particular importance are the disclosure in the September 4 prospectus that the Com- pany now anticipates that Newbrook Company would sell approximately $730 million of long-term debt securities to finance the Company's share of the cash costs to complete Unit 1. (p. 19) The prospectus also states that:

In developing financing plans for completing construction of Unit I the Joint Owners have agreed that until they otherwise determine, each owner should assume a total cash cost to complete the Unit of 1.3 billion. The estimates of required financing contained in this prospectus are based upon this assumption notwithstanding that the latest update of the cash cost to complete is $830 million as indicated above. There can be no assurance that the Company can obtain its share of a $1.3 billion level of prefinancing. If the cash cost to complete Unit 1 were to increase to $1.3 billion, the Company's cash requirements would exceed amounts it could reasonably expect to obtain through rate increases and external financing. (p. 6.)

Furthermore, in the prospectus of September 14, 1984, PSNH disclosed that Exeter & Hampton Electric Company and Concord Electric Company notified PSNH that they intend to terminate their existing power purchase contracts with the Company effective September 30, 1986. The prospectus further discloses that power sold to these two utilities accounted for 11% of the Company's total power sales and 8% of total revenues. (p. 34.)

These two new facts are directly relevant to the feasibility of the Company's financing plans and to the amount of financing that should be approved in this docket given the emergency nature of the proceeding and the limited scope. (SAPL Motion for Rehearing grounds VI and VII.) The financial feasibility questions raised by these new facts are of two kinds: (1) the Company may not be able to raise the level of financing required; (2) the rates required to support the resulting capital structure may be unacceptable to all parties and may result in loss of customers and reduced sales sufficient to render the financing plan infeasible.

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Given the added uncertainty about financial feasibility raised by these facts, the Commission

should admit this evidence and allow the parties to address the relevance of these additional facts to the Commission's evaluation of the merits of the full $425 million financing. The materiality of these new facts to this financing cannot be questioned because the Company included these facts in its prospectuses in compliance with SEC requirements to disclose material facts.

While my analysis of the evidence in the record already has led me to conclude that approval of the $425 million cannot be justified in the context of an emergency proceeding, these additional facts heighten my concern about the amount of financing that should be approved prior to the review in DF 84-200. (See Dissenting Opinion of Commissioner Aeschliman, Seventh Supplemental Report and Order No. 17,222 [69 NH PUC pp. 542, 544-546].)

Indeed, since all Commissioners have based their conclusions on the weight of the evidence and since a hearing on these facts could affect the weight of the evidence, the inclusion of these facts could lead the Commission to a different final conclusion.

FOOTNOTES

[1]The history of the proceedings is lengthy and has already been set forth in the Decision at 1-6.

[2]On September 26, 1984, PSNH filed an objection to the Motion for Rehearing. Additionally, on September 26, 1984, after due notice, a hearing was held at which PSNH presented the pricing information on the proposed financing. After review, the Commission issued Eighth Supplemental Order No. 17,228 ([1984] 69 NH PUC 558) which, inter alia, authorized PSNH to issue and sell the proposed securities in amounts and upon the terms stated at the hearing and with the conditions imposed in this docket. Subsequently, on September 27, 1984, PSNH filed a Petition for Original Jurisdiction with the Supreme Court seeking a determination that PSNH can issue valid securities on the strength of an unsuspended Commission Order without regard to the possibility that the Order may be overturned on appeal.

[3]Indeed adoption of the 4-6 month time frame for analysis of Seabrook issues proposed by SAPL and Conservative Law Foundation, Inc. ("CLF") among others would have frustrated the urgent necessity for timely action resulting in our Order of September 21, 1984 and our financing Order of September 26, 1984 (Eighth Supplemental Order No. 17,228).

[4]It is noteworthy that SAPL's argument in the previous paragraph of the Motion was that the Commission erred by not relying on information contained in that same document.

Separate Opinion of Commissioner
Lea H. Aeschliman

[1]While I agree with the majority at this point in time, I must also point out that the need for an extended investigation should have been obvious to the Commission since the release of the new cost estimates in March. Had the Commission acted on my proposals to hire a financial consultant, last spring or even early this summer, the Commission would have been in a position to consider this financing petition with the scope it deemed proper in the original procedural order of July 30th.

[2]As my previous opinion indicated, I found the testimony of the Company and of Mr.

Hildreth to be inconsistent and troubling in respect to the need to approve the entire $425 million financing package. (Dissenting Opinion of Commissioner Aeschliman, Seventh Supplemental Report and Order No. 17,222 [69 NH PUC at pp. 546, 549, 551].)

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NH.PUC*09/28/84*[61548]*69 NH PUC 569*Fuel Adjustment Clause

[Go to End of 61548]

69 NH PUC 569

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, Woodsville Water and Light Department, and Connecticut Valley Electric Company, Inc.

DR 84-250, Order No. 17,232

New Hampshire Public Utilities Commission

September 28, 1984

Order establishing fuel adjustment clause rates.

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

By the Commission:

REPORT

The Public Utilities Commission held a duly noticed public hearing on the fuel adjustment clause filings of Concord Electric Company, Exeter & Hampton Electric Company, and Granite State Electric Company, for the fourth quarter of 1984 at its office in Concord on September 26, 1984.

Concord Electric Company and Exeter & Hampton Electric Company were represented by one witness, William. H. Steff. Concord had a FAC rate credit of ($0.198)/ 100 KWH approved for July, August,

and September, 1984, while Exeter & Hampton Electric Company had a rate credit of ($0.074)/100 KWH.

In developing the fourth quarter of 1984 estimates, the most significant inputs were based on June, 1984 estimates by the companies' sole electricity supplier, PSNH, of $0.03716/KWH for October, 1984, $0.03472/KWH for November, 1984, and $0.03958/KWH for December, 1984.

Based on this and taking the amount of fuel expense rolled into base rates and the effect of

the State Franchise Tax into account, Concord's proposed rate for the fourth quarter of 1984 was $0.489/100 KWH, while Exeter & Hampton's was $0.624/100 KWH. These will result in increased charges to customers in both cases. A net increase of $3.43/month for average Concord customers, and a $3.49 increase for an average 500 KWH/month customer on the Exeter & Hampton system.

The increases are attributable to a decrease in overcollections in the third quarter of 1984 than the prior quarter [sic], which by the mechanism of the Fuel Adjustment Clause, are deducted from the cost estimates for the 4th quarter of 1984. Overcollections are due to the utilities' sole supplier of electricity, PSNH, over estimating its cost of generation. Additionally, increases are due to an increase in 4th quarter sales projected by PSNH and higher cost generation needed to support those increased sales.

During the course of the September 26, 1984 hearing the Commission Staff brought up the subjects of the Company's estimates of sales growth estimates, Company use, loss, and unaccounted for energy, overcollections for prior periods, etc. Based on these lines of cross and the direct testimony, the Commission believes the rate as filed for both companies is in the public good and our Order will issue accordingly.

Granite State Electric Company (GSEC) made its filing for a Fuel Adjustment Clause rate and an Oil Conservation Adjustment rate (OCA) for the 4th quarter of 1984.

The rates requested were $1.209/100 KWH for the FAC and $0.145/100 KWH for the OCA. For comparative purposes the respective rates for the third quarter were $0.949/100 KWH and $0.187/100 KWH (OCA). A combined increase of $1.09/month for a typical 500 KWH/ month customer.

During the course of the duly noticed hearing on September 26, 1984, eleven exhibits were submitted by the Company through one witness.

First, addressing the FAC request, the Commission is again pleased with the favorable generation mix; namely more hydroelectric, coal and nuclear generation. Next in the report and order for DR 84-130 the Commission described the August, 1983 outage of Brayton Point III and the ongoing investigation of the circumstances surrounding the outage. Under cross examination in the September 26, 1984 hearing, the Company witness stated that the investigation of the outage is still in process. DR 84-130 approved the increased replacement power cost needed during Brayton Point III's outage with the caveat that upon conclusion of the pending investigation, if negligence or company error is determined, the increased replacement power costs approved in prior FAC orders will be subject to refund.

With the aforementioned caveat, and bearing in mind the record in this docket regarding fuel costs, coal inventory plans and shipping operations, sales growth, etc. the Commission will accept GSEC's proposed fourth quarter FAC rate of $1.209/100 KWH.

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Our Order will issue accordingly.

GSEC's OCA rate as proposed reflects a slight decrease from the third quarter rate due to a smaller oil/coal price differential and a prior period overcollection.

Based on the record, the New Hampshire PUC will accept GSEC's proposal for the third quarter OCA rate of $0.145/ 100 KWH.

Our Order will issue accordingly.

Through cross examination by Commission staff it was pointed out that Companies with quarterly FAC's are not accruing interest on over or under collected fuel charges. The Commission has in the past required this practice with other adjustment clauses used by utilities in this state, therefore in the next FAC proceeding for Concord Electric, Exeter & Hampton, and Granite State Electric the Companies and staff should be prepared to address the issue.

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

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

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

FURTHER ORDERED, that 20th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 9 - Electricity, providing for a fuel surcharge of $0.489 per 100 KWH for the months of October, November, and December, 1984, be, and hereby is, permitted to go into effect for the month of October, 1984; and it is

FURTHER ORDERED, that 20th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge of $0.624 per 100 KWH for the months of October, November, and December, be, and hereby is, permitted to go into effect for the month of October, 1984; and it is

FURTHER ORDERED, that 11th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of $0.145 per 100 KWH for the months of October, November, and December, 1984, be, and hereby is, permitted to go into effect for October, 1984; and it is

FURTHER ORDERED, that 13th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of October, November, and December, 1984 of $1.209 per 100 KWH, be, and hereby is, permitted to go into effect for October, 1984; and it is

FURTHER ORDERED, that 45th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity, providing for a fuel surcharge of $3.15 per 100 KWH for the month of October, 1984, be, and hereby is, permitted to become effective October 1, 1984; and it is

FURTHER ORDERED, that 97th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge of $0.56 per 100 KWH for the month of October, 1984, be, and hereby is, permitted to become effective October 1, 1984; and it is

FURTHER ORDERED, that 94th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge of $0.91 per 100 KWH for the month of October, 1984, be, and hereby is, permitted to become effective October 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this twentyeighth day of September, 1984.

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NH.PUC*10/02/84*[61549]*69 NH PUC 572*Public Service Company of New Hampshire

[Go to End of 61549]

69 NH PUC 572

Re Public Service Company of New Hampshire

DF 84-167,
Tenth Supplemental Order No. 17,233

New Hampshire Public Utilities Commission

October 2, 1984

Order transferring question of law to state supreme court.

Security Issues, § 129 — Procedure — Transfer to state supreme court.

Because the possibility of an appeal of an order by the state public utilities commission conditionally authorizing an electric utility to issue and sell securities had raised substantial questions about the continuing validity of the securities and the effectiveness of the order authorizing the issuance and sale, the public utilities commission transferred to the state supreme court the question of whether or not a public utility may issue valid securities notwithstanding the possibility of an appeal of the order authorizing the issuance of the securities.

(Aeschliman, commissioner, separate opinion, p.577.)

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Report and Seventh Supplemental Order No. 17,222 ([1984] 69 NH PUC 522) ("Order No. 17,222") in this docket which pursuant to RSA Chapter 369, inter alia, conditionally authorized Public Service Company of New Hampshire ("PSNH") to issue and sell certain securities; and

WHEREAS, the Commission issued Report and Eighth Supplemental Order No.

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17,228 ([1984] 69 NH PUC 558) which, inter alia, approved the price, terms and conditions of the instant financing; and

WHEREAS, on September 26, 1984, the Seacoast Anti-Pollution League ("SAPL") filed a Motion for Rehearing pursuant to RSA 541:3 on Order No. 17,222; and

WHEREAS, the Commission issued Report and Ninth Supplemental Order No. 17,231 ([1984] 69 NH PUC 562) which denied SAPL's Motion for Rehearing; and

WHEREAS, pursuant to RSA 541:6, SAPL may file an appeal of Order No. 17,222 within 30 days of the issuance of Report and Ninth Supplemental Order No. 17,231; and

WHEREAS, the possibility of appeal raises substantial questions about the continuing validity of the securities and the effectiveness of the Commission's authorizing orders; and

WHEREAS, on October 1, 1984, PSNH filed a Motion for Supplemental Order requesting, inter alia, that the Commission issue an order directing PSNH to proceed in accordance with the Commission's previous authorizing orders; and

WHEREAS, the Commission cannot issue such an order in view of the cloud over the continuing validity over the PSNH securities; and

WHEREAS, on October 2, 1984, SAPL filed an Objection to PSNH Motion for Supplemental Order which has been fully reviewed by the Commission; and

WHEREAS, the issue of the continuing validity of securities, the issuance and sale of which the Commission found to be in the public good, is one of significant public and regulatory importance in all financing dockets; and

WHEREAS, RSA 365:20 provides: "The commission may at any time reserve, certify and transfer to the supreme court for decision any question of law arising during the hearing of any matter before the commission"; and

WHEREAS, the Commission requires an opinion resolving the issue of the continuing validity of the authorized securities in order to issue an appropriate order enabling PSNH to issue and sell those securities in accordance with Order Nos. 17,222 and 17,228; it is therefore

ORDERED, that pursuant to RSA 365:20, the following question be reserved, certified and transferred to the Supreme Court:

Do orders of the Public Utilities Commission authorizing a public utility to issue securities pursuant to RSA 369:1 and 4, which have not been suspended in accordance with RSA 541:18 enable the public utility to issue valid securities, notwithstanding the possibility of appeal or the possible results therefrom?;

and it is

FURTHER ORDERED, that a copy of the Interlocutory Transfer Statement, attached to this Order as Appendix A, be transmitted forthwith to the Supreme Court along with all documents which have become a part of the instant record subsequent to the time that record was transmitted to the Court to facilitate its review in Re Seacoast Anti-Pollution League (1984) 124 NH —.

By order of the Public Utilities Commission of New Hampshire this second day of October, 1984.

INTERLOCUTORY TRANSFER WITHOUT RULING

I. Statement of the Case.

The petitioner, Public Service Company of New Hampshire (PSNH), has

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been authorized by the Public Utilities Commission (PUC) to issue certain securities pursuant to Commission Order Nos. 17,222 and 17,228, issued in accordance with RSA 369:1 and 4. The motion of Seacoast Anti-Pollution League (SAPL) for rehearing of Order No. 17,222 has been denied, Report and Ninth Supplemental Order No. 17,231. The orders have not been suspended by the Supreme Court in accordance with RSA 541:18. PSNH has moved for a supplemental order from the PUC, directing PSNH to proceed with the financing transaction authorized in Order Nos. 17,222 and 17,228. In addition, PSNH has requested that in connection with the adjudication of its motion for a supplemental order, the Commission reserve, certify and transfer to the New Hampshire Supreme Court a question of law, pursuant to RSA 365:20. The Commission issued its order for Interlocutory Transfer, Report and Supplemental Order No. 17,233 ([1984] 69 NH PUC 561).

II. Statement of Facts.

For the purpose of this transfer, the following facts apply:

1. PSNH is a corporation duly authorized to conduct the business of a public utility in New Hampshire. PSNH has been duly authorized by the PUC to issue certain securities at prices and under terms and conditions specified in PUC Order Nos. 17,222 and 17,228. SAPL has perfected its right to appeal to the Court the order authorizing issuance of the securities. The time for such an appeal will expire on or about October 29, 1984.

2. PSNH and the proposed underwriter, Merrill Lynch Capital Markets, are ready to proceed with the sale of the securities, as authorized by the Commission's Orders. However, the proposed

offerings cannot be effectively marketed without an opinion of counsel of PSNH that securities issued on the basis of orders of the Commission which have not been suspended, are valid and will remain so regardless of appeals or the resolution thereof. Such an opinion cannot currently be given because of uncertainty created by a decision of the Court, Re Granite State Electric Co. (1980) 120 NH 536, 540, 421 A2d 121. In that decision, the Court initially stated that "appealed or appealable PUC orders are presumptively valid and may be acted upon by interested parties at their risk until such time as they may be suspended or reversed on appeal. ..." Subsequently, the Court modified its opinion to limit the application of the cited language to rate cases, but did not go further to clarify whether the "at risk" language would apply to PUC orders authorizing issuance of securities.

3. Left unsettled in Granite State, supra, was the question of whether bona fide purchasers of a new issue of public utility securities, having "acted upon" an order of the PUC authorizing issuance of the securities, would be doing so "at risk" that the securities might later be invalidated through an order of the Court in an appeal taken subsequent to the issuance and purchase of the securities. This is a question of substantial pubic importance because, in the ordinary course, new issues of securities are sold and the issue in transaction is closed as soon as possible following orders of the Commission authorizing issuance of the securities. Pricing of securities issues depends upon commitments from underwriters and prospective investors that are based on existing market conditions. These commitments cannot be maintained for extended periods of time because of the risk of change in market conditions and the availability of other opportunities for

underwriters and investors. Because of these exigencies, the transaction must normally be closed well in advance of the expiration of the period for motions for rehearing under RSA 541:3 and the period for appeal under RSA 541:6.

4. Unless underwriters and prospective investors in public utilities securities can be assured that the securities are valid, without regard to the possibility of subsequent appeals or the possible results thereof, the transactions cannot be closed, because underwriters and investors in public offerings are not willing to incur the risk that the securities may subsequently be invalidated as the result of an appeal. Furthermore, the Securities & Exchange Commission will not permit a registration of a securities issuance to become effective, without disclosure of whether such assurances will be available prior to final closing and an opinion of counsel that the securities will be validly issued at that time.

5. Although the Court limited the application of its decision in Granite State, supra, to rate orders, the same statutory scheme for suspension and appeal applies to orders of the PUC under RSA 369. Accordingly, although circumstances surrounding financing orders differ regarding the need to move promptly to issue securities in accordance with PUC orders, uncertainty generated by the Granite State decision prevents informed counsel from predicting whether the Court would apply the same "at risk" provision to securities orders of the PUC, and therefore cannot provide assurances required by underwriters, investors and the SEC. Under the practical circumstances surrounding the issuance of the securities, if the "at risk" conditions set forth in Granite State were to be applied, the mere unexercised right of appeal under RSA 541 would

serve as a constructive suspension of Commission authorizing orders under RSA 369, notwithstanding the lack of any suspension order by the Court under RSA 541:18.

6. Such uncertainty stands to frustrate the regulatory process as it pertains to the orderly and timely issuance of utility financing instruments. In particular, such uncertainty stands to frustrate the PUC's findings that the issuance of securities is in the public good and is necessary to preserve a utility's ability to perform its statutory obligations.

7. A definitive Court ruling is necessary to permit PSNH to go forward with the securities transaction authorized by order of the Commission. The purpose of the transaction is to restore PSNH's financial integrity by regaining its access to capital markets for external financing of its capital needs to provide service to approximately 75% of New Hampshire ratepayers and to void exacerbation of PSNH's liquidity crisis. The financing is critical to minimize PSNH's financial crisis over a time frame to permit its operations to continue and to enable PSNH to engage in strategic planning for the future.

8. Time is of the essence to complete a successful financing to enable the Company to survive and carry out its public utility obligations to its ratepayers, pending consideration of certain issues relating to the Seabrook Project, which have been deferred to PUC Docket DF 84-200. Unless PSNH can complete the transaction in a timely fashion, it faces default of certain debt obligations totalling approximately $125 million. PSNH will again face imminent cash stringencies unless the transaction can be completed promptly. Absent the timely receipt of cash proceeds of the transaction, severe financial strain will shortly recur because PSNH will thereafter be confronted with

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a lack of sufficient cash to meet its obligations.

9. There is no realistic alternative to the current transaction. The final closing of the transaction must take place according to the present schedule because delay would make it highly unlikely that the public offering portion of the transaction could be held together and the exchange offering portion of the transaction could only proceed if the public offering were well received.

III. Questions of Law.

The following controlling question of law is transferred in accordance with RSA 365:20:

Do orders of the Public Utility Commission authorizing a public utility to issue securities pursuant to RSA 369:1 and 4, which have not been suspended in accordance with RSA 541:18, enable the Public Utility to issue valid securities, notwithstanding the possibility of appeal or the possible results thereof?

IV. Reasons for Interlocutory Transfer.

Urgent determination of the transferred question is essential to the practical effectiveness of PUC Order Nos. 17,222 and 17,228, in the absence of suspension under RSA 541:18, and to adjudication of PSNH's pending motion. Prompt completion of the authorized transaction, which has been found by the PUC to be in the public good, is essential to the financial survival of

PSNH. PSNH takes the position that in light of practical circumstances surrounding securities transactions, the transferred question should be answered in the affirmative, in order to permit it to continue to perform its statutory obligations as a public utility under RSA 374:1. SAPL contends that the transferred question should be answered in the negative because an affirmative answer would compromise the effectiveness of its appeal rights under RSA 541. A substantial basis exists for a difference of opinion on the question and determination of the question through an interlocutory transfer is essential to prevent frustration of the PUC's orders simply because of uncertainty in the law. There is no other available means to procure an authoritative, timely determination of the question.

PSNH previously sought such a determination through a petition for original jurisdiction to the Supreme Court, which was dismissed on September 28, 1984 for lack of jurisdiction and as a Company attempt to limit the time provided by the Legislature for bringing appeals from the PUC under RSA 542:6.

The PUC seeks a response to the transferred question based on RSA 365:20, which provides:

365:20 Questions of Law. The commission may at any time reserve, certify and transfer to the supreme court for decision any question of law arising during the hearing of any matter before the commission.

We are seriously concerned with protecting the appeal rights of the parties without in the interim bringing the regulatory process to a halt by delay in marketing securities found to be required by the public good. If our Order Nos. 17,222 and 17,228 are appealed on the merits and found to be improper in any respect after successful marketing of the securities, there must be safeguards imposed on the Company's application of the proceeds of the financing. We have already imposed protective conditions upon our authorization for financing to control the application of the proceeds through monthly accounting by the Company and deposit of the funds in a segregated

account until the issuance of an Order No. DF 84-200. We will, of course, implement forthwith any other protective conditions imposed by the Court to protect the public interest pending its order on the merits of Order Nos. 17,222 and 17,228 if appealed; and we will undertake such other protective measures as deemed necessary at that time. Determination by the Court of the legal status of securities pending appeal on the merits of our orders authorizing sale found necessary to protect the public good should not derogate the appeal rights of the parties conferred by RSA 541:6. Determination of the question relates to the Commission's administration of RSA Chapter 369, involves a genuine question of law and justiciable rights of PSNH and intervenors, and arises in adversary proceedings before the Commission. Determination of the question will permit adjudication of PSNH's pending motion for a supplementary order directing it to proceed with the authorized transactions. The issue is one of general importance in the administration of the public utility laws of the State of New Hampshire, and requires emergency determination.

The PUC is not empowered to respond to the transferred question. A ruling of the Court is required to validate orders of this Commission authorizing financing of essential utility services

to serve the public good without awaiting a final non-appealable decision of the Court on the merits of the financing.

Public Utilities must be able to gain access to the financial markets in a timely manner. The issue has been crystallized in the instant proceedings to the extent that the lack of an answer is interfering with the utility's ability to market securities in volatile financial markets which, in turn, directly threatens the utility's ability to provide safe, adequate service at just and reasonable rates. In an effort to obtain a resolution to the issue, the PUC believes that it is within its duty to transfer the foregoing question to the Court.

We have carefully reviewed SAPL's Objection to PSNH's Motion for Supplemental Order and we commend them for the timely response. We continue to be convinced that time is of the essence and there is no other viable alternative to this procedure at this time. Under the circumstances we will grant PSNH's request to reserve, certify and transfer the question without ruling to the New Hampshire Supreme Court.

Separate Opinion of Commissioner Aeschliman

I have reviewed and evaluated the October 1, 1984 Public Service Company of New Hampshire ("PSNH") Motion for a Supplemental Order. My review was conducted from a perspective of a full understanding of PSNH's concern that the regulatory process be rational and effective; a concern that was a factor in my decision to sign Report and Second Supplemental Order No. 17,141 ([1984] 69 NH PUC 422). However, because I did not agree with the underlying orders which we are being asked to make effective, I also cannot agree with a supplemental order directing PSNH to comply with those orders. Moreover, we have not been presented with cause to believe that PSNH will not comply with Commission orders.

Since I would not grant the Motion to issue a supplemental order, I do not reach the issue of whether to reserve, certify and transfer to the court the question of the validity of PSNH securities given the possibility of appeal, so that such an order may be issued.

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NH.PUC*10/02/84*[61550]*69 NH PUC 578*Concord Electric Company

[Go to End of 61550]

69 NH PUC 578

Re Concord Electric Company

Intervenor: Boston and Maine Railroad

DX 84-212, Order No. 17,234

New Hampshire Public Utilities Commission

October 2, 1984

Order establishing compensation for electrical distribution line over railroad property.

Eminent Domain, § 8 — Compensation — Crossing of private property.

Compensation proposed by a railroad company for payment by an electric utility for a distribution line over the property of the railroad company was rejected because the utility had met its burden of proof in establishing that the proposed compensation was not just and reasonable. [1] p.579.

Eminent Domain, § 8 — Compensation — Burden of proof.

The burden of proof in establishing just and reasonable compensation for a utility line crossing the property of another was shifted from the utility to the party having control of data from which proper compensation could be determined. [2] p.581.

Appearances: Ransmeier & Spellmen by Dom S. D'Ambruoso, Esquire for Concord Electric Company; John J. Nee, Esquire on behalf of the Boston and Maine Railroad.

By the Commission:

REPORT

I. PROCEDURAL HISTORY

On August 10, 1984, Concord Electric Company (Concord) filed a petition for approval by the Public Utilities Commission (Commission) of construction of an overhead distribution line over the tracks and property of the Boston & Maine Railroad in Concord, New Hampshire. An Order of Notice was issued on August 23, 1984 scheduling a hearing for September 20, 1984, at which time Concord and the Boston and Maine Corporation (B&M) entered appearances and took part in the proceedings. Testimony on behalf of Concord was offered by Vernon McFarland, its Vice President for Engineering and Operations. Francis X. Peters, B&M's General Industrial Agent, testified on behalf of B&M. Two exhibits were entered into evidence, Concord's petition and a plan showing the layout of the proposed crossing.

II. APPLICABLE LAW

RSA 371:24 provides as follows:

Upon approval of the commission, a public utility may construct transmission and distribution lines that traverse or parallel the tracks and property of a railroad and establish a permanent or temporary easement thereby. The public utility shall file a plan and layout delineating the route for such lines with the commission 30 days prior to beginning construction and shall make any payment to the railroad the

commission determines to be just and reasonable.

III. FINDINGS

The uncontested facts establish that Concord utilizes an extensive underground electric distribution system to supply power to most of the downtown Concord commercial business district west of Main Street and north of Pleasant Street which is serviced by a stepdown

substation located off Montgomery Street. During the past three months, splices and deterioration in this cable have resulted in five extended outages. In order to perform the maintenance to prevent such outages, it is necessary for Concord under its existing system to disrupt service to the customers on this line, most of whom are commercial in nature. To prevent a disruption in their service, Concord is proposing to construct a distribution line which will provide an alternate 34.5 KV supply to the stepdown substation. This alternate feed will allow Concord to de-energize the underground system to perform the much-needed maintenance without disrupting its customers service.[1](189) Because this overhead distribution line is proposed to cross the tracks of the B&M, the precise location of which is set forth in Exhibit 2, Concord seeks Commission approval pursuant to the above-stated statute.

In determining the location of the proposed overhead line, Concord considered other alternatives which it found after study to be much less desirable and more expensive. Specifically, Concord considered utilizing the so-called "Rumford" Crossing, an existing crossing in the general vicinity of the proposed crossing. This would necessitate the extension of an existing distribution line and involve obtaining the right to cross private property at an estimated cost of more than $70,000. Because the proposed overhead crossing will cost $28,000, Concord determined that utilization of the Rumford crossing was not an economically feasible alternative.

These findings lead us to conclude that Concord has met its burden of establishing the necessity of this crossing. Indeed, it is not opposed by B&M. B&M's concern in this proceeding is with the Commission's statutory duty to determine the just and reasonable payment Concord is to pay for the crossing. Thus, we will approve the crossing.

[1] We now turn to the issue of just and reasonable payment. In Re Exeter & Hampton Electric Co. (1984) 69 NH PUC 259, we determined that in addition to the burden of going forward under RSA 371:24, the petitioning utility has the burden of demonstrating that the railroad's proposed payment is not just and reasonable. We acknowledge that this negative burden creates analytical difficulties in that the railroad has sole custody and control of the cost data. However, despite these difficulties, we find that Concord has met its burden of establishing that B&M's proposed payment in this case is not just and reasonable.

As in Exeter, B&M maintains that RSA 371:24 is unconstitutional and that the Commission therefore lacks jurisdiction to adjudicate issues relating to the crossing of railroad property by utility lines. In the alternative, it argues that a just and reasonable payment for this crossing is $2,000.00. Mr. Peters testified that in his judgement this figure represents B&M's initial internal paper processing

costs in connection with this crossing. Like that in Exeter, this crossing involves no B&M track removal or other such construction; it only involves a distribution line passing over B&M's tracks at an elevation of approximately 30 feet.

Concord argues that B&M's request for a $2,000 payment is not supported by sufficient cost-based data as required by Exeter. While Concord proposed no specific payment, it did present several factors for the Commission to consider in making this determination, one of

which is Concord's $10.00 annual payment for the "Rumford" crossing. In addition, Concord pointed out that it has several other B&M crossings in the Concord area, the annual fees for which range between $0 and $25.00. Another factor suggested by Concord is the Commission's decision in Exeter which ordered Exeter and Hampton Electric Company (Exeter and Hampton) to pay to B&M an initial fee of $100.00 and an annual fee of $30.00 for a new railroad crossing.

In Exeter, the Commission addressed and rejected B&M's constitutional claims and adjudicated the case on the merits.[2](190) B&M did not present any new arguments herein which would lead us to conclude that our previous analysis was in error. It merely restated its contention that RSA 371:24 is unconstitutional. Thus, we will again reject their claims and in support thereof will incorporate by reference our discussion and findings regarding the constitutionality of RSA 371:24 located at pp. 5-9 of the Decision (69 NH PUC at pp. 261-263).

In Exeter, the Commission concluded that Exeter and Hampton met its burden of demonstrating that B&M's proposed payment schedule was not just and reasonable by establishing that B&M's evidence in support thereof was not based on the costs of engaging in the crossing transaction. Specifically, the Commission pointed to B&M's failure to provide cost data showing a detailed breakdown between the initial and continuing costs and the components of each. With regard to the initial fee, the Commission found that B&M's request for an initial fee of $100 was supported by the record. However, the proposed $200 annual fee was rejected. Instead, the Commission chose the figure on the high end of the range of the charges previously imposed by B&M ($10-$30) and directed it to charge an annual fee of no more than $30 until a further Order issued authorizing an increase.

The Commission commented on B&M's failure to provide proper cost documentation as follows (69 NH PUC at p. 265):

As is obvious, this Order cannot be the final word on the Railroad's cost of engaging in a crossing transaction. We fully expect to see this issue again and, given that the importance of documentary evidence has been emphasized in this Order, we also expect to see a better record.

Despite this direction, B&M has failed to provide any cost-based data in connection with its request that a $2,000 initial fee be imposed. Mr. Peter's judgment stands alone as justification for the $2,000 fee. As with Mr. Adam's in Exeter, Mr. Peter's judgment is not in question here. However, we have no way of evaluating that judgment given B&M's failure to provide the necessary supporting data.

Since we do not believe that the record supports the $2,000 requested initial fee, B&M's proposal will be rejected. The record does support a $100 initial fee, the same finding we made in the Exeter

Decision. B&M made no proposal regarding an annual fee. However, as in the Exeter Decision, we will choose the figure on the high end of the range of charges currently imposed by B&M on Concord in connection with crossings in the Concord area. Accordingly, B&M will be directed to charge an initial fee of $100 and an annual fee of no more than $30 for the crossing in this docket unless and until the Commission issues an Order authorizing an increase.

[2] In both this case and Exeter, we have allocated the burden of proof regarding just and reasonable payment to the petitioning utility. We required the petitioning utility to show that the payment schedule proposed by B&M was not just and reasonable. As noted above, the imposition of this negative burden on the utility presents significant analytical difficulties for the petitioning utility. Outside of the discovery process, the petitioning utility has no direct access to the data and sources thereof which it must attach; the railroad has sole custody and control of the cost documentation. While these problems have been successfully overcome by the petitioning utility in both Exeter and this case, upon further review we have decided that this particular burden is more appropriately allocated to the railroad. We hereby put B&M on notice for future cases that we believe that it should have the burden of proof regarding the issue of just and reasonable payment.[3](191) However, since we have come to this position without the benefit of input from the parties, we will allow B&M and any other party the opportunity to present their position in the next such crossing docket. In the absence of argument to the contrary, however, the burden of proof with respect to the rate will be allocated to the party which has custody and control of the data.

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 Corporation is authorized to impose an initial fee of $100 and an annual fee of $30.00 on Concord Electric Company for the instant crossing.

By order of the Public Utilities Commission of New Hampshire this second day of October, 1984.

FOOTNOTES

[1]In addition, this alternate 34.5 KV supply to the stepdown substation will allow Concord to connect new customers at that higher voltage level and, by allowing de-energizing of the underground system, will ensure the safety of Concord personnel working near and around the cable in the manholes.

[2]B&M's appeal of Exeter is currently pending in the New Hampshire Supreme Court.

[3]The burden of proving the necessity of the crossing should, of course, remaining with the petitioning utility.

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NH.PUC*10/02/84*[61551]*69 NH PUC 582*New England Telephone and Telegraph Company

[Go to End of 61551]

69 NH PUC 582

Re New England Telephone and Telegraph Company

DR 84-245, Order No. 17,235

New Hampshire Public Utilities Commission

October 2, 1984

Order approving tariff revisions.

By the Commission:

ORDER

WHEREAS, on August 31, 1984, New England Telephone and Telegraph Company filed with this Commission certain revisions to its tariff, NHPUC No. 75, proposing the annual adjustment of rate groupings of its exchanges; and

WHEREAS, said adjustment was based upon approved tariff procedures which review the weighted main exchange lines for each local service area and identify those exceeding the maximum, or dropping below the minimum, for each rate group; and

WHEREAS, the Commission finds such review and adjustment in the public interest; subject to further Commission review and adjustment, if appropriate, in the on-going New England Telephone and Telegraph Company rate case in docket No. DR84-95; it is

ORDERED, that the following revisions to New England Telephone and Telegraph Company tariff, NHPUC No. 75, be, and hereby are, approved for effect on September 30, 1984:

Supplement No. 15—Title Page Original Page 1 Part A, Section 5—Third Revised Page 22 Second Revised Pages 23-26.

By order of the Public Utilities Commission of New Hampshire this second day of October, 1984.

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NH.PUC*10/05/84*[61552]*69 NH PUC 583*New England Telephone and Telegraph Company

[Go to End of 61552]

69 NH PUC 583

Re New England Telephone and Telegraph Company

Intervenor: Office of Consumer Advocate

DR 84-51,
Supplemental Order No. 17,243

New Hampshire Public Utilities Commission

October 5, 1984

Order authorizing reduction of Centrex rates.

Rates, § 553 — Telephone — Centrex — Stranded investment.

A dominant local exchange carrier was authorized to reduce rates for Centrex services to new and existing subscribers in order to offset the impact of an interstate end-user common line charge mandated by the Federal Communications Commission; to discourage potential problems of stranded investment the carrier was ordered to offer Centrex services only under contractual payment plans that provided for full recovery of costs during the contract period.

Appearances: Bruce P. Beausejour, Esquire for New England Telephone and Telegraph Company; Michael W. Holmes, Esquire as Consumer Advocate for residential ratepayers; Larry Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the Commission:

REPORT

I. Procedural History

On March 2, 1984, New England Telephone and Telegraph Company ("NET" or "Company") filed a petition for reduction in the monthly rates for CENTREXCO Services to offset the impact of interstate End User Common Line Charges which were scheduled to become effective on April 3, 1984. A duly noticed public hearing was held on March 22, 1984, followed by the submission of briefs by Mr. Bruce Beausejour representing NET and Mr. Michael Holmes, Consumer Advocate. The Commission issued its decision in Report and Supplemental Order No. 17,053 on May 25, 1984 (69 NH PUC 268), approving the petition in part.

On June 4, 1984 NET filed a Motion for Reconsideration and Clarification. Oral arguments on rehearing were held on June 14, 1984; the Commission granted the motion and held an evidentiary hearing on the merits on August 21, 1984. NET filed its brief on August 28, 1984.

II. Position of the Parties

Supplemental Order No. 17,053 rejected the Company's request to offset in their entirety the End User Common Line (EUCL) charges mandated by the Federal Communications Commission (FCC). Instead the Commission attempted to offset for existing customers the effect of the charges on the relative competitiveness of CENTREX and PBX systems. The Company testified that the ratio of the charges between CENTREX and PBXs

was six to one and the Commission reduced the system features rates to retain the equivalency, i.e. five-sixths of the end user charge. The offset was allowed only for existing customers. The Commission was primarily concerned with the potential problem of stranded investment of facilities ordered and briefly used by customers who would subsequently cancel their CENTREX commitment. Therefore, the Commission determined that the Company should not be encouraged to expand its CENTREX customer base, and that rather the rates should be structured merely to slow what was seen as the natural migration of existing CENTREX

customers to customer-owned terminal equipment in the form of PBX systems.

In its Motion of Reconsideration and in the Supplemental Testimony of William. A. Blaisdell, the Company argued that the sales of the Custom CENTREX Systems would not create a risk of stranded investment. Mr. Blaisdell noted that Custom CENTREX, in contrast to CENTREX I and II, was designed for the small business user and was economic for such users only in the urban areas. Seventy percent of the systems installed in New Hampshire has less than 30 lines. Since these customers are located in urban areas, outside plant facilities and the central office would be reusable through the normal growth in the area. Further, according to the payback analysis, the original customer covers much of the costs of the installed equipment through his own payments. A summary of Mr. Blaisdell's charts D and E shows the following payback periods in relation to the size of the installation (23 and 90 main stations) and the contracts (Month to Month, 24 Months and 48 Months).

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

Size of Installation	Payback Periods	
	Month to Month	24 Months 48 Months
Months		
23 Main Stations	20	33 41
90 Main Stations	30	47 56

The Company also testified that according to its cost studies CENTREX covers its operating and capital costs and provides a contribution towards the costs of basic exchange. Therefore, the Company argues that the continuation and growth of the Custom CENTREX service base benefits the general body of ratepayers.

Finally the Company argues that CENTREX is a viable offering which is competitive in features and price to comparable PBXs available to the smaller business users. NET points to the growth in the service base until the Commission's May 25, 1984 Order, the average 4-year in-service life of systems installed prior to 1983, and the willingness of customers to commit themselves to the longer contracts.

III. Commission Analysis

The Commission's primary concern in Order No. 17,053 was to assure that the interests of the general ratepayer would not be harmed by the problem of stranded investment. The Commission stated (69 NH PUC at p. 272):

To the extent that the technology of CENTREX and PBX are evolving and the prices are in flux, business customers have an incentive to choose the CENTREX service for an interim

period, and move to PBX once the options are clearer. When they adopt this strategy the Company is required to make an investment in central office equipment in order to accommodate the customer, only to have that investment "stranded" when the customer eventually replaces it with a PBX. Other ratepayers must then bear the cost of the excess capacity in the central office.

The Company's supplementary testimony which emphasizes the small size and urban location of the Custom CENTREX service alleviates this concern to some extent. However, the

payback analysis highlights major disparities in the recovery of the capital investment from the original customer and is itself flawed. The existing rates for a 23 main station system under a 48-month contract provides a 41 month payback (seven months before the contract expires). In contrast the rates for a 90 main station system under a 24-month contract provide recovery only after 47 months (23 months after the contract expires). While the Company asserts that the equipment is reusable for other customers, it is not necessarily reused. In any case the customer who has ordered the installation of the equipment has not fully compensated the Company for the value of the equipment installed for his benefit unless full recovery is accomplished during the period in which that initial customer is using the equipment.

In addition, the payback analysis is itself flawed by the use of depreciation rates which do not coincide with those adopted by the PUC staff, the Company and the FCC staff. The Company had forcefully maintained that 30-year lives for Central Office Equipment underestimates the obsolescence of this equipment and that shorter lives are more appropriate.

The Company's arguments that CENTREX provide a contribution to basic exchange is valid to the extent that it has calculated the costs correctly. The costs are underestimated at least to the degree they are affected by the choice of the longer depreciation lives in the capital cost calculation.

The Company also argues that CENTREX is competitive with PBX systems and has presented data on comparable costs and system features. It is clear that some of the ability of CENTREX to compete depends on enhancements which will require a waiver from the FCC. Thus far neither the Company nor NYNEX has applied for such a waiver. However, as long as the general ratepayer is protected against costs stemming from stranded investment, and the rate structure puts CENTREX and PBX on equal footing, the market place can decide whether CENTREX is a viable service without harm to the Company, the general ratepayer or principles of economic efficiency.

The Commission will therefore allow the requested $5 reduction in the monthly rates for CENTREX-CO Services to offset the impact of the interstate End User Common Line Charge, subject to the following three conditions. First we will require the Company to recalculate and submit to the Commission the Payback and contribution analyses (Charts D, E And A of Blaisdell's Testimony), using capital costs which incorporate the depreciation lives agreed upon in the threeway depreciation meetings of Commission and FCC staffs and the Company.

Second, on a prospective basis, the Company shall withdraw the Month-toMonth Optional Payment Plan for new systems and only offer Custom CENTREX under the 24-month and 48-month contractual payment plans.

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Third, on a prospective basis the Company shall recalculate rates and submit tariffs for the 24-month and 48-month contractual payment plans such that the payback period approximates the period of the contract.

Finally, the intent of the Commission was to make CENTREX equivalent to PBX systems vis a vis the FCC End User Common Line Charge. The Commission has accepted a six-to-one CENTREX/PBX line equivalency as an appropriate ratio. Thus, a PBX customer pays $6 per six

line equivalents ($1 each) to obtain a service that is equivalent to one for which a CENTREX customer must pay $6 for each of six lines ($6 each). The offset of $5 per line is a correct calculation for those customers paying the $6 EUCL charge because it leaves the CENTREX customer paying the remaining $1 per line. However, our offset of $1.67 which left existing CENTREX customers paying on $0.33 per line should have been an offset of $1 subtracted from the $2 EUCL charge, this leaves the same $1 per line paid by both new CENTREX customers and all PBX customers. Therefore we will correct that error at this time and reduce the offset for existing customers from $1.67 to $1.00.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Company shall recalculate and submit to the commission revised payback and contribution analyses using capital costs which incorporate the depreciation lives agreed upon in the three way depreciation meetings of the staffs of the N.H. Public Utilities Commission, the Federal Communications Commission and NET; and it is

FURTHER ORDERED, that the following tariff revisions be, and hereby are, rejected:

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

NHPUC No. 75
Supplement No. 12 — Title Page
— Original Page 1
Part A - Section 7 — Page 28, Fourth Revision
— Page 30, Third Revision
— Pages 31 & 70, Fourth

and it is

FURTHER ORDERED, that New England Telephone file appropriate revised pages in lieu of those rejected, said pages to implement the changes in the CENTREX System Features charges and to bear the notation that they are issued according to this Order; and it is

FURTHER ORDERED, that said revised pages become effective upon issue of an approval Order; and it is

FURTHER ORDERED, that a one time public notice of the Order be given to all affected customers explaining the impact of the filing.

By Order of the Public Utilities Commission of New Hampshire this fifth day of October, 1984.

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NH.PUC*10/05/84*[61553]*69 NH PUC 587*Mountain Springs Water Company

[Go to End of 61553]

Intervenors: Mountain Lakes Community Association, Inc., and Mountain Lakes Village District

DE 6481,
20th Supplemental Order No. 17,244

New Hampshire Public Utilities Commission

October 5, 1984

Denial of motion for rehearing.

Expenses, § 89 — Rate case expenditures — Current rates.

A request by a water utility for inclusion of rate case expenses in current rates was denied because the request was made in the context of a proceeding to resolve only specific issues that had been remanded to the public utilities commission by a court of appeals. [1] p.587.

Expenses, § 89 — Rate case expenditures — Revenue requirement.

Rate case expenses are nonrecurring expenses and therefore are excluded from the revenue requirement of a public utility because they do not reflect the ongoing cost of providing service. [2] p.588.

Appearances: As previously noted.

By the Commission:

REPORT

On August 14, 1984, the Commission issued Report and Order No. 17,163 (69 NH PUC xxx) ("Decision") which decided the issues remanded to the Commission by the Supreme Court in Re Mountain Springs Water Co. (1983) 123 NH 653. The Supreme Court decision and the subsequent Commission findings in accordance therewith are adequately addressed in the Decision and need not be repeated here. Thereafter, on September 4, 1984, Mountain Springs Water Company ("Company") filed a Motion For Rehearing ("Motion") pursuant to RSA 541:1. By letter dated September 7, 1984, the Mountain Lakes Community Association, Inc. and Mountain Lakes Village District ("Intervenors") objected to the Motion and requested that it be denied without a hearing. After due consideration, we will deny the Company's Motion.

In its Motion, the Company alleges that the Commission applied an incorrect standard with respect to who has the burden of proving the existence and amount of contributions in aid of construction. In addition, it avers that the Commission's finding of $400,000 of contributions in aid of construction is not supported by the record evidence. These assertions were fully argued, reviewed and addressed in the context of the Decision and the Commission's analysis need not be repeated here. The Motion did not present any additional information in this regard which warrants reconsideration of that analysis.

[1] The Company also argues that the Commission's decision to defer consideration of the Company's request to include rate case expenses of $11,646.88 for the Supreme Court Appeal

and the further Commission proceedings in its current rates until its forthcoming rate case is a violation of RSA 365:38 as

interpreted by the Supreme Court in New Hampshire v Hampton Water Works Co. (1941) 91 NH 278, 18 A2d 765. We disagree. RSA 365:38 addresses a utility's obligation to pay the Commission's expenses in rate case proceedings for attorneys, experts, accountants or other assistants. It makes no reference to the recovery by a utility of its own rate case expenses. In addition, New Hampshire v Hampton Water Works Co. supra, makes no mention of this statute.

The Company's request for inclusion of these rate case expenses in its current rates is not within the scope of these proceedings as set forth in Report and Seventeenth Supplemental Order No. 16,895 (February 2, 1984). The Commission stated therein as follows:

... The scope of this docket is to resolve only those issues remanded to the Commission by the Court in Re Mountain Springs Water Company, Inc. (1983) 123 NH —. specifically: 1) the extent to which customer contributions offset rate base investment, and (2) the steps to be taken in view of the reversal of the Commission's "special policy" on service terminations; ... (emphasis added.)

Given this narrow scope, no additional issues can therefore be considered. These request for recovery of these expenses was not a part of the original filing in this case but was submitted for the first time in the Company's Past-Hearing Brief. The request was not accompanied by any supporting data. Thus, even if this remand proceeding was the appropriate place to consider this request, the Company's failure to provide the requisite back-up data would prevent us from sodoing. The Company's upcoming rate case is therefore the appropriate context in which to review the Company's request for these expenses.

[2] According to standard ratemaking principles, rate case expenses are generally considered to be non-recurring expenses and as such are excluded from a utility's revenue requirement because they are not reflective of its ongoing cost of providing service. Unless such expenses are excluded, ratepayers will be required to pay such expenses on an annual basis despite the fact that they are no longer being incurred by the Company. However, in certain instances, a utility may be permitted to amortize a non-recurring expense over a defined period of years. This is the holding of New Hampshire v Hampton Water Works, supra. Such amortization permits recovery of the expense while preventing the multiple recovery on an ongoing basis implied by base rate treatment. The Commission has generally allowed recovery of rate case expenses by amortization. Re Hudson Water Co. (1979) 64 NH PUC 35, 40, 28 PUR4th 617.

Thus, in accord with these ratemaking principles, we will conduct a review of the Company's above-stated rate case expenses during the upcoming rate proceeding and, if found to be reasonable, will allow the Company to recover them by means of amortization over a period of years.

In the Decision, the Commission also deferred consideration until the next rate case of legal expenses totalling $6,000 associated with efforts to collect unpaid customer bills. Recovery of these expenses was originally denied by the Commission which instead instituted a policy of automatic, permanent disconnect of any customer who refused, in the future, to pay the rates and

fees as established by the Commission. The Court struct down this "unique policy" and directed the

Commission on remand to consider whether already approved rate case legal expenses, amortized over two years, should be increased to include any portion of the $6,000. In its Motion, the Company argues that the Commission's failure to include in its present rates the cost of these fees is illegal because the evidence in the record discloses that the Company not only spent the money in the test year, but spent similar sums for collection in the years since the test year.

In its opinion, the Court directed the Commission to consider whether any of the $6,000 should be included in the amortization over two years of the already approved rate case legal expenses. The Commission's original decision in this case is dated November 10, 1981 (Re Mountain Springs Water Co. [1981] 66 NH PUC 487.) Thus, the amortization of the approved rate case expenses took place in the two years following that decision, 1982 and 1983. The $6,000 at issue here therefore cannot now be included in that particular amortization. Given this situation, the Company's upcoming rate case is the proper context in which to consider these expenses.[1(192)] At that time the Commission will review the Company's total request for rate expenses, including the $6,000 legal fees, the similar sums spent for collection in the years since the test year, and, as stated above, the rate case expenses relating to the Supreme Court appeal and further Commission proceedings.

The Company's assertion that deferring consideration of these expenses until its upcoming rate case is illegal is without support in New Hampshire common or statutory law. There is no requirement in any statute, Commission rule or prior decision that rate case expenses must be amortized and recovered through rates which are based on the test year in which those rate case expenses were incurred. Indeed, the Company does not cite any such law in its Motion.

Lastly, as part of its Motion, the Company requests that the Commission make a formal determination with respect to the validity of the three promissory notes and mortgages issued by the Company in 1975 pursuant to RSA 369. As we stated above, the scope of these proceedings is limited to two issues: the amount of customer contributions and the steps to be taken by the Commission in view of the Commission's "special policy" on service terminations. Thus, the Company's request for approval of indebtedness is without the scope of these proceedings. Moreover, a Motion for Rehearing is not the proper context in which to request approval or authorization. Requests for financing approvals pursuant to RSA 369 are required to be submitted in petition form (Commission Rule No. Puc 204.01).

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 of Mountain Springs Water Company be, and hereby is, denied.

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

1984.

FOOTNOTE

[1]As we stated on page 11 of the Decision (66 NH PUC at p. 493), on June 13, 1984, the Company filed a Notice of Intent to File Rate Schedules.

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[Go to End of 61554]

69 NH PUC 590

Re New Hampshire Yankee Electric Corporation

DF 84-229, Order No. 17,245

New Hampshire Public Utilities Commission

October 12, 1984

Order granting corporation authority to act as a public utility.

Public Utilities, § 73 — Electric plant — Managing agent.

A corporation that had been formed for the purpose of acting as a managing agent for the joint owners of a nuclear power plant in the construction and operation of the plant was held to fall within the statutory definition of a public utility; the corporation was granted authority to act as a public utility because a public need existed for the services offered by the corporation and because the corporation had the expertise necessary to perform the service.

By the Commission:

REPORT

On August 21, 1984 New Hampshire Yankee Electric Corporation ("NHY"), the petitioner, applied to this Commission under RSA 374:22 for permission to engage in business as a public utility within the Town of Seabrook. Concurrently, the same corporation applied under RSA 369 for authority to issue and sell 1,000 shares of common stock.

On August 27, 1984 an Order of Notice was issued setting a hearing for September 20, 1984 at 10 o'clock at the Commission's Concord offices. Notices were sent to Edward A. Haeffer, Esquire, attorney for the applicant, for publication; to the Office of Attorney General; and an informational hearing service list.

An affidavit of publication was filed with the Commission on September 4, 1984 certifying that publication was made in the Union Leader on August 29, 1984.

We will address each application separately.

APPLICATION FOR PERMISSION TO ENGAGE IN BUSINESS AS A PUBLIC UTILITY WITHIN THE TOWN OF SEABROOK

The applicant presented Edward A. Brown as its witness. Mr. Brown is president and chief executive officer of the New Hampshire Yankee Division of Public Service Company of New Hampshire. He testified that New Hampshire Yankee has been incorporated to become managing agent for the joint owners in the construction of the nuclear project and that through an agreement with New Hampshire Yankee, it is intended that Public Service Company of New Hampshire would delegate its duties, rights, and powers as managing agent. (Application By New Hampshire Yankee Electric Corporation For Permission to Engage in Business as a Public Utility Within the Town of Seabrook, Page 1, No. 2 and 3.) Mr. Brown testified that NHY would

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be fully subject to the jurisdiction of this Commission.

The specific request made in the petitioner's application is that the Commission

find that it would be for the public good for NHY to engage in business as a public utility within the Town of Seabrook acting as managing agent for the construction of the Seabrook nuclear power project. (Application, supra, p. 2.)

Based upon such a finding, NHY requests that the Commission grant permission and approval to engage in such business. (Application, supra, p. 2, A and B.) While it is contemplated that NHY would become managing agent for the Joint Owners in the operation of the Seabrook plant, authority to act as operating agent has not been requested in this petition.

A list of key personnel was identified. Upon receipt of regulatory approvals approximately 565 PSNH employees would be transferred from PSNH to New Hampshire Yankee, representing a monthly payroll of approximately 1.4 million dollars. All payroll and payroll overhead costs would be billed directly to the joint owners as would all other costs related to construction and operation. Monthly costs would be estimated and billed to the joint owners in advance. Payments from each of the joint owners would be in proportion to their ownership interest in the project.

Overall direction of New Hampshire Yankee would be by a Board of Governors. Each member of the Board would be appointed by a joint owner and each member's voting power would reflect the ownership share of the joint owner which appointed that member.

Prior to receiving any regulatory approvals, PSNH would delegate to New Hampshire Yankee, through an agreement under RSA 374-A:2 II, all its duties, rights, and powers to act as managing agent for the joint owners in the construction. In that respect, continued jurisdiction over the project by this Commission is assured. Approval of this application would assure continued jurisdiction by this Commission after the reorganization is completed.

Mr. Brown testified that despite PSNH's delegation to Yankee of its duties, rights and powers, PSNH would remain the holder of the Certificate of Site and Facility and that the delegation would not reduce PSNH's responsibilities under that Certificate. The thrust of this proceeding, however, is that PSNH would no longer have absolute control over the level of

expenditures or the level of the work force or the manner in which the work is accomplished or the sequence in which it is accomplished. That responsibility would now be New Hampshire Yankee's.

Upon cross-examination by the Consumer Advocate, Mr. Brown testified that this Commission would continue to regulate rates for electricity to be sold from Seabrook. Each of the owners would be financially responsible for their share of the plant. PSNH would continue under the jurisdiction of this Commission for its 35 plus percent ownership of the plant, for any rate base treatment and for the setting of any rates applicable to that investment. New Hampshire Yankee would not be involved in the application for rates or the selling of power. New Hampshire Yankee would not sell Seabrook energy to PSNH on a wholesale basis.

In response to questioning by Mary Metcalf, on behalf of the Campaign for Ratepayers' Rights, Mr. Brown explained his perception of the regulatory approvals needed by the various parties in

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order for this organization to become effective. In addition to the applications presented in this docket, New Hampshire Yankee would apply to the Nuclear Regulatory Commission to amend the construction permit. No other Yankee actions would be necessary. There are approval requirements placed upon the other partners, however; New England Power Company, New Hampshire Electric Cooperative, Inc., and Public Service Company of New Hampshire would require approval of this Commission to purchase stock and, at least in the case of Public Service Company, they would need approval of their Board of Directors prior to doing so.

Upon receipt of this Commission's approval to do business as a public utility, and the NRC's approval to amend the construction permit, the Joint Owners would consider and consent to the arrangement, based on a resolution passed by the Joint Owners in May, 1984 which contained a number of conditions that had to be met before the owners would consent to raise the level of expenditures on the project and before the project could continue. The Joint Owners have extended an earlier deadline of September 1 to October 1, 1984.

In response to cross-examination by Staff, Mr. Brown added a critical reason for the creation of New Hampshire Yankee. As managing agent for the Joint Owners of the construction, New Hampshire Yankee would provide an entity that is not encumbered by problems in other areas of utility operation. New Hampshire Yankee would be structured along the lines of the Yankee type corporations in other parts of New England. In each of those cases the Yankee management is solely concerned with the management of the unit within its control.

Position of Parties Presented in Brief

In addition to testimony and crossexamination received at the public hearing the Commission allowed the parties to file a Memorandum of Law. A legal memorandum was filed on behalf of the applicant and by SAPL, CRR and the Consumer Advocate. The relevant statutes cited by the parties are RSA 362:2, RSA 374:22, RSA 374-A and RSA 162-F.

NHY's position is that by definition under RSA 362:2 NHY would be a "public utility" since Seabrook is a "plant ... for the manufacture of ... power," and since NHY will be "managing" it.

(Memorandum of Law of NHY, p. 1) Since NHY falls within the definition of "public utility" under RSA 362:2, it is the applicant's position that it must obtain permission from the Commission to engage in business pursuant to RSA 374:22. NHY also takes the position that PSNH's delegation of its duties as managing agent for the construction of the Seabrook project pursuant to RSA 374-A is consistent with PSNH remaining the holder of the Certificate of Site and Facility granted to PSNH under RSA 162-F. NHY contends that a delegation of duties does not reduce PSNH's ultimate responsibility.

SAPL opposes the granting of utility status to NHY for two reasons. First, it contends that the request for utility status is intended to accomplish a de facto transfer of the Certificate of Site and Facility issued pursuant to RSA 162:F and that the Certificate is not transferrable as a matter of law. Second, SAPL believes that the granting of utility status to NHY would create the risk that power from Seabrook could be sold at wholesale. SAPL believes that the granting of utility status would confer to NHY the powers of a domestic "electric utility" under RSA 374:A, and that pursuant to these

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powers NHY could potentially circumvent the rate regulation of the New Hampshire Commission.

The Consumer Advocate raises similar concerns particularly with regard to the powers of NHY if it is granted status as a utility under RSA 374-A:2. The Consumer Advocate also questions the need for utility status if NHY's sole function is to manage the Seabrook construction. The same concerns are raised by the CRR.

COMMISSION ANALYSIS

The starting point of our analysis is to ascertain whether NHY will fall within the statutory definition of "public utility" if it is permitted to conduct its proposed operations. RSA 362:2 provides, inter alia:

The term public utility shall include every corporation, company, 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 plant or equipment or any part of the same ... for the manufacture or furnishing of light, heat, power ... for the public, or in the generation ... or sale of electricity ultimately sold to the public ... (Emphasis supplied.)*

If NHY performs its proposed functions, it will be a corporation which manages plant or equipment for the manufacture or furnishing of light, heat or power for the public and for the generation of electricity ultimately sold to the public. Thus, it would fall within the statutory definition of a public utility.

Having determined that NHY would be a public utility, it remains to determine the nature of the authority which should be granted by the Commission. RSA 374:22I provides:

I. No public utility shall commence its business as such within this state, or shall engage in such business, or begin the construction of a plant, line, main or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business, or shall

exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.

We find guidance in the implementation of that statute in RSA 374:26:

374:26 Permission. The commission shall grant such permission whenever it shall, after due hearing, find that such engaging in business, construction or exercise of right, privilege or franchise would be for the public good, and not otherwise; and may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest. Such permission may be granted without hearing when all interested parties are in agreement.

The Commission in determining whether the granting of permission to a public utility to engage in business is in the public interest must consider two main criteria (1) the need for the service; and (2) the ability of the applicant to provide the service. The Commission believes that

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the applicant has supported the need for a new managing agent of the Seabrook construction.

The testimony indicates that the Joint Owners believe that a separate entity having the sole function of managing the construction is essential both for reasons of efficiency and confidence. Mr. Brown testified that it is essential to separate the construction management from PSNH and its financial problems and from any perception that these problems are affecting the management of the project. This is a legitimate concern and is illustrated by the loan agreement negotiated between PSNH and United Engineers and Constructors (UE&C) about which the Commission has previously expressed concern. Mr. Brown indicated that he was aware of the condition in this agreement which would prohibit PSNH from terminating or materially reducing UE&C's employment without their consent. In response to Commission inquiry, Mr. Brown has advised the Commission that NHY has not and will not undertake any responsibilities or assignments relating to this agreement. (Exhibit 13)

There is also substantial evidence to indicate that the applicant has the expertise to manage the Seabrook construction and that the reorganization and centralization of the managing agent function will facilitate efficient and economical construction.

The management structure of New Hampshire Yankee is comprised of individuals with significant experience in the electric power industry and all have markedly credible experience in the nuclear power industry. The Chairman and CEO has held management positions with the New England Electric Systems since 1956. The Senior Vice President of Nuclear Energy who is responsible for construction and start-up has had extensive experience in nuclear construction at St. Lucie II, a facility which established an industry standard for its ability to meet scheduling deadlines. The Vice President of Nuclear Production was previously directly responsible for operation, maintenance and technical support of Vermont Yankee. The Project Manager has held various engineering management positions with the Yankee group since 1963. The manager of construction quality assurance has held quality control management positions since 1958. The 565 PSNH employees who are proposed to be transferrred to NHY presently hold the same professional positions as they will under the new management team.

The financial capability of the applicant is reviewed in the second part of this report relative to the Company's application for authority to issue 1,000 shares of common stock and the Commission findings are incorporated here by reference.

Based upon this analysis the Commission finds that there is a need for the service to be provided by NHY and that NHY has the expertise required to perform that service. Consequently, the Commission finds that it is in the public good to authorize NHY to engage in business in the Town of Seabrook for the specific purpose of managing the construction of the Seabrook project.

Our approval is not given lightly. We will hold New Hampshire Yankee to its commitment to be responsive to this Commission to the same degree that we expect all other New Hampshire utilities to be responsive. Moreover, we will limit the authority granted in this order to only that authority which was requested: the authority to manage the construction of an electric generating facility in the Town of Seabrook. If NHY wishes to exercise additional public utility

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authority, it may not do so without first seeking and obtaining that authority from this commission.

It must be noted that contrary to the concerns of several intervenors, NHY will not have the powers of domestic electric utilities set forth in RSA Chapter 374-A. This is because the authority granted herein will not allow NHY to fall within the definition of "electric utility" which is applicable to that chapter. That definition is set forth at RSA 374-A:1IV which provides:

"Electric utility" means any individual or entity or subdivision thereof, private governmental or other, including a municipal utility, wherever resident or organized, primarily engaged in the generation and sale or the purchase and sale of electricity or the transmission thereof, for ultimate consumption by the public. (Emphasis supplied.)

The above definition is different from that of a "public utility" set forth at RSA 362:2 in several key aspects. An RSA 362:2 "public utility" may be an entity which manages a plant for the generation or sale of electricity ultimately sold to the public. An RSA 374:1:1 "electric utility" is an entity primarily engaged in the generation and sale of electricity ultimately sold to the public. The difference is, inter alia, that a "public utility" may be engaged in either the generation or the sale of power, or both; an "electricity utility" must be engaged in both. Since NHY will be engaged in managing a plant for generating electricity ultimately sold to the public, but will not be selling electricity, it cannot be an "electric utility" for the purposes of RSA Chapter 374-A even if it is a "public utility" for other purposes.

It is true that PSNH is an RSA Chapter 374-A "electric utility" and, as such, it has the authority, inter alia, to transfer certain management functions to another entity. In this case that entity is NHY; an entity which will not have the authority to engage in functions other than construction management in the absence of a further authorization from this Commission. Thus, the grant of public utility status to NHY does not carry with it the opportunity to circumvent the state regulatory process for rate making purposes.

It is also consistent under this statutory construction for PSNH to remain as the holder of the certificate of site and facility (RSA 162-F) and to retain its primary responsibility. A delegation by PSNH of its duties rights and powers pursuant to RSA 374-A for the management of the Seabrook construction does not relieve it of its ultimate responsibility for the performance of this function. Clearly this Commission would hold PSNH responsible in rate proceeding for the conduct of the construction by NHY. Thus, the delegation of duties does not in any way relieve PSNH of responsibility in the setting of rates which is the area of concern of this Commission. The supervision of construction as it relates to safety and quality assurance as opposed to rates falls under the purview of the Nuclear Regulatory Commission.

APPLICATION FOR AUTHORITY TO ISSUE AND SELL 1,000 SHARES OF COMMON STOCK

Witness Brown testified that the Company is seeking permission to sell 1,000 shares of common stock to the sixteen Joint Owners, each of whom would be represented on the New Hampshire Yankee Board of Governors and would have voting powers in direct proportion to their ownership interest in the Seabrook

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project. Funds raised through the sale of stock would be used for initial capitalization to cover organizational expenses of New Hampshire Yankee; this is estimated to be approximately $70,000. All costs associated with the operation of New Hampshire Yankee, the construction of the Seabrook project and the start-up of the project would be directly passed through from the owners to cover the costs. The costs would be estimated monthly in advance and would be billed to the Joint Owners in advance. The costs would be dispersed through a Dispersing Agent Agreement, a copy of which was offered as Exhibit No. 5. There would be no realignment of ownership interests in the project.

COMMISSION ANALYSIS

Having approved New Hampshire Yankee's request for permission to do business as a public utility in the Town of Seabrook and having recognized that New Hampshire Yankee is to be the managing agent for the construction of the Seabrook Nuclear Power Project, it is a relatively simple matter to address the issue of allowing it to issue and sell common stock in support of that venture.

The financial impact upon Public Service would be its responsibility to purchase approximately 35 percent of the 1,000 shares of common stock, as representative of its proportionate share of its ownership interests in the Seabrook project. We concur in the manner in which the stock ownership is to be distributed.

We will accept the concept that the costs of New Hampshire Yankee's operations are expected to be passed through to the Joint Owners as charges for services rendered. We will reserve the rights to investigate, audit, or otherwise monitor those costs to assure that they are (1) necessary costs of doing business; and (2) properly allocated to Public Service Company of New Hampshire.

New Hampshire Yankee estimates that its initial capitalization costs will be less than

$200,000. The Commission will expect the cost projections, as they occur, will be submitted to this Commission for its review in order that it can assure itself of the propriety of those costs. With those forward looking reporting requirements we find that the issuance and sale of 1,000 shares of NHY common stock to the 16 Joint Owners is in the public good and we will approve the petitioner's application.

CONCLUSION

We have found that the grant of the status of public utility, as defined in RSA 362:2 is in the public good pursuant to RSA 374:22 and 26. Thus, we are authorizing NHY to engage in the business of a public utility within the Town of Seabrook for the purpose specified in its application. We have also found that it is in the public good to allow NHY to issue the appropriate equity securities so that it may be adequately capitalized. It must be emphasized that our findings are limited to the public utility business of acting as a managing agent for the construction of the Seabrook nuclear power project. No other authorization is intended and, thus, this order cannot be construed as granting any authorization other than that explicitly set forth. We have specifically not granted NHY "electric utility" status under RSA Chapter 374-A.

Our Order will issue accordingly.

ORDER

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

ORDERED, that pursuant to RSA

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374:22 and 26, New Hampshire Yankee Electric Corporation be, and hereby is, authorized to engage in business as a public utility within the Town of Seabrook solely for the purpose of acting as managing agent for the construction of the Seabrook nuclear power project; and it is

FURTHER ORDERED, that pursuant to RSA Chapter 369, New Hampshire Yankee Electric Corporation be, and hereby is, authorized to issue and sell not more than 1,000 shares of common stock, each share having a par value of $1.00; and it is

FURTHER ORDERED, that New Hampshire Yankee Electric Corporation is directed to meet with the Finance Director and the Engineering Director to formulate and develop the proper reporting procedures and accounting requirements required by NHPUC Rules and the Laws of New Hampshire.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of October, 1984.

*Although the management of the construction of an electric generating facility is not explicitly included within this definition, we believe that the statutory intent is that such an action is one which may only be undertaken by a public utility. See, RSA 374:22I and RSA 362-A:2.

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[Go to End of 61555]

69 NH PUC 597

Re Public Service Company of New Hampshire

DF 84-167,
11th Supplemental Order No. 17,246

New Hampshire Public Utilities Commission

October 12, 1984

Order denying motion for rehearings.

By the Commission:

On October 11, 1984 the Campaign for Ratepayers' Rights (CRR) and the Business and Industry Association of New Hampshire (BIA) filed Motions for Rehearing pursuant to RSA 541:3. Previously the Seacoast Anti-Pollution League (SAPL) filed a similar motion, to which the Commission responded by Report and Order No. 17,231 issued September 25, 1984 (69 NH PUC 562). Objections to CRR's and BIA's motions was filed by Public Service Company of New Hampshire (PSNH).

We have reviewed the motions filed by CRR and BIA as well as our decision and the record in this proceeding. We conclude that the Report and Order No. 17,222 issued September 21, 1984 (69 NH PUC 522) are lawful and reasonable. The motions fail to provide any basis or reason for rehearing (See RSA 541:3 and 4). Accordingly we deny the motions.

1. BIA's Motion adopts the motions for rehearing filed by SAPL and CRR. Our Order No. 17,231 is dispositive of SAPL's motion and our Order herein is dispositive of CRR's motion.

2. Matters set forth in paragraph I of CRR's motion were considered in Report and Order No. 17,231. We continue to view said order as lawful and reasonable.

3. Matters set forth in paragraph II have been reviewed and based upon the circumstances, testimony and exhibits in the record we hold our analysis and reasoning that resulted in Report and

Order No. 17,222 was not arbitrary, unreasonable or capricious but served the public good. We find nothing presented by CRR which supports a contrary or different conclusion. We believe the Commission and its Staff adequately reviewed the amount of financing, the capitalization of the Company, the purpose of the financing and the effect on the capital structure. We have found that the proceeds of the financing as conditioned by the Public Utilities Commission will be used for legitimate public utility purposes to serve the public good. We reviewed our decision to separate Seabrook construction costs from general utility costs and continue to hold that such bifurcation is sound and reasonable under present circumstances and

in the public good. We exercised our discretion to limit the scope of Docket DF 84-167 deferring consideration of broader issues to Docket DF 84-200 consistent with the decision of the New Hampshire Supreme Court in Re Seacoast Anti-Pollution League (1984) 124 NH —, 482 A2d 509. In Order No. 17,141, August 2, 1984 (69 NH PUC 422), the Commission determined that the scope of its investigation in Docket No. DF 84-200 will include:

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

2) Whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders; and

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

4. The motions present no new information or evidence which justifies a rehearing of any of the issues.

5. The motions are filed to perfect the appeal process required by RSA 541 et seq., therefore, we shall act promptly.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Campaign for Ratepayers' Rights Motion for Rehearing pursuant to RSA 541:3 be, and hereby is, denied; and it is

FURTHER ORDERED, that the Business and Industry Association Motion for Rehearing pursuant to RSA 541:3 be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of October, 1984.

Separate Opinion of Commissioner Lea H. Aeschliman:

My dissent to Report and Seventh Supplemental Order No. 17,222 and my separate opinion in Report and Order No. 17,231 adequately set forth my views on the issues decided by the Commission. Accordingly, I would grant the Motions to the extent it is in accordance with my previous opinions and deny it in any other respects.

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69 NH PUC 599

Re Public Service Company of New Hampshire

Intervenors: Volunteers Organized in Community Education, Community Action Program, Office of Consumer Advocate, New Hampshire People's Alliance, and Parents for Justice et al.

DRM 84-205, Order No. 17,247

New Hampshire Public Utilities Commission

October 12, 1984

Order granting exemption from commission rules.

Commissions, § 43 — Powers — Exemptions to rules.

The state public utilities commission has authority to issue exemptions to and waivers of its rules. [1] p.600.

Payment, § 33 — Termination of service — Pilot program.

A temporary waiver of commission rules and regulations was granted to an electric utility to allow the utility to implement and extend a pilot program designed to encourage customers to approach the utility regarding payment arrearages prior to termination of service. [2] p.601.

Appearances: Pierre O. Caron, Esq. for Public Service Company of New Hampshire (PSNH); Alan Linder for VOICE; Gerald M. Eaton, Esq. for Community Action Program (CAP); Michael W. Holmes, Esq. for the Consumer Advocate; John Cloutier and Dot Blodgett, N.H. People's Alliance; Tess Petix, Division of Human Resources; Sarah Dustin, Parents for Justice; John Cutting and Gail Williams for the Commission Staff.

By the Commission:

REPORT

I. Procedural History

On August 1, 1984, Public Service Company of New Hampshire ("PSNH" or the "Company") filed a petition with this Commission seeking a system-wide exemption from the application of Section 303:08(k) of the Commission's regulations relative to termination of service during the winter period.

An Order of Notice was issued setting a public hearing at the Commission offices for August 30, 1984 at 2:00 p.m. All interested parties were noticed of such hearing and an affidavit indicating publication of the above notice was made as required by law.

In testimony during this hearing, PSNH stated that the matter before the Commission in the instant hearing was the first of a four-part program designed to broaden the scope of protection for people with arrearages. Targeted termination protection for the winter period and for the needy and elderly is step one. Other programs being considered are: an approved pilot program

in the southern part of the State for targeted lifeline, weatherization programs, and a program tentatively entitled, "Share the Warmth."

The Company offered two booklets

entitled, Electric Service Termination, Pilot Program Results and Targeted Termination Protection Program Re: Docket No. DRM 84-205, respectively. These booklets were accepted and marked as Exhibits 1 and 2. Mrs. Joan Rinker of PSNH and Ms. Shannon Nolin of DHR were presented as witnesses by PSNH.

PSNH's petition basically seeks to have the current dollar ceilings ($175 for nonheating customers, $300 for heating customers) lifted and replaced with a program in which the Community Action Program (CAP) or the Division of Human Resources would implement a certification process to identify and assist eligible customers. The Company's position is that the suspension of the current rules would allow customers more flexibility and less hesitation in approaching the Company to make arrangements on arrearages. Customers seeking fuel assistance through CAP would be advised of the Company's proposed program and asked if they wished to participate. Other customers, not seeking such assistance, would be reached via bill messages, bill inserts, news media, etc. All customers, regardless of eligibility status, would be offered budget billing plans and flexible payment arrangements. The basis for certification would be the following three criteria:

1. Total household income is at or below 150% of Federal Poverty Guidelines.

2. The customer is age 65 or older.

3. The customer has a verifiable medical emergency or hardship.

All Commission requirements pertaining to special protection for the elderly would continue to be applicable.

In addition, a description of the relationship between CAP and the Division of Human Resources (DHR) was presented and the outreach network and outreach activities of CAP, DHR and PSNH were described.

At the hearing, The Commission also heard from John Cloutier and Dot Blodgett of the New Hampshire People's Alliance who opposed any change to the existing winter rules and from Sarah Dustin of Parents for Justice who expressed reservations regarding the financial eligibility of single parents with children.

Lorraine Sakowicz of VOICE testified that due to the low participation rate and the indequate data gathered to date that a substantive evaluation would not produce conclusive results. Therefore VOICE would recommend that the program be continued on a pilot basis in a larger geographic area in order to monitor participation and customer acceptance of the program.

Tess Petix of DHR spoke in favor of the program and the imposition of a system wide application of a targeted termination plan.

[1] After due consideration of the filings of the parties concerning whether the Commission has the authority to issue exemptions and waivers of its rules, we have determined that PUC

regulations 201:05 and PUC 301:01(b) provide for this authority. However, the specific wording of the September 11, 1984 PSNH Petition is of concern to the Commission. Specifically the Company states that it is seeking "a rule (emphasis added) applicable uniformly throughout its franchise territory ..." While the Commission acknowledges its authority to grant waivers and exemptions it does not find sufficient basis upon which to grant a rule with permanent status without a formal rulemaking proceeding in compliance with the N.H. Administrative

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Procedure Act. Although a hearing was held on the PSNH petition for an exemption (emphasis added) from the PUC rule Section 303:08(k), there was not a petition offered requesting a rule change to allow for system wide application of a targeted termination program.

We now turn to the issue of whether a waiver is justified in this case.

[2] After a review of the program, the Commission finds that the Company's efforts in developing the program are constructive. The program is consistent with the Commission's directive in DRM 82-304 in which it stated that " [t]his longer term review should also consider the appropriateness and feasibility of refining the present rules so that they are targeted to those in greatest need of protection."[1(193)] In addition, the Commission stated in DRM 83-31, Report and Supplemental Order No. 16,656 ([1983] 68 NH PUC 566, 567, 568):

While we have decided not to change our existing [winter termination] regulations at this time, we are interested in considering requests for waivers when those waivers include serious alternative programs. Such pilot programs can provide additional data and ideas so that we may confidently determine what regulatory approach is most consistent with the public interest in the long term. (Footnote omitted.)

However, although the program has several innovative features which are attractive, we have some concerns which will cause us to condition a waiver of the regulations upon certain modifications to the program. Those concerns pertain to participation rate, program costs, and savings estimates, program evaluation, notification of customers about the waiver of the Commission's rules and the need to be flexible with customers who may not be familiar with the program. We will address each of these concerns and set forth the corresponding program modifications in turn.

Participation Rate

It is evident from the record that the participation rate has been below expectations and that only a small percentage of participants were not Fuel Assistance clients prior to their contact with CAP or PSNH. This indicates that although CAP outreach efforts and PSNH advertising were extensive, their effectiveness was limited due to the small population of potentially eligible customers. System wide imposition is not warranted given the lack of substantive data compiled to date in the pilot area. We believe that expansion of the program into a wider geographic area would improve the quality and quantity of the data necessary to evaluate the merits of a targeted termination program.

Therefore, the Commission directed the parties in a subsequent hearing held October 3, 1984 to determine in what area(s) an expanded pilot program should be implemented. As a result of

that meeting, the parties reported to the Commission that Cheshire County and Coos County provided the best administrative match between PSNH service districts and the CAP outreach network. In addition, it was recommended that the pilot program be continued in the original four town (Laconia, Gilford, Gilmanton and Belmont) area in order that additional data could be collected and analyzed.

Upon review of the parties' recommendations, the Commission finds that the areas in question are suitable for

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expansion of the pilot program and hereby directs PSNH, CAP, and DHR to take all necessary actions to assure rapid customer notification of the waived regulations in those areas.

Program Costs and Savings Estimates

One of the most important components of any pilot program is the cost and savings analysis; however, the record in this case does not indicate that a substantive analysis has been performed. We believe that a thorough evaluation of the following areas would lend considerable credence to the need for targeted termination protection:

1. Comparison of the Company's losses that occur due to the existing rules to the losses occurring when CAP is paid to implement the program;

2. Comparative analysis of what it currently costs the Company to administer the winter rules to what it costs CAP/DHR to run the certification termination program;

3. Comparative analysis of the savings accrued due to the pilot program and in what accounts those saving are realized to past Company records in these areas.

Program Evaluation

One of the advantages of a pilot program such as targeted termination is that it can yield data which may be useful to evaluate the concept of targeted termination, the Commission's regulations and, perhaps, other alternative programs. Thus, the evaluation of the program is a critical part of the process. The Company and CAP stated that their survey results from Blake and Dickinson and participant survey responses respectively demonstrate a high degree of customer awareness and acceptance of the program and the need for year round termination protection. We are not convinced that the data is sufficient to support such conclusions. We believe that further data is necessary and that the Commission Staff and the parties should be involved in the evaluation process. Accordingly, we will direct the Company and CAP/DHR to work with Staff and the parties to develop an evaluation process that examines the impact of the program on customers who participate, customers who do not participate, those customers who seek Commission intervention and the financial impact on all ratepayers. In addition, the evaluation must consider the input of Company employees who administer the program, social service agencies and Commission consumer assistance personnel. Finally, the revenue impact upon the Company should also be included as part of the overall evaluation effort. The Staff and the parties are directed to submit a detailed description of the evaluation process no later than January 31, 1985.

Notification

The Commission's concern here is that Company customers who are not recipients of direct CAP notification of the program may decide not to participate based on the erroneous assumption that they will be protected by Commission regulations. This may prove to be a problem with elderly customers who should notify the Company of their age and those customers not eligible to be certified for the program. Thus, we will require the Company to provide notice to customers that, upon Company request, the regulations at PUC 303.08(k) relative to the winter rules have been waived. Such notice should fully inform each customer about the meaning of the waiver.

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Flexibility

Since the targeted termination program will be new to many customers, even to customers in the original pilot area, we believe there exists a potential for misunderstanding and customer confusion during the implementation process. The Company and CAP/DHR have expressed their willingness to be flexible with customers and clients and we expect such flexibility. We shall direct the Commission's consumer assistance personnel to monitor Company flexibility through periodic contact with Company personnel and the processing of customers' complaints.

Waiver

If the above modifications are implemented, the Commission will be satisfied that the targeted termination program will be an acceptable substitute for the subject Commission regulations. Thus, we will waive those regulations on the condition that the Company implement the targeted termination program as modified. The waiver period will be for the coming winter season only (19841985).

Our Order will issue accordingly.

ORDER

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

ORDERED, that Commission regulations at PUC 303.08(k) be, and hereby are, waived as they apply to Public Service Company of New Hampshire customers as follows:

(A) the present pilot program operating in the Towns of Laconia, Gilford, Gilmanton and Belmont shall continue in a manner consistent with the foregoing report;

(B) that the pilot program requested in Public Service Company of New Hampshire's petition shall be authorized in Cheshire and Coos Counties; and

(C) the program shall be implemented effective on the date of this Order and shall terminate on December 1, 1985 or until further order of this Commission; and it is

FURTHER ORDERED, that the waiver of Commission regulations at PUC 303. 08(k) is conditioned on Public Service Company of New Hampshire's implementation of the targeted termination program as set forth in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this twelfth day of October,

1984.

FOOTNOTE

[1]See, DRM 82-304 Report and Order No. 16,164 ([1983] 68 NH PUC 22, 26).

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[Go to End of 61557]

69 NH PUC 603

Re Exeter and Hampton Electric Company

DE 84-243, Order No. 17,248

New Hampshire Public Utilities Commission

October 12, 1984

Order granting extension of waiver of commission rules.

Payment, § 33 — Termination of service — Alternative winter program.

An extension of a waiver of commission rules and regulations was granted an electric utility to allow the utility to continue an alternative winter program designed to protect residential customers from electric service termination due to nonpayment of bills.

Appearances: Sulloway, Hollis and Soden by Warren C. Nighswander, Esquire for Exeter and Hampton Electric Company; John Cutting with Gail Williams and Stephen Stocklan for the Staff of the New Hampshire Public Utilities Commission.

By the Commission:

REPORT

On July 18, 1984, Exeter and Hampton Electric Company ("Company") filed a Petition for Extension of the Waiver of PUC 303.08(k)(2), (3) and (6). Those regulations provide, inter alia:

(2) For the duration of the winter period, an accumulation arrearage of $175 or less for 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. (3) Any payment schedules entered into prior to the winter period are not subject to the winter period rules; however, a residential customer

shall not be deemed to have failed to abide by the terms of a payment agreement if he/she fails to pay a current bill during the winter period and does not become subject to termination except in accordance with the winter period rules. (6) All residential customers who qualify for, and comply with, the provisions of the winter period rules shall be advised as to his/her opportunities to make payment of the arrearage in a maximum of six equal monthly installments, the last of which shall be due on or before September 30, and which shall be due in addition to the normal payment of current bills.

A duly noticed hearing on the Petition was held on October 2, 1984. A certified copy of said notice, according to regulation, was recorded.

At the hearing, the Company offered the testimony of Richard F. Gilmore, the Company's Assistant Vice-President and Controller. Mr. Gilmore described the results of the Company's alternative winter program for 1983-1984 entitled "Electric Service Protection" (ESP).

As described by Mr. Gilmore, ESP was designed to protect the residential customer from electric service termination, due to non-payment, during the winter period from December 1st through March 31st. The program would again be open to all residential customers regardless of the level of any outstanding arrears or past delinquencies. The Company will allow the customer, upon application, to elect to pay as little as 20% of their monthly electric bill during the four (4) winter months., December, January, February and March. In addition, those customers who carried arrearages into the winter period will be required to pay off such arrears over the winter period. At the end of said winter period those participating customer's arrearages would be recovered in equal monthly payments in

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the months of April, May, June and July. Mr. Gilmore also stated that a "safety net" was built into the ESP program in order to protect customers, regardless of ESP participation. That was, the Company would not terminate service to any customer during the winter period without express written approval of the Public Utilities Commission. Mr. Gilmore also stated that all Commission requirements pertaining to the elderly would continue to be applicable.

Mr. Gilmore continued his testimony and made specific references to the synopsis by the Company, Exhibit #1 and Exhibit #2, in compliance with the Commission requirements of Report and Order No. 16,571 in Docket DE 83-297. Those being (1) evaluation; (2) notification; (3) flexibility; and (4) personal contact.

After a review of the testimony and the program results, the Commission finds that the Company's efforts were constructive and continued implementation of the ESP program should be encouraged.

While the ESP program of the Company offers a unique approach to Winter Termination, we continue to have concerns that cause us to condition the waiver of the regulations. Those concerns include data collection and evaluation, notification of customers of the waiver of the Commission's rules PUC 303.8(k)(2), (3) and (6), customer flexibility and personal contact.

Data Collection and Evaluation

As can be expected, one of the advantages of the continuation of the ESP program is

comparative data can be obtained that may be useful to the Commission in evaluating this and other programs. Having a base year analysis, the additional information collected during a second year of the ESP program should produce definite trends regarding customer cooperation, awareness and participation. We believe that further data is necessary to accomplish this and that the Commission Staff should be involved with the Company in the evaluation process. Accordingly, we direct the Company to work with Staff in order to develop an evaluation process that examines the total impact of said program on participating customers, non-participants, customers with disconnect notices, customers who were disconnected then re-connected and those customers who were disconnected and not re-connected. In addition, a more extensive procedure to review and analyze data regarding those customers who have been terminated permanently is required. Finally, the Commission is also interested in a complete evaluation of the revenue impact, Company savings, and administrative expense of the ESP program. The Staff and the Company are directed to submit a detailed description of the data collection and evaluation process no later than January 31, 1985.

Notification

The Commission's initial concern that some customers may not apply for the ESP protection, thinking that they would still be protected under the current Winter rules PUC 303.8(k)(2), (3) and (6), is still a major concern and thus, we will require the Company to provide notice to customers that, upon Company request, the regulations noted above have been waived. Such notification material and procedures shall be reviewed by Staff and Company before issue.

Flexibility

There is a definite misunderstanding among customers as shown by Exhibit #1, page 9, item 7, regarding the Commission Winter rules and the ESP

program. Thirty-seven percent of customers surveyed were not aware that there were Commission termination rules and 79% surveyed were not aware that the Company had received an exemption. Thus, we express a concern and expect the Company to be flexible with its customers and initiate any possible procedure that would assist the customer in a better understanding of the ESP program.

In addition, Company flexibility regarding program enrollment and payment percentages[1(194)] lower than originally chosen will be expected to continue. This information must be maintained and submitted as part of the data collection and evaluation.

Personal Contact

The Commission's continued concern of Company and customer communication must be addressed. We believe that a direct communication between the parties is the only way to minimize misunderstanding or resulting disputes. Therefore, the Commission directs the Company to continue to inform the customers through a letter, included with a disconnect notice, and personal phone contact regarding the existence of the ESP program and the waiver of PUC Winter Rules.

Waiver

If the above modifications are implemented, the Commission will be satisfied that the ESP program will be an acceptable substitute for the subject Company regulations. Thus, we waive those regulations, PUC 303.8(k)(2), (3) and (6), on condition that the Company implement the ESP program as modified. This waiver period will be for December 1, 1984 through July 31, 1985.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Commission regulations at PUC 303.8(k)(2), (3) and (6) be, and hereby are waived as they apply to Exeter and Hampton Electric Company until December 1, 1985; and it is

FURTHER ORDERED, that the waiver of the Commission regulations at PUC 303.8(k)(2), (3) and (6) is conditioned on Exeter and Hampton Electric Company's implementation of the Electric Service Protection (ESP) program as hereby modified by the foregoing Report.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of October, 1984.

FOOTNOTE

[1]No lower than the 20% minimum.

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NH.PUC*10/15/84*[61558]*69 NH PUC 606*Concord Natural Gas Corporation

[Go to End of 61558]

69 NH PUC 606

Re Concord Natural Gas Corporation

DR 84-301, Order No. 17,252

New Hampshire Public Utilities Commission

October 15, 1984

Order approving amendment to special contract.

By the Commission:

ORDER

WHEREAS, on September 28, 1984 Concord Natural Gas Corporation submitted an Agreement for Commission approval; and

WHEREAS, that Agreement, dated September 25, 1984, between Concord Natural Gas Corporation and Gas Service, Inc., provides Concord an opportunity to exercise its franchise to serve customers in Loudon and Pembroke by installing gas services off the "Loudon Lateral" of Gas Service; and

WHEREAS, that Agreement is intended to supercede an earlier Agreement executed August 31, 1984 and filed with this Commission on September 4, 1984; it is hereby

ORDERED, that the Agreement between Concord Natural Gas Corporation and Gas Service, Inc. executed on August 31, 1984 be, and hereby is, denied; and it is

FURTHER ORDERED, that the Agreement between Concord Natural Gas Corporation and Gas Service, Inc. executed on September 25, 1984 be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1984.

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NH.PUC*10/15/84*[61559]*69 NH PUC 607*Wilton Telephone Company

[Go to End of 61559]

69 NH PUC 607

Re Wilton Telephone Company

DR 84-264, Order No. 17,254

New Hampshire Public Utilities Commission

October 15, 1984

Order approving tariff revisions to correct omission of exchange listings.

By the Commission:

ORDER

WHEREAS, Wilton Telephone Company has filed revisions to its tariff, NHPUC No. 5, said revisions correcting an omission of the listing of exchanges within the various toll bands; and

WHEREAS, identification of such exchanges and toll bands is essential to the operation of Selective Calling Service; and

WHEREAS, the Commission finds such corrective action in the public interest; it is

ORDERED, that Part V, Section 3, Original Page 3 and 1st Revised Page 2, 10Wilton Telephone Company tariff, NHPUC No. 5 - Telephone, be, and hereby are, approved for effect on October 20, 1984.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1984.

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NH.PUC*10/15/84*[61560]*69 NH PUC 608*Northern Utilities, Inc.

[Go to End of 61560]

69 NH PUC 608

Re Northern Utilities, Inc.

DE 84-244, Order No. 17,256

New Hampshire Public Utilities Commission

October 15, 1984

Order authorizing expansion of service territory.

Service, § 199 — Expansion of territory — Gas utility.

A gas utility was granted authority to expand its service territory where the expansion would not adversely affect existing customers of the utility, would not increase the cost of gas, and would enhance potential industrial development in the newly acquired territory.

By the Commission:

REPORT

On September 6, 1984 Northern Utilities, Inc., a public utility authorized to conduct the business of a gas utility in the State of New Hampshire petitioned this Commission for authorization to serve an additional area in the Town of Stratham, New Hampshire.

An Order of Notice was issued on September 10, 1984 setting a hearing for October 3, 1984 at 10:00 a.m. in the Commission's Concord offices. On September 20, 1984 a revised Order of Notice was issued changing the publication date to September 24, 1984, but retaining the same date and time for the public hearing.

Notices were sent to Martin L. Gross, Esquire, for publication; Northern Utilities, Inc. and the Office of the Attorney General.

The petitioner provided the Commission with an affidavit that publication was made in the Portsmouth Herald in accordance with the Commission's revised Order of Notice of September 20, 1984. The notice was published on Saturday, September 22, 1984.

The petitioner has been requested to provide gas service to Stratham Industrial Park so called an industrial park development which lies partially in the Town of Exeter and partially in the Town of Stratham. The Company has existing authority to provide service to the portion of Stratham Industrial Park which lies within the Town of Exeter and, in fact, has existing distribution facilities in Exeter adjacent to the proposed franchise territory. The proposed authority is necessary to enable the Company to provide service to the remainder of the Stratham

Industrial Park which lies within the Town of Stratham.

The limits of the franchise area are identified in an exhibit offered as an attachment to the petition.

Letters of support were entered into the record by:

Department of Resources and Economic Development, September 11, 1984; Paul H. Guilderson, Industrial Director

Altid Enterprises, August 17, 1984; John Oberti, Jr.

Home Tech, Inc., August 28, 1984; Susan J. Conway, President

Town of Stratham, New Hampshire, Undated, Board of Selectmen

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Upon cross examination the petitioner confirmed that the additional gas load imposed by the new franchise would not impact adversely upon the Company's ability to serve its existing customers, and would not increase the Company's costs of gas.

Upon investigation the Commission finds that the granting of the authority sought in the petition to be in the public good. It will enhance the potential for industrial development in the Town of Stratham. It will not adversely impact the Company's ability to serve its existing customers. It will expand the service area in which natural gas customers may be served in the State of New Hampshire.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition of Northern Utilities, Inc. for authorization to serve an additional limited area in the Town of Stratham, New Hampshire, such limited area as identified in an attachment to the petition in this docket, be and hereby is, granted.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1984.

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NH.PUC*10/22/84*[61561]*69 NH PUC 609*Town of Pembroke — Water Works

[Go to End of 61561]

69 NH PUC 609

Re Town of Pembroke — Water Works

DR 84-280, Supplemental Order No. 17,259

New Hampshire Public Utilities Commission

October 22, 1984

Order approving revised tariff.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, Pembroke Water Works has filed a revised tariff designated NHPUC No. 2 - Water; and

WHEREAS, Order No. 17,236 was issued to suspend this filing for review and consideration; and

WHEREAS, after such review and consideration, the Commission finds that approval will be in the public good; it is hereby

ORDERED, that Order No. 17,236 is revoked and Town of Pembroke - Water Works tariff NHPUC No. 2 - Water is hereby approved and allowed to become effective as of October 1, 1984.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of October, 1984.

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NH.PUC*10/22/84*[61562]*69 NH PUC 610*Gas Utilities Supply and Demand

[Go to End of 61562]

69 NH PUC 610

Re Gas Utilities Supply and Demand

DL 83-5,
Fifth Supplemental Order No. 17,260
New Hampshire Public Utilities Commission
October 22, 1984

Order closing docket.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, this docket was opened by Order No. 16,124 ([1983] 68 NH PUC 3) for the purpose of, inter alia, investigating the sufficiency and quality of management planning for gas supply and demand; and

WHEREAS, the Commission believes that it may defer addressing its concerns pertinent to gas supply; and

WHEREAS, the Commission believes that it should address issues pertinent to the price of gas, rather than supply and demand; and

WHEREAS, the Commission continues to have the ability to initiate and conduct an investigation into issues pertinent to the supply and demand of gas; it is therefore

ORDERED, that Docket No. DL 83-5 be, and hereby is, closed.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of October, 1984.

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NH.PUC*10/22/84*[61563]*69 NH PUC 610*Concord Steam Corporation

[Go to End of 61563]

69 NH PUC 610

Re Concord Steam Corporation

Intervenor: New Hampshire Department of Health and Welfare

DR 84-72, Order No. 17,261

New Hampshire Public Utilities Commission

October 22, 1984

Order approving stipulation agreement.

Appearances: David W. Marshall, Esquire for Concord Steam Corporation; Peter C. Scott, Jr., Assistant Attorney General for the N.H. Department of Health and Welfare; Robert B. Lessels for the Staff of the N. H. Public Utilities Commission.

By the Commission:

REPORT

On November 28, 1983 Concord Steam Corporation (Concord Steam) filed a request with this Commission for approval of cost allocations for investment expenses

and income made and to be incurred for development and operation of a cogeneration facility to be owned and operated by Concord Steam. Simply described the cogeneration facility will produce steam from a wood fired boiler that will drive turbine generators with an average output of 1250 kw. The turbine exhaust of low pressure steam will then flow into the Concord Steam district steam system.

Following a procedural public hearing on this matter, representatives and attorneys for Concord Steam, the New Hampshire Department of Health and Welfare (NHH), the New Hampshire Attorney General, and the Staff of the Public Utilities Commission met on several

occasions to discuss Concord Steam's proposed cost allocations. A Stipulation Agreement (Exhibit 1) was arrived at and agreed to by the above parties and presented to the Commission at a public hearing held on October 11, 1984.

The highlights of the Stipulation Agreement are as follows:

1. Except as otherwise specifically provided in the Stipulation Agreement, all costs incurred by the Company attributable to the Cogeneration Facility shall be borne by the Cogeneration Division.

2. The full capital cost and installation of the new high pressure wood-fired boiler and other equipment associated solely with the Cogeneration Facility (the turbine generators, piping, electrical switch gear, metering and wiring) will be the sole responsibility of the Cogeneration Division, and the above equipment will not be included in the Company's rate base for utility steam service.

In addition, the Cogeneration Division shall be responsible for its portion of the fixed cost attributable to the wood handling and storage equipment through the removal from the Company's steam utility rate base of 5.8% of the depreciated cost of plant of such equipment, accompanied by an appropriate adjustment to Utility Division operating expenses for associated depreciation expenses.

3. The Utility Division will operate the new high pressure boiler, along with the other boilers in the boiler room and the wood storage and handling equipment, all located at its district steam plant, and will be responsible for all operating costs thereof, such as fuel and maintenance.

4. The steam produced in the boiler room will pass through turbine generators and then to the Company's district system. The method used for measuring the heat energy extracted from the steam by the power generation phase is to multiply the number of kwh of power sold to the purchasing electric utility by each turbine's "heat rate."

5. The cost of any additional labor required to operate the Cogeneration Division will be borne by the Cogeneration Division. A portion of the Company's existing administrative labor costs that otherwise would be charged to the Utility Division will be charged to the Cogeneration Division; specifically, 15% of the annual salary and benefits of the Company's General Manager and Bookkeeper will be allocated to the Cogeneration Facility. Labor for Cogeneration Facility maintenance will be charged as incurred.

6. Approximately $200,000 of the costs incurred by the Company in connection with the 1983 New Hampshire Municipal Bond Bank revenue bond financing approved in DF 83-361 were fixed; onefourth of those costs (i.e. $50,000) will be borne by the Cogeneration Division rather than by the Utility Division.

7. Any debt service relative to the Cogeneration Facility will be borne by the Cogeneration Division, including 25% of that associated with the 1983 New

Hampshire Municipal Bond Bank revenue bond financing, and the cost of that debt capital will not be included in the Utility Division's cost of capital for utility purposes.

It was further stipulated and agreed to that all allocations made shall remain effective unless and until actual operating experience demonstrates that they are unreasonable, and that the books and records of Concord Steam Corporation shall be accessable for verification.

After review and consideration it is the Commission's judgment that the Stipulation Agreement, presented as Exhibit 1, is in the public good and is hereby accepted. It is our further judgment that revision of these allocations shall only be made after due notice to all parties, review and investigation, and further Order of this Commission.

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 Stipulation Agreement marked as Exhibit 1 in this docket, is accepted with the further provisions as noted in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of October, 1984.

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NH.PUC*10/22/84*[61564]*69 NH PUC 612*Union Telephone Company

[Go to End of 61564]

69 NH PUC 612

Re Union Telephone Company

DR 84-299, Order No. 17,262

New Hampshire Public Utilities Commission

October 22, 1984

Order suspending tariffs.

By the Commission:

ORDER

WHEREAS, Union Telephone Company has filed with this Commission certain revisions to its tariff, NHPUC No. 7 - Telephone, proposing terms under which it will sell embedded equipment to its customers; and

WHEREAS, public good necessitates that the terms of such sales be thoroughly investigated; and

WHEREAS, the proposed effective date of November 5, 1984 precludes completion of such investigation and decision theron prior to that date; it is

ORDERED, that Part III, Section 2, Original Pages 1-7, Union Telephone Company tariff,

NHPUC No. 7, be, and hereby are, suspended pending completion of the Commission investigation and decision thereon.

By Order of the Public Utilities Commission of New Hampshire this twentysecond day of October, 1984.

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NH.PUC*10/23/84*[61565]*69 NH PUC 613*Fuel Adjustment Clause

[Go to End of 61565]

69 NH PUC 613

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 84-250,
Supplemental Order No. 17,264

New Hampshire Public Utilities Commission

October 23, 1984

Order approving fuel adjustment charge rate.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268) notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

ORDERED, that 130th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $1.73 per 100 KWH for the month of October, 1984, be, and hereby is, permitted to become effective October 11, 1984.

By Order of the Public Utilities Commission of New Hampshire this twentythird day of October, 1984.

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NH.PUC*10/23/84*[61566]*69 NH PUC 613*Chichester Telephone Company

[Go to End of 61566]

69 NH PUC 613

Re Chichester Telephone Company

DR 84-285, Order No. 17,265

New Hampshire Public Utilities Commission

October 23, 1984

Order suspending tariffs.

By the Commission:

ORDER

WHEREAS, on October 2, 1984, Chichester Telephone Company filed with this Commission Section 3, Original Pages 20-24, of tariff NHPUC No. 3 - Telephone, proposing terms under which

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embedded equipment will be sold to the Company's subscribers; and

WHEREAS, the Commission finds investigation and review of said filing to be essential to the public good; and

WHEREAS, it appears that time constraints preclude completion of said investigation and resulting decision prior to the proposed effective date of November 1, 1984; it is

ORDERED, that the above-cited pages of Chichester Telephone Company tariff, NHPUC No. 3, be, and hereby are, suspended pending completion of the investigation of this filing and decision thereon.

By order of the Public Utilities Commission of New Hampshire this twentythird day of October, 1984.

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NH.PUC*10/23/84*[61567]*69 NH PUC 614*Granite State Telephone Company

[Go to End of 61567]

69 NH PUC 614

Re Granite State Telephone Company

DR 84-289, Order No. 17,266

New Hampshire Public Utilities Commission

October 23, 1984

Order suspending tariffs.

By the Commission:

ORDER

WHEREAS, Granite State Telephone has filed with this Commission revisions to its tariff, NHPUC No. 6 - Telephone, proposing criteria under which embedded equipment will be sold; and

WHEREAS, said filing is proposed for effect November 1, 1984; and

WHEREAS, it appears that the time constraint precludes adequate investigation to protect the public interest; it is

ORDERED, that Section 7, Original Sheets 6-10, Granite State Telephone tariff, NHPUC No. 6, be, and hereby are, suspended pending completion of cited investigation and resulting decision thereon.

By order of the Public Utilities Commission of New Hampshire this twentythird day of October, 1984.

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NH.PUC*10/23/84*[61568]*69 NH PUC 614*Dunbarton Telephone Company

[Go to End of 61568]

69 NH PUC 614

Re Dunbarton Telephone Company

DR 84-282, Order No. 17,267

New Hampshire Public Utilities Commission

October 23, 1984

Order suspending tariff revisions.

Page 614

By the Commission:

ORDER

WHEREAS, Dunbarton Telephone Company has filed revisions to its Tariff, NHPUC No. 5, proposing the terms for sale of embedded equipment; and

WHEREAS, public good necessitates that the terms of such sale be thoroughly investigated; and

WHEREAS, the proposed effective date of November 1, 1984 precludes completion of such

investigation and decision thereon prior to that date; it is

ORDERED, that the following revisions to Dunbarton Telephone Company tariff, NHPUC No. 5 - Telephone, be, and hereby are, suspended pending completion of the Commission's investigation, and decision thereon:

Index — 2nd Rev. Sheet 2
Sec. 3 — Original Sheets J-6, J-7, J-8, J-9
1st Rev. Sheets I-1, I-2, I-3, K-1, K-2, K-3
2nd Rev. Sheets J-1, J-4, J-5
3rd Rev. Sheet C-1

By order of the Public Utilities Commission of New Hampshire this twentythird day of October, 1984.

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NH.PUC*10/23/84*[61569]*69 NH PUC 615*Merrimack County Telephone Company

[Go to End of 61569]

69 NH PUC 615

Re Merrimack County Telephone Company

DR 84-281, Order No. 17,268

New Hampshire Public Utilities Commission

October 23, 1984

Order suspending tariff revisions.

By the Commission:

ORDER

WHEREAS, Merrimack County Telephone Company has filed with this Commission certain revisions to its tariff, NHPUC No. 7 - Telephone, by which it proposes to sell its embedded customerpremises equipment; and

WHEREAS, public good necessitates that the terms of such sale be investigated thoroughly; and

WHEREAS, the proposed November 1, 1984 effective date of these tariff revisions precludes adequate investigation considering the current schedule of this Commission; it is

ORDERED, that the tariff revisions listed on the attachment to this Order be, and hereby are, suspended pending completion of the cited investigation and resulting decision.

By 0rder of the Public Utilities Commission of New Hampshire this twentythird day of October, 1984.

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

Contents — Third Revised Page 2

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NH.PUC*10/24/84*[61570]*69 NH PUC 617*John F. Chick & Son, Inc.

[Go to End of 61570]

DE 83-265,
Supplemental Order No. 17,276

New Hampshire Public Utilities Commission

October 24, 1984

Order continuing previous order.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, on August 5, 1983, John F. Chick & Son, Inc. (Chick) filed a petition for authority to discontinue water service in the village of Silver Lake, Madison, New Hampshire, and on October 3, 1983, filed a petition that it be exempt from Public Utilities Commission jurisdiction; and

WHEREAS, a hearing on said petition was held on October 4, 1983; and

WHEREAS, on October 18, 1983, the Commission issued Report and Order No. 16,723 (68 NH PUC 621) which denied Chick's petition for exemption; and

WHEREAS, in said Order the Commission ordered Chick to continue operations for one (1) year from the date of the Order and allowed Chick to discontinue operations at that time or when the water system is turned over to the town or customers, whichever is sooner, provided Chick has made a good faith effort to engage in negotiations with these parties concerning such a takeover; and

WHEREAS, the Town of Madison and Chick are currently involved in negotiations regarding the purchase of Chick's water system by Madison; and

WHEREAS, to date, these negotiations have produced no agreement; and

WHEREAS, on September 26, 1984, John F. Chick & Son, Inc. filed a request with the Commission that Report and Order No. 16,723 be continued for another year while the said negotiations continue; and

WHEREAS, the Town of Madison has no objection to said request; and

WHEREAS, the Commission finds the requested continuation of Order No. 16,723 to be in the public good; it is hereby

ORDERED, that Report and Order No. 16,723 be, and hereby is, continued for one (1) year to October 18, 1985; and it is

FURTHER ORDERED, that John F. Chick & Son, Inc. continue to provide service in accord with the provisions of said Order; and it is

FURTHER ORDERED, that if and when a sale of John F. Chick & Son, Inc.'s water system to the Town of Madison is completed, John F. Chick & Son, Inc. may, at that time, discontinue service.

By Order of the Public Utilities Commission of New Hampshire this twentyfourth day of October, 1984.

69 NH PUC 618

Re Nashua Hydro Associates

DR 84-266, Order No. 17,283

New Hampshire Public Utilities Commission

October 29, 1984

Order granting petition for 30-year rate order.

By the Commission:

ORDER

WHEREAS, on September 18, 1984, Nashua Hydro Associates ("NHA") filed a long term rate filing; and

WHEREAS, NHA filed amendments to its filing on October 1, 1984, October 8, 1984, and October 29, 1984; and

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

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

WHEREAS, NHA has averred that it will provide a lien on the project junior to the lien, mortgage and security interests required by NHA's interest required by NHA's construction and term loan lenders; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire ("PSNH") the opportunity to respond to NHA's Petition for ThirtyYear Rate Order; and

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

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

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

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

effective date.

By order of the Public Utilities Commission of New Hampshire this twentyninth day of October, 1984.

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NH.PUC*10/29/84*[61572]*69 NH PUC 619*Pembroke Hydroelectric Project

[Go to End of 61572]

69 NH PUC 619

Re Pembroke Hydroelectric Project

DR 84-233,
Supplemental Order No. 17,284

New Hampshire Public Utilities Commission

October 29, 1984

Order suspending previous order.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, on August 28, 1984, Pembroke Hydroelectric Project ("Pembroke") filed a Petition for a twenty-year rate order; and

WHEREAS, the Petition requested inter alia exemption from the requirement in Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 61 PUR4th 132, that long term rates be established for the first three years of an arrangement no higher than a ceiling of 90% of the levelized rates; and

WHEREAS, on September 27, 1984, the Commission issued Order No. 17,229 (69 NH PUC 560) which ordered nisi that Pembroke's Petition be approved and allowed PSNH an opportunity to file a response to the Petition no later than 20 days from that date; and

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

WHEREAS, on October 17, 1984, Public Service Company of New Hampshire (PSNH) filed certain comments and exceptions (response) regarding the long term rate filings of Pembroke Hydroelectric Project; and

WHEREAS, having considered PSNH's comments and exceptions, the Commission has determined that Pembroke has not sufficiently demonstrated that the full levelized rate is necessary to permit development of its site and that a hearing be scheduled at which time Pembroke shall be afforded an opportunity to address, inter alia, PSNH's comments and exceptions; and

WHEREAS, the Commission finds the remainder of Pembroke's filing to be consistent with the requirements set forth in Re Small Energy Producers and Cogenerators, supra, in all respects other than said ceiling, it is hereby

ORDERED, that Order No. 17,229 be, and hereby is, suspended pending a further Commission Order; and it is

FURTHER ORDERED, that a hearing be held before the Public Utilities Commission at its office in Concord, 8 Old Suncook Road, Building #1 in said state at ten o'clock in the forenoon on the 13th day of November, 1984 for the above state purposes.

By Order of the Public Utilities Commission of New Hampshire this twentyninth day of October, 1984.

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NH.PUC*10/29/84*[61573]*69 NH PUC 620*Greggs Falls Hydroelectric Project

[Go to End of 61573]

69 NH PUC 620

Re Greggs Falls Hydroelectric Project

DR 84-234,
Supplemental Order No. 17,285

New Hampshire Public Utilities Commission

October 29, 1984

Order scheduling a hearing regarding a petition for approval of a longterm fully levelized rate for hydroelectric power.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, on August 28, 1984, Greggs Falls Hydroelectric Project ("Greggs Falls") filed a Petition for a twenty-year rate order; and

WHEREAS, the Petition requested inter alia exemption from the requirements in Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, Report and Eighth Supplemental Order No. 17,104 ([1984] 69 NH PUC 352, 61 PUR4th 132) that long term rates be established for the first three years of an arrangement no higher than a ceiling of 90% of the levelized rates; and

WHEREAS, on September 27, 1984, the Commission issued Order No. 17,230 ([1984] 69 NH PUC 561) which ordered nisi that Greggs Falls' petition be approved and allowed PSNH an opportunity to file a response to the Petition no later than 20 days from that date; and

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

order issued prior to the effective date; and

WHEREAS, on October 17, 1984, Public Service Company of New Hampshire (PSNH) filed certain comments and exceptions (response) regarding the long term rate filings of Greggs Falls Hydroelectric Project; and

WHEREAS, having considered PSNH's comments and exceptions, the Commission has determined that Greggs Falls has not sufficiently demonstrated that the full levelized rate is necessary to permit development of its site and that a hearing be scheduled at which time Greggs Falls shall be afforded an opportunity to address, inter alia, PSNH's comments and exceptions; and

WHEREAS, the Commission finds the remainder of Greggs Falls filing to be consistent with the requirements set forth in Re Small Energy Producers and Cogenerators, supra, in all respects other than said ceiling, it is hereby

ORDERED, that Order No. 17,229 ([1984] 69 NH PUC 560) be, and hereby is, suspended pending a further Commission Order; and it is

FURTHER ORDERED, that a hearing be held before the Public Utilities Commission at its office in Concord, 8 Old Suncook Road, Building #1 in said state at ten o'clock in the forenoon on the 13th day of November, 1984 for the above stated purposes.

By Order of the Public Utilities Commission of New Hampshire this twentyninth day of October, 1984.

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NH.PUC*10/30/84*[61574]*69 NH PUC 621*Lakes Region Water Company, Inc.

[Go to End of 61574]

69 NH PUC 621

Re Lakes Region Water Company, Inc.

DR 84-314, Order No. 17,286

New Hampshire Public Utilities Commission

October 30, 1984

Order suspending revised tariffs for metered water rates pending investigation by the commission.

By the Commission:

ORDER

WHEREAS, Lakes Region Water Company, Inc. has filed with this Commission certain revisions to its tariff proposing to establish metered rates in its franchise territory in Moultonboro, New Hampshire; and

WHEREAS, the Commission finds that this filing requires investigation before rendering a

decision; it is

ORDERED, that First Revised Page 2A, Fourth Revised Page 2, and Third Revised Page 3, Lakes Region Water Company, Inc., Tariff, NHPUC No. 2 - Water, be and hereby are, suspended pending investigation and decision thereon.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1984.

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NH.PUC*10/30/84*[61575]*69 NH PUC 621*Public Service Company of New Hampshire

[Go to End of 61575]

69 NH PUC 621

Re Public Service Company of New Hampshire

DR 82-333,
16th Supplemental Order No. 17,287

New Hampshire Public Utilities Commission

October 30, 1984

Request for compensation by an intervenor; denied.

Parties, § 18 — Intervenors — Request for funding — Intervenor contribution — Rate-making standards.

The commission denied a request for compensation by an intervenor for its participation in an electric rate proceeding where the intervenor's participation did not result in the adoption by the commission of the intervenor's position; the intervenor had maintained that current standards for electric lifeline rates should be maintained while the commission had previously supported and approved a targeted lifeline program.

(Aeschliman, commissioner, separate opinion, p. 624.)

Appearances: As Previously Noted.

By the Commission:

REPORT

I. PROCEDURAL HISTORY

This Public Service Company of New Hampshire ("PSNH") rate case commenced on

December 29, 1982 when PSNH filed Tariff No. 28 - Electricity designed to increase non-energy revenues by approximately $33 million. By Supplemental Order No. 16,144 (January 17, 1983), that tariff was suspended pending investigation by the Commission. After a number of public hearings throughout the State in the early part of 1983, a procedural hearing was held on June 1, 1983 which addressed the matters of intervention and scheduling. In Report and Fourth Supplemental Order No. 16,471 ([1983] 68 NH PUC 407) ("Procedural Order"), the Commission inter alia granted full intervenor status to the Business and Industry Association of New Hampshire, Community Action Program, Campaign for Ratepayers' Rights, and the Consumer Advocate.

Subsequent to the Procedural Order, PSNH filed a Motion to Include Implementation of Lifeline Rates as an issue in Part B of this docket. PSNH's Motion arose out of Commission determinations in a related docket: DP 80-260, Investigation into Lifeline Rates. On April 20, 1983, the Commission issued a final Order in that docket (Report and Seventeenth Supplemental Order No. 16,356 [68 NH PUC 216]) which established lifeline rate standards. PSNH thereafter filed a timely Motion for Rehearing. The Motion was denied by the Commission in Report and Eighteenth Supplemental Order No. 16,460 ([1983] 68 NH PUC 389); however, that Order also provided that PSNH could seek a waiver from the Commission's lifeline standards in an appropriate context. As a result, PSNH's Motion was an attempt to secure such a waiver in the context of this docket. By Report and Fifth Supplemental Order No. 16,543 ([1983] 68 NH PUC 489), PSNH's Motion was granted.

Thereafter, the Commission received a late-filed Motion to Intervene and a Request for a Finding of Eligibility for Compensation ("Request") from VOICE which PSNH did not object. VOICE's Motion arose out of its participation in docket DP 80-260. In that Docket, VOICE was a full party intervenor and the Commission found that it was eligible for intervenor compensation. See e.g., Report and Eleventh Supplemental Order No. 15,642 ([1982] 67 NH PUC 318); Report and Fourteenth Supplemental Order No. 15,857 ([1982] 67 NH PUC 610). On August 18, 1983, the Commission issued Report and Sixth Supplemental Order No. 16,602 ([1983] 68 NH PUC 515) which granted VOICE's Motion to Intervene to the extent that it requested intervenor status to address the issue of implementation of lifeline rates. In addition, because the issues in this docket were substantially identical to those in DP 80-260, the Commission found VOICE to be eligible for intervenor compensation.

On the lifeline issue, PSNH initially sought a waiver or exemption from the Commission lifeline rate standards set forth in Report and Seventh Supplemental Order No. 16,356. However, in the course of the proceedings, PSNH proposed an alternative lifeline rate structure which narrowed the eligible group of ratepayers by "targeting" the program to those who fall within defined criteria of need. VOICE objected to PSNH's request for a waiver or exemption. VOICE took the position that the current

nontargeted lifeline standards were performing as designed and should be maintained. It therefore opposed allowing PSNH to substitute a targeted lifeline rate.

On January 30, 1984, the Commission issued Report and Eighth Supplemental Order No.

16,885 ([1984] 69 NH PUC 67, 57 PUR4th 563) in which Public Service Company of New Hampshire was granted a rate increase of $24.7 million. With regard to the lifeline issue, the Commission approved the concept of targeted lifeline rates and allowed PSNH to develop a pilot program as a first step to system-wide implementation.[1(195)]

Thereafter, on July 26, 1984 VOICE filed a Request For Compensation ("Request") pursuant to Rule No. Puc 205.07. In its Request, VOICE seeks a total of $13,711.25, which is comprised of the following: $10,062.50 in attorney's fees, $3,350.00 in expert witness fees and $298.75 in other reasonable costs. On August 1, 1984 PSNH filed an Objection to VOICE's Request.

II. ANALYSIS

VOICE took the position that the current lifeline rates should be retained and opposed allowing PSNH to substitute a targeted lifeline rate. In that regard it submitted prefiled direct testimony of its expert witness, George Steizinger. At the hearings, VOICE submitted exhibits and cross-examined the three PSNH lifeline witnesses. In addition, it submitted a brief following the close of testimony. After PSNH filed its pilot program, VOICE reviewed it, and met with the parties and submitted written comment to the Commission. VOICE attended the May 23, 1984 hearing on the filing, offered testimony and cross-examined witnesses. Given this measure of participation, VOICE contends that it "substantially contributed to the Commission's decision to deny PSNH's request for a waiver or exemption from the standard lifeline rate" (VOICE Request, p. 1) and is therefore entitled to an award of compensation.

PSNH does not object the VOICE's claim that it substantially contributed to the Commission's decision. However, it takes issue with the hourly fee for attorney's fees claimed by VOICE. It also objects to VOICE's inclusion of claims for time spent in preparing its Request.

Commission Rule No. Puc 205.02, entitled Standard for Compensation, provides that compensation shall be awarded to a consumer who substantially contributes, in whole or in part, to the adoption by the Commission of a PURPA position advocated by the consumer which relates to a PURPA standard.[2(196)] The above description of VOICE's participation in this docket clearly establishes that VOICE made a substantial contribution to the Commission's consideration of the lifeline issue. However, under the abovestated statute, that is not enough to award compensation. The Commission must also find that VOICE's substantial contribution related to the adoption by the Commission of a position advocated by VOICE.

VOICE took the position that the current lifeline rate was performing as designed and should be maintained. It therefore opposed allowing PSNH to substitute a targeted rate. In Report and Eighth Supplemental Order No. 16,855, the Commission rejected this argument and instead approved and adopted the concept of targeted lifeline rates for PSNH

customers.[3(197)] However, because of concerns with the gathering of appropriate data and the Community Action Program's role in identifying eligible recipients, the Commission allowed PSNH to develop a pilot program instead of implementing the program on a system-wide basis at this time. The Commission allowed PSNH "to develop a pilot targeted program which will address those concerns, develop data and aid us in planning a system-wide approach to be

implemented at the appropriate time." (69 NH PUC at p. 90, 57 PUR4th at p. 586.) (Emphasis added.) In so finding, the Commission further stated on as follows (69 NH PUC at p. 90, 57 PUR4th at p. 586):

We are convinced that there are good reasons to consider seriously a targeted lifeline program. We believe that such a program can mitigate the hardship of electric utility rates for certain needy customers. We believe it is proper to state plainly that we will be engaging in a program of "social" ratemaking which may vary from traditional concepts in recognition of the proposed costs that will soon confront consumers. Having made this statement, the reason for our caution is clear. We are embarking in a new area and, since we are not confronted with a need for immediate action, we have a "grace" period to ensure that our decisions are properly rooted in theory, fact and law. (Emphasis added.)

The pilot program is thus the first step to system-wide implementation.

In embracing the targeted lifeline concept, the Commission did not adopt VOICE's position that the current lifeline standard should be maintained. Thus under Rule 205.02, VOICE is not entitled to compensation. We will therefore deny its Request. Because of this finding, it is not necessary for us to consider the issues raised in PSNH's Objection regarding the hourly fee for attorney's fees and claims for time spent in preparing the compensation request made by VOICE.

Our Order will issue accordingly.

Separate Opinion of Commissioner Lea H. Aeschliman:

In my dissenting opinion to the majority decision in Report and Eighth Supplemental Order No. 16,885 (69 NH PUC at p. 93, 57 PUR4th at p. 588), I found that Public Service Company of New Hampshire had not met its burden of proof in justifying a waiver or exemption from the Commission's lifeline rate standards established in Report and Seventeenth Supplemental Order No. 16,356 dated April 20, 1983 (68 NH PUC 216). Since I adopted VOICE's position relative to the issues of the timing of a rate structure change and of the need for a coordinated approach to rate shock, I would have found that VOICE had made a substantial contribution to that decision. Accordingly, I would have awarded VOICE compensation.

SUPPLEMENTAL ORDER

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

ORDERED, that VOICE's Request for Compensation in this docket be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1984.

FOOTNOTES

[1]See Report and Fifteenth Supplemental Order No. 17,062 ([1984] 69 NH PUC 295) in which the Commission allowed PSNH to implement the pilot targeted program as presented by PSNH.

[2]"Lifeline rates" is included as one of the PURPA standards set forth in Rule No. Puc 205.01(d).

[3]In so doing, the Commission rejected Mr. Steizinger's analysis in favor of PSNH's cost projections on which to base its analysis. Report and Order No. 16,855 (69 NH PUC at p. 90).

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NH.PUC*10/30/84*[61576]*69 NH PUC 625*Public Service Company of New Hampshire

[Go to End of 61576]

69 NH PUC 625

Re Public Service Company of New Hampshire

DR 84-312, Order No. 17,288

New Hampshire Public Utilities Commission

October 30, 1984

Order approving special contract for electric service at rates other than those fixed by the utility's schedule of general application.

By the Commission:

ORDER

WHEREAS, Public Service Company of New Hampshire, a utility selling electricity under the jurisdiction of this Commission, has filed with this Commission a copy of Special Contract No. 45 with CW-KSB Pump Company, Inc. for electric service at rates other than those fixed by its schedule of general application; and

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

ORDERED, that said contract may become effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1984.

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NH.PUC*11/01/84*[61577]*69 NH PUC 625*New England Power Company

[Go to End of 61577]

69 NH PUC 625

Re New England Power Company

DF 84-188, Order No. 17,291

New Hampshire Public Utilities Commission

November 1, 1984

Petition by an electric utility for authorization to issue securities and execute loan agreements; approved.

Security Issues, § 58 — Purpose of capitalization — Financing of jointly owned construction project.

The commission approved a petition by an electric utility for authority to issue securities as part of a proposed financing plan, (1) designed to allow the utility flexibility in the timing of the issue of the securities to respond quickly to changing conditions, and (2) designed to meet the requirements of a resolution adopted by the joint owners of a nuclear project requiring each joint owner to provide a plan for financing its share of projected costs.

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Appearances: Robert King Wulff, Esquire and Gregory A. Hale, Esquire, for New England Power Company.

By the Commission:

REPORT

New England Power Company (the Company), is a utility subject to our jurisdiction. On July 24, 1984, the Company filed a petition requesting authorization and approval of the Commission for the issue and sale of $100,000,000 aggregate principal amount of securities. Of these securities, it is proposed that as much as $50,000,000 may be accounted for through the issuance of one or more additional series of the Company's preferred stock (the New Preferred Stock) and that the balance will be accounted for through the issuance of one or more additional series of the Company's General and Refunding Mortgage Bonds (the New G&R Bonds). The Company's petition also requests authority to issue and pledge First Mortgage Bonds (*the New Pledged Bonds) in an aggregate principal amount equal to the aggregate principal amount of the New G&R Bonds issued. The Company, in its petition, also requests authorization and approval of the Commission for the execution of one or more loan agreements or supplemental loan agreements between the Company and public agencies empowered to issue pollution control revenue bonds on behalf of corporations such as the Company. The Company will apply the proceeds from the issue and sale of securities which are the subject of this proceeding to the payment of short-term borrowings incurred for, or to the cost of, or to the reimbursement of the treasury of the Company for, uncapitalized additions and improvements to the plant and property and any other uncapitalized expenditures, or to refund maturing long-term indebtedness.

A public hearing was held on the petition on September 5, 1984.

The Companys' financial statements, introduced at the hearing as exhibits, were the basis of testimony relating to the Company's capitalization. They show that on the date of the statements,

March 31, 1984, the aggregate par value of the Company's common stock totaled $128,997,920 represented by 6,449,896 shares outstanding having a par value of $20 per share. Premiums on capital stock amounted to $87,161,500. Other paid-in capital was $288,000,000. Retained earnings were $55,374,156 and unappropriated undistributed subsidiary earnings were $10,838,905. The 1,897,380 shares of preferred stock outstanding were composed of three classes: 6% Cumulative Preferred Stock having par value of $100, of which one series is outstanding; Dividend Series Preferred Stock also having a par value of $100, of which eight series are outstanding with dividend rates ranging from 4.56% to 13.48%; and Preferred Stock Cumulative having a par value of $25, of which one series with a dividend rate of 11.04% is outstanding. The combined aggregate par value of the Company's preferred stock, after deducting $1,078,015 for shares held in Treasury, was $129,949,985. Long-term debt outstanding, net of unamortized premium or discount, amounted to $697,793,081, consisting of 15 issues of First Mortgage Bonds (not including pledged bonds) and 9 issues of General and Refunding Mortgage Bonds with interest and rates ranging from 3-1/4% to 16-5/8% and with maturity dates from 1985 to 2013. Not shown in the capitalization is $188,150,000 of pledged First Mortgage Bonds held by the Trustee for

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the General and Refunding Mortgage Bonds. Short-term borrowing on the date of the financial statements was reported at $49,900,000.

The Company's reported that, as of March 31, 1984, its utility plant was $1,191,101,541. Construction work in progress was shown to be $738,851,631. The accumulated depreciation reserve against such property amounted to $377,476,569. The Company's net utility plant was $1,582,973,502. Other property and investments, of which a major part of the amount was authorized investments in securities of nuclear generating companies, was shown as $48,541,930.

The Company has requested authorization and approval to issue the securities which are the subject to this proceeding as part of a proposed financing plan running through year-end 1986. The proposed financing plan has been designed to provide the Company with flexibility in the timing of the issue of the various securities which compromise the financing plan and the ability to respond quickly to rapidly changing conditions. The Company's financing plan has also been designed to meet the requirements of the resolution adopted by the joint owners of the Seabrook nuclear project on May 14, 1984, which calls for each joint owner to provide a plan for financing its share of the costs to complete Unit I. The several issues of New Preferred Stock and New G&R Bonds are separate transactions and not contingent one upon the other.

The proposed New Preferred Stock will be Cumulative Preferred Stock and may be composed of either Dividend Series Preferred or Preferred Stock - Cumulative or both. Except for the difference in par value, the corresponding difference in voting rights, and such variables as the dividend rate, redemption prices, limitations on redemptions, and any sinking fund, the terms and preferences of each series of the two classes of Cumulative Preferred Stock are the same.

It is currently anticipated that the New Preferred Stock will carry either fixed or adjustable

dividend rates and will be sold at competitive bidding after a public invitation for bids. The New Preferred Stock will be sold at a price not less than 98% of par nor more than 102.75% of par. The dividend rate, or dividend rate ceiling in the case of New Preferred with an adjustable dividend rate, is not to exceed 16% per annum unless a higher rate or ceiling is subsequently approved by the Commission. The maximum dividend rate of 16%, as requested by the Company, appears reasonable in view of current conditions in capital markets. The New Preferred Stock will not be redeemable for a period of five years, if such redemption is for the purpose of or in anticipation of refunding the New Preferred Stock through the direct or indirect use of funds obtained by the issuance of debt securities at an effective interest cost to the Company or by the issuance of other preferred stock with an effective dividend cost of less than the dividend cost to the Company of the New Preferred. The New Preferred Stock need not but may have a sinking fund requirement of up to 20% per year beginning in the sixth year after issuance. The New Preferred Stock will be sold to the bidder or bidding group which submits a price and interest rate resulting in the lowest cost of money to the Company. If market conditions make competitive bidding impracticable or undesirable, the Company would seek a supplemental order from the Commission authorizing either private placements with institutional investors or negotiations with underwriters.

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Massachusetts statutes currently limit the ability of the Company to sell to underwriters at less than par. Therefore, the terms and conditions for bids, or the agreement of sale if the New Preferred Stock is sold by negotiation, may provide for compensation to be paid to underwriters.

The proposed New G&R Bonds will be issued under and pursuant to the terms of the Company's General and Refunding Mortgage Indenture and Deed of Trust dated as of January 1, 1977, as amended and supplemented (the G&R Indenture), securing its presently outstanding Series A, B, D, E, F, G, H, I, and J G&R Bonds. The New G&R Bonds will have a lien subordinate to the Company's First Mortgage Bonds. Each series of New G&R Bonds will mature in not more than 30 years. The exact maturity date will be fixed prior to the sale of each series. Only fully registered bonds will be issued. All or a portion of the New G&R Bonds issued may be issued in connection with the issuance of pollution control revenue bonds.

New G&R Bonds (except those issued in connection with the issuance of pollution control revenue bonds) will bear interest from the date of authentication, and will be redeemable, at the option of the Company, in whole or in part, at any time prior to maturity upon thirty days notice at general redemption prices; however, no such redemption from a refunding issue at a lesser effective interest cost will be allowed during the first five years. Additionally, these bonds will also be redeemable for sinking fund and other specific purposes at special redemption prices.

The Company is currently contemplating use of pollution control revenue bonds as a means to finance approximately $35,000,000 of expenditures related to pollution control equipment. Approximately $20,000,000 of these expenditures are associated with the Company's share of certain facilities that have been constructed at Millstone 3 for the removal, processing and storage of solid, liquid, and gaseous waste produced during the nuclear generation process. The remaining approximately $15,000,000 of expenditures related to pollution control equipment the Company currently contemplates will be financed with pollution control revenue bonds are

associated with the Company's ownership interest in similar facilities being constructed in connection with Seabrook Unit I. Any pollution control revenue bonds issued on the Company's behalf would be issued by a public agency specifically empowered to issue and sell such bonds to the public (the Agency). The pollution control revenue bonds would be sold to the public pursuant to negotiated underwriting agreements between the Agency and one or more underwriters.

While the Company would not be a party to any underwriting agreement, any such agreement shall provide that its terms will be satisfactory to the Company. Additionally, the Company may provide certain written assurances to the underwriter or underwriters. The pollution control revenue bonds sold to the public may bear interest at a fixed rate or they may contain provisions whereby the interest rate is periodically adjusted by a remarketing agent on the basis of prevailing market conditions. Pursuant to a loan agreement or supplemental loan agreement between the Company and the Agency, the Agency would lend the proceeds from the sale of the pollution control revenue bonds to the Company in exchange for the Company's promise to make payments to the Agency corresponding to the payments of principal of,

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premium, if any, and interest on the pollution control revenue bonds sold to the public. To secure its obligation, the Company may issue an equal principal amount of New G&R Bonds issued to the Agency bearing the same date, maturity and interest payment provisions as the pollution control revenue bonds. New G&R Bonds issued in connection with the issuance of pollution control revenue bonds may bear interest from a date prior to their authentication. In addition, these bonds may contain sinking fund, mandatory redemption, and optional redemption provisions that differ from typical G&R Bonds. As an alternative to issuing New G&R Bonds to secure its obligation to the Agency, the Company may obtain a letter of credit from a bank or other financial institution for this purpose. Because the interest paid to holders of the pollution control revenue bonds will be tax-exempt under the Internal Revenue Code, purchasers of these bonds will be willing to accept a lower interest rate, resulting in substantial savings to the Company and its customers. Proceeds from the sale of pollution control revenue bonds may be held in trust pending their use by the Company for qualifying expenditures. The interest rate of New G&R Bonds issued to support pollution control revenue bonds is not to exceed 14% per annum unless a higher rate is subsequently approved by the Commission. If pollution control revenue bonds with an adjustable interest rate and backed by a Letter of Credit or New G&R Bonds are issued, the maximum interest rate to be paid by the Company is not to exceed 14% per annum unless a higher rate is subsequently approved by the Commission. The maximum interest rate of 14%, as requested by the Company, appears reasonable in view of current conditions in capital conditions in capital markets.

It is currently anticipated that the New G&R Bonds not issued to support pollution control revenue bonds will be sold at competitive bidding after a public invitation for bids. The terms and conditions for the bids will provide, in part, that the New G&R Bonds will be sold at a price not less than 95% nor more than 105% of their principal amount. The interest rate is not to exceed 18% per annum unless a higher rate is subsequently approved by the Commission. The New G&R Bonds sold competitively will be sold to the bidder or bidding group which submits a

price and an interest rate resulting in the lowest cost of money to the Company. The maximum interest rate of 18%, as requested by the Company, appears reasonable in view of current conditions in capital markets. If market conditions made competitive bidding impracticable or undesirable, the Company would seek a supplemental order from the Commission authorizing either private placements with an institutional investor or negotiations with underwriters.

The New Pledged Bonds will be issued and pledged, from time to time, to the Trustee for the G&R Bonds as additional security, representing a First Mortgage claim for the holders of all G&R Bonds. The New Pledged Bonds will contain the same interest payment provisions and have the same maturity date as the series of G&R Bonds with respect to which they are issued. The New Pledged Bonds will not pay interest as long as interest payments are made on the G&R Bonds. The Company will receive no proceeds from the issue and pledge of the New Pledged Bonds.

Assuming $50 million of New Preferred Stock and $50 million of New G&R bonds are issued pursuant to the Company's financing plan, the Company's total capitalization will be composed of 41%

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common equity, 11% preferred stock, and 48% bonds.

The last issue of securities by the Company was $79,250,000 of G&R Bonds, Series J, which were issued in connection with the financing of certain pollution control facilities at the Company's Salem Harbor Station. These bonds were issued December 28, 1983, and bear interest at the rate of 10-5/8% per annum and mature in 2013.

Upon investigation and consideration of the evidence submitted, the Commission is of the opinion that granting the authorization and approval sought for the financing proposed in the Company's financing plan will be consistent with the public good. Our order will issue accordingly.

ORDER

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

ORDERED, that New England Power Company be, and hereby is, authorized to issue and sell on or more additional series of Preferred Stock with an aggregate par value not exceeding $50,000,000, consisting of either Dividend Series Preferred (par value $100), Preferred Stock Cumulative (par value $25), or both, with a fixed dividend rate not in excess of 14% or with an adjustable dividend rate with a potential maximum rate not in excess of 16% (unless a higher rate or maximum rate is subsequently approved by the Commission), and the Commission consents to the issue, disposition, and sale of said additional Preferred Stock of the Company at competitive bidding provided, however, i) the preferred stock authorized by this paragraph is to be sold at a price not less than 98% of the aggregate par value thereof nor more than 102.75% of the aggregate par value thereof, and ii) the aggregate par value of preferred stock authorized by this paragraph shall be reduced by the aggregate par value of any preferred stock issued pursuant to the Commission's Orders in Docket No. 83-149; and it is

FURTHER ORDERED, that New England Power Company be and hereby is authorized to

issue and sell one or more series, aggregating not exceeding $100,000,000 principal amount, of General and Refunding Mortgage Bonds, to mature in not more than 30 years from the date as of which the bonds are issued provided, however, the principal amount of bonds authorized by this paragraph shall be reduced by the aggregate par value of any preferred stock issued pursuant to the preceding paragraph or the Commission's Orders in Docket No. 83-149 and by the aggregate principal amount of any bonds issued in 1984 pursuant to the Commission's Orders in Docket No. 83-149; and it is

FURTHER ORDERED, that the General and Refunding Mortgage Bonds authorized and approved by the Commission herein which are not issued and sold in connection with the issuance of pollution control revenue bonds shall bear interest at a rate not in excess of 18% per annum (unless a subsequent order of the Commission approves a higher rate) and are to be sold at not less than 95% of the principal amount thereof nor more than 105% of the principal amount thereof as shall be determined by the directors of the Company in accordance with the terms of the accepted bid therefore, following invitation for bids for such issue of bonds; and it is

FURTHER ORDERED, that the General and Refunding Mortgage Bonds authorized and approved by the Commission herein which are issued and sold in connection with the issuance of pollution

control revenue bonds with a permanently fixed interest rate or with an adjustable interest rate shall bear interest at a rate or potential maximum rate not in excess of 14% per annum (unless a subsequent order of the Commission approves a higher rate or maximum rate) and are to be sold at such price and with such principal and interest payment provisions as to conform with the price of and the principal and interest payment provisions of pollution control revenue bonds to be issued simultaneously therewith by an agency of The State of New Hampshire, The State of Connecticut, The Commonwealth of Massachusetts, or the City of Salem, Massachusetts; and it is

FURTHER ORDERED, that in connection with the financing of expenditures relating to pollution control and solid waste disposal facilities, New England Power Company be, and hereby is, authorized to execute and deliver one or more loan agreements or supplemental loan agreements with public agencies empowered to issue pollution control revenue bonds under which loan agreements or supplemental loan agreements New England Power Company will agree to make payments to the agency at such times and of such tenor as will correspond to the payments for principal, premium if any, and interest on pollution control revenue bonds issued on the Company's behalf provided, however, the terms of any such loan agreement or supplemental loan agreement will provide that the interest rate or potential maximum interest rate payable by the Company is not to exceed 14% per annum (unless a subsequent order of the Commission approves a higher rate or maximum rate); and it is

FURTHER ORDERED, that New England Power Company be, and hereby is, authorized to issue and pledge, from time to time, additional First Mortgage Bonds, of one or more series, in an aggregate principal amount not exceeding the aggregate principal amount of General and Refunding Mortgage Bonds authorized and approved by the Commission herein, said additional

First Mortgage Bonds to have the same maturity and interest payment provisions as the series of General and Refunding Mortgage Bonds with respect to which they are issued; 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 all outstanding series of the Company's General and Refunding Mortgage Bonds, the General and Refunding Mortgage Bonds authorized herein, and bonds hereafter issued under the provision of the Company's General and Refunding Mortgage and First Mortgage Indentures; and it is

FURTHER ORDERED, that the proceeds from the issue and sale of the General and Refunding Mortgage Bonds and the Preferred Stock and the execution and delivery of loan agreements and supplemental loan agreements, authorized herein, will be applied to the payment of short-term borrowings incurred for, or to the cost of, or to the reimbursement of the treasury of the Company for, uncapitalized additions and improvements to the plant and property of the Company and any other uncapitalized expenditures of the Company, or to refund maturing long-term indebtedness; and it is

FURTHER ORDERED, that this authorization to issue securities contained herein, except with regard to First Mortgage Bonds, shall be exercised on or before December 31, 1986, and not

thereafter, unless such period is extended by order of this Commission; and it is

FURTHER ORDERED, that the authorization to issue and pledge First Mortgage Bonds contained herein shall expire at such time as there are no longer any publicly held First Mortgage Bonds outstanding; and it is

FURTHER ORDERED, that on or about January first and July first in each year, said New England Power Company shall file with this Commission a detailed statement, duly sworn by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of said securities, until the expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1984.

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NH.PUC*11/01/84*[61578]*69 NH PUC 632*Northern Utilities, Inc.

[Go to End of 61578]

69 NH PUC 632

Re Northern Utilities, Inc.

DR 84-290, Order No. 17,292

New Hampshire Public Utilities Commission

November 1, 1984

Petition by a natural gas distributor for a revised winter cost of gas adjustment.

Automatic Adjustment Clauses, § 52 — Estimates and forecasts — Estimated supplier cost increase — Winter adjustment for distributor.

The commission approved a revised winter cost of gas adjustment for a natural gas distributor where the revised rate reflected a projected increase in the cost of gas for the distributor's supplier; however, the commission ordered the distributor to refile the cost of gas adjustment at a later date using the known change in its supplier's cost of gas.

Appearances: For Northern Utilities, Inc., LeBoeuf, Lamb, Leiby & MacRae by Elias G. Farrah, Esquire; and for the New Hampshire Public Utilities Commission; Eugene F. Sullivan, Finance Director and Richard Marini, Gas Safety Engineer.

By the Commission:

REPORT

On September 28, 1984 Northern Utilities, Inc. (the "Company"), a public utility engaged in the business of supplying gas service in the state of New Hampshire, filed with this Commission certain revisions to its tariff providing for a 1984-1985 Winter Cost of Gas Adjustment for effect November 1, 1984. That cost of gas adjustment was to be ($0.0207) net of the franchise tax.

An Order of Notice was issued on October 4, 1984 setting the date of the hearing as of October 26, 1984 at the Commission offices in Concord. The duly noticed public hearing was held accordingly.

On October 19, 1984 Northern

Utilities, Inc. submitted a revised cost of gas adjustment of ($0.0209) per therm. The Company stated that the reasons for the requirement to file this new cost of gas adjustment was due to the selection of its propane supplier. The previous cost was estimated at $.65 per gallon. The selected supplier, Dome Petroleum, has a cost of $.5676 per gallon. This change reduces the anticipated gas costs by $2,235.

As can be determined from the cross examination by the Commission and its staff, one of the Commission's concerns is with the proposed Tennessee Pipeline purchase cost of gas adjustment which will go into effect on January 1, 1985. All of the companies have used a 15 increase in the PGA, this figure is the midpoint of 10-20, an estimate given to the Companies by an official of Tennessee Gas Pipeline Company as to their estimate of the increase in the PGA.

The Commission has in the past allowed this increase in the PGA to be an estimate but the Commission is also wary of the fact that these increases are not known and measurable. In the past these estimates have varied widely, and we will therefore instruct Northern Utilities, Inc. to inform this Commission as soon as Tennessee's new PGA for effect January 1, 1985 is known. If the filing varies substantially from the estimate, we will expect the Company, on December 1, or

within a reasonable period thereafter, to refile their cost of gas adjustment for the winter 1984-1985 period using the known Tennessee change.

The Commission has found no cause to dispute the projected cost and projected sales and finds the adjustment made to be consistent with those approved in past CGA's. Therefore, the cost of gas rate approved for Northern Utilities, Inc. will be ($0.0209).

Our Order will issue accordingly.

ORDER

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

ORDERED, that 52nd Revised Page 22A, superseding 50th Revised Page 22A of Northern Utilities, Inc. tariff, NHPUC No. 6 - Gas, providing for a Cost of Gas Adjustment of ($0.0209)/therm for the period November 1, 1984 through April 30, 1985, be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised page approved by this order become effective with all bills issued on and after November 1, 1984; and it is

FURTHER ORDERED, that a public notice of this cost of gas adjustment be given by one time publication in newspaper having general circulation in the territories served.

By Order of the Public Utilities Commission of New Hampshire this first day of November, 1984.

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NH.PUC*11/01/84*[61579]*69 NH PUC 634*Keene Gas Corporation

[Go to End of 61579]

69 NH PUC 634

Re Keene Gas Corporation

DR 84-291, Order No. 17,293

New Hampshire Public Utilities Commission

November 1, 1984

Petition by a natural gas distributor for a decrease in its winter cost of gas adjustment rate; granted.

Automatic Adjustment Clauses, § 22 — Indirect costs — Line losses — Natural gas.

The commission approved a revised winter cost of gas adjustment for a distributor even though the utility used a firm 10 per cent loss factor and a zero per cent growth factor with the understanding that the company would exercise maximum effort to reduce the loss factor.

Appearances: Kenneth Wood, V.P. Operations, Keene Gas Corporation; Eugene F. Sullivan, Finance Director for Public Utilities Commission Staff.

By the Commission:

On October 1, 1984, Keene Gas Corporation filed its winter period 1984-1985 Cost of Gas Adjustment for effect November 1, 1984. The request was for a rate of $0.1432/therm, excluding the State Franchise Tax, which is a decrease from the rate of $0.4036/therm allowed by the Commission for the 1983-1984 winter period. In addition to this amount, $0.4214 is included in Base Rates for the Cost of Gas.

A duly noticed public hearing was held at the Commission's office in Concord, New Hampshire on October 26, 1984.

Through testimony and cross-examination of Mr. Kenneth Wood, Company witness, it was established; the utility estimates sales to remain steady for the winter 1984-1985; a $0.6166496/therm for propane delivered to Keene by truck by suppliers; use of a 10% factor for company use, lost and unaccounted for product.

The Commission accepts the 0% growth factor from recent audit explanation, a minute customer growth offset by a commercial consumer loss and customer conservation.

The use of a firm 10.0% loss, unaccounted and/or company use is still well above the weighted average of the gas utilities in New Hampshire having a six (6) months Cost of Gas Adjustment but with continued diligence and use of a calarimeter, phase out of non temperature compensated meters, improvement in leak surveying, etc., the Commission believes continued reductions can be made. We will continue to accept the 10.0% factor with the understanding the company persists in exercising maximum effort to reduce this factor.

A recent audit of the Company revealed the contract made with Pargas of Houston, Inc. July 1, 1983 has been continued. It provides for Keene to obtain product at a 3:1 ratio; up to three (3) times the average summer monthly volume delivered during winter, also no provision to prevent Keene from going to the spot market for more favorable price. The audit shows the Company requested quotes and obtained additional product

from up to five (5) suppliers during the winter period 1983-1984 passing on the cost savings through the winter 1984-1985 Cost of Gas Adjustment.

The Commission has found no cause to dispute the projected costs or projected sales and finds the adjustments made to be consistent with those approved in past period CGA's. Therefore, the Cost of Gas Adjustment as proposed will be approved.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 6th Revised Page 26 of Keene Gas Corporation, Tariff, NHPUC No. 1 -

Gas, providing for a Cost of Gas Adjustment of $0.1446/therm for the period November 1, 1984 through April 30, 1985 be, and hereby is, ap- proved; and it is

FURTHER ORDERED, that the Revised Tariff Pages approved by this Order become effective with all billings issued on or after November 1, 1984; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served.

By Order of the Public Utilities Commission of New Hampshire this first day of November, 1984.

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NH.PUC*11/01/84*[61580]*69 NH PUC 635*Gas Service, Inc.

[Go to End of 61580]

69 NH PUC 635

Re Gas Service, Inc.

DR 84-292, Order No. 17,294

New Hampshire Public Utilities Commission

November 1, 1984

Petition by a natural gas distributor for a revised winter cost of gas adjustment.

Automatic Adjustment Clauses, § 52 — Estimates and forecasts — Estimated supplier cost increase — Winter adjustment for distributor.

The commission approved a revised winter cost of gas adjustment for a natural gas distributor where the revised rate reflected a projected increase in the cost of gas for the distributor's supplier; however, the commission ordered the distributor to refile the cost of gas adjustment at a later date using the known change in its supplier's cost of gas.

Appearances: For Gas Service, Inc., Charles Toll, Esquire; and for the New Hampshire Public Utilities Commission; Eugene F. Sullivan, Finance Director and Richard Marini, Gas Safety Engineer.

By the Commission:

REPORT

On October 1, 1984 Gas Service, Inc., a public utility engaged in the business of supplying gas in the state of New

Hampshire, filed with this Commission certain revisions to its tariff providing for a 1984-1985 Winter Cost of Gas Adjustment for effect November 1, 1984. That cost of gas adjustment was to be $0.0116 net of the franchise tax.

An Order of Notice was issued on October 4, 1984 setting the date of the hearing as of October 26, 1984 at the Commission offices in Concord. The duly noticed public hearing was held accordingly.

On October 24, 1984 Gas Service submitted a revised cost of gas adjustment of $0.0119 per therm. The Company stated that the reasons for the revision to its filing this new cost of gas adjustment was 1) the reduction in the prime lending rate from 12 to 12% for their inventory trust financing, 2) a correction in the prior period over and undercollection due to early payments of discounts not taken when making payments to propane vendors as was pointed out to the Company when the Commission staff audited the cost of gas, and 3) a reduction in the seasonal sales due to the availability of the August and September, 1984 actual figures.

As can be determined from the cross examination by the Commission and its staff, one of the Commission's concerns is with the proposed Tennessee Pipeline purchase cost of gas adjustment which will go into effect on January 1, 1985. All of the companies have used a 15 increase in the PGA, this figure is the midpoint of 10-20, an estimate given to the Companies by an official of Tennessee Gas Pipeline Company as to their estimate of the increase in the PGA.

The Commission has in the past allowed this increase in the PGA to be an estimate but the Commission is also wary of the fact that these increases are not known and measurable. In the past these estimates have varied widely, and we will therefore instruct Gas Service, Inc. to inform this Commission as soon as Tennessee's new PGA for effect January 1, 1985 is known. If the filing varies substantially from the estimate, we will expect the Company on December 1 or within a reasonable period thereafter, to refile their cost of gas adjustment for the winter 1984 -1985 period using the known Tennessee change.

Manchester Gas Company and Gas Service, Inc., in their respective filings are proposing to combine their supply under a pooling of gas concept and apportion those costs to each company based on their respective monthly send out.

This Commission in Docket DF 82-140 gave our approval for the two companies to reorganize under Energy North, Inc. In that order we encouraged the pooling of gas suppliers as well as filing a combined cost of gas adjustment and the consolidation of its natural gas supply contract with Tennessee Gas Pipeline. The Company testified that the consolidation of the Tennessee Contract has occurred and that by pooling the remainder of their gas supplies they will be able to experience savings by using their most efficient plants first.

As we have encouraged this pooling concept in DF 82-140, we will accept the companies filings based on this method. We will also require the companies to meet with the Commission staff within 30 days of this order to determine how the companies will report the monthly over or undercollections to the Commission.

When the companies calculate their CGA they arrive at a cost of gas adjustment and then divide that figure by a factor of .99 to reflect the N.H. State Franchise Tax. The N.H. State

Franchise Tax is not part of the Cost of Gas

Adjustment. The company already has a provision in its tariff to collect the franchise tax. We will show the CGA based on a figure net of the New Hampshire State Franchise Tax. We will note that for billing purposes the Company may bill a higher rate to include the franchise tax.

Except for the franchise tax noted above, the commission has found no cause to dispute the projected costs or projected sales, and find the adjustments made to be consistent with those approved in past CGA's. Therefore, the cost of gas rate approved for Gas Service, Inc. will be $0.0118.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 10th Revised Page 1, superseding 9th Revised Page 1 of Gas Service, Inc. tariff, NHPUC No. 6 - Gas, providing for a Cost of Gas Adjustment of $0.0119/therm for the period November 1, 1984 through April 30, 1985, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Gas Service, Inc. file 11th Revised Page 1 of its tariff NHPUC No. 6 - Gas, reflecting a cost of gas adjustment of $0.0118/therm to become effective with all bills issued on or after November 1, 1984; and it is

FURTHER ORDERED, that a public notice of this cost of gas adjustment be given by one time publication in newspaper having general circulation in the territories served.

By Order of the Public Utilities Commission of New Hampshire this first day of November, 1984.

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NH.PUC*11/01/84*[61581]*69 NH PUC 637*Concord Natural Gas Corporation

[Go to End of 61581]

69 NH PUC 637

Re Concord Natural Gas Corporation

DR 84-293, Order No. 17,295

New Hampshire Public Utilities Commission

November 1, 1984

Petition by a natural gas distributor for a revised winter cost of gas adjustment.

Automatic Adjustment Clauses, § 52 — Estimates and forecasts — Estimated supplier cost

increase — Winter adjustment for distributor.

The commission approved a revised winter cost of gas adjustment for a natural gas distributor where the revised rate reflected a projected increase in the cost of gas for the distributor's supplier; however, the commission ordered the distributor to refile the cost of gas adjustment at a later date using the known change in its supplier's cost of gas.

Appearances: For Concord Natural Gas Corporation, David W. Marshall, Esquire; and for the New Hampshire Public Utilities Commission; Eugene F. Sullivan, Finance Director and Richard Marini, Gas Safety Engineer.

By the Commission:

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REPORT

On September 28, 1984 Concord Natural Gas, a public utility engaged in the business of supplying gas in the state of New Hampshire, filed with this Commission certain revisions to its tariff providing for a 1984-1985 Winter Cost of Gas Adjustment for effect November 1, 1984. That cost of gas adjustment was to be $0.0846 net of the franchise tax.

An Order of Notice was issued on October 4, 1984 setting the date of the hearing as of October 26, 1984 at the Commission offices in Concord. The duly noticed public hearing was held accordingly.

As can be determined from the cross examination by the Commission and its staff, one of the Commission's concerns is with the proposed Tennessee Pipeline purchase cost of gas adjustment which will go into effect on January 1, 1985. All of the companies have used a 15 increase in the PGA, this figure is the midpoint of 10 - 20, an estimate given to the Companies by an official of Tennessee Gas Pipeline Company as to their estimate of the increase in the PGA.

The Commission has in the past allowed this increase in the PGA to be an estimate but the Commission is also wary of the fact that these increases are not known and measurable. In the past these estimates have varied widely, and we will therefore instruct Concord Natural Gas to inform this Commission as soon as Tennessee's new PGA for effect January 1, 1985 is known. If the filing varies substantially from the estimate, we will expect the Company, on December 1 or within a reasonable period there-after, to refile their cost of gas adjustment for the winter 1984 - 1985 period using the known Tennessee change.

When the companies calculate their CGA they arrive at a cost of gas adjustment and then divide that figure by a factor of .99 to reflect the N.H. State Franchise Tax. The N.H. State Franchise Tax is not part of the Cost of Gas Adjustment. The company already has a provision in its tariff to collect a franchise tax. We will show the CGA based on a figure net of the New Hampshire State Franchise Tax. We will note that for billing purposes the Company may bill a higher rate to include the franchise tax.

Except for the tax noted above, the Commission has found no cause to dispute the projected

cost and projected sales and find the adjustments made to be consistent with those approved in past CGA's. Therefore, the cost of gas rate approved for Concord Natural Gas Corporation will be $0.0846.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 41st Revised Page 21, superseding 40th Revised Page 21 of Concord Natural Gas Corporation tariff, NHPUC No. 13 - Gas, providing for a Cost of Gas Adjustment of $0.0855/therm for the period November 1, 1984 through April 30, 1985, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation file 42nd Revised Page 21 of its tariff, NHPUC No. 13 - Gas to reflect a cost of gas adjustment of $0.0846 to become effective with all bills issued on or after November 1, 1984; and it is

FURTHER ORDERED, that a public notice of this cost of gas adjustment be given by one time publication in a

newspaper having general circulation in the territories served.

By Order of the Public Utilities Commission of New Hampshire this first day of November, 1984.

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NH.PUC*11/01/84*[61582]*69 NH PUC 639*Manchester Gas Company

[Go to End of 61582]

69 NH PUC 639

Re Manchester Gas Company

DR 84-294, Order No. 17,296

New Hampshire Public Utilities Commission

November 1, 1984

Petition by a natural gas distributor for a revised winter cost of gas adjustment.

Automatic Adjustment Clauses, § 52 — Estimates and forecasts — Estimated supplier cost increase — Winter adjustment for distributor.

The commission approved a revised winter cost of gas adjustment for a natural gas distributor where the revised rate reflected a projected increase in the cost of gas for the

distributor's supplier; however, the commission ordered the distributor to refile the cost of gas adjustment at a later date using the known change in its supplier's cost of gas.

Appearances: For Manchester Gas Company, Charles Toll, Esquire; and for the New Hampshire Public Utilities Commission; Eugene F. Sullivan, Finance Director and Richard Marini, Gas Safety Engineer.

By the Commission:

REPORT

On October 1, 1984 Manchester Gas Company (the "Company"), a public utility engaged in the business of supplying gas in the state of New Hampshire, filed with this Commission certain revisions to its tariff providing for a 1984-1985 Winter Cost of Gas Adjustment for effect November 1, 1984. That cost of gas adjustment was to be $0.0375 net of the franchise tax.

An Order of Notice was issued on October 4, 1984 setting the date of the hearing as of October 26, 1984 at the Commission offices in Concord. The duly noticed public hearing was held accordingly.

On October 24, 1984 Manchester Gas submitted a revised cost of gas adjustment of $0.0373 per therm. The Company stated that the reason for the revision to its filing this new cost of gas adjustment was the reduction in the prime lending rate from 13 to 12% for their inventory trust financing. As can be determined from the cross examination by the Commission and its staff, one of the Commission's concern is with the proposed Tennessee Pipeline purchase cost of gas adjustment which will go into effect on January 1, 1985. All of the companies have used a 15 increase in the PGA, this figure is the midpoint of 1020, an estimate given to the Companies

by an official of Tennessee Gas Pipeline Company as to their estimate of the increase in the PGA.

The Commission has in the past allowed this increase in the PGA to be an estimate but the Commission is also wary of the fact that these increases are not known and measurable. In the past these estimates have varied widely, and we will therefore instruct Manchester Gas Company to inform this Commission as soon as Tennessee's new PGA for effect January 1, 1985, is known. If the filing varies substantially from the estimate, we will expect the Company, on December 1 or within a reasonable period thereafter, to refile their cost of gas adjustment for the winter 1984 — 1985 period using the known Tennessee change.

Manchester Gas Company and Gas Service, Inc., in their respective filings are proposing to combine their supply under a pooling of gas concept and apportion those costs to each company based on their respective monthly send out.

This Commission in Docket DF 82-140 ([1982] 67 NH PUC 730) gave our approval for the two companies to reorganize under Energy North, Inc. In that order we encouraged the pooling of gas supplies as well as filing a combined cost of gas adjustment and the consolidation of its

natural gas supply contract with Tennessee Gas Pipeline. The Company testified that the consolidation of the Tennessee Contract has occurred and with the pooling of the remainder of their gas supplies they will be able to experience savings by using their most efficient plants first.

As we have encouraged this pooling concept in DF 82-140, we will accept the companies filings based on this method. We will also require the companies to meet with the Commission staff within 30 days of this order to determine how the companies will report the monthly over or undercollections to the Commission.

When the companies calculate their CGA they arrive at a cost of gas adjustment and divide that figure by a factor of .99 to reflect the N.H. State Franchise Tax. The N.H. State Franchise Tax is not part of the Cost of Gas Adjustment. The company already has a provision in its tariff to collect the franchise tax. We will show the CGA based on a figure net of the New Hampshire State Franchise Tax. We will note that for billing purposes the Company may bill a higher rate to include the franchise tax.

Except for the franchise tax noted above, the Commission has found no cause to dispute the projected costs or projected sales, and finds the adjustments made to be consistent with those approved in past CGA's. Therefore, the cost of gas rate approved for Manchester Gas Company will be $0.0373.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 14th Revised Page 26, superseding 13th Revised Page 26 of Manchester Gas Company tariff, NHPUC No. 13 - Gas providing for a Cost of Gas Adjustment of $0.0377/therm for the period November 1, 1984 through April 30, 1985, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Manchester Gas Company file 15th Revised Page 26 of its tariff NHPUC No. 13 - Gas reflecting a cost of gas adjustment of $0.373/therm become effective with all bills issued on or after November 1, 1984; and it is

FURTHER ORDERED, that a public notice of this cost of gas adjustment

be given by one time publication in newspaper having general circulation in the territories served.

By Order of the Public Utilities Commission of New Hampshire this first day of November, 1984.

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69 NH PUC 641

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, and Woodsville Power and Light Department

DR 84-265, Order No. 17,297

New Hampshire Public Utilities Commission

November 1, 1984

Order approving revised fuel adjustment clause rates for electric service without a hearing.

By the Commission:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, Concord Electric Company and Exeter & Hampton Electric Company have filed revised FAC tariff pages reducing the FAC surcharge to reflect a decrease in fuel cost estimates provided by the Company's sole supplier of energy, Public Service Company of New Hampshire, and a substantial overcollection of fuel expense; and

WHEREAS, the Commission has reviewed the filing by Exeter & Hampton Electric Company and Concord Electric Company and determined that an average monthly billing decrease of $1.59 for Exeter & Hampton Electric customers, and $2.39 for Concord Electric customers is in the public good; and

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

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

ORDERED, that, because the Commission in DR 83-352, Order No. 16,946 dated March 19, 1984 (69 NH PUC 189), pertaining to the New Hampshire Electric

Cooperative, Inc. maintained the rolled in rate of $0.2822/KWH in effect until changed by the Commission, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in

this month's FAC order; and it is

FURTHER ORDERED, that 21st Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 - Electricity, providing for a fuel surcharge of $.012 per 100 KWH for the months of November and December, 1984, be, and hereby is, permitted to become effective for the month of November, 1984; and it is

FURTHER ORDERED, that 21st Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge of $.307 per 100 KWH for the months of November and December, 1984, be, and hereby is, permitted to become effective for the month of November, 1984; and it is

FURTHER ORDERED, that 11th 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, November, and December, 1984, be, and hereby is, permitted to remain in effect for November, 1984; and it is

FURTHER ORDERED, that 13th Revised Page 30 of Granite State Electric Company tariff, NHPUC NO. 10 - Electricity, providing for a fuel surcharge for the months of October, November, and December, 1984 of $1.209 per 100 KWH, be, and hereby is, permitted to remain in effect for November, 1984; and it is

FURTHER ORDERED, that 46th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity, providing for a fuel surcharge of $2.88 per 100 KWH for the month of November, 1984, be, and hereby is, permitted to become effective November 1, 1984; and it is

FURTHER ORDERED, that 98th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge of $.05 per 100 KWH for the month of November, 1984, be, and hereby is, permitted to become effective November 1, 1984; and it is

FURTHER ORDERED, that 95th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge of $.11 per 100 KWH for the month of November, 1984; be, and hereby is, permitted to become effective November 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this first day of November, 1984.

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NH.PUC*11/02/84*[61584]*69 NH PUC 643*Public Service Company of New Hampshire

[Go to End of 61584]

Re Public Service Company of New Hampshire

Intervenors: Community Action Program and Office of Consumer Advocate

DR 84-128,
Second Supplemental Order No. 17,298

New Hampshire Public Utilities Commission

November 2, 1984

Request for an interim change in an electric utility's energy cost recovery mechanism rate; granted.

Automatic Adjustment Clauses, § 53 — Overand undercollections — Rate adjustment — Subsequent documentation and "trueup" adjustment.

Where an electric utility's energy cost recovery mechanism rate resulted in a projected overrecovery of approximately $5.5 million and the established ECRM rate provided for a trigger mechanism allowing parties to request further adjustments if estimated underor overrecoveries exceeded $4 million, the commission lowered the rate for the remainder of the ECRM period consistent with a projected appropriate rate for the first half of the subsequent year subject to adjustment after a review of detailed data; the commission found that the solution adopted was consistent with prior treatment of over- and underrecoveries and with the objectives of rate continuity, revenue recovery, and minimization of regulatory burden even though, unlike other proposals, this one would require two rate changes rather than one.

Appearances: Sulloway, Hollis and Soden by Eaton W. Tarbell, Jr., Esquire for Public Service Company of New Hampshire; Gerald Eaton, Esquire for Community Action Program; Michael W. Holmes, Esquire for the Consumer Advocate; Eugene F. Sullivan, Daniel Lanning, Melinda Butler and Jim Lenihan for the Staff of the Public Utilities Commission of New Hampshire.

By the Commission:

REPORT

By Petition filed on October 25, 1984 Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire, requested a hearing to determine whether a change should be made to the Energy Cost Recovery Mechanism (ECRM) rate for the remaining portion of the current ECRM period.

The rate originally approved by the Commission in this docket, Report and Order No. 17,099 ([1984] 69 NH PUC 344) was $3.634/100 KWH for the months of July through December, 1984. The ECRM mechanism provides for a trigger mechanism so that the parties could request further adjustments if an estimated underrecovery or over-recovery for the period exceeds four million dollars. In its current petition the Company stated that it projects its current over-recovery to be approximately $5.5 million. Since this exceeds the four million dollar

trigger amount, a duly noticed public hearing was held on October 31, 1984.

The purpose of the hearing was the same as the purpose behind the trigger mechanism, which is:

... to balance the competing objectives of rate continuity, revenue recovery, and minimization of regulatory burden.

PSNH presented two witnesses at the hearing and submitted five exhibits.

PSNH testified that the reasons for the actual and estimated over-collection are:

1) Unit availability is better than targeted, resulting in reduced energy costs. In particular, PSNH has cancelled a four week outage at Merrimack Station Unit 1, resulting in substantially lower energy costs for the second half of 1984.

2) Actual oil prices are lower than originally estimated. The actual cost of oil burned at Newington Station in July through September, 1984 was, on average, $0.60 per barrel less than estimated.

3) PSNH is now estimating that the average cost of oil burned at Newington Station for October through December, 1984 will be approximately $0.50 to $1.50 per barrel lower than what was estimated in June, 1984.

4) The actual results for July through September, 1984 inherently include approximately $1.2 million in savings resulting from short-term purchases and sales of energy.

These reasons are reasonable on the surface, but it is not in the nature of this hearing to rule on the propriety of the Company's actions as much as it is to balance the competing objectives of rate continuity, revenue recovery, and minimization of regulatory burden.

With these objectives in mind, the parties presented several proposals to the Commission. The proposals are: 1) that the entire over-recovery be refunded in the November to December, 1984 time period; 2) that a seven month rate incorporating a refund of the over-recovery be established for the period of December 1, 1984 to June 30, 1985; and 3) that a rate be established for November and December, 1984 which is consistent with PSNH qualitive projections of the appropriate rate for the first half of 1985, subject to adjustment after detailed data are submitted and analyzed.

PSNH argued that the first option does not meet the objectives of rate continuity and does not provide sufficient efficiency incentives to Company management. After review, we find the Company's rate continuity arguments persuasive. Such arguments were the basis of the Commission adjustment to the ECRM rate of July to December, 1983 when the Company projected an under-recovery of $6,487,949. Re Public Service Co. of New Hampshire (1983) 68 NH PUC 645. Since the rate continuity objective is persuasive in and of itself, it is not necessary here for us to reach the issue of efficiency incentives for Company management.

The second option would flow the overrecovery to ratepayers over a seven month period commencing December 1, 1984. The adoption of this option was recommended by PSNH and

CAP. The advantage of the option is that it allows the rate to be based on detailed data which will be available November 21, 1984. The disadvantages of the option are that the Company will continue to over-recover during the month of November, 1984 and

that it does not allow sufficient time to review the November 21, 1984 data.

The third option would lower the rate for November and December, 1984 so that no further over-recoveries would accumulate.[1](198) Such a rate would be close to the ECRM rate projected for the first half of 1985 by Witness Hall's qualitative analysis. The Commission would receive detailed data on November 21, 1984 which would be investigated and analyzed in accordance with standard ECRM procedures. The November to December, 1984 rate could then be adjusted for the January to June, 1985 period to reflect this analysis. The third option was recommended by the Commission staff. It has the advantages of allowing sufficient time to analyze the data to be submitted and of consistency with the treatment of the Company's under-recovery in Report and Order No. 16,738. The disadvantage is that it would, in all probability, require two changes in rates rather than one.

After review, we have decided to adopt the third option as recommended by staff. That option is consistent with the Commission's prior treatment of over and under-recoveries and with the objectives of rate continuity, revenue recovery and minimization of regulatory burden. We do not believe that a minimal change in the ECRM rate on January 1, 1985 is inconsistent with the objective of rate continuity. We are concerned that the second option will not allow sufficient time to review the detailed data and that it implies continuation of the over-recovery. Thus, we will order the Company to reduce its ECRM rate from its current level of $3.634/100 KWh to a new level of $3.501/100 KWH. The new rate will be effective for the months of November and December, 1984. The ECRM rate for the first half of 1985 will be established in accordance with standard ECRM procedures.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that PSNH shall file revised tariff pages setting an ECRM rate of $3.501/100 KWH for November, 1984 and December, 1984; and it is

FURTHER ORDERED, that PSNH file energy cost data for the first half of 1985 in accordance with standard ECRM procedures.

By Order of the Public Utilities Commission of New Hampshire this second day of November, 1984.

FOOTNOTE

[1]In cross-examination, the staff established that this would mean that the rate would be lowered to $3.501/100 KWH from the existing rate of $3.634/100 KWH.

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NH.PUC*11/06/84*[61585]*69 NH PUC 646*TDEnergy, Inc.

[Go to End of 61585]

69 NH PUC 646

Re TDEnergy, Inc.

DR 84-283, Order No. 17,305

New Hampshire Public Utilities Commission

November 6, 1984

Petition for a 20-year rate order for the sale of power to an electric utility including an interconnection agreement; approved by order nisi.

By the Commission:

ORDER

WHEREAS, on September 27, 1984, TDEnergy, Inc. ("TDEnergy") filed a long term rate filing; and

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

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

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 61 PUR4th 132, in all respects; it is therefore,

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

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

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

By order of the Public Utilities Commission of New Hampshire this sixth of November, 1984.

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NH.PUC*11/06/84*[61586]*69 NH PUC 646*Steels Pond Hydroelectric Project

[Go to End of 61586]

69 NH PUC 646

Re Steels Pond Hydroelectric Project

DR 84-279, Order No. 17,306

New Hampshire Public Utilities Commission

November 6, 1984

Petition for a 30-year rate order for the sale of power to an electric utility including an interconnection agreement; approved by order nisi.

By the Commission:

ORDER

WHEREAS, on September 28, 1984, Steels Pond Hydro, Inc. ("Steels Pond") filed a long term rate filing; and

WHEREAS, Steels Pond filed amendments to its filing on October 26, 1984, and November 2, 1984; and

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

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

WHEREAS, Steels Pond has averred that it will grant Public Service Company of New Hampshire ("PSNH") a "junior lien" on the Project, to cover the "buy out" value at the Project; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire the opportunity to respond to Steels Pond's Petition for Thirty-Year Rate Order; and

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

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

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

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

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1984.

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NH.PUC*11/07/84*[61236]*70 NH PUC 881*Gas Service, Inc.

[Go to End of 61236]

70 NH PUC 881

Re Gas Service, Inc.

DR 85-348, Order No. 17,934

New Hampshire Public Utilities Commission

November 7, 1984

ORDER setting winter cost of gas adjustment rate.

Automatic Adjustment Clauses, § 6 — Cost of gas adjustment — Revisions to rate filing — Failure to take offered discounts — Staff audit.

A natural gas distribution company's cost of gas adjustment rate filing was revised to reflect discounts offered but not taken when making payments to propane vendors; the commission expects all utilities to take discounts when offered unless evidence can be provided which proves this is not a prudent business practice; the failure to take the discount was discovered through a staff audit. [1] p. 882.

Rates, § 252 — Deviation from rate schedule — Interruptible gas service — Penalty.

A natural gas distribution company that negotiated a reduced price with two of its interruptible customers but failed to seek commission approval for the agreement was subjected to a $5,000 penalty to be recorded below the line; the commission found that the company's failure to seek approval for the agreement was a direct violation of state statute RSA 378:3, which prohibits tariff revisions without commission approval; the company was given the option of flowing the penalty amount through to ratepayers via next winter's cost of gas adjustment or revising its current cost of gas adjustment to include the penalty. [2] p. 883.

Return, § 36 — Management inefficiency — Penalties.

A natural gas distribution company that negotiated a reduced price with two of its interruptible customers but failed to seek commission approval for the agreement was found to have violated a state statute which prohibits tariff revisions without commission approval, and was subjected to a $5,000 penalty; the commission found that the company's failure to inform the commission of the rate reduction indicated a lack of management efficiency and ordered that the penalty be recorded below the line. [3] p. 883.

Automatic Adjustment Clauses, § 53 — Cost of gas adjustment rate — Overand undercollections

— Commission review — Trigger mechanism.

In setting a winter cost of gas adjustment rate the commission required the inclusion of a trigger mechanism that allows for commission review of the rate if over- or undercollections exceed 10% of the total cost of gas during the cost of gas adjustment period. [4] p. 884.

APPEARANCES: For Gas Service, Inc., David Marshall, Esquire; and, for the New Hampshire Public Utilities Commission, Daniel D. Lanning, Assistant Finance Director; James L. Lenihan, Rate Analyst; Richard G. Marini, Gas Safety Engineer.

By the COMMISSION:

REPORT

On October 1, 1985, Gas Service, Inc. (Gas Service), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this Commission certain revisions to its tariff providing for a 1985 — 1986 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1985. That cost of gas adjustment was to be $0.0161 net of the franchise tax.

An Order of Notice was issued on October 3, 1985 setting the date of the hearing as of October 28, 1985 at the Commission offices in Concord. The hearing was subsequently continued until October 29, 1985.

On October 29, 1985, Gas Service submitted a revised cost of gas adjustment of $(0.0153) per therm. The revised rate is a decrease of $0.0271 from the prior winter period of $.0118/therm.

Based on an average usage of 150 therms per month, this reduction represents a decrease of $4.065 per month on a typical bill.

The Company stated that the reasons [sic] for the revision to its filing was: 1) the reduction in the purchased cost of gas from Tennessee Gas Pipeline; 2) a correction in the cost of propane to reflect discounts not taken when making payments to propane vendors, discovered through a PUC Staff audit; 3) a reduction in the seasonal sales due to the availability of the August and September, 1985 actual figures; and 4) inclusion of actual refund figures that became available after the original filing.

During the hearings on October 29, 1985, the following issues were discussed: a) the sale of interruptible gas to customers without approval from the Commission; b) pricing of LNG inventory; c) Gas Services' sales forecast; d) foregone propane invoice discounts; and e) the "trigger mechanism". Some of these issues deserve further discussion.

[1] The first issue relates to the purchase price of propane inventory. The PUC staff audit revealed a number of propane invoices which offered discounts that Gas Service had not taken. This is contrary to what the Commission believes is proper practice.

The Commission expects all utilities to take discounts when offered unless evidence is provided which proves such a course of action is not a prudent business practice. The company,

in response to stated concerns of the Commission staff, revised their filing. We accordingly accept the revised filing which includes these discounts.

The fact that these discounts were missed and Gas Services' management adjusted their CGA filing to reflect the available discounts, after our auditors uncovered them, is a concern. The failure to take advantage of the offered discounts alerts the Commission to a potential management problem. It is obvious by subsequent actions that Gas Service's senior management would have had its personnel take such discounts had management known such discounts were available. It appears

that management is lacking some control over day to day utility related transactions.

[2,3] The problem is even more prevalent in another issue discussed during the CGA hearings. This issue pertains to Gas Services' price negotiation for interruptible sales, and the sale thereof, without approval from this Commission.

During the summer of 1985, Gas Service was notified by a number of its interruptible customers that the contract price for interruptible gas was too high compared to alternate fuels. Further, if Gas Service could not adjust its price of interruptible gas to be competitive with the alternate fuel, those customers would not purchase gas but would instead resort to a cheaper fuel.

Gas Service reviewed the situation and found that of the five interruptible customers which voiced concern about the price of gas, two could remain customers and still provide a margin of income to other classes of customers through the CGA if the price of gas could be reduced. The other three customers could obtain alternate fuel at a cost which was less than the price of gas that could be negotiated by Gas Service and therefore would not purchase gas.

Gas Service proceeded to negotiate a reduced price with the two customers who expressed interest in using gas. Once this price was agreed upon, Gas Service began providing gas under this agreement. However, they did not issue a contract for this agreement nor did they seek Commission approval.

Gas Service management asserts that the absence of Commission approval was not discovered until late October of 1985. Immediately following the discovery they informed the Commission. To date revised contracts have not been provided for our approval.

The fact that management was not aware the price revisions were without Commission approval affirms our concern about the lack of management control over utility operations. Tariff revisions without Commission approval are a direct violation of RSA 378:3. Management should have been made aware of the violation in advance (the initial agreements began in April, 1985). Given proper internal controls and supervision this incident would never have transpired.

The Commission is now faced with a situation where it must deal with this violation. Whether Gas Service intentionally or unwittingly failed to petition for Commission approval of these rates is not an issue here. The evidence is clear that they did not intentionally fail to seek approval, but nonetheless, approval was never requested. It was simply a lack of management control over the utility operations which permitted this violation to take place.

This incident requires action by the Commission. Just as we rewarded Gas Service for a good gas safety program in its last rate case (DR 83-345), so should we also penalize Gas Service for violating applicable rules, regulations or statutes. If management is not held responsible for this violation, it would establish a poor precedent.

The most obvious penalty to invoke would be to flow the margin from interruptible sales, which would have been realized had Gas Service charged the approved rates, through the CGA. The additional margin amounts to $172,790, (Exh. 4, Schedule of Interruptible Sales, column G).

Such a penalty is justified. There are approved rates for interruptible

customers. A reduced rate could result in firm customers subsidizing interruptible customers. Although the revised contracts might have been approved had they been filed with the Commission, in fact the rates were never so filed and the Commission was not afforded the opportunity to investigate the impact said revised contracts will have on Gas Service or the utility's firm customers.

Although the penalty is justified, albeit severe, the magnitude of the infraction committed does not warrant a penalty in the sum of $172,790. In the past, this Commission has invoked lessor [sic] penalties for infractions we considered greater in severity than that which the company has committed in this instance. Therefore, the Commission will reduce the penalty to $5,000.

At the option of Gas Service, this amount may flow through the next winter CGA (1986-87) as a single line item under the caption "Additions/ (Deductions)" on the CGA tariff page, in which case it is to accrue interest at ten (10) percent beginning with the date of this order, or Gas Service may revise the current CGA tariff to include the penalty. With either option the $5,000 is to be recorded "below the line".

We are attempting to communicate to Gas Service management and to EnergyNorth, Inc. stockholders with this penalty that we will not take lightly the lack of control or interest management takes in utility operations in the financial, operational, or regulatory areas. If the incidents pointed out by us in this docket and Manchester Gas Company's CGA docket (DR 85-349) are the result of management's responsibility dictated by the holding company concept, we find such procedures to be inefficient and direct that immediate action be taken to rectify same. In approving the holding company, this Commission was led to believe by EnergyNorth, INC. that the utility operation would be paramount in the holding company structure. We expect that policy to be put into practice.

[4] The final issue to be discussed involves the proposed trigger mechanism. The Commission will set the trigger at ten percent of the total gas costs during a CGA period. Determination of the trigger will be made by adding the over/under collection of the CGA which is known for a period to the forecasted over/under collection for the remaining portion of the period. This is to be divided by the total known gas costs for the same period plus the forecasted gas costs for the remaining portion of that period. The trigger mechanism is initiated when this quotient is greater than ten percent.[1(199)]

When the trigger mechanism is initiated, all parties to the CGA will have ten (10) days to petition for a change in the CGA rate. After receiving the petitions the Commission will determine: 1) whether a change in the CGA rate is appropriate; and 2) whether a hearing on the change is necessary.

To assure an expeditious and adequate review of the data used in determining the trigger, we will mandate that the gas utilities utilizing the semiannual CGA are to file the required monthly reconciliations of the CGA on or before the twentieth (20th) day of a month. Said reconciliation is to be for the immediate preceding month.

The Commission finds that Gas Service's CGA rate of $(0.0153) per therm

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is just and reasonable, with the exception stated above, and therefore accepts such as filed.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 15th Revised Page 1, superseding 14th Revised Page 1 of Gas Service, Inc. tariff, NHPUC No. 6 — Gas, providing for a Cost of Gas Adjustment of $(0.0153) per therm for the period November 1, 1985 through April 30, 1986, become effective with all bills issued on or after November 1, 1985; and it is

FURTHER ORDERED, that Gas Service, Inc. pay a $5,000 penalty in accordance with the report attached herewith; and it is

FURTHER ORDERED, that a public notice of this cost of gas adjustment be given by one time publication in newspaper having general circulation in the territories served.

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

FOOTNOTE

[1]The formula for the trigger mechanism will be as follows: 10% < [(known over/under collection) + (estimated over/undercollection for remainder of period)] divided by [(known gas costs) + (estimated gas costs for remainder of period)].

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NH.PUC*11/07/84*[61587]*69 NH PUC 647*Lake Ossippee Village, Inc.

[Go to End of 61587]

69 NH PUC 647

Re Lake Ossippee Village, Inc.

DE 84-329, Order No. 17,302

New Hampshire Public Utilities Commission

November 7, 1984

Order requiring water system to show cause why it should not be regulated by the commission as a public utility.

By the Commission:

ORDER

WHEREAS, RSA 372:2 defines a public utility to include inter alia "every corporation, company, association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations operating within their corporate limits, owning, operating

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or managing \&... any plant or equipment or any part of the same \&... for the manufacture or furnishing of \&... water for the public \&..."; and

WHEREAS, RSA 362:4 provides inter alia that every corporation, company, association, joint stock association, partnership, or person owning or operating any water system or part thereof shall be deemed to be a public utility unless exempted by the New Hampshire Public Utilities Commission (Commission) in accordance with the terms of that statute; and

WHEREAS, the Commission has general supervisory powers over public utilities pursuant to RSA 374; and

WHEREAS, RSA Chapter 378 requires public utilities to file schedules of rates and charges with the Commission, RSA 378:1, and provides that said rates and charges are subject to Commission review and approval, 378:3 et seq; and

WHEREAS, it is alleged that Lake Ossipee Village, Inc. is providing water service to customers in the Town of Wolfeboro and is charging rates for that water service; and

WHEREAS, Lake Ossipee Village, Inc. has not filed a schedule of rates and charges with the Commission or otherwise complied with the statutory or regulatory requirements which govern public utilities; it is hereby

ORDERED, that Lake Ossipee Village, Inc. show cause why it should not be regulated by this Commission as a public utility; and it is

FURTHER ORDERED, that a hearing on this matter be scheduled for December 11, 1984 at 10:00 a.m. at the Commission's Concord offices; and it is

FURTHER ORDERED, that a copy of this Order be served upon the Attorney General.

By order of the Public Utilities Commission of New Hampshire this seventh day of November, 1984.

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NH.PUC*11/09/84*[61588]*69 NH PUC 648*Concord Natural Gas Corporation

[Go to End of 61588]

69 NH PUC 648

Re Concord Natural Gas Corporation

DR 83-206,
Supplemental Order No. 17,304

New Hampshire Public Utilities Commission

November 9, 1984

Order adjusting electric rate surcharge as a result of a change in the revenue difference between permanent and temporary rates.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, under this docket the Commission authorized temporary rates for Concord Natural Gas Corporation, effective on October 14, 1983; and

WHEREAS, said Company was granted a permanent increase in revenue in accordance with a stipulation agreement approved and accepted by the Commission on January 18, 1984 in Report and Order No. 16,862 ([1984] 69 NH PUC 27); and

WHEREAS, the permanent rate

increase proceeding was bifurcated between revenue requirement and rate design, the latter approved in a second stipulation agreement made a part of Report and Order No. 17,179, dated August 24, 1984 ([1984] 69 NH PUC 459); and

WHEREAS, Concord Natural Gas Corporation has advised the Commission in correspondence dated October 5, 1984 that, pursuant to Article VI of the stipulation agreement referenced in the Commission Report and Order No. 16,862, revenue differences between temporary and permanent rates amount to $114,280; and

WHEREAS, recovery or reimbursement of any differences between permanent and temporary rates is authorized by RSA 378:29; and

WHEREAS, subsequent to a staff audit of said amount the revenue difference was reduced to $103,259; it is

ORDERED, that page 2, Concord Natural Gas Corporation, tariff NHPUC No. 13 - Gas, supplement No. 8 be, and hereby is, rejected; and it is

FURTHER ORDERED, that 1st Revised Page 2, Concord Natural Gas Corporation, tariff

NHPUC No. 13 - Gas, supplement No. 8 reflecting the reduced amount of $103,259 factored for the New Hampshire State Franchise Tax be, and hereby is, accepted; and it is

FURTHER ORDERED, that the surcharge be recalculated prior to the last billing period of recoupment, thereby reallocating the remaining revenue deficiency equitably among all customers billed in said billing period; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation notify its customers of this filing via a one time bill insert accompanying the first bills in which the surcharge is included; copy of said insert to be filed with this Commission with appropriate affidavit.

By Order of the Public Utilities Commission of New Hampshire this ninth day of November, 1984.

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NH.PUC*11/09/84*[61589]*69 NH PUC 649*Public Service Company of New Hampshire

[Go to End of 61589]

69 NH PUC 649

Re Public Service Company of New Hampshire

DF 84-200,
Third Supplemental Order No. 17,307

New Hampshire Public Utilities Commission

November 9, 1984

Motion by an electric utility to compel responses to requests for data from an intervening party; granted.

Procedure, § 17 — Production of evidence — Grounds for refusing request for data by opposing party.

While granting an electric utility's motion to compel responses to requests by the utility for data from a full party intervenor in a complex proceeding, the commission found that, given an absence of bad faith, only three

proper grounds for refusing such a request exist: (1) the information sought is privileged, (2) the information sought is irrelevant or immaterial, or (3) the production of the information sought would produce an unwarranted burden on the respondent (whether any burden is unwarranted depends on the relevance or materiality of the matter sought.)

Appearances: As noted previously.

By the Commission:

REPORT

In Report and Order No. 17,164 ([1984] 69 NH PUC 446), the Commission, inter alia, established a procedural schedule in this docket. Pursuant to that procedural schedule, Intervenor Calcogen ("Calcogen") prefiled testimony and exhibits and Public Service Company of New Hampshire ("PSNH") submitted data requests. By its letter of October 5, 1984, Calcogen objected to ten of the data requests submitted by PSNH.[1(200)] Thereafter, on October 11, 1984, PSNH filed a Motion to Compel Responses to PSNH Data Requests. After due notice, the matter was heard by the Commission on November 7, 1984.

In the course of the hearing, Calcogen agreed to drop its objection to several of the PSNH data requests.[2(201)] The remaining PSNH data requests, which continue to be subject to the Calcogen objection are:

1. Please provide all work papers supporting analyses contained in your direct testimony.[3(202)]

2. Please describe the precise location; status, technical design data (name plate capacity, fuel type, heat rate); operating performance data; financial arrangements; revenue sources and all other pertinent data for the three cogeneration facilities being developed by Calcogen for the State of California. For each, please include the date when they began "gestating" and the expected inservice date. (Page 1, Reply to Question 2).

4. Please supply the same information provided for Data Request 3 for each of the 3 cogeneration facilities being developed by Calcogen for the State of California.

57. Please provide a detailed forecast of electricity prices for the country over the next eight years and the basis for that forecast. (Page 48, Benefits to the Joint Owners, Paragraph 3).

75. Please supply the same information requested in Data Request 44 for the three cogeneration facilities being developed by Calcogen for the State of California.

After review, we have decided to grant PSNH's Motion. Our decision is based on the application of the parties' arguments to the analytical framework recommended by the Commission Staff.

The starting place of the Staff's recommended analysis is that we must assume the good faith of all parties. Thus, unless the evidence leads to a contrary conclusion, we assume that PSNH has a real interest in obtaining the information it seeks and that its purpose is not to harass

or over burden Calcogen. We also assume that Calcogen's objection is based on a good faith difficulty in providing information rather than an attempt to "stonewall" an opposing party. The evidence does not lead us to a contrary conclusion and accordingly, the assumption of good faith remains intact.

Given an absence of bad faith, it remains to determine whether Calcogen had a proper reason

for refusing to respond to the PSNH data requests. The Staff argued that there can be only three proper grounds:

1) The information sought is privileged;

2) The information sought is irrelevant or immaterial; or

3) The production of the information sought would produce an unwarranted burden on the respondent.

The Staff noted that there is a relationship between the burdensomeness of responding and the relevance or materiality of the material sought. Thus, if providing the information is burdensome and it is only peripherally relevant or material, an objection is proper. Conversely, if the information is critical to the presentation of the case of the party who submitted the data request, a higher level of burdensomeness is warranted.

Our review leads us to conclude that the standard recommended by Staff is proper and based on sound principles of law. For example, Superior Court Rule No. 44[4(203)] provides, inter alia:

The deponent, on deposition or on written interrogatory, shall ordinarily be required to answer all questions not subject to privilege or excused by the statute relating to depositions. ...

In interpreting the rule, the Court has held that the extent to which rigid compliance with the rule will be required in a particular case is within the discretion of the trial court. See e.g. Farnum v Bristol-Myers Co. (1966) 107 NH 165, 168. In exercising its discretion, the adjudicatory body should balance the burden on the respondent with the need of the proponent of the question for the information (Id., 107 NH at p. 169.)

Our application of the standard to the instant matter leads us to conclude that PSNH's Motion must be granted. With respect to question no. 1, Calcogen has already agreed to provide its workpapers; the dispute centers around the ability of PSNH to photocopy those workpapers at its own expense. Since it is possible that PSNH may wish to enter certain of those workpapers into evidence in this proceeding and since the Commission requires that copies of exhibits be provided to the Commission and all parties, we must allow the photocopying of information in order to make discovery meaningful. Question nos. 2, 4 and 75 request technical data on cogeneration projects developed by Calcogen. This information is relevant for the purpose of exploring witness Hilberg's experience, expertise and credibility. Thus, we cannot accept the Calcogen argument that the information sought is not relevant. To the extent that providing the information may require disclosure of trade secrets or extensive gathering efforts, these may be burdensome requests. We note that this ground was not asserted by Calcogen and, thus, we cannot base our

ruling on this ground. Accordingly, PSNH's Motion will be granted. However, we encourage the parties to consult so that only truly necessary information may be provided in a manner that is least disruptive to Calcogen's business. Question no. 57 is worded broadly and could be construed to request information which is not Calcogen's possession. However, we shall not interpret the question that broadly. The question is proper to the extent that it seeks to discover the information, if any, which formed the basis for a Calcogen assertion in direct testimony.

Thus, we shall construe the question in its more narrow sense and grant PSNH's Motion based on that interpretation.

As set forth above, we are granting PSNH's Motion to Compel Responses to Data Requests. To the extent that Calcogen believes that any of the information sought should be confidential, we will entertain appropriate Motions for Protective Orders so that confidentiality may be maintained. To the extent that PSNH continues to believe that information is not being provided, we will entertain an appropriate Motion to Strike portions of Calcogen's direct testimony. Finally, we must state that the time and effort for all parties involved in resolving the instant Motion could have been minimized if Calcogen had a better understanding of our procedures and, in particular, Commission discovery practices. This is one of the disadvantages of allowing full party intervenors to enter pro se appearances in complex matters. We continue to encourage Calcogen to obtain necessary legal assistance so that we will not have to face the issue of whether the granting of full party intervenor status will impair the orderly and prompt conduct of the proceedings. See, RSA 541-A:17.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Public Service Company of New Hampshire's Motion to Compel Responses to PSNH Data Requests to John V. Hilberg be, and hereby is, granted.

By order of the Public Utilities Commission of New Hampshire this ninth day of November, 1984.

FOOTNOTES

[1]Calcogen filed responses to the remaining data requests.

[2]In anticipation of the receipt of satisfactory responses, PSNH accordingly withdrew its Motion as it pertained to data request nos. 6, 40, 43, 62 and 67.

[3]Calcogen agreed to file its work papers with the Commission for inspection by PSNH and other parties, but refused to agree that those work papers may be photocopied. Thus, our ruling will be limited to whether Calcogen must allow the photocopying of its workpapers by PSNH at PSNH's expense.

[4]We recognize that the Superior Court Rules are not directly applicable to Commission proceedings; however, in this instance we find the standards of the rule to be persuasive.

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NH.PUC*11/14/84*[61590]*69 NH PUC 652*Kona, Inc.

[Go to End of 61590]

Re Kona, Inc.

DE 83-137, Order No. 17,310

New Hampshire Public Utilities Commission

November 14, 1984

Order allowing continuance of hearing concerning a petition to discontinue water service.

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Appearances: Steven M. Latici, Esquire for Kona, Inc.; Philip Holland, customer; Daniel D. Lanning and Robert B. Lessels, NHPUC Staff.

By the Commission:

REPORT

The water system owned by Kona, Inc. was the subject in a prior docket (DE 80-65) and a hearing held on April 5, 1983 regarding a customer service complaint and a petition by Kona to be exempt from utility regulation. At that hearing it became apparent that the filings did not reflect the intentions of the parties. Since the parties were not able to proceed at that time with an amended petition, DE 80-65 was closed with the recommendation that Kona file a new petition seeking 1.) authority to discontinue service, 2.) exemption from regulation, or 3.) authority to operate as a public utility.

The instant docket was opened on a petition filed by Kona, Inc. on July 11, 1984 to discontinue service to six homes in Moultonboro, New Hampshire. A duly noticed hearing on this matter was held on October 24, 1984.

In its petition and testimony, Kona represents that this system cannot economically continue to serve six customers, only three of whom take service during the full twelve months of any year. In addition, three customers have not paid for the last billed period of 1983. Various exhibits filed by Kona show an operating loss of $2,377.22 for the year 1983.

It was established on cross examination that the alleged operating expenses for the year 1983 were estimated. No witness was available to establish actual 1983 or 1984 expenses. There were also questions raised as to capital additions that were expensed and service lives used on capital equipment and the resulting level of depreciation expense.

It is our judgment that the evidence presented at this hearing is insufficient to allow us to decide on Kona's petition to discontinue service and accordingly we will allow continuance of this hearing and docket until February 1, 1984 at which time Kona shall present its income statement, rate base, and other required data, in the form and substance required under RSA 378 and the PUC rules. In the interim period we will allow the present annual charge of $150 as a temporary rate level, to be applied to all customers.

Our order will issue accordingly.

ORDER

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

ORDERED, that Kona, Inc. shall file the income, expense, and plant data of its water system in Moultonboro, New Hampshire by February 1, 1985; and it is

FURTHER ORDERED, that the temporary rate of $150 per year shall be allowed during this interim period.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of November, 1984.

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NH.PUC*11/15/84*[61591]*69 NH PUC 654*Public Service Company of New Hampshire

[Go to End of 61591]

69 NH PUC 654

Re Public Service Company of New Hampshire

DE 84-300, Order No. 17,311

New Hampshire Public Utilities Commission

November 15, 1984

Petition for license to construct, operate, and maintain an electric distribution line; granted.

Appearances: For the petitioner, Pierre O. Caron, Esquire.

By the Commission:

REPORT

On October 10, 1984 Public Service Company of New Hampshire filed with this Commission a petition seeking authority to construct, operate, and maintain a 2.4KV electric line of wires and cables over and across Island Pond in Derry, New Hampshire.

On October 19, 1984 an Order of Notice was issued setting a hearing for November 5, 1984 at 10:00 a.m. at the Commission's Concord offices. Notices were sent to Pierre O. Caron, Esquire, Public Service Company of New Hampshire (for publication); the New Hampshire Aeronautics Commission; the Department of Resources and Economic Development; Robert X. Danos, Director, Safety Services; and the Office of Attorney General.

An affidavit of publication was received at the Commission's offices on the date of the hearing confirming that publication was made in the Union Leader on October 26, 1984.

The Company's witness, Marcel E. Demers, Electrical Superintendent for the Company, testified that a single residential customer requests service on the easterly side of Island Pond in the vicinity of a dam which separates Island Pond from the Spickett River.

Both shorelines are owned by the Big Island Pond Association. Easements have been obtained from the Association for the crossing. A copy of the easement was offered as an

exhibit. The Company proposes to install poles at each bank of Island Pond at a point just northerly of the existing dam. An overhead wire line will be extended approximately 140 feet westerly to the Company's existing facility. The wire line will extend over Island Pond at approximately 37 feet and will be constructed in accordance with the National Electric Safety Code.

The Company considered two alternative routes. There is an existing overhead wire line on Island Pond Road approximately 2500 feet from the proposed customer. The Company calculates a cost of approximately $8361 to reach the customer from that location and decided against that alternative on the basis that its cost was substantially greater than that of the preferred line. The preferred line is estimated to cost $1260.50. The Company also considered an under water crossing in the vicinity of the dam and discounted it on the basis that it would be even more expensive than alternative route.

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Boating traffic is denied access to that portion of Island Pond due to a constructed barrier northerly of the proposed crossing site.

No objections were filed or expressed either prior to or at the public hearing.

The Commission finds that approval for a license to construct, operate and maintain an electric distribution line over and across Island Pond in Derry, New Hampshire at the site specified in exhibits in this proceeding 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, that authority be granted to the Public Service Company of New Hampshire to construct, operate and maintain an overhead electric distribution line over and across Island Pond in Derry, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1984.

==========

NH.PUC*11/15/84*[61592]*69 NH PUC 655*Lancaster Farms Water Company, Inc.

[Go to End of 61592]

69 NH PUC 655

Re Lancaster Farms Water Company, Inc.

DR 84-267, Order No. 17,312

New Hampshire Public Utilities Commission

November 15, 1984

Petition for authority to establish a water utility; granted.

Rates, § 249 — Procedure — Effective date — Rates in effect at time of consumption — Consumption while rate request is pending.

Customers of a utility have a right to rely on rates which are in effect at the time they consume the service provided by the utility and conversely, once they consume a unit of those services, they are legally obligated to pay in accordance with rates then in effect or rates later approved by the commission based on a pending request. [1] p.656.

Rates, § 249 — Procedure — Effective date — Newly certified utility — Notice of intent to establish rates.

Where a newly certified water system had been providing service to its customers at no charge the commission found that the rates approved in conjunction with the system's certification should be effective as of the date of public notice of the system's intent to establish rates. [2] p.656.

Appearances: Peter A. Lewis and Stephen J. Noury for the Petitioner; Daniel D. Lanning and Robert B. Lessels for the New Hampshire Public Utilities Commission Staff.

By the Commission:

REPORT

By a petition filed on September 19, 1984, Lancaster Farms Water Company (Lancaster), a duly organized New Hampshire corporation supplying water to 82 customers in a limited area in the town of Salem, New Hampshire, seeks authority to establish a water public utility in the area served. A public hearing on this

matter was held on November 7, 1984.

Lancaster is owned by Lewis Builders of New Hampshire who is also the developer of this subdivision. Metered service is provided to each customer and has been supplied since August 1984 at no charge.

RATE BASE

Lancaster's rate base is calculated as follows:

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

Gross Plant	$112152
less customer contributions	16400
Average Plant in Service	95752
Plus working capital	1092
Average Rate Base	$ 96844

RATE OF RETURN

The financing to build this water system, less customer contributions, was obtained from the developer and owner of the water system, Lewis Builders, with the following capital structure:

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

Cost Rate

Long Term Debt $91752 10%
Common Stock 4000 10
$95752 10%

The return requirement then becomes:

Average Rate Base $96844 x 10% = $9684

OPERATING EXPENSES

Lancaster has estimated the following as annual operation and maintenance expenses:

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

Superintendance $4680
Purification 150
Maintenance of pumps 400
Purchased power 1200
Customer meter reading 240
Customer billing 600
Office supplies 350
Supervision fees 1000
Franchise requirement 120
$8740

REVENUE REQUIREMENT

Based on the preceding sections in this Report, the revenue requirement is as follows:

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

Operation and Maintenance $8740
Depreciation Expense 3600
Return Requirement 9684
Taxes — Property 1500
$23524

FRANCHISE

As stated previously in this Report, the Lancaster Farms Water System began providing good water service, as verified by the Commission staff, in the latter part of this summer. The supply source is from two wells with proven adequate yield and it is our opinion that the granting of the authority sought in this case, will be in the public good.

EFFECTIVE DATE

[1,2] No request for temporary rates was made in this case; however, the Commission is aware that Lancaster has been providing water service to its customers, at no charge, since August of 1984.

The Supreme Court of New Hampshire has held (PUC No. 79-143) that customers of a utility have a right to rely on rates which are in effect at the time that they consume the service

provided by the utility and conversely that once customers consume a unit of those services, they are legally obligated to pay in accordance with rates then in effect or with rates later approved by the Commission based on a pending request.

In this case there were no existing effective rates and as in a previous docket case (DE 81-358), we will recognize that water service has been provided for some months at no charge. Public notice of Lancaster's intent to establish rates was made on October 31, with a public hearing held on November 7 at which no one

Page 656

appeared. It is our decision that the rates here approved shall become effective with all service rendered on or after October 31, 1984, the date of public notice.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Lancaster Farms Water Company, Inc., be, and hereby is, authorized to operate as a public water utility in a limited area in the Town of Salem, as shown on a map marked Exhibit 1 and as described on a deed description marked Exhibit 5; and it is

FURTHER ORDERED, that the Lancaster Farms Water Company, Inc., shall file a tariff describing the terms, conditions, and rates to be charged to recover annual revenues of $23524, and bearing the effective date of October 31, 1984.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1984.

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NH.PUC*11/15/84*[61593]*69 NH PUC 657*Robert Demers Water System

[Go to End of 61593]

69 NH PUC 657

Re Robert Demers Water System

DE 84-341, Order No. 17,313

New Hampshire Public Utilities Commission

November 15, 1984

Order requiring water system to show cause why it should not be regulated by the commission as a public utility.

By the Commission:

ORDER

WHEREAS, RSA 362:2 defines a public utility to include inter alia "every corporation, company, association, partnership and person, their lessess, trustees or receivers appointed by any court, except municipal corporations operating within their corporate limits, owning, operating or managing ... any plant or equipment of any part of the same ... for the manufacture or furnishing of ... water for the public ..."; and

WHEREAS, RSA 362:4 provides inter alia that every corporation, company, association, joint stock association, partnership, or person owning or operating any water system or part thereof shall be deemed to be a public utility unless exempted by the New Hampshire Public Utilities Commission (Commission) in accordance with the terms of that statute; and

WHEREAS, the Commission has general supervisory powers over public utilities pursuant to RSA 374; and

WHEREAS, RSA Chapter 378 requires public utilities to file schedules of rates and charges with the Commission, 378:1, and provides that said rates or charges are subject to Commission review and approval, 378:3 et seq; and

WHEREAS, the Commission is

Page 657

informed that Robert Demers is providing water service to customers in the Town of Bartlett and is charging rates for that water service; and

WHEREAS, Robert Demers has not filed a schedule of rates and charges with the Commission or otherwise complied with the statutory or regulatory requirements which govern public utilities; it is hereby

ORDERED, that Robert Demers be required to show cause why he or the subject water system should not be regulated by the Commission as a public utility; and it is

FURTHER ORDERED, that a hearing on this matter is scheduled for January 15, 1985 at 2:00 p.m. at the Commission's Concord offices; and it is

FURTHER ORDERED, that a copy of this Order be served upon the Attorney General.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1984.

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NH.PUC*11/19/84*[61594]*69 NH PUC 658*New England Telephone and Telegraph Company

[Go to End of 61594]

69 NH PUC 658

Re New England Telephone and Telegraph Company

Intervenors: Community Action Program, Office of Consumer Advocate, and Volunteers Organized in Community Education

DR 84-95,
Fifth Supplemental Order No. 17,320
New Hampshire Public Utilities Commission
November 19, 1984

Petition for a temporary rate increase; granted.

Appearances: For the New England Telephone and Telegraph Company, Christopher M. Bennett, Esquire and Robert A. Wells, Esquire; for the Community Action Program, Gerald M. Eaton, Esquire; for VOICE, Alan Linder, Esquire; for the Public Utilities Commission Staff, Larry Smukler, Esquire; for the Consumer Advocate, Michael W. Holmes, Esquire.

By the Commission:

REPORT

BACKGROUND

On May 16, 1984, the New England Telephone and Telegraph Company filed with the Commission certain revisions to its Tariff Nos. 75 and 76 by which it proposed a revenue increase of $33.5 million or approximately 20%. On May 22, 1984, Order No. 17,040 (amended by Order No. 17,054) was issued suspending

the filing pending investigation and decision on the matter.

A procedural schedule was presented by the agreeing parties and such schedule was adopted by Commission Order No. 17,094. Under that schedule, the Commission would render its decision prior to the December 15, 1984 date on which New England Telephone could implement its filing under bond according to the provisions of RSA 378:6. A subsequent motion by staff prompted a change in that procedural schedule on August 9, 1984, making a December 15, 1984 decision by the Commission impossible.

Because of this fact, meetings of the parties were held at which temporary rates were discussed. Subsequent filing of Staff testimony for the case revealed that Staff recommended a revenue requirement of $21.627 million to $22.413 million. In lieu of placing its proposed rates under bond and facing complexities of refund or recoupment, New England Telephone opted for temporary rates with the increase of $21.627 million, the lower end of the Staff recommendation.

A petition seeking authorization for the temporary rate increase of $21.627 million was filed by New England Telephone and Telegraph Company on October 23, 1984. A duly noticed hearing on said temporary rates was held at the Commission's Concord offices at 10:00 a.m. on November 8, 1984. The Company sub- mitted that all parties were in agreement with such temporary rates of $21.627 million to be collected via an across-theboard increase of existing rates.

COMMISSION ANALYSIS

Extensive proceedings in rate cases mandate time constraints to preclude harming any party.

Allowing for bonded rates under RSA 378:6 is one statutory method of accomplishing this. As noted in the New England Telephone petition for temporary rates, action under this statute could result in complex refunds to its customers should the final decision in the case be less then proposed. On the other hand, should no temporary relief be allowed, extensive recoupment would result and greatly disrupt the NET customers. RSA 378:27 provides the alternative which the Commission finds more acceptable.

Recognizing that Staff's investigation results in testimony which recommends a revenue requirement with the range from $21.627 million and $22.413 million and that the temporary rates are proposed at the low end of this range, the Commission will accept the proposal as reasonable. Such allowance will avoid excessive recoupment or refund, neither of which is in the best interest of the public. Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the New England Telephone and Telegraph Company be, and hereby is, granted a temporary rate increase of $21,627,000.00 on an annual basis according to provisions of RSA 378:27, and it is

FURTHER ORDERED, that New England Telephone and Telegraph Company file with this Commission revised tariff pages to reflect such increase as an across-the-board change to existing rates; and it is

FURTHER ORDERED, that accurate records be maintained by the Company such that differences between temporary rates approved herein and those authorized by the final decision in this case can be refunded or recouped as appropriate with minimal disruption to the public; and it is

FURTHER ORDERED, that the increases herein authorized be, and hereby are, approved for effect with bills rendered on and after December 15, 1984; and it is

FURTHER ORDERED, that public notice be given of this increase by publication twice in a widely read newspaper in the territory served, as well as individual bill inserts summarizing the allowed changes.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1984.

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NH.PUC*11/19/84*[61595]*69 NH PUC 660*Fuel Adjustment Clause

[Go to End of 61595]

69 NH PUC 660

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 84-265,
Supplemental Order No. 17,329

New Hampshire Public Utilities Commission

November 19, 1984

Order permitting a fuel surcharge to go into effect without formal fuel adjustment clause hearings.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

ORDERED, that 131st Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $1.62 per 100 KWH for the month of November, 1984, be, and hereby is, permitted to become effective November 13, 1984.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1984.

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NH.PUC*11/20/84*[61596]*69 NH PUC 661*New England Telephone and Telegraph Company

[Go to End of 61596]

69 NH PUC 661

Re New England Telephone and Telegraph Company

DR 84-51,
Fifth Supplemental Order No. 17,321

New Hampshire Public Utilities Commission

November 20, 1984

Order accepting a telephone company's compliance filings.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No. 17,243 ([1984] 69 NH PUC 583) directed New England Telephone and Telegraph Company to file revised tariff pages to incorporate changes specified therein; and

WHEREAS, on November 16, 1984, that Company filed certain revisions which it claimed were in compliance with said order; and

WHEREAS, Commission review of said page revisions verifies such compliance; it is

ORDERED, that the following revisions to the New England Telephone and Telegraph Tariff No. 75 be, and hereby are, approved for effect on November 20, 1984:

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

Supplement No. 16 — Title Page and Original Page 1

Part A — Section 1 — 3rd Revised Pages 13 and 14

Part A — Section 7 — Original Pages 30.1 and 31.1
— 4th Revised page 30
— 5th Revised Pages 28, 31,
— and 70
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and it is

FURTHER ORDERED, that said Company give public notice of this filing by one-time publication of a summary of the changes in The Union Leader and provide individual notification to affected customers.

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 1984.

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NH.PUC*11/20/84*[61597]*69 NH PUC 662*Concord Electric Company

[Go to End of 61597]

69 NH PUC 662

Re Concord Electric Company

Intervenor: Community Action Program

DR 84-239, Supplemental Order No. 17,323

New Hampshire Public Utilities Commission

November 20, 1984

Order establishing a hearing schedule in an electric rate case and authorizing temporary rate relief pending the conclusion of the case.

Appearances: for the petitioner, Dom S. D'Ambruoso, Esquire; for the Community Action Program, Gerald M. Eaton, Esquire; and for staff, Larry M. Smukler, Esquire and Daniel J. Kalinski, Esquire.

By the Commission:

REPORT

On October 1, 1984, Concord Electric Company (hereinafter referenced as "the Company"), a public utility engaged in the business of supplying electrical service in certain limited areas of this state, filed with the Commission certain revisions to its tariff designed to yield an annual increase in rates in the amount of one million two hundred sixty-five thousand eight hundred forty-five dollars ($1,265,845) to be effective November 1, 1984. Also, on October 1, 1984, the Company filed a petition for temporary rate relief requesting that in the event the Commission suspended the permanent rate request, the Commission order the Company's existing rates into effect as temporary rates as of November 21, 1984 pending the conclusion of proceedings upon the Company's permanent rate filing.

By its Order No. 17,278 dated October 25, 1984, the Commission suspended the revisions to the Company's tariff pending investigation. An Order of Notice was issued setting a hearing for November 1, 1984 at 11:00 a.m. for the purpose of determining the temporary rates and to discuss the procedural aspects of the permanent rate request.

At the hearing on November 1, 1984 Company witnesses presented testimony and exhibits claiming that the Company's overall earned rate of return for the twelve (12) months ended June 30, 1984 (the chosen test year) was at the rate of 8.93 percent on average rate base.

The witness went on to state that despite what the Company feels is an inadequate rate of return, it is their intent only to request its existing rate schedule as temporary rates. Neither CAP nor staff objected. We find this petition to be consistent with past Commission practice (Re Granite State Electric Co. DR 81-86), therefore, temporary rates will be set in compliance with RSA 378:27.

Staff then offered a proposed procedural schedule which had been stipulated in a pre-hearing conference attended by all parties. The following is the schedule to be adopted for the purpose of disposing of this case:

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

Deadline for Staff & Intervenors
  to Submit Data Requests: November 30, 1984

Deadline for Company to Answer
  Data Requests: December 31, 1984

Pre-hearing Conference: January 14, 1985

Staff and Intervenors File
  Testimony: February 1, 1985

Deadline for Company to Submit
  Data Requests: February 15, 1985
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Deadline for Staff and Intervenors
  to Answer Data Requests: March 1, 1985

Hearing Dates: March 12, 13, & 14, 1985
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The Company, through its petition, requests temporary rates be effective as of November 1, 1984. The filing for tempo- rary rates was dated October 1, 1984. Staff and CAP have not addressed the issue. In reviewing the filing we have determined that, for these proceedings, allowing the Company's petition to become effective on all service rendered one month beyond the date of the filing is in the public good and does not conflict with the Supreme Court decision in Pennichuck Water Works v New Hampshire (1980) 120 NH 155, 419 A2d 1080.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Concord Electric Company's current rates are made temporary effective with all service rendered on or after November 1, 1984; and it is

FURTHER ORDERED, that the following procedural schedule will be adopted for the purposes of disposing of this case:

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

Deadline to submit Staff & Intervenor
  data requests November 30, 1984

Deadline to answer data requests December, 31, 1984

Prehearing Conference January 14, 1985

Staff and intervenors file testimony February 1, 1985

Deadline to submit Company data
  requests February 15, 1985

Hearing Dates March 12, 13, & 14, 1985
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The Secretary of the Commission is hereby directed to issue the above order this twentieth day of November, 1984.

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NH.PUC*11/21/84*[61598]*69 NH PUC 664*New England Telephone and Telegraph Company

[Go to End of 61598]

69 NH PUC 664

Re New England Telephone and Telegraph Company

DR 84-51,
Sixth Supplemental Order No. 17,325
New Hampshire Public Utilities Commission

November 21, 1984

Order revoking a previous rejection of a telephone company's tariff pages.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, Commission Order No. 17,243 ([1984] 69 NH PUC 583) rejected certain revised tariff pages of the New England Telephone and Telegraph Company's Tariff No. 75; and

WHEREAS, it now appears that such action was inappropriate since rates and charges specified therein were and are in effect; it is therefore

ORDERED that the portion of Commission Order No. 17,243 specifying rejection of the following Tariff No. 75 revisions is hereby revoked:

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

Supplemental No. 12 — Title Page and Original
Page 1
Part A — Section 7 — 4th Revised Pages 28, 31, and
70
— 3rd Revised Page 30

and it is

FURTHER ORDERED, that appropriate revised tariff pages be filed by New England Telephone and Telegraph Company to implement changes specified in Order No. 17,243.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of November, 1984.

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NH.PUC*11/21/84*[61599]*69 NH PUC 664*Holiday Ridge Supply Company, Inc.

[Go to End of 61599]

69 NH PUC 664

Re Holiday Ridge Supply Company, Inc.

DE 83-362,
Supplemental Order No. 17,326

New Hampshire Public Utilities Commission

November 21, 1984

Petition for authority to provide water service in a limited real estate development; granted.

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By the Commission:

REPORT

On November 22, 1983 this Commission issued its Order No. 16,771 to the Holiday Ridge Supply Company, Inc. which required that it appear at public hearing on January 5, 1984 at 10:00 a.m. to show cause why it should not be regulated by this Commission as a public utility.

The hearing was reconstituted as a meeting between staff and the Company. Subsequent to that meeting correspondence had passed between the parties which have resulted in the Company's submission of Statements of Investment, Statements of Income, and Statements of Expenses.

The Company has now filed a petition for authority to establish a water utility in a limited area in the Town of Bartlett, New Hampshire. On August 30, 1984 an Order of Notice was issued setting a hearing for September 20, 1984 at 2:00. Notices were sent to C. John Madden, Esquire, for the Company and to the Attorney General's office. On September 12, 1984 a further Order of Notice was issued setting a new date at October 31, 1984 at 2:00 in the Commission's Concord offices.

Mr. C. John Madden, Esquire appeared for the Company. An affidavit was offered confirming that the Order of Notice was published in the Reporter, North Conway, New Hampshire, on October 10, 1984.

Mr. Madden testified that the Challet development served by this utility began in 1965. A water system was installed by the developer to serve the 80 development lots. In response to the developer's desire to sell the water system, a group of Challet owners purchased the system in 1979 for the sum of $14,000. Thirty-one shares of stock were issued to the owners.

The system presently serves 39 challets in the development. Customers are determined by the number of kitchens in the complex. There being 51 kitchens, there are 51 identified customers. Expenses are calculated for the preceding year and rates are set for the following year based on those expenses. The billing period extends from June 1 to May 31 of the given year, and the bill for that period is submitted in the fall for payment. Accordingly, approximately one-third of the bill becomes payment for arrearage and twothirds of the bill is for prospective service.

The current rate is $175 per customer per year. The rate is determined by identified expenses of $8,816.00 and at an estimated cost of money of 12%.

The Company has established a contact representative, Carl Hydren and has provided customers with his telephone number and address. A maintenance contractor has been retained to provide emergency service on a 24 hour basis.

The community is served by a single 400 foot well of unknown capacity which supplies water through a reservoir to 2,000 pressure tank. The distribution is predominately two inch and three inch plastic main. Maps were filed identifying the approximate locations of the distribution system.

The petitioner testified that, although service has been adequate, the system is marginally meeting the needs of its customers, most of whom are winter customers. The Company has no confirming approval document issued by the New Hampshire Department of Water Supply and

Pollution Control.

We will approve the Company's petition to provide water service in this limited area in the town of Bartlett. In order to assure that customer service will continue at least as present levels, we will

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deny the Company an opportunity to add new customers until it can document to the Commission that the system is in fact designed for a greater number than presently exists. We will require that the Company obtain from the New Hampshire Water Supply and Pollution Control Commission a document attesting to their approval for this community system, and that a copy be supplied to this Commission.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Holiday Ridge Supply Company, Inc. be and hereby is, authorized to establish a water utility in a limited area in the Town of Bartlett, such limited area as identified in exhibits accompanying the Company's petition; and it is

FURTHER ORDERED, that the Company shall limit its number of customers to those existing at the date of this Order; and it is

FURTHER ORDERED, that the Company shall request and obtain from the New Hampshire Water Supply and Pollution Control Commission an approval certificate for its system, and a copy shall be provided to this Commission; and it is

FURTHER ORDERED, that the Company shall continue to provide its customers and this Commission with appropriate points of contact in case of emergency.

By Order of the Public Utilities Commission of New Hampshire this twentyfirst day of November, 1984.

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NH.PUC*11/21/84*[61600]*69 NH PUC 666*New England Telephone and Telegraph Company

[Go to End of 61600]

69 NH PUC 666

Re New England Telephone and Telegraph Company

DE 84-325, Order No. 17,327

New Hampshire Public Utilities Commission

November 21, 1984

Order approving automated billing for municipal calls made via companyowned or coin

telephones.

By the Commission:

ORDER

WHEREAS, New England Telephone and Telegraph Company has filed with this Commission certain revisions to its tariff, NHPUC No. 75 providing for automatic billing of charges for intramunicipal messages at the local coin rate when such calls are originated from Companyowned telephones or Charge-a-Call telephones and charged via Calling Card; and

WHEREAS, such automation deletes the requirement that the caller notify the Business Office of the Company when making such calls; and

WHEREAS, the Commission finds such

convenience in the best interest of the customer; it is

ORDERED, that Part A, Section 5, 2nd Revised Page 28 of New England Telephone and Telegraph Co. tariff NHPUC No. 75 be, and hereby is, approved for effect on December 1, 1984.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of November, 1984.

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NH.PUC*11/26/84*[61601]*69 NH PUC 667*Promulgation of Commission Rules

[Go to End of 61601]

69 NH PUC 667

Re Promulgation of Commission Rules

DRM 84-194,
Supplemental Order No. 17,328

New Hampshire Public Utilities Commission

November 26, 1984

Order readopting certain administrative rules and regulations.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, the Commission opened this docket to readopt its rules and regulations (NHPUC 100-1600) in accord with RSA 541-A, the Administrative Procedures Act; and

WHEREAS, on July 27, 1984, the Commission issued Report and Order No. 17,137 ([1984]

69 NH PUC 410) which adopted the Commission's rules and regulations (NHPUC 100-1600) as emergency rules pursuant to RSA 541-A:3-g; and

WHEREAS, after the issuance of said Order, the Commission reviewed the rules and recommended that certain changes be made in connection with the readoption of the rules on a permanent basis; and

WHEREAS, on October 1, 1984, the Commission obtained a fiscal impact statement from the legislative budget assistant as required by RSA 541-A:3-a; and

WHEREAS, on October 5, 1984, the Commission filed a Notice of Proposed Rule with the Administrative Procedures Division of the Office of Legislative Services for publication in the October 12, 1984 issue of the New Hampshire Rulemaking Register as required by RSA 541:3-a; and

WHEREAS, on October 24, 1984, the Commission held a public hearing on the proposed rules; and

WHEREAS, in response to the comments at the hearing the Commission made certain changes to the proposed rules and on October 29, 1984 obtained an amended fiscal impact statement regarding these further changes from the legislative budget assistant; and

WHEREAS, on November 1, 1984, the Commission filed a Final Proposal with the Administrative Procedures Division of the Office of Legislative Services as required by RSA 541-A:3d; and

WHEREAS, on November 14, 1984, the joint legislative committee on administrative rules held a hearing and unanimously approved the Final Proposal; and

WHEREAS, we find that the requirements of RSA 541-A, the Administrative

Procedures Act, have been met and the proposed rules may now be adopted; it is hereby

ORDERED, that the proposed rules set forth in the Final Proposal approved by the joint legislative committee on administrative rules be, and hereby are, adopted; and it is

FURTHER ORDERED, that in accordance with RSA 541-A:2, these rules shall be effective for a period not longer than six years; and it is

FURTHER ORDERED, that this docket is closed.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of November, 1984.

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NH.PUC*11/26/84*[61602]*69 NH PUC 668*Concord Steam Corporation

[Go to End of 61602]

Re Concord Steam Corporation

DR 84-268, Order No. 17,330

New Hampshire Public Utilities Commission

November 26, 1984

Petition for an alternative 20- or 25-year long-term interconnection rate order; granted.

By the Commission:

ORDER

WHEREAS, on, September 24, 1984, Concord Steam Corporation (Concord Steam) filed a long term rate filing; and

WHEREAS, Concord Steam filed amendments to its filing on October 19, 1984 and October 31, 1984; and

WHEREAS, the Petition requested inter alia alternative twenty-year and twentyfive-year rate orders; and

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

WHEREAS, Concord Steam has averred that it intends to comply with the aforementioned requirement; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Petition for alternative TwentyYear and Twenty-five Year Rate Orders; and

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

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

FURTHER ORDERED, that Concord Steam supply notice thirty days prior to the in-service date of the facility to the Commission and PSNH as to what rate alternative it has chosen; and it is

FURTHER ORDERED, that an

election of one rate alternative is a rejection of the other rate alternative; and it is

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

is

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

By order of the Public Utilities Commission of New Hampshire this twentysixth day of November, 1984.

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NH.PUC*11/26/84*[61603]*69 NH PUC 669*Public Service Company of New Hampshire

[Go to End of 61603]

69 NH PUC 669

Re Public Service Company of New Hampshire

DR 84-308, Order No. 17,331

New Hampshire Public Utilities Commission

November 26, 1984

Order requiring confidentiality of records during a review of coal supply contracts.

By the Commission:

ORDER

WHEREAS, the Commission has been petitioned by Public Service Company of New Hampshire (hereinafter "PSNH") to approve a proposed lease of land and equipment to ANR Coal Sales, Incorporated (hereinafter "ANR") at Schiller Generating Station located in Portsmouth, New Hampshire; and

WHEREAS, as part of this hearing, the Commission desires to review the new coal contract between PSNH and ANR dated November 15, 1984 (hereinafter "Contract"); and

WHEREAS, disclosure of the terms of the Contract to the general public might adversely impact the ability of PSNH to obtain the most favorable terms and conditions available in the marketplace in negotiating new contracts with other suppliers;

NOW THEREFORE: it is

ORDERED, that PSNH shall immediately upon receipt hereof provide to the Commission and the Commission Staff an accurate copy of the Contract and, unless and until otherwise ordered, it is to be viewed only by the Commission and the Commission Staff. Until such further order of the Commission, said document and the information contained therein shall not become a part of the public records of the Commission, nor shall the document be copied or reproduced nor shall the information contained therein be further disseminated; and it is

FURTHER ORDERED, that upon completion of this docket or upon further order of the Commission;

whichever shall first occur, all documents the subject hereof shall be forthwith returned to the custody of PSNH.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of November, 1984.

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NH.PUC*11/29/84*[61604]*69 NH PUC 670*Public Service Company of New Hampshire

[Go to End of 61604]

69 NH PUC 670

Re Public Service Company of New Hampshire

DF 84-200,
Supplemental Order No. 17,332

New Hampshire Public Utilities Commission

November 29, 1984

Order establishing discovery schedule.

By the Commission:

SUPPLEMENTAL ORDER

Public Service Company of New Hampshire (PSNH) having filed on November 26, 1984, a motion for establishment of a discovery schedule with respect to the testimony of Charles E. Bayless; and

WHEREAS, none of the parties have objected to the motion; and

WHEREAS, the proposed schedule is consistent with the time frames previously established in this docket by the Commission; and

WHEREAS, all parties received copies of the prefiled testimony of Mr. Bayless on or about November 21, 1984; and

WHEREAS, the Commission finds it would be reasonable to allow one week from the date hereof for the parties to prepare their data requests; it is

ORDERED, that the granting of the petitioner's motion in part consistent with the above considerations would be in the public good; and it is

FURTHER ORDERED, that said motion is hereby granted in part so that all parties must file their data requests directed at the Bayless testimony with PSNH no later than the close of business December 5, 1984 and PSNH must respond to said data requests by the close of business on December 10, 1984. On motion of any party, the Commission may order further

discovery if the interest of justice so requires.

By Order of the Public Utilities Commission of New Hampshire this twentyninth day of November, 1984.

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NH.PUC*11/29/84*[61605]*69 NH PUC 671*Public Service Company of New Hampshire

[Go to End of 61605]

69 NH PUC 671

Re Public Service Company of New Hampshire

DF 84-200,
Second Supplemental Order No. 17,333

New Hampshire Public Utilities Commission

November 29, 1984

Order requiring a prehearing conference to establish all issues before commencement of formal proceedings on a nuclear station financing petition.

By the Commission:

SUPPLEMENTAL ORDER

Public Service Company of New Hampshire having filed on November 15, 1984 a petition for authority to enter into the Newbrook financing for the completion of construction of Seabrook Station Unit I under RSA 369 including authorty: (a) to issue to Newbrook Corporation not more than $730,000,000 in aggregate principal amount of Collateral Bonds, (b) to issue to the Newbrook Trustee on the date of the closing and thereafter from time to time General and Refunding Mortgage Bonds in the maximum amount then issuable under the provisions of the Company's General and Collateral Bonds, (c) to issue First Mortgage Bonds as further security for the G&R Bonds and the Collateral Bonds, (d) to mortgage the Company's properties, tangible and intangible, including franchises and after-acquired property, as security for the Company's Collateral Bonds, General and Refunding Mortgage Bonds and First Mortgage Bonds, (e) to pledge all of the common stock of the Company's rights to receive payments from the PSNH Subsidiary as further security for the Collateral Bonds, and (f) to issue evidences of indebtedness in connection with a letter of credit, insurance policy or other similar arrangement and pledge as security therefor the portion of the proceeds from this financing allocated to the pre-financing of Unit I construction expenditures; and

WHEREAS, in anticipation of said petition, the Commission opened this docket on August 2, 1984 pursuant to Order No. 17,141 dated August 2, 1984 (69 NH PUC 422), defining the scope of the proceedings as including the following issues:

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

2) Whether the purpose of the proposed financings is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders; and

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

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the successful completion of Seabrook Unit I; and

WHEREAS, the Commission established a procedural schedule in this docket in Order No. 17,164 ([1984] 69 NH PUC 446) scheduling hearings on the petition beginning December 3, 1984 at 10:00 A.M. at the Commission offices; and

WHEREAS, there are procedural issues that must be addressed before commencing hearings on the merits; it is

ORDERED, that pursuant to Puc 203.05, prior to beginning the formal proceeding, the Commission will hold a prehearing conference on the record relating to the following subject matter:

(a) written or oral statement of each party's position on the issues defined in Order No. 17,141 dated August 2, 1984;

(b) statement of any supplemental issues deemed by the parties to be within the scope of this proceeding;

(c) stipulations or admissions as to issues of fact or proof;

(d) order of witnesses and order of cross-examination; and

(e) any other matters which may aid in the fair disposition of the proceeding;

and it is

FURTHER ORDERED, that any statements by members of the public for the record will be received by the Commission on December 3, 1984; and it is

FURTHER ORDERED, that also on December 3, 1984, immediately following the prehearing conference and public statements, the hearing on the merits will commence; and it is

FURTHER ORDERED, that the parties are hereby notified that during the course of the proceeding, the Commission contemplates a view of the Seabrook facility, subject to prior notice; and it is

FURTHER ORDERED, that the hearing of December 3, 1984 shall commence at 10:00 A.M. at the Commission offices, 8 Old Suncook Road, Concord, New Hampshire; and it is

FURTHER ORDERED, that for all subsequent hearings the schedule will be from 9:30 A.M. to 12:30 P.M. and from 2:00 P.M. to 4:30 P.M.; and it is

FURTHER ORDERED, that the hearing dates proposed by the Commission are as follows:

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

December 3, 4, 5, 6, 11, 12, 13, 17, 18,
19, 20, 26, 27, 28, 1984
January 3, 4, 7, 8, 9, 10, 11, 1985 and
thereafter at the call of the Commission;

and it is

FURTHER ORDERED, that the Secretary to the Commission serve this order on all parties.

By order of the Public Utilities Commission of New Hampshire this twentyninth day of November, 1984.

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NH.PUC*11/30/84*[61606]*69 NH PUC 673*Public Service Company of New Hampshire

[Go to End of 61606]

69 NH PUC 673

Re Public Service Company of New Hampshire

DR 84-308, Order No. 17,335

New Hampshire Public Utilities Commission

November 30, 1984

Petition for approval of a coal storage lease; granted as modified.

Electricity, § 3 — Generating plants — Coal supplies — Storage leases.

An electric utility's proposal to lease part of its property at a generating station to its coal supplier for the storage of coal was approved provided a 45- to 60-day coal supply is maintained there for each unit of the generating station.

Appearances: For the Petitioner, Eaton W. Tarbell, Esquire.

By the Commission:

REPORT

On October 19, 1984 Public Service Company of New Hampshire filed with this Commission a petition for authority to lease certain real estate and equipment at its Schiller Station Plant located at Portsmouth, New Hampshire.

On October 29, 1984 an Order of Notice was issued setting a hearing for November 15, 1984 at 2:00 p.m. at the Commission's Concord offices. Notices were sent to Eaton W. Tarbell,

Esquire, for publication; Debbie Anne Sklar, Esquire, PSNH; ANR Coal Company; and the Office of the Attorney General. An affidavit attesting to publication in the Union Leader on November 1, 1984 was submitted to the Commission on November 14, 1984.

The Company requests Commission authorization, under RSA 374:30, to lease approximately three acres of land at its Schiller Station to ANR Sales, Inc., a subsidiary of ANR Coal Company. ANR Coal Sales, Inc. is the fuel supplier for Units IV, V, and VI which are being converted presently from oil fired to coal fired generator stations.

Mr. Sheldon B. Wicker, Jr., Manager of Financial Projects, PSNH, testified that the Company is proposing to lease certain land at Schiller Station to ANR Coal Sales, Inc. to store coal which it will be supplying to the Company for use at the station. The land lease, which is the subject of this petition, is one of five separate agreements which make up the arrangements which will exist between ANR and PSNH. Under a Coal Sales Agreement, ANR will be responsible for delivering coal to PSNH at the Station's bunkers and maintaining an adequate inventory of coal in the coal storage area. PSNH will pay for the coal as it is bunkered at a price which will include all costs of mining, shipping, handling, and storing. The term of the agreement is four years.

Under the coal storage lease, PSNH will lease the land under the coal pile to ANR and give ANR the rights to use the necessary coal handling facilities to move coal to the storage area. The lease will have a term which will be coterminous

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with the coal sales agreement at an annual lease payment of $1200. Mr. Wicker testified that this planned lease is basically the same type as is presently used for coal supplied by Consolidation Coal Company at Merrimack Station which has been previously approved by this Commission.

Under a Coal Handling Agreement, PSNH will be responsible for handling the coal which is piled at the site. PSNH plans to contract with C.B. Sprague and Son Company for the coal handling.

Under an Equipment Lease, PSNH and ANR will enter into an agreement whereby Properties, Inc., a subsidiary of PSNH, will sell the Schiller Station Coal Unloader and Data Acquisition System to ANR Coal for approximately $4 million and then lease them back to PSNH and Properties, Inc. jointly over eight and five years respectively. PSNH will retain an option to extend the leases and/or purchase the equipment at the end of the lease at fair market value.

The last of the five agreements constitutes an unsecured loan, in which PSNH and ANR have agreed to the terms on a five year Schiller conversion financing of aproximately $5 million to be provided by ANR. This unsecured loan will be used to reimburse PSNH for expenditures made to convert the Station to coal. Upon execution of the final loan documents, the Coal Sales Agreement would be extended to eight years. That loan will be the subject of a separate petition to be submitted to the Commission in the future.

The witness was cross-examined as to the amount of coal that would be stored at the Schiller

site. The site is approximately three and one-half acres. The Company estimates that it will hold approximately 50 to 60,000 tons of coal. Since Schiller should burn approximately 450,000 tons a year then there will be approximately six weeks, or 45 days, of coal supply at the site. That calculation is an estimate, however, and there is no adequate history upon which to make a more precise computation. The Company has calculated that a 40,000 ton supply will maintain a minimum inventory level to meet the needs of the Station.

There is a provision in the lease agreement for coal sales to third parties.

Since the stored coal will remain the property of ANR prior to bunkering, then ANR will retain the insurance responsibility for the coal prior to delivery to the Company's bunker.

Through our analysis of the record, and our experience with Coal inventory in other proceedings (DR 84-115 Re Public Service Co. of New Hampshire) our commitment for an adequate and dependable supply of fuel must be reaffirmed. Our review of the current and projected quantity and quality of coal at the Merrimack Station led us to the decision that a ninety (90) day supply of coal inventory was necessary to comply with, inter alia, RSA 374:1.

The Circumstances surrounding the decision in DR 84-115 are not altogether the same for the instant docket, however, the principal remains the same.

Through cross-examination staff indicated a concern about numerous references in the coal lease contract to "Third Party Sales". These are sales by ANR to an independent party. The coal supply for the third party will be from time to time stored on the leased storage site at no additional cost to ANR. The witness testified that the third party arrangements were part of the negotiated package and that the package as a whole was a "good deal for the Company" (DR 84-308, Transcript at 19).

Staff's concerns in this area are well taken, particularly if a possibility exists of third party coal storage impeding the

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Company's ability to retain an adequate inventory level. It is our understanding, however, that this is not the situation. Third party sales will be minimal.

Some measure of protection still may be needed by this Commission to protect both the Company and ratepayers against future abuses of third party sales. Therefore, we feel it is in the public good and consistent with prior commission practice that a minimum inventory of coal for the Schiller facility be established.

The Commission in DR 84-115, ordered the Company to build up a coal inventory at the Merrimack Station to a ninety (90) day supply. In these proceedings the Company witness has indicated that the Company will maintain a 40,000 ton minimum inventory level or approximately thirty (30) days, after all units are completed and generating. The witness also stated that the site leased to ANR for storage has an estimated capacity of up to 60,000 tons or approximately 45 days.

It is our opinion that Schiller's demand for storage should be foremost with the leased property. This is part of the reason rent for the property is only $1,200 per year. We therefore

will require a minimum coal inventory of 45 to 60 days. This is consistent with our findings in DR 84-115 and within the physical constraints at the Schiller site.

With the exception of the previous mentioned issue, we find the lease agreement submitted as exhibit 1 in these proceedings, corrected for typographical errors, to be in the public good. Of course, the remaining agreements with ANR are not before us in this docket and, thus, the findings and conclusions in this order are not applicable to those remaining agreements.

Our Order will issue accordingly.

ORDER

Upon Consideration of the foregoing Report, which will be made a part hereof; it is

ORDERED, that Public Service Company of New Hampshire be, and hereby is, permitted to enter into the "Coal Storage Lease Agreement" with ANR Coal Sales, Incorporated in accordance with RSA 374:30; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire maintain a 45 to 60 day supply of coal at the Schiller Station for each unit after said unit is converted to coal.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of November, 1984.

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NH.PUC*12/01/84*[61607]*69 NH PUC 676*Fuel Adjustment Clause

[Go to End of 61607]

69 NH PUC 676

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, and Woodsville Power and Light Department

DR 84-265, Order No. 17,334

New Hampshire Public Utilities Commission

December 1, 1984

Order setting fuel adjustment clause rates.

By the Commission:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of

Wolfeboro, Concord Electric Comany, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268), notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

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

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

FURTHER ORDERED, that 21st Revised Page 19A of Concord Electric Company tariff; NHPUC No. 8 - Electricity, providing for a fuel surcharge of $.012 per 100 KWH for the months of November and December, 1984, be, and hereby is, permitted to become effective for the month of December, 1984; and it is

FURTHER ORDERED, that 21st Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge of $.307 per 100 KWH for the months of November and December, 1984, be, and

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hereby is, permitted to become effective for the month of December, 1984; and it is

FURTHER ORDERED, that 11th 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, November, and December, 1984, be, and hereby is, permitted to remain in effect for December, 1984; and it is

FURTHER ORDERED, that 13th Revised Page 30 of Granite State Electric Company tarriff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of October, November, and December, 1984 of $1.209 per 100 KWH, be, and hereby is, permitted to remain in effect for December, 1984; and it is

FURTHER ORDERED, that 47th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity, providing for a fuel surcharge of $3.32 per 100 KWH for the month of December, 1984, be, and hereby is, permitted to become effective December 1, 1984; and it is

FURTHER ORDERED, that 99th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 Electricity, providing for a fuel surcharge credit of $(.70) per 100 KWH for the month of December, 1984, be, and hereby is, permitted to become effective December 1, 1984; and it is

FURTHER ORDERED, that 96th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 Electricity, providing for an energy surcharge credit of $(.22) per 100 KWH for the month of December, 1984; be, and hereby is, permitted to become effective

December 1, 1984.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this first day of December, 1984.

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NH.PUC*12/04/84*[61608]*69 NH PUC 677*Granite State Electric Company

[Go to End of 61608]

69 NH PUC 677

Re Granite State Electric Company

DF 84-286, Order No. 17,338

New Hampshire Public Utilities Commission

December 4, 1984

Order granting authority to issue and sell long-term notes.

Appearances: for the petitioner, Robert K. Wulff, Esquire

By the Commission:

REPORT

By this unopposed petition filed October 2, 1984, Granite State Electric Company (the Company), a corporation duly organized under the Laws of this State and conducting an electric public utility business therein, seeks authority pursuant to RSA 369 to issue and sell a longterm note or notes (the Note) in an aggregate principal amount not exceeding $5,000,000. The proposed Note will mature in not exceeding 20 years and will bear interest at a fixed rate not exceeding 15% per annum. The Note will be issued

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pursuant to a Note Agreement, the specific terms of which will be negotiated with the purchaser.

A public hearing was held on the petition on November 14, 1984.

The Company's financial statements, introduced at the hearing as exhibits, were the basis of testimony relating to the Company's capitalization. They show that on the date of the statements, June 30, 1984, the Company's authorized capital stock consisted of 60,400 shares, $100 par value, issued and outstanding. The Company also had outstanding, as of June 30, 1984, $4,000,000 of long-term debt in the form of a 9 1/2% note due 1986 issued to John Hancock Mutual Life Insurance Company and $4,250,000 of short-term notes payable. The Company's financial statements also show that uncapitalized expenditures have increased in net amount by

$9,819,125 from September 30, 1976 to June 30, 1984 for a total of $17,632,435 in uncapitalizable expenditures on June 30, 1984.

In its prefiled testimony, the Company represented that since late 1976, it has had a portion of its capitalization in longterm debt in the form of the 9 1/2% note. The 9 1/2% note was originally issued in an aggregate principal amount of $8 million. The Company has since retired $4 million of this note through the mandatory sinking fund. As a result, short-term debt has grown to approximately $4.3 million which represents approximately 27% of capitalization, including short-term debt, at June 30, 1984.

The Company represented that the proceeds from the issue and sale of the proposed Note will be applied to the payment of short-term borrowings of the Company incurred for or to the cost of, or to the reimbursement of the treasury for, capitalizable additions and improvements to the plant and property of the Company.

Upon investigation and consideration of the evidence submitted, this Commission is satisfied that the proceeds of the proposed issue and sale of the Note will be applied toward the payment of shortterm borrowings of the Company incurred for or to the cost of, or to the reimbursement of the trearury for, capitalizable additions and improvements to the plant and property of the Company. This Commission also finds that the granting of the authorizations and approvals sought herein is consistent with the public good; and accordingly authorizes and approves the proposed issue and sale by the Company of not exceeding $5,000,000 principal amount of long-term notes, and the purposes to which proceeds therefrom are to be applied.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Granite State Electric Company be, and hereby is, authorized to issue and sell for cash, its note or notes, in an aggregate principal amount not exceeding five million dollars ($5,000,000), maturing in not exceeding twenty (20) years and bearing interest at a fixed rate not exceeding fifteen percent (15%) per annum; and it is

FURTHER ORDERED, that the proceeds of said note be applied to the payment of short-term borrowings of the Company incurred for or to the cost of, or to the reimbursement of the treasury for, capitalizable additions and improvements to the plant and property of the Company; and it is

FURTHER ORDERED, that on or before January first and July first in each year until the expenditures of the whole

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of the proceeds of said note shall be fully accounted for, said Granite State Electric Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer or an Assistant Treasurer, showing the disposition of proceeds of said note.

By Order of the Public Utilities Commission of New Hampshire this fourth day of December, 1984.

69 NH PUC 679

Re Public Service Company of New Hampshire

DF 84-200,
Third Supplemental Order No. 17,343

New Hampshire Public Utilities Commission

December 6, 1984

Order establishing scope of proceedings.

Appearances: As previously noted

By the Commission:

REPORT

This docket was opened by an Order of Notice dated August 2, 1984. Pursuant to that Order of Notice, a procedural hearing was held on August 9, 1984 for the purpose of, inter alia, establishing a procedural schedule. By Order No. 17,164 ([1984] 69 NH PUC 446), the Commission established a schedule which addressed issues of, inter alia, the prefiling of testimony and exhibits and discovery. That Order also scheduled the initial day of hearings for December 3, 1984. On November 9, 1984, the Commission issued Second Supplemental Order No. 17,333 ([1984] 69 NH PUC 671) which notified the parties, inter alia, that the initial business of the December 3, 1984 hearing would be a Pre-Hearing conference held pursuant to PUC Rule No. 203.05. See also, RSA 541-A:16 V (Supp. 1983). The Pre-Hearing conference was held as scheduled and, pursuant to the Rule, the Commission is issuing this Pre-Hearing Order. We shall address each of the issues raised in the Pre-Hearing conference in turn.

SCOPE OF ISSUES

The parties presented their views of the issues which they wish to address and which they believe to be within the scope of the proceedings as established by the Commission. With the exception of several items, discussed separately below, the parties were in agreement. Thus, there was no dispute that certain issues fall within the scope of proceedings as defined by the Commission including, inter alia: 1) bankruptcy; 2) the Commission's authority over the Newbrook Corporation; 3) the potential effect of Public Service Company of New Hampshire's ("PSNH" or "Company") financing plan (including the $425 million financing

approved in DF 84-167 as well as the financing proposed in the instant docket) on rates; 4)

the effect of Seabrook based rates on demand for electricity; and 5) the rate issues identified by the Court in Re Seacoast Anti-Pollution League (1984) 125 NH —, 484 A2d 1196. We have reviewed the above list of issues and we have determined that they are relevant and material to the scope of proceedings as defined by the Commission. Accordingly, we will allow the parties to address these issues in the course of their participation in these proceedings.

The appropriateness of including the remaining issues proposed by one or more of the parties is disputed. Those issues are: 1) the rate impact of alternative treatments of Seabrook Unit II and Pilgrim Unit II; 2) whether the proposed Maine Yankee transaction between PSNH and the New Hampshire Electric Cooperative ("Co-op") ("Yankee Swap") is in the public good; 3) whether an appropriate evaluation of the Company's petition can be made on the basis of incremental cost above; and 4) whether the Commission can consider a cap on Seabrook cost as a part of this proceeding.

Our evaluation of the above disputed issues for the purpose of this Order will be procedural only. Thus, our rulings will pertain only to whether the parties may present evidence or argument on a particular issue. Our rulings should not be read as a pre-determination of the weight to be attributed to particular evidence or argument or to whether, after review of evidence or argument, the Commission will adjudicate the issue in this proceeding. Further, we are guided by the Court's language in Re Easton (1984) 125 NH —, 480 A2d 88, which states: "... the PUC has a duty to determine whether, under all the circumstances, the financing is in the public good ..." (Emphasis supplied.) (Slip opinion at 6.) We are also guided by the Court's language in Re Seacoast Anti-Pollution League, supra which directed (484 A2d at p. 1203):

Our opinion has referred to some of the issues that the commission must address in the course of its Easton inquiry. As an example, we remind the commission that Re New Hampsire Gas & E. Co. supra [(1936) 88 NH 50, 16 PUR NS 322, 184 A2d 602], held that "the primary public interest may be found to be affected injuriously" "if it appears, upon all the evidence, that the capitalization sought is so high that the utility, because if [its] inability to earn operating costs, depreciation and other charges, will not be able to give its consumers at reasonable rates the service to which they are entitled. ..." Id. 88 NH at p. 57, 16 PUR NS at p. 329, 184 Atl at p. 607. Therefore, in the Newbrook proceeding the commission must address the effect on the company's future rates of this and any further investment, with findings of fact sufficient for genuine appellate review.

Seabrook Unit II and Pilgrim Unit II

Several intervenors have requested the opportunity to pursue the issue of the effect of alternative treatments of Seabrook Unit II and Pilgrim Unit II costs on the financial scenarios supplied by PSNH and other parties. PSNH objected claiming that the issue is before the Commission in other proceedings and that the issue is irrelevant. PSNH's concern is that we may in this case make findings that will affect its rights in other subsequent ratemaking proceedings.

After review, we have decided to allow the intervenors to pursue the Seabrook Unit II and Pilgrim Unit II issue. As discussed by the parties, this issue will be

treated on a "what if" basis so that the record will reflect the effects of alternative scenarios

for our consideration of the public good. The issue of the proper ratemaking treatment for Seabrook Unit II and Pilgrim Unit II has not been noticed and accordingly, any such determination must be deferred until the appropriate proceeding.

Yankee Swap

The Yankee Swap involves the sale of PSNH's ownership share of the Maine Yankee facility to the Co-op and the subsequent exchange with PSNH of that share for a like amount of Seabrook Unit I when the plant is completed. PSNH proposes to use the proceeds of the initial sale as security for several of the interest payments required by the proposed financing. Several Intervenors have requested that they be allowed to submit evidence on the propriety of PSNH's proposed Yankee Swap. PSNH and the Co-op have objected. PSNH's objection is based on its contention that Commission approval of the Yankee Swap is not sought and not necessary. The Co-op is concerned because the issue will be before the Commission in its remanded Seabrook financing docket, DF 83-360, Re Easton, supra, and it does not wish an opportunity for meaningful adjudication foreclosed by our findings in the instant proceeding.

After review, we will overrule the objections. PSNH has included a description of the Yankee Swap as one of the facts averred in its petition. Additionally, the transaction is described in detail by two of PSNH's witnesses in prefiled testimony. It is clear that PSNH is offering the transaction as security to investors in the proposed financing and, accordingly, an evaluation of the transaction is material to a determination of the public good.

Incremental Cost

Several intervenors have argued that it is inappropriate to evaluate the alternatives to Seabrook on the basis of incremental cost alone. PSNH has objected on the basis of: 1) the appropriateness of an incremental cost standard; and 2) the fact that the incremental cost standard was noticed in the Commission's orders.

After review, we will sustain PSNH's objection. Our Order of Notice stated that the issue includes: "an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of ... incremental cost ..." We have been presented with insufficient reason to vary from that standard. A finding of public good for the purpose of reviewing a proposed financing involves an evaluation of the circumstances as they exist today. The costs which have already been "sunk" will exist in any event and should be treated in a consistent way in comparing alternatives.

However, it should be explicitly noted that the incremental analysis described above does not prescribe any particular assumption about how sunk costs should be treated (apportioned) for revenue requirements analysis; nor does it carry with it any presumption about how sunk costs ultimately will be treated for ratemaking purposes. That matter must await adjudication in an appropriately noticed proceeding.

Further, it must be stated that a total cost analysis is appropriate to an evaluation of "Whether it is financially feasible for the Company to engage in its proposed construction program, including an evaluation of the level of revenues necessary to support the capital structure which would result fom the successful completion of Seabrook Unit I." Ratepayer and investor exposure cannot be assessed on

the basis of incremental cost alone. To the extent that PSNH's objection to the use of a total cost standard was intended to proscribe our evaluation of this issue (i.e., Issue #3), it is overruled. As noted above, we are not engaged here in a ratemaking determination. Any evidence on total cost will be reviewed for the purpose of assessing ratepayer and investor exposure and any other matters related to the public good.

Cost Cap

Several intervenors have raised the issue of whether the Commission could make findings which would in effect, cap the cost of Seabrook Unit I construction for ratemaking purposes. PSNH has objected on the basis of lack of notice and because there already exists an ongoing docket on the issue.

After review, we have decided to allow the parties to present evidence or argument on the issue. Our decision here is procedural; an adjudication of the merits must await our analysis of the proferred evidence or argument in relation to our ultimate determination of the public good.

Schedule and Order of Witnesses

Our November 29, 1984 Order of Notice proposed a schedule and solicited recommendations on the order of witnesses. The parties conferred and recommended that the Commission adopt the following tentative schedule:

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

Date Witness

December 3, 1984 Mr. Derrickson
December 4, 1984 Mr. Derrickson
December 5, 1984 Mr. Derrickson
December 6, 1984 Mr. Plett
December 11, 1984 Mr. Hildreth
December 12, 1984 Mr. Staszowski
December 13, 1984 Mr. Staszowski
December 17, 1984 Ms. Hadley
December 18, 1984 Mr. Bayless
December 19, 1984 Mr. Lovins
December 20, 1984 Mr. Chernick
January 3, 1985 Mr. Rosen
January 4, 1985 Mr. Viles
January 7, 1985 Mr. Palast
January 8, 1985 Mr. Hilberg
January 9, 1985 Rep. Easton
January 10, 1985 Mr. Ellsworth
January 11, 1985 Mr. Trawicki
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After review, we have decided to adopt the proposed schedule. We recognize that certain witnesses may be required to spend more time at the hearing than allotted here and that other witnesses may require less time. We also recognize that unexpected events may necessitate a schedule change. In such an instance, we shall be receptive to the appropriate Motion of any party. Further, we have stated our intention to schedule a view of Seabrook. That event, when noticed, may require a modification of the schedule.

Order of Cross-examination

Based on the statements of the parties, we have determined that, for the purposes of cross-examination, there are three groups of interests. The group that supports the grant of PSNH's petition is PSNH, the Business and Industry Association and the Co-op. All remaining intervenors favor the denial of PSNH's Petition. The third group consists of the Commission and its Counsel which has a decisional role. Cross-examination by a party who is in the same group as the party sponsoring the witness will be defined as "friendly". Cross-examination by a party who is in a group which opposes the party sponsoring the witness will be defined as "adverse". Cross-examination by the Commission or its counsel will be characterized as "clarifying" because such cross-examination will be neither friendly nor adverse.

Having defined the groups, we will accept the recommendation of the parties that the order of cross examination will

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be: 1) friendly; 2) adverse; and 3) clarifying. Since PSNH bears the burden of proof, it will be the party within its group to cross-examine last. Subject to the above constraint, we will allow the parties within each group to determine for themselves the appropriate order of cross-examination.

The remaining issue is the order of cross-examination of witnesses Ellsworth and Trawicki. Both the groups favoring and opposing the grant of the PSNH Petition claim that their interests are adverse to Mr. Ellsworth's and Mr. Trawicki's testimony and, thus, both groups ask to be second in the above stated order of cross-examination. After review, we are hesitant to prejudge whether the testimony of witnesses Ellsworth and Trawicki will be adverse or friendly to the interests of any party. Thus, given that PSNH bears the burden of proof, we will establish the following order of cross-examination: 1) the group opposing the grant of the PSNH Petition; 2) the group favoring the grant of the PSNH Petition; and 3) the Commission and its Counsel. See also, Puc Rule No. 203.06.

ADDITIONAL MATTERS

There remain two disputed items: 1) whether the Commission can take administrative notice of the Bankruptcy Analysis of the Law Firm of Devine, Millimet, Stahl & Branch; and 2) whether the Commission should grant a Motion to Compel Discovery of the names of certain of PSNH's investors. The parties have been directed to file Legal Memoranda in support of their respective positions. Accordingly, we will defer ruling on the above matters until we have had an opportunity to review and evaluate the submissions of the parties.

CONCLUSION

As noted above, this Order is directed to the procedure to be followed in the instant docket. It is not meant to be a prejudgment of any substantive issue. Further, the Commission reserves its right, as it always does, to amend any of the rulings contained herein to ensure that the proceedings are concluded in an orderly manner.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that our procedural rulings on the scope of issues, schedule, order of witnesses and order of crossexamination shall be as set forth in the foregoing Report.

By Order of the Public Utilities Commission of New Hampshire this sixth day of December, 1984.

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NH.PUC*12/10/84*[61610]*69 NH PUC 683*Watson Associates

[Go to End of 61610]

69 NH PUC 683

Re Watson Associates

DR 84-331, Order No. 17,344

New Hampshire Public Utilities Commission

December 10, 1984

Order granting 30-year rate filing.

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By the Commission:

ORDER

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

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

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

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

WHEREAS, Watson has averred that it will provide either a surety bond or a junior lien on the project to cover the "buy out" value at the site; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire ("PSNH") the opportunity to respond to Watson's Petition for ThirtyYear Rate Order; and

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

ORDERED NISI, that the Petition for Thirty-Year Rate Order for Watson, including the

interconnection agreement and the rates set forth on the long term worksheet are approved; and it is

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

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

By order of the Public Utilities Commission of New Hampshire this tenth of December, 1984.

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NH.PUC*12/11/84*[61611]*69 NH PUC 684*Pennichuck Water Company, Inc.

[Go to End of 61611]

69 NH PUC 684

Re Pennichuck Water Company, Inc.

Intervenor: Boston and Maine Corporation

DE 84-288, Order No. 17,346

New Hampshire Public Utilities Commission

December 11, 1984

Order authorizing installation of pipeline across railroad property.

By the Commission:

ORDER

WHEREAS, Pennichuck Water Company, Inc. (Pennichuck) on October 1, 1984, filed a request for approval for the construction of an underground water pipeline that will traverse the tracks and property of the Boston and Maine

Corporation in the Town of Merrimack, New Hampshire; and

WHEREAS, New Hampshire law, RSA 371:24 provides the following:

Upon approval of the commission, a public utility may construct transmission and distribution lines that traverse or parallel the tracks and property of a railroad and establish a permanent or temporary easement thereby. The public utility shall file a plan and layout delineating the route for such lines with the commission 30 days prior to beginning construction and shall make any payment to the railroad that the commission determines to be just and

reasonable.

and

WHEREAS, Pennichuck Water Works, parent company of Pennichuck, and the Boston and Maine Corporation have entered into and mutually agreed to an easement deed filed with this request, including an easement plan, granting a permanent subsurface easement for the location and maintenance of one water line; and

WHEREAS, this easement deed was granted in consideration of $1000.00, and in our opinion is in the public good; it is hereby

ORDERED, that Pennichuck Water Company, Inc. is authorized to construct and install an underground pipeline that traverses the track and property of the Boston and Maine Corporation in the Town of Merrimack, and as described and shown on exhibits filed in this docket.

By order of the Public Utilities Commission of New Hampshire this eleventh day of December, 1984.

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NH.PUC*12/13/84*[61612]*69 NH PUC 685*New England Telephone and Telegraph Company

[Go to End of 61612]

69 NH PUC 685

Re New England Telephone and Telegraph Company

DR 84-95,
Sixth Supplemental Order No. 17,348

New Hampshire Public Utilities Commission

December 13, 1984

Order approving revised tariffs.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, on November 19, 1984, this Commission issued its Order No. 17,320 (69 NH PUC 658) authorizing New England Telephone and Telegraph Company (NET) a temporary rate increase in the amount of $21,627,000, and directed that revised tariff pages reflecting such increase be filed; and

WHEREAS, on December 3, 1984, NET filed revised tariff pages which it states

will glean said temporary rate increase; and

WHEREAS, Commission review of the revised pages indicates they are in compliance with

the earlier order; it is

ORDERED, that the revised tariff pages of New England Telephone and Telegraph Company Tariffs Nos. 75 and 76 shown on the attachment to this order, be, and hereby are, approved for effect with all bills rendered on and after December 15, 1984.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1984.

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

Attachment I

NHPUC - NO. 75
 Supplement No. 17 -  Title Page
-  Original Pages 1 through 80
Part A - Section 1 -  Third Revision of Pages 11 and 15
- Section 2 -  Third Revision of Page 8
-  Second Revision of Page 14
- Section 4 -  Third Revision of Page 31 through 40
- Section 5 -  First Revision of Pages 20.4 through 20.7
- Section 6 -  Third Revision of Pages 2, 3, 5, 6, and 8
- Section 7 -  Third Revision of Page 2
-  First Revision of Page 4.1
-  Fourth Revision of Page 6
-  First Revision of Pages 6.1 and 6.2
-  Third Revision of Pages 8, 9, 11 through 13
-  First Revision of Page 14
-  Third Revision of Pages 17 and 18
-  Fifth Revision of Page 30
-  First Revision of Pages 31.1 and 34.2
-  Third Revision of Pages 35, 40 and 41
-  Fourth Revision of Page 42
-  Third Revision of Page 43
-  Fourth Revision of Page 44
-  Third Revision of Pages 45, 46, and 52
-  First Revision of Page 53
-  Third Revision of Pages 54 through 63, and 66
-  Fourth Revision of Page 69
-  Second Revision of Pages 82 and 83
- Section 8 -  Fourth Revision of Page 4
Part B - Section 3 -  Third Revision of Pages 3 and 4
-  Fourth Revision of Page 8

NHPUC - No. 76
Supplement No. 2 -  Title Page
-  Original Page 1
Mobile -  Third Revision of Page 13
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NH.PUC*12/13/84*[61613]*69 NH PUC 687*New England Telephone and Telegraph Company

[Go to End of 61613]

69 NH PUC 687

Re New England Telephone and Telegraph Company

DR 84-368, Order No. 17,349

New Hampshire Public Utilities Commission

December 13, 1984

Order approving tariffs for optional measured service.

By the Commission:

ORDER

WHEREAS, on December 5, 1984, New England Telephone and Telegraph Company filed with this Commission certain revisions to its tariff, NHPUC No. 75, documenting the addition of optional measured service to various exchanges between the period January 12, 1985 and May 30, 1985; and

WHEREAS, this filing is another in the steps taken by the Company in compliance with Commission Order No. 15,752 (DR 82-70) ([1984] 67 NH PUC 469) which specified that the Company would offer optional measured service in each of its exchanges no later than December 31, 1985; and

WHEREAS, the Commission finds such filing in accord with its earlier order and in the public interest; it is

ORDERED, that Part A, Section 5, Original Page 20.8 and 2nd Revised Pages 20.4, 20.5, 20.6 and 20.7; and Supplement No. 18 (Title Page and Original Pages 1-7) be, and hereby are, approved for effect on January 5, 1985; and it is

FURTHER ORDERED, that affected customers be given timely notice of the availability of this option.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1984.

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NH.PUC*12/13/84*[61614]*69 NH PUC 687*Public Service Company of New Hampshire

[Go to End of 61614]

69 NH PUC 687

Re Public Service Company of New Hampshire

DR 84-355, Order No. 17,350

New Hampshire Public Utilities Commission

December 13, 1984

Order granting waiver of commission rules and effecting special contract.

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By the Commission:

ORDER

WHEREAS, Public Service Company of New Hampshire, a utility selling electricity under the jurisdiction of this Commission, has filed with the Commission a copy of Special Contract No. 46 with the Department of Resources and Economic Development of the State of New Hampshire for electric service at rates other than those fixed by its schedule of general application; and

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

ORDERED, that a waiver be granted from that portion of Part 1601.02 (c) of the Commission's Rules and Regulations which requires that special contracts be filed at least fifteen days in advance of the effective date; and it is

FURTHER ORDERED, that said Contract become effective on the first day of December, 1984.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1984.

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NH.PUC*12/17/84*[61615]*69 NH PUC 688*Public Service Company of New Hampshire

[Go to End of 61615]

69 NH PUC 688

Re Public Service Company of New Hampshire

DR 84-354, Order No. 17,356

New Hampshire Public Utilities Commission

December 17, 1984

Order directing production of data.

By the Commission:

ORDER

WHEREAS, Public Service Company of New Hampshire (PSNH) has petitioned the Commission for approval of an ECRM (Energy Cost Recovery Mechanism) rate for the first six months of 1985 (JanuaryJune); and

WHEREAS, as part of the investigating process into the ECRM rate Staff has submitted to PSNH 12 data requests; and

WHEREAS, PSNH alleges that request #1 of Staff Data Request Set]1, dated December 10, 1984, will disclose to the general public terms of certain coal purchasing contracts which might adversely affect the ability of PSNH to obtain the most favorable terms and conditions available in the marketplace in negotiating new contracts with other suppliers; and

WHEREAS, PSNH has not yet produced evidence that the information to be offered in response to Staff's data request will adversely affect the Company's position in future or present contractual obligations, now therefore; it is

ORDERED, that PSNH shall immediately upon receipt hereof provide to the Commission and the Commission Staff the data requested in request #1 of Staff Data Request Set #1, dated December 10, 1984, and, unless and until otherwise ordered, it is to be viewed only by the Commission and the Commission Staff. Until such further order of the Commission, said data and the information contained therein shall not be copied or reproduced nor shall the information contained therein be further disseminated; and it is

FURTHER ORDERED, that PSNH shall present its evidence during the proceeding of this docket supporting the need to continue the protection of said information which is provided herewith; and it is

FURTHER ORDERED, that upon completion of this docket all data, which is subject hereof, shall be returned forthwith to the custody of PSNH, unless otherwise ordered.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1984.

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NH.PUC*12/18/84*[61616]*69 NH PUC 689*Fuel Adjustment Clause

[Go to End of 61616]

69 NH PUC 689

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 84-326,
Supplemental Order No. 17,357

New Hampshire Public Utilities Commission

December 18, 1984

Supplemental order approving a revised fuel surcharge for an electric utility.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton

Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59 ([1982] 67 NH PUC 268) notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

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

ORDERED, that 132nd Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of $1.41

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per 100 KWH for the month of December, 1984, be, and hereby is, permitted to become effective December 10, 1984.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 1984.

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NH.PUC*12/18/84*[61617]*69 NH PUC 690*Public Service Company of New Hampshire

[Go to End of 61617]

69 NH PUC 690

Re Public Service Company of New Hampshire

DF 84-200,
Fourth Supplemental Order No. 17,359

New Hampshire Public Utilities Commission

December 18, 1984

Order by commission in a generic proceeding ruling on motions to compel discovery, produce testimony, and take administrative notice.

Evidence, § 3 — Administrative notice — Appropriateness when supporting witness is available — Benefits of cross examination.

Where one party to a generic proceeding requested that the commission take administrative notice of a relevant document the commission found that the presentation of a supporting witness with the attendant opportunity to test the analysis and conclusions contained in the document through cross-examination was a preferable procedural alternative to the taking of administrative notice. [1] p.691.

Procedure, § 17 — Motion to compel discovery — In camera review by commission.

Where a motion to compel discovery brought by a party to a generic proceeding was not sufficient to allow the commission to determine whether the information sought was relevant or

material to the extent that it outweighed the burden imposed on the respondent, the commission directed the respondent to provide the requested data to the commission so that it could be examined in camera solely for the purpose of determining whether the motion to compel should be granted or denied. [2] p.691.

Appearances: As previously noted.

By the Commission:

REPORT

This docket was opened by an Order of Notice dated August 2, 1984. The procedural history has been set forth at length in previous orders and need not be repeated here. The purpose of this Order is to rule on the several outstanding Motions which remain. Those Motions are: 1) Public Service Company of New Hampshire's ("PSNH" or "Company") Motion that the Commission take administrative notice of a September 18, 1984 Report prepared by the firm of Devine, Millimet, Stahl and Branch entitled The State of New Hampshire and Public Service Company of New Hampshire ("Bankruptcy Report"); 2) Seacoast Anti-Pollution League's ("SAPL") Motion to Compel Discovery; 3) SAPL's Motion to Direct PSNH to Produce Further Testimony; and 4) the Consumer Advocate's Motion on additional PSNH testimony. Responses to

those Motions have been filed by the parties and have been fully considered by the Commission. We shall address each Motion in turn.

Bankruptcy Report

[1] During the hearing of December 3, 1984, PSNH requested that the Commission take administrative notice of the Bankruptcy Report (Tr. at 148). SAPL objected (Tr. at 148-149) and the Commission took the matter under advisement pending the filing of legal memoranda by the parties. On December 17, 1984, the Business and Industry Association of New Hampshire ("BIA") reported that it had been in contact with the authors of the Bankruptcy Report and that they were prepared to present a witness to support the authenticity, analysis and conclusions of the Bankruptcy Report (Tr. at 1455-56). No objection to the proffer of a witness to support the Bankruptcy Report was interposed by any party. Additionally, the Commission believes that the pesentation of a supporting witness, with the attendant opportunity to test the analysis and conclusions of the Bankruptcy Report through cross-examination, is a preferable procedural alternative to the taking of administrative notice. Accordingly, we will accept the proffer of the witness and the proposed schedule of the parties. The witness will be presented on January 15, 1984,[1(204)] data requests must be submitted no later than December 28, 1984 and responses to data requests must be submitted no later than January 7, 1985.

Motion to Compel Discovery

[2] Pursuant to the procedural schedule established in Report and Order No. 17,164 ([1984] 69 NH PUC 446) SAPL submitted[2(205)] to the Company the following data request:

1. Identify all purchasers, including ultimate purchasers, of the $90 million notes sold in June; the institutional purchasers of the exchange or public offering for the $425 million intended to be sold in October.

On October 15, 1984, PSNH submitted the following response:

The $90 million private placement was purchased by 14 institutional investors. We expect the public offering of $425 million to be purchased by up to 300 investors. Nearly all of the dollar amount of the public offering will be purchased by institutional investors.

The Company respectfully declines to provide the names of the purchasers of either the $90 million notes or the $425 million on the following grounds:

a. Provision of the names would serve no relevant purpose to this proceeding;

b. The names of the purchasers of securities of the Company are generally treated as confidential; and

c. Provision of names might provide opportunity for damage to credit relationships. The Company has learned that certain persons who oppose The Company's refinancing have written directly to the Company's lenders urging that such lenders decline to extend

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further credit to the Company. Provision of the names would expose the Noteholders to similar efforts to impair the Company's credit.

F. J. Coolbroth is responsible for this response.

On December 3, 1984, SAPL filed an oral Motion to Compel Discovery (Tr. at 137-138) which was followed up by written legal memoranda by SAPL, PSNH and the BIA.

We have reviewed the argument contained in the memoranda in light of the analysis set forth in our Report and Third Supplemental Order No. 17,307 ([1984] 69 NH PUC 649) in this docket. On the face of the written submissions, we are unable to determine whether the information sought is relevant or material to a point where it outweighs the burden imposed on the respondent. Accordingly, we will direct the Company to provide the information to the Commission so that it can be examined in camera solely for the purpose of determining whether SAPL's Motion to Compel should be granted or denied. Pending that review we shall continue to take the Motion under advisement. If, after we review the information, we decide to deny SAPL's Motion to Compel, the information will be returned to the Company forthwith. If we decide to grant the Motion, notice will be provided to all parties so that appropriate requests for protective orders may be considered prior to the release of the information to the parties.

Motion to Produce Further Testimony

On December 12, 1984, SAPL filed a Motion to have the Commission Direct PSNH to Produce Further Testimony. Specifically, SAPL seeks the production of Mr. Harrison of PSNH, Mr. Fassett of United Illuminating, and the President or Chief Financial Officer of Northeast Utilities for the purpose of testifying on PSNH's proposal to cap the cost of Seabrook Unit I for ratemaking purposes at $4.5 billion. See, Transcript of informational hearing of July 23, 1984,

administratively noticed in this dockt at Tr. at 1480. PSNH filed a reply memorandum objecting to the SAPL Motion on December 18, 1984 and the Consumer Advocate filed a Motion supporting the SAPL Motion on the same date.

After review, we have decided to grant the Motion in part and deny the Motion in part.

We have already determined that the parties may submit evidence and argument on a cost cap. See, Report and Third Supplemental Order No. 17,343 ([1984] 69 NH PUC 679, 682). Mr. Harrison, as the President and Chief Executive Officer of PSNH has made past representations about such a cap and is the only Company representative who can speak authoritatively about the PSNH position. We believe that it is in the interest of all parties to allow for the full development of the record on this issue consistent with the interest of not imposing unreasonable burdens. Accordingly we will direct PSNH to produce Mr. Harrison at a time acceptable to the parties for the purpose of providing testimony on PSNH's position as it relates to a cap on the cost of Seabrook Unit I for ratemaking purposes.

With respect to the other witnesses requested by SAPL, we are not convinced that their testimony is relevant or material to the issue of PSNH's position on the cap to a point where the burden of directing PSNH to produce such out-ofstate witnesses can be overcome. The economics of a cost cap in Connecticut are not material to an adjudication of the issue as it pertains to PSNH. Accordingly, SAPL's Motion will be denied to

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the extent that it applies to Mr. Fassett and the President or Chief Financial Officer of Northeast Utilities.

Motion on Additional PSNH Testimony

In addition to stating his support for SAPL's Motion to produce evidence on the cost cap, the Consumer Advocate requested that the Commission direct the Company to provide:

Quantification of what Mr. Stasowski [sic] refers to as factors which would if quantified show Seabrook to be more beneficial than his study as presented.

We have considered fully the Consumer Advocate's request. The information sought was the subject of extensive cross-examination by the Consumer Advocate. In the couse of that cross-examination, Mr. Staszowski stated that it would take weeks to months to provide the quantification and that the value of such a quantification would be marginal. In vew of that testimony, which at this time has not been controverted, we belive that a requirement to provide such a quantification would unduly burden the record. Accordingly, the Consumer Advocate's Motion will be denied.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the witness to sponsor the Bankruptcy Report shall be scheduled to appear as set forth in the foregoing Report; and it is

FURTHER ORDERED, that PSNH provide the information sought in SAPL Data Request No. 1 to the Commission for an in camera inspection solely for the purpose of ruling on SAPL's Motion to Compel Discovery; and it is

FURTHER ORDERED, that PSNH produce Mr. Harrison to testify about PSNH's position as it relates to a cap on the cost of Seabrook Unit I for ratemaking purposes; and it is

FURTHER ORDERED, that SAPL's Motion to Direct PSNH to Produce Further Testimony is denied in all other respects; and it is

FURTHER ORDERED, that the Consumer Advocate's Motion for Additional PSNH Testimony is denied in all other respects.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 1984.

FOOTNOTES

[1]Direct examination of the witness will be conducted by the Commission's Counsel consistent with his role as a Decisional Employee. See, Puc Rule No. 203.15, Tr. at 31-33, 1457-59.

[2]PSNH stated that SAPL submitted the request on October 5, 1984, rather than on the October 1, 1984 deadline. However, since PSNH provided a response in a timely manner, there is no need to address the issue of the deadline.

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NH.PUC*12/20/84*[61618]*69 NH PUC 693*New England Telephone and Telegraph Company

[Go to End of 61618]

69 NH PUC 693

Re New England Telephone and Telegraph Company

DF 84-178,
Supplemental Order No. 17,362

New Hampshire Public Utilities Commission

December 20, 1984

Supplemental order approving standard indenture provisions proposed by a telephone utility.

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By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, New England Telephone and Telegraph Company (the Company) has requested

clarification of Commission Order No. 17,227, dated September 26, 1984 (69 NH PUC 553) related to the use of financing proceeds for the repayment and discharge of unsecured shortterm obligations or for any lawful corporate purpose as need therefore arises; and

WHEREAS, Order No. 17,227 incorporates the Commission Report in Docket DF 84-178 and said report states on page 4 that the current standard indenture provisions will be incorporated into any proposed debt obligation, and the Company's Board of Directors has approved a new form of standard indenture, which contains substantially the same terms and conditions as the previous standard indenture and in addition can accommodate Security and Exchange Commission (SEC) shelf registrations, as well as overseas issues; and

WHEREAS, clarification is required for both of the above items; it is

ORDERED, that the Company may use the proposed financing proceeds for the repayment and discharge of unsecured short-term obligations or for any other lawful corporate purpose as need therefore arises; and it is

FURTHER ORDERED, that the 1984 standard indenture is in compliance with the Report which was made a part of Order No. 17,227.

By order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1984.

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NH.PUC*12/20/84*[61619]*69 NH PUC 694*Trafalgar Power Limited

[Go to End of 61619]

69 NH PUC 694

Re Trafalgar Power Limited

DR 84-358, Order No. 17,363

New Hampshire Public Utilities Commission

December 20, 1984

Petition for a 20-year rate order for the sale of electric power to an electric utility granted by order nisi.

By the Commission:

ORDER

WHEREAS, on September November [sic] 29, 1984 Trafalgar Power Limited ("Trafalgar") filed a long term rate filing; and

WHEREAS, Trafalgar filed an amendment to its filing on December 17, 1984; and

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

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire

("PSNH") the opportunity to respond to the Petition for Twenty-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 61 PUR4th 132, in all respects; it is therefore,

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

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

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

By order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1984.

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NH.PUC*12/26/84*[61620]*69 NH PUC 695*Concord Steam Corporation

[Go to End of 61620]

69 NH PUC 695

Re Concord Steam Corporation

DR 84-268,
Supplemental Order No. 17,369

New Hampshire Public Utilities Commission

December 26, 1984

Supplemental order approving election of a 20-year rate order by a steam corporation.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, on November 26, 1984, the Commission issued Order No. 17,330 in DR 84-268 (69 NH PUC 668) authorizing Nisi, Inter alia, that Concord Steam Corporation (Concord Steam) may elect either the twenty year or the twenty-five year rate set forth in its petition dated September 24, 1984, as amended; and

WHEREAS, said order also provides that Concord Steam supply notice thirty days prior to the in-service date of the facility to the Commission and to the Public Service Company of New

Hampshire (PSNH) as to which rate alternative it has chosen; and

WHEREAS, said order Nisi is to be effective on December 26, 1984, unless otherwise ordered by the Commission; and

WHEREAS, Concord Steam notified the Commission and PSNH by letter dated November 28, 1984 that it had elected the twenty-five year rate; and

WHEREAS, Concord Steam subsequently notified the Commission and PSNH by letter dated December 12, 1984, that it now elects the twenty year rate and revokes its prior election of the twenty-five year rate; and, requests that the twenty year rate be effective on December 26, 1984 notwithstanding the above-cited thirty day rate election notice provision; and

WHEREAS, the Commission finds that

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the requested relief is consistent with the requirements of RSA 362-A and is in the public good; it is

ORDERED, that the twenty year rate set forth in Concord Steam's September 24, 1984 filing, as amended, is effective December 26, 1984.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of December, 1984.

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NH.PUC*12/27/84*[61621]*69 NH PUC 696*Philip S. Moran et al. v Exeter and Hampton Electric Company

[Go to End of 61621]

69 NH PUC 696

Philip S. Moran et al.
v
Exeter and Hampton Electric Company

DC 84-248,
DC 84-223, Order No. 17,365

New Hampshire Public Utilities Commission

December 27, 1984

Motion to reconsider a decision allowing an electric company to terminate service; denied.

By the Commission:

ORDER

WHEREAS, on November 21, 1984, the Commission issued a decision in the abovestated dockets which ordered Exeter and Hampton Electric Company to return a $500 deposit plus

interest to Benjamin M. Labb and which found that Philip S. Moran is responsible for an arrearage of $2,056.61 on certain accounts discussed therein; and

WHEREAS, said decision also allowed Exeter and Hampton Electric Company to terminate service to a residential account in Moran's name in Stratham, New Hampshire pursuant to Rule No. Puc 303.08(b)(1) if Mr. Moran failed to pay the arrearage or make reasonable payment arrangements; and

WHEREAS, on December 10, 1984, Philip S. Moran filed a Motion to Reconsider Decision of the Commission; and

WHEREAS, said Motion repeated arguments which were fully considered and rejected in the initial decision and contained no new information; it is hereby

ORDERED, that Philip S. Moran's Motion to Reconsider Decision of the Commission be, and hereby is, denied.

By Order of the Public Utilities Commission this twenty-seventh day of December, 1984.

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NH.PUC*12/27/84*[61622]*69 NH PUC 697*Policy Water Systems, Inc.

[Go to End of 61622]

69 NH PUC 697

Re Policy Water Systems, Inc.

DR 84-321,
Supplemental Order No. 17,370

New Hampshire Public Utilities Commission

December 27, 1984

Motion by a water utility requesting that the commission specify issues involved in an investigation ordered subsequent to a rate filing by the utility; denied.

By the Commission:

SUPPLEMENTAL ORDER

WHEREAS, on October 25, 1984, Policy Water Systems, Inc. filed certain revisions to its tariff designed to increase annual revenues by $35,922.00; and

WHEREAS, on November 20, 1984, the Commission issued Order No. 17,322 which suspended said tariff pursuant to RSA 378:6 pending an investigation by the Commission of the rates set forth in the tariff and a decision thereon; and

WHEREAS, on December 12, 1984, Policy Water Systems, Inc. filed a Motion reuesting that the Commission issue an order specifying with reasonable detail each of the issues involved in this proceeding and in support thereof states that Order No. 17,322 fails to specify any issues as required by RSA 541-A:16 (III) (d); and

WHEREAS, RSA 378:6 I Suspension of Schedule, provides as follows:

Pending any investigation of a rate schedule and decision thereon, the commission may, by an order served upon the public utility affected, suspend the taking effect of said schedule and forbid the demanding or collecting of the rates, fares, charges or prices covered by the schedule for such period or periods, not to exceed 12 months in all, as in the judgment of the commission may be necessary for such investigation ...;

and

WHEREAS, RSA 365:5, Independent Inquiry, provides as follows:

The commission, on its own motion or upon petition of a public utility, may investigate or make inquiry in a manner to be determined by it as to any rate charged or proposed or as to any act or thing having been done, or having been omitted or proposed by any public utility; and the commission shall make such inquiry in regard to any rate charged or proposed or to any act or thing having been done or having been omitted or proposed by any such utility in violation of any provision of law or order of the commission;

and

WHEREAS, pursuant to the abovestated statutes the Commission is conducting an investigation of the proposed tariff; and

WHEREAS, after said investigation is complete, the Commission will issue an Order of Notice scheduling a hearing

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and specifying the issues involved in such hearing; and

WHEREAS, RSA 541-A:16 (III)(d) provides as follows:

III. In a contested case, all parties shall be afforded an opportunity for an adjudicative proceeding after reasonable notice. The notice shall include:

(d) A short and plain statement of the issues involved. Upon request an agency shall, when possible, furnish a more detailed statement of the issues within a reasonable time;

and

WHEREAS, the Order of Notice to be issued upon completion of the pending investigation will meet the requirements of RSA 541-A:16 (III)(d); and

WHEREAS, after the issuance of said Order of Notice, Policy Water Systems, Inc. may file a motion for a more detailed statement of the issues pursuant to RSA 541-A:16 (III)(d), if, in its opinion, the Order of Notice does not contain sufficient detail; it is hereby

ORDERED, that the Motion of Policy Water Systems, Inc. be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of December, 1984.

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NH.PUC*12/28/84*[61623]*69 NH PUC 698*Lake Tarleton Land Management Corporation

[Go to End of 61623]

69 NH PUC 698

Re Lake Tarleton Land Management Corporation

Additional petitioners: Connecticut Valley Electric Company, Inc., and New Hampshire Electric Cooperative, Inc.

DC 84-271, Order No. 17,371

New Hampshire Public Utilities Commission

December 28, 1984

Petition by an electric user to alter service territories of neighboring utilities; rejected.

Service, § 132 — Duty to serve — Existence of other service.

A petition by an electric consumer to have an electric cooperative's franchise area altered so that it could provide service to the consumer was rejected where the existing utility was willing and able to provide the desired service albeit at a substantially higher connection cost.

Appearances: Ross Robbins on behalf of Lake Tarleton Land Management Corporation; Joseph Kraus, Esquire on behalf of Connecticut Valley Electric Company, Inc.; Earl Hansen on behalf of New Hampshire Electric Cooperative, Inc.

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By the Commission:

REPORT

I. PROCEDURAL HISTORY

On September 13, 1984, Lake Tarleton Land Management Corporation (LTL) filed a petition requesting that the existing franchise line betwen Connecticut Valley Electric Company, Inc. (Con. Val.) and the New Hampshire Electric Cooperative, Inc. (Coop.) be moved so that the Lake Tarleton area is included in the Coop.'s service territory. By letter dated October 3, 1984, the Commission scheduled a hearing for October 30, 1984, at which time representatives of LTL, Con. Val. and the Coop. appeared and took part in the hearing. Ross Robbins, LTL's corporate secretary, testified in support of the petition. Con. Val's manager, Janice Field, and its district superintendent, Eugene M. Brown, offered testimony and exhibits in opposition to the petition. Earl Hansen, the Coop.'s representative, offered testimony on its behalf.

II. APPLICABLE LAW

Electric Utilities Service Territories

374:22-a Service Territories; Commission Jurisdiction.

I. The Commission shall have jurisdiction to establish service territories in any town or portion thereof or other defined franchise area in which 2 or more electric utilities subject to commission jurisdiction are engaged in the distribution and sale of electrical energy. The commission may, from time to time as conditions warrant, alter such territories. In establishing or in altering service territories, the commission shall give consideration to:

(a) Existing service areas;

(b) Any voluntary agreements between or among 2 or more such companies with the commission which define service territories of the companies;

(c) Consistency with the orderly development of the region;

(d) Natural geographical boundaries;

(e) Compatibility with the interests of all consumers; and

(f) All other relevant factors.

II. The Commission shall have power to exercise the jurisdiction conferred in this section only after due notice to all interested parties and hearing, and after making findings that the service territories established or altered are consistent with the public good. In establishing service territories, the commission may declare that specified areas are not within the service territory of any company, and may leave the assignment of such areas for later determination. Existing franchise areas shall be deemed to be service territories in which an electric utility is presently providing service, provided that no other electric utility is authorized to engage in the distribution of electrical energy within the same franchise area.

III. COMMISSION ANALYSIS

This petition involves the provision of electrical service to a building being renovated as a residence on Lake Tarleton in Piermont, New Hampshire. The building, which formerly housed a private club, the Lake Tarleton Club, is located on a 5,200 acre parcel of land which includes Lake Catherine, Piermont Mountain and part of Lake Armington. It is owned by LTL, a New Hampshire corporation formed by C. Fred Weeks of Rye Beach, New Hampshire for the express purpose of acquiring the above described land and maintaining it in its natural condition as a heritage to his children. Mr. Robbins, a forester by profession, was

hired by LTL to manage the property.[1](206) When the renovation to the building requiring electricity is complete, Mr. Robbins and his family will reside in the house. LTL also plans to build two additional residences.

The building and part of Lake Tarleton are located in Con Val's service territory. Several years ago Con. Val. constructed 3.1 miles of three-phase line in order to provide service to the Lake Tarleton Club. At that time, the Club constructed an extension of several hundred feet from

the end of Con. Val's line to the building through a wooded area so that the extension would be hidden from sight. Although the Club went out of existence some time ago, the extension, though in need of some repair, still stands.

By this petition LTL seeks to have the Coop.'s franchise area altered to include the Lake Tarleton area so that the Coop. could provide service to the existing and two proposed residences. To do so, the Coop. would have to build 1,930 feet of single-phase line at a cost to LTL of approximately $3,000 - $4,000. For Con. Val. to provide service by means of a singlephase line would necessitate construction of 6,519 feet of line at a cost of approximately $15,000. According to Mr. Robins, the sole reason LTL desires service from the Coop. is because of the cheaper cost.

Service could also be provided by means of the existing three-phase line by energizing only one line. However, LTL considers this impractical and has no intention of utilizing this option primarily because LTL has and will have no need for three-phase service. According to Mr. Robins, the extension would require a certain amount of repair if a single line were to be energized.[2(207)] Additionally, part of the extension obscures a view of Lake Tarleton. LTL intends to remove this line once the renovation is complete.

Con. Val. opposes the petition. Con. Val. argues that it has provided service to this area in the past and stands ready to do so today by means of the 3.1 mile three-phase line. According to Con. Val., this line was built exclusively for the Lake Tarleton area and despite its lack of use, has been maintained and is ready to be utilized by energizing one line. It therefore opposes any attempt to alter its franchise territory. The Coop. takes no position on the merits of the petition. However, it is ready to accommodate LTL should the Commission see fit to alter the existing line between its and Con. Val.'s franchise territory.

After a complete review of the testimony and evidence, we must deny LTL's petition. Unlike the typical request to alter service boundaries, this petition does not present a situation where the franchised utility is unable to provide adequate and reliable service. As in the past, Con. Val. is ready, willing and able to provide service to the Lake Tarleton area either by means of a new single-phase line or the existing three-phase line which LTL does not wish to utilize. There is therefore no reasonable basis on which to alter the existing service territories. Con. Val. should not be penalized for making service available in its franchise area. If LTL desires single-phase service, it will have to be obtained by Con. Val.

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 petition of Lake Tarleton Land Management Corporation to move the existing franchise line between Connecticut Valley Electric Company, Inc. and the New Hampshire Electric Cooperative, Inc. be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of December, 1984.

FOOTNOTES

[1]This will include some timber production to cover expenses.

[2]Con. Val. estimates this cost to be approximately $5,000.

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[Go to End of 61624]

69 NH PUC 701

Re Concord Electric Company

Additional petitioner: Exeter and Hampton Electric Company

Intervenors: Community Action Program and Office of Consumer Advocate

DE 84-263,
Supplemental Order No. 17,373

New Hampshire Public Utilities Commission

December 31, 1984

Order approving a proposal by several electric utilities for corporate reorganization into a holding company.

Automatic Adjustment Clauses, § 13 — Purchased power — Ability of state commission control passthrough of wholesale rates.

The ability of the state commission to control the passthrough of wholesale electric rates to consumers through a purchased power cost adjustment clause is very limited due to the fact that, even where the Federal Energy Regulatory Commission approves wholesale charges that are clearly violative of state law, the state commission must allow distribution utilities to recover the cost from ratepayers. [1] p.705.

Intercorporate Relations, § 13 — Holding company — Benefits to ratepayers — Electric utilities.

A proposal setting forth a comprehensive plan for corporate reorganization of several electric utilities into a holding company system was approved where the commission found that the reorganization would: (1) permit the utilities, through shared services, to improve the efficiency of administrative, managerial, and purchasing function; (2) improve the utilities' ability to deal with potential power suppliers; and (3) enhance their ability to attract capital on favorable terms. [2] p.705.

Intercorporate Relations, § 13 — Holding company — Effect on commission's ability to protect

ratepayers — Electric utilities.

The commission approved a proposal by several electric utilities for corporate reorganization into a holding system finding the proposal to be in the public interest; however, the commission, responding to concerns regarding a narrowing of its ability to review the utilities' transactions: (1) placed the utilities on notice that the utilities would have the burden of demonstrating the appropriateness of future wholesale power contracts; (2) required the new companies to adhere to currently approved cost allocation formula and systems of accounts; and (3) forbade diversification into nonutility business without express approval. [3] p.705.

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(McQuade, chairman, dissents, p. 708.)

Appearances: For the Petitioners, Joseph S. Ransmeier, Esquire, Dom S. D'Ambruoso, Esquire, and Steven E. Hengen, Esquire; for Community Action Program, Belknap-Merrimack Counties, Gerald M. Eaton, Esquire; Consumer Advocate, Michael Homes, Esquire; for the Commission Staff, Larry Smukler, Esquire.

By the Commission:

REPORT

PROCEDURAL HISTORY

On September 19, 1984, Concord Electric Company and Exeter & Hampton Electric Company ("Concord" and "Exeter", respectively, or the "Petitioners" or the "Companies" jointly) filed a Joint Petition for Approval of Reorganization into a Holding Company System and Certain Related Matters. On October 16, 1984, the Commission issued an Order of Notice establishing November 2, 1984 as the date for a procedural hearing. At the procedural hearing, the Commission heard the unsworn statement of Larry Eckhaus supporting the Petition, heard the Petition to Intervene of the Community Action Program (CAP), and the oral Motion to Intervene of Public Service Company of New Hampshire (PSNH), and considered a discovery and hearing schedule. On Novembr 2, 1984, the Commission issued Order No. 17,299 granting CAP's Petition to Intervene and confirming a bench ruling denying the PSNH Motion to Intervene. The Commission concluded that PSNH had not set forth a valid basis to justify intervention, but the decision in this regard was without prejudice and PSNH was afforded leave the renew its request in writing pursuant to RSA 541-A:17. PSNH did not renew its request for intervention and, accordingly, is not a party to these proceedings. in its procedural order, the Commission also established a discovery and hearing schedule. Public hearings on the merits of the Petition were on November 20, 1984 and November 29, 1984. After the hearings, the Commission received the Petitioners' Memorandum of Law and Supplement thereto and also CAP's Memorandum of Law.

THE PETITION

The Petition sets forth a comprehensive plan for corporate reorganization of the Petitioners into a holding company system to be known as the UNITIL System after the newly organized

system parent, UNITIL Corporation ("UNITIL"), a New Hampshire corporation. It requests Commission approval of a variety of aspects of the reorganization, including:

(1) The execution of the Agreement and Plan of Exchange, by which among other things Concord and Exeter shareholders will exchange their common shares for UNITIL shares, and UNITIL will acquire all of the common shares of the Companies;

(2) The organization of UNITIL Power Corp., an affiliate of the Companies, which will engage in the business of wholesale power supply as a New Hampshire public utility;

(3) The continuing operation of Concord and Exeter, after the reorganization, as regulated New Hampshire public utilities within their respective franchise territories;

(4) The maintenance by the Companies and UNITIL Power Corp., after the reorganization, of a

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common cash pool in which each company will have a shifting undivided interest, and authority for the Companies and UNITIL Power Corp. to borrow from, or to lend surplus cash to, any other UNITIL system company on a short-term basis, subject to various limitations;

(5) The incurring of short-term debt up to certain limits by the Companies and UNITIL Power Corp., subject to a duty of semiannual accounting for the disposition of the proceeds to the Commission;

(6) The amortization by the Companies of their actual expenses incurred in connection with the reorganization over a five-year period.

For the reasons set forth herein, we will approve the reorganization and we will approve in part and disapprove in part the series of related transactions listed in the Petition subject to certain specified conditions.

COMMISSION ANALYSIS

The reorganization which is involved in this proceeding is a statutory share exchange under the New Hampshire Business Corporation Law (RSA 293-A) of all the common stock held by the shareholders of each of the Companies for common shares of UNITIL. After the reorganization, Concord and Exeter will continue to be New Hampshire electric utilities fully subject in every respect, as now, to the regulatory jurisdiction of the Commission. The corporate existence and identity of each Company will remain unchanged, and the franchise, assets, liabilities, securities and rate base of each will be unaffected. Only as to the holding of their common stock will they have experienced a change. In this respect, rather than having their separate, individual shareholders, each company after the exchange will be held exclusively by UNITIL, which will itself in turn be held proportionately by the former shareholders of Concord and Exeter.

The rationale for the reorganization is the Companies' conviction that the new organization will assist them to do a better job of providing utility service economically and efficiently. For many years the Companies have had some common directors, officers and employees and have shared some of the advantages of coordinated management. The Companies' witnesses testified

that the reorganization will provide an enduring corporate management arrangement which will stabilize the present relationship and make it permanent, thereby continuing the availability of existing benefits into the indefinite future.

In order to provide management, administrative and other services to the Companies on a coordinated basis, Petitioners have caused the formation of UNITIL Service Corp., which will enter into service agreements with Concord, Exeter, and UNITIL Power Corp. pursuant to contracts to be filed with the Commission pursuant to, inter alia, RSA Chapter 366. The evidence indicated that the formation of UNITIL Service Corp. will make available new opportunities for the Companies to derive benefits from higher volume joint purchasing, standardization of engineering procedures, budgeting, general corporate accounting, data processing, ratemaking, and system development. The Commission will have jurisdiction over the terms of the relationship of the Companies with UNITIL Service Corp. under, inter alia, the Affiliates of Public Utilities statutes, RSA Chapter 366.

A major benefit, which the Companies' evidence indicated would become

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available under the reorganization, is that their access to the capital markets, as elements of the UNITIL System, should be upon more favorable terms than would be available to them as small independent New Hampshire public utilities. The Companies' claimed that their existing size puts them at a serious disadvantage as compared with larger entities seeking equity capital. UNITIL will be twice the size of Concord and Exeter and will correspondingly have larger revenues, net income, cash flow, capitalization and equity, and thus be better able to raise equity capital on more favorable terms. Costs of issuance will be proportionately less and the combined savings in this regard along with themore favorable financing terms to be realized may be expected to create more favorable results for the Companies' customers over a period of time in terms of the costs of capital. We shall be mindful of those benefits when we evaluate Concord's cost of capital in its upcoming rate proceeding (Docket No. DR 84-239).

A third and equally important area of benefit which the evidence indicated may be expected under the reorganization will be the ability of UNITIL Power Corp. to serve as a wholesale supplier of power to Concord and Exeter. Both Companies have recently given PSNH notice of termination of their all-requirements contracts for power supply from PSNH, effective September 30, 1986.

1(208) By combining their efforts in seeking replacement power, the Companies believe that they will gain leverage and bargaining strength in the power supply market. The potential savings to be realized by the Companies in shifting away from PSNH to new alternative sources of power supply are expected by the Companies to be the most substantial economy which they will derive under their new organization. Mr. Stulgis testified that the Companies' exploration of the power supply market to date gave him confidence that the Companies would have no difficulty in meeting their needs after September 30, 1986 at relatively reasonable rate levels, and that for each cent per kilowatt hour saving, as compared with the cost of power otherwise purchased from PSNH, each Company would derive a purchased power cost benefit for its customers of

approximately $3,000,000.

While we recognize the potential benefits of the formation of UNITIL Power Corp., we are also mindful of the risks to New Hampshire ratepayers. The proposed corporate structure will, in all probability, result in the execution of an allrequirements contract between each of the Companies and UNITIL Power Corp. Thus, day-to-day decision-making will be undertaken by UNITIL Power Corp. personnel rather than those of Concord or Exeter; UNITIL Power Corp. personnel who, in the absence of the proposed corporate structure, would be performing identical functions directly for the Companies. The regulatory effect of this structure is to insulate the power supply decision-making process from state regulation and, instead, subject it to the jurisdiction of the FERC. This is because once the all-requirements contract is excuted, UNITIL Power corp. will be engaged in the wholesale sale of power Concord and Exeter. See, e.g., Federal Power Act, Part II, Federal Power Commission v Florida Power & Light Co. (1972) 404 US 453, 92

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PUR3d 149, 30 L Ed 2d 600, 92 S Ct 637; Federal Power Commission v Southern California Edison Co. (1964) 376 US 205, 52 PUR3d 321, 11 L Ed 2d 638, 84 S Ct 644.

[1] Our ability to control the pass through of wholesale rates to consumers through a purchase power cost adjustment clause is very limited. See e.g., Narragansett Electric Co. v Burke (1977) 119 RI 554, 23 PUR4th 509, 381 A2d 1358. Even where the FERC approves wholesale charges that are clearly violative of New Hampshire law, we must allow distribution utilities to recover the cost from ratepayers. See e.g., Re Connecticut Valley Electric Co., Inc. (1984) 69 NH PUC 319 (Appeal presently pending before the New Hampshire Supreme Court, Re Sinclair Machine Products, Inc., Docket No. 84-380); Re Granite State Electric Co. (1984) 69 NH PUC 1. Of course, the Commission has the ability to intervene in FERC proceedings and argue that state policies should be applied to the wholesale rates of affiliated companies. See, 18 C.F.R. § 385.214. Such arguments, designed to protect New Hampshire ratepayers, have not been persuasive to the FERC in the past. For example in Re New England Power Co. (1984) 27 FERC ¶ 63,080, the Commission argued that the FERC should not allow New England Power Company ("NEP") to include in wholesale rates applicable to Granite State Electric Company charges that would otherwise be precluded by RSA 378:30-a, the so-called "Anti-CWIP" law. The Administrative Law Judge responded at 27 FERC ¶ 65,310 as follows:

PUCNH argues that the New Hampshire policy embodied in its statute should not be overriden by the Commission; that PUCNH would be required to allow these CWIP costs, if included by this Commission in NEP's rate base, to be imposed on ratepayers through NEP's affiliate, by way of its purchased power cost adjustment. PUCNH argues that ratepayers of the NEP affiliate will thus be treated differently than other New Hampshire ratepayers who do not pay such costs. PUCNH points out that most of the CWIP proposed to be included in rate base is associated with the Seabrook I nuclear facility in New Hampshire.

Acceptance of PUCNH's argument would mean that a state could impose its own limitations upon rate making by this Commission. If a state's policy prevents this Commission from including CWIP in a rate base, it would follow that a state's policy could limit the rate of return

allowed, limit the type of plants to be included in the rate base, and limit the expenses which could be included as costs — for example, a ceiling could be placed on officers' salaries and other compensation. Here, either NEP would have to be required to forego that portion of CWIP which could be allocated to customers in New Hampshire, and treat interstate customers differently in states with different laws, or (if all NEP customers are to be treated alike, in or out of New Hampshire) the State of New Hampshire would determine NEP's rate treatment by this Commission in every other state served by NEP.

In Order No. 298 the Commission has made no exception based on state laws like New Hampshire. I decline to create one here.

[2, 3] It is therefore apparent that we must exercise due care in approving a corporate structure which narrows our ability to review the Companies' transactions and take appropriate action to

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protect New Hampshire ratepayers. No such proposal is before us in the instant Petition and, accordingly, we will not rule here in a vacuum. However, when the Companies submit their all-requirements contract with UNITIL Power Corp. to the Commission pursuant to, inter alia, RSA Chapter 366, we will closely scrutinize the transaction. The Companies are hereby placed on notice that, in the absence of a mechanism that will allow continuing Commission review of the power supply decision-making process (such as periodic renewals of the all-requirements contract between the Companies and UNITIL Power Corp.), they will have the burden of demonstrating that a contract which restricts the State's ability to protect ratepayers is in the public good.

With respect to the instant Petition, our evaluation of the evidence pertinent to the reorganization, leads us to conclude that the reorganization will permit the Companies, through shared services, to improve the efficiency and economy of various administrative, managerial and purchasing functions as compared with the discharge of such functions by the Companies on an unrelated basis; that it will improve the Companies' ability to deal with potential power suppliers to provide for their needs after September 30, 1986, and that it will enhance their ability to attract capital upon favorable terms. The Commission therefore so finds, and further finds and rules that the reorganization is consistent with and for the public good.

At the outset of the proceedings, we expressed concern regarding potential problems that might flow from the holding company form. The Commission's inquiry of the Petitioners' witnesses and the Petitioners' agreement to accept a stipulated condition to Commission approval of the reorganization has satisfied that concern.

It should be noted that although the Petitioners have represented that the proposed reorganization will qualify for the intrastate exemption under the Public Utilities Holding Company Act of 1935, they have also advised this Commission that the UNITIL System companies will comply with the accounting and cost allocation rules mandated for non-exempt registered public utility holding companies. This decision will require the UNITIL companies to adhere to presently approved cost allocation formulas and systems of accounts, thereby facilitating the work of this Commission in its review and supervision of the public utility

activities of UNITIL System companies and their transactions with affiliates.

In response to the Commission's concern about future diversification of the UNITIL System into non-utility areas, the Petitioners prepared and submitted a condition (the "Condition") to be included in the Commission's order approving the Petition. Under the Condition, each Petitioner and each UNITIL System Company will be bound not to engage in any line of business which is functionally unrelated to the business of a public utility company without our further express approval. We adopt this condition and find that it satisfies our concerns about potential future non-utility diversification of UNITIL activities.

Intervenor CAP has taken the position that the Petition should be granted, but urges that we expand the reach of the Condition so that it would apply to the consolidation of UNITIL with other operating utility companies. We find that the Companies' voluntary adherence to the rigorous cost allocation formula and accounting requirements of the Public Utility Holding Company Act of 1935, together with the anti-diversification condition described above and the abiding

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fidiciary obligations of corporate management, provide sufficient protection of the public interest with respect to the issue raised by CAP. Moreover, Commission jurisdiction over transactions with affiliates (See e.g., RSA Chapter 366) will allow us to monitor future proposals to consolidate, if any, and to take appropriate regulatory action.

Our review of the record reveals several other Commission concerns. Those are the request for authority to issue evidences of short term indebtedness in amounts not to exceed $10 million and the request to amortize the cost of reorganization over a five year time period.

With respect to the request for authority for UNITIL Power Corp. to incur up to $10 million in short term debt, we find that the Petitioners have not met their burden in this proceeding to demonstrate, under RSA 369:7, that such short term debt is in the public good. The record reveals that the Companies could not articulate a corporate purpose to which the proceeds would be applied; rather, the increased authorization would enhance corporate financial flexibility in some undefined manner. Such an undefined, broad and unsupported assertion cannot provide a sufficient evidentiary basis to rest a finding of public good. Accordingly, the request for authority to incur increased levels of short term debt will be denied without prejudice. At such time as additional short term debt authorization becomes necessary, UNITIL Power Corp. is entitled to file an appropriate Petition and to present additional evidence for the purpose of seeking whatever relief it believes is justified.

With respect to the amortization of expenses, we believe that a five year time period is too short. The ratepayers will be realizing the benefits resulting from the reorganization for an extended future time period. It is thus unfair to impose the entire cost on only those who will be ratepayers during the first five years. Our balancing of the need to recover costs on a timely basis with the interests of the various ratepayers who will be affected leads us to conclude that a ten year amortization period is more reasonable. Accordingly, we will allow the Companies to amortize the cost of effecting the reorganization over a ten year period.

With the exception of the above reservations, we find that the Petitioner's presentation of

extensive documentary and testimonial evidence amply supports their claims as to the benefits of the reorganization. Based upon all of the evidence in the record and upon the foregoing factual findings, we find the reorganization is not contrary to law, that it is reasonable under all the circumstances of the case, and subject to the Condition described above in this report that the several prayers of the Petition should be granted in part and denied in part. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the reorganization of Concord Electric Company and Exeter & Hampton Electric Company into a holding company system to be known as the UNITIL System by the exchange of their common stock for the common stock of UNITIL Corporation upon the terms and conditions provided in the Agreement and Plan of Exchange is consistent with and for the public good; and it is

FURTHER ORDERED, that the formation of UNITIL Corporation as a holding company and the exchange of its common stock for the common stock of

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Concord Electric Company and Exeter & Hampton Electric Company in accordance with the terms and conditions of the Agreement and Plan of Exchange is hereby authorized, approved and allowed; and it is

FURTHER ORDERED, the formation of UNITIL Power Corp. as New Hampshire public utility company is hereby authorized and approved; and it is

FURTHER ORDERED, that Concord Electric Company and Exeter & Hampton Electric Company each be, and hereby are, authorized from the date of this Order to issue and sell for cash, or to renew, notes or other evidences of short term indebtedness in accordance with RSA 369:7 and in amounts not to exceed three million dollars ($3,000,000); and it is

FURTHER ORDERED, that the request of UNITIL Power Corp. that it be authorized from the date of this Order to issue and sell for cash, or to renew, notes or other evidences of short-term indebtedness in accordance with RSA 369:7 and in amounts not to exceed Ten Million Dollars ($10,000,000) be, and hereby is, denied without prejudice; and it is

FURTHER ORDERED, that Concord, Exeter and UNITIL Power each be and hereby is authorized to deposit, maintain and disburse their corporate cash into and from one or more bank accounts shared and maintained in common with one another; and it is

FURTHER ORDERED, that Concord, Exeter and UNITIL Power report the activity of the cash pool in the monthly internal reports which are filed with this Commission; and it is

FURTHER ORDERED, that Concord, Exeter and UNITIL Power each be and hereby is authorized to loan surplus cash to any UNITIL System company against the borrower's note or other evidence of indebtedness; and it is

FURTHER ORDERED, that the formation of UNITIL Service Corp. and the execution of appropriate Service Agreements between it and Concord, Exeter and UNITIL Power be and

hereby is authorized; and it is

FURTHER ORDERED, that the above agreements be submitted to the Commission pursuant to, inter alia, RSA Chapter 366 for review and approval; and it is

FURTHER ORDERED, that the approval of the Petitioners' reorganization hereunder is upon the express condition that neither Concord, Exeter nor any other UNITIL System company shall without our further express approval enter into or engage in any line of business which is functionally unrelated to the business of a public utility company and further, in accepting and acting pursuant to this Report and Order, the Petitioners for themselves and in behalf of each UNITIL system company covenant and agree with this Commission to comply with the said Condition; and it is

FURTHER ORDERED, that the cost of effecting the reorganization authorized hereunder shall be amortized over a period of ten (10) years commencing as to the share of Concord upon the effective date of its final rate order in DR 84-239 and as to the share of Exeter upon the effective date of this Order.

By order of the Public Utilities Commission of New Hampshire this thirtyfirst day of December, 1984.

DISSENTING OPINION OF CHAIRMAN PAUL R. McQUADE

I have viewed with some concern the recent trend toward the establishment of utility holding company corporate structures and utility diversification. I had misgivings about approving the

establishment of the EnergyNorth, Inc. holding company, See, Re Gas Service, Inc. (1982) 67 NH PUC 730, and I have similar misgivings in the instant proceeding.

The source of my concern is that I believe that there are substantial doubts about whether ratepayers will benefit from the proposed transaction. I believe that there will be benefits resulting from the transaction; however, while it is clear to me that those benefits will be realized by the Companies' investors, it is not so clear that the ratepayers will see anything other than additional costs. If this is the case, we will have failed in our responsibility to act as an arbiter between the interests of the customers and the regulated utility pursuant to RSA 363:17-a.

One example of additional cost is the amortization of the expenses of the transaction over a 10 year period. According to recent information filed with the Commission in Re Concord Electric Co. (1984) 69 NH PUC 662, those costs could amount to $460,000; an amount which on its face seems extraordinarily high. In other words, the cost of the transaction on a per customer basis is $10.43. The magnitude of this cost cannot be masked by a 10-year amortization period; it will have to stand or fall on its own merits at the time ratemaking treatment is sought.

1(209) Thus, when the Companies seek to recover those costs in future rate cases, they should not view such recovery as automatic. The Companies should be put on notice now that I will expect them to provide a full qualitative and quantitative report on the benefits of the transaction to ratepayers and, if the quantification of those benefits reveals that they do not exceed the cost, a

decision to disallow such expenses would be justified.

Certainly, I would welcome concrete proof that the ratepayers have benefited from the transaction; however, the record as it has developed thus far has left me concerned that it will not be possible to present such proof. If my misgivings are borne out, then surely an important issue in future cases (both ratemaking cases and review of affiliated contracts pursuant to RSA Chapter 366) will be to ensure that the ratepayers are not asked to shoulder burdens that exceed benefits.

The irony in the above analysis is that it would not be necessary to undertake the review of benefits and burdens if the majority had denied the Petition. I believe such a denial is justified because the Companies simply failed to meet their burden of proving that the transaction is in the public good. Rather, the evidence indicates that the transaction carries with it potential harm to the ratepaying public. For example, decisions which would formerly be reviewed by the Commission may be totally unregulated or, at best, regulated by a distant federal bureaucracy with the authority to preempt state concerns. Since the Companies' present rates are, presumably, just and reasonable; and since the Companies are, presumably, providing safe, reliable and adequate service; and since the record indicates that the Companies will continue to have the same management, intermanagement, corporate identities, etc., it does not seem like sound regulatory policy to allow a "paper" change which may have significant and profound adverse effects on the ratepaying public.

Additionally, I share the concern of the majority about future power supplies.

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I note recent press statements by Company officials that the transaction was accomplished to allow the Companies to escape from what was perceived as a burdensome wholesale arrangement with Public Service Company of New Hampshire ("PSNH"). Since my views, as well as those of the majority, must come only from the record in this proceeding, I have not allowed such press reports to color my thinking. However, I must assume that the press incorrectly quoted Company officials because, if the statements were accurately reported, they would be totally inconsistent with the evidence and arguments proferred at the hearing. There, the Companies stated that since they had already exercised the termination provisions of the wholesale contracts, the only issue in the instant proceeding is the difference the UNITIL structure would have on future power supply options. Thus, the proferred evidence showed that the termination of the PSNH contracts was accomplished; the UNITIL Power Corp. structure would only provide the Companies with some additional incremental flexibility in pursuing alternative supply arrangements.

Needless to say, the issue of whether the Companies could terminate their wholesale contracts with PSNH is presently before the Federal Energy Regulatory Commission ("FERC"). Certainly in view of the evidence relied upon, neither this opinion nor, I assume, the majority opinion can be read as indicating any Commission judgment pertinent to either the current FERC proceeding or other proceedings before this Commission. However, I am concerned that the language used in the majority opinion may be interpreted otherwise.

My one additional concern is directed at the haste in which the majority opinion was issued.

Such haste does not facilitate the careful deliberative process which cases of this importance deserve. One example of the consequences of such haste is the way that the backdating of the order was framed. Although I agreed to allow any Order to be retroactive to December 31, 1984, I did not agree to dating the Order in a manner which could be construed as limiting appeal rights. I assume that the majority would rule on any Motion for Rehearing filed pursuant to RSA 541:3 within 20 days of January 21, 1985; the date on which the Order was actually issued. However, the manner in which the majority Order was framed could lead an aggrieved party to conclude that the deadline for Motions for Rehearing is 20 days from December 31, 1984.

Since, as indicated above, the Petitioners failed to meet their burden of proving that the transaction will benefit ratepayers, I would have voted to deny the Petition.

In view of this analysis, I call upon my fellow Commissioners to suspend the majority Order pursuant to RSA 365:26 and reconsider what I believe is a very ill-advised opinion.

FOOTNOTES

[1]On December 11, 1984, PSNH filed with the Federal Energy Regulatory Commission ("FERC") a Petition for a declaratory order declaring that the proposed termination of service by Concord and Exeter is unjust, unreasonable and contrary to the public interest. See, Re Public Service Co. of New Hampshire, FERC Docket No. EL85-15-000. That Petition has yet to be adjudicated.

DISSENTING OPINION OF CHAIRMAN
PAUL R. McQUADE

[1]While the majority Order addresses the 10-year accounting treatment to be accorded to such costs, I do not read it as providing that those costs may be recovered from ratepayers. Stretching out an unjustified increase over a longer period of time does not mitigate the injustice, nor does it transform an unnecessary cost into a necessary cost.

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Endnotes

1 (Popup)

[1]The record also reflects that NEPCO's filing allocates all benefits from the Investment Tax Credit ("ITC") to its investors; an allocation which has never been approved by this Commission. While this allocation is inconsistent with the Commission practice, we cannot conclude that it has been prohibited by statute. Accordingly, we are not able to conclude here, without hearing, that the ITC allocation would always be rejected by this Commission. Cf., Re Granite State Electric Co. (1981) 121 NH 787, 793, 435 A2d 119 (Commission must consider a rate change when conditions so warrant).

2 (Popup)

[2]For example, the amended FERC regulations limit the amount of CWIP which can be included in ratebase to an amount which will not have a revenue impact of more than 6%. 18 C.F.R. § 35.26(d)(i). NEPCO has included revenues attributable to its Oil Conservation Adjustment in this calculation, with the effect of increasing the amount of CWIP that can be included in ratebase. This calculation is a disputed issue before the FERC.

3 (Popup)

[3]To date, only one other New Hampshire utility, Connecticut Valley Electric Company ("CVEC"), has sought to include CWIP in rate base indirectly through a PPCA. The Commission has not yet held a hearing on CVEC's request and thus it remains to be determined whether CWIP has been included pursuant to a FERC Order. Accordingly, the Commission expresses no opinion about that request here.

4 (Popup)

[4]In the Public Service Co. of Colorado case, the Court did hold that the state commission was not obligated to pass automatically the gas cost increase on to the retail consumers because the manner in which the gas adjustment clause was treated is an administrative matter and the state commission is vested with considerable discretion in carrying out such functions. The New Hampshire Commission also has considerable discretion in the manner in which the PPCA cost is to be recovered. Re Granite State Electric Co. (1983) 123 NH —, 467 A2d 252. However, we do not believe that the issue here is one of the manner of recovery; rather a finding that a CWIP pass through is violative of RSA 378:30-a would be, in effect, a collateral attack on a FERC decision. The Colorado Court, like the other courts cited, found that the state commission must accept any FERC decision as reasonable.

5 (Popup)

[5]The cases cited all involve situations where FERC rates were not deemed reasonable as a matter of regulatory policy. Here, the issue of reasonableness is brought into play by a statute. However, given the preemption rationale, we do not believe that the distinction is meaningful. Federal preemptive authority would apply equally to legislative as well as administrative policy.

6 (Popup)

*We were initially concerned that the Company has not committed itself to actually have the work completed by a date certain. See e.g., Exh. Stipulation No. 1 at 3: "The Company has continued to make substantial progress in its corrosion control program, and it appears that the Company's entire distribution system will be cathodically protected in accordance with applicable federal regulations on or before July 1, 1985" (Emphasis supplied.) However, since we must assume that the Company has implicitly agreed in good faith to use its best efforts, we have determined that the language is satisfactory.

7 (Popup)

[1]For the purpose of this Order we have accepted the asserted facts in the light most favorable to the Company. However, this Order should not be construed as Commission acceptance of those facts for other purposes, since they may be subject to dispute. For example, the Company asserted at paragraph 10 that its owners have not received any return on their investment. This fact depends on the level of investment or, in other words, the Commission established value of the Company's rate base. The issue of rate base valuation has been remanded to the Commission in Re Mountain Springs Water Co., Inc. (1983) 123 NH —. The remanded issues will be the subject of upcoming Commission hearings.

8 (Popup)

[2]The Company's Motion for Rehearing asserted at paragraph 11 that a rate case will be filed within 30 days. Such a filing cannot be accepted because the Company has not yet filed the Notice of Intent to File Rate Schedules required by Regulation 1603.02. It hardly needs to be stated that we will expect the Company to adhere to the tariff filing requirements set forth in Chapter 1600 of our regulations.

9 (Popup)

[1]The rates are not labelled as Permanent Rates as the rate structure issue is still undecided.

10 (Popup)

*In Granite State, the Commission concluded that FERC regulatory approval of inclusion of CWIP in rate base in a wholesale rate will act to preempt any inconsistent provision contained in RSA 378:30-a.

11 (Popup)

[1]This standard was adopted by the Commission in Docket No. DP 80-260, entitled Re Lifeline Rates (1982) 67 NH PUC 610 and (1983) 68 NH PUC 547, and in Docket No. DE 80-174, entitled Re Information to Consumers (1982) 67 NH PUC 604.

12 (Popup)

[2]These standards are as follows: cost of service, declining block rate, time of day rates, seasonal rates, interruptible rates, load management techniques, lifeline rates, master metering, automatic adjustment clauses, information to consumers, procedures for termination of electric service and advertising.

13 (Popup)

[3]42 USCA § 1988 provides for the recovery of "reasonable attorneys' fees".

14 (Popup)

[4]The CLF staff breakdown of the total is as follows:

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

Douglas Foy 529
Linzee Weld 932.4
Charles Cary 1,324
Stephanie Pollock   80
 Total 2,865.4
```

These figures do not include the hours spent by Douglas Foy and Linzee Weld on the preparation of CLF's Request. In addition, the 64 billable hours of Attorney Cleve Livingston are also excluded. His participation in this docket was limited to compiling CLF's Request. As stated above, the time spent on the recovery of compensation is not subject to an award for compensation.

15 (Popup)

[4]The CLF staff breakdown of the total is as follows:


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16 (Popup)

[1]DP 80-260, Re Lifeline Rates (1982) 67 NH PUC 610 and (1983) 68 NH PUC 547, and in Docket No. DE 80-174, Re Information to Consumers (1982) 67 NH PUC 604.

17 (Popup)

[1]United States v Wise (1962) 370 US 405, 8 L Ed 2d 590, 82 S Ct 1354; American Trucking Associations, Inc. v Atchison T. & S.F.R. Co. (1967) 387 US 397, 69 PUR3d 230, 18 L Ed 2d 847, 87 S Ct 1608; Girouard v United States (1946) 328 US 61, 90 L Ed 1084, 66 S Ct 826.

18 (Popup)

[2]A short time after this case was handed down, the New York legislature amended its Public Service Law to expressly provide its PSC with authority to prescribe just and reasonable rates, terms and conditions for attachments to utility poles and the use of utility ducts, trenches and conduits. Section 199-a, Public Service Law; 1978 N.Y. Laws, Ch. 703.

19 (Popup)

[3]See, however, Re Regulation of Rates, Terms, and Conditions for the Provision of Pole Attachment Space to Cable Television Systems by Telephone Companies and by Electric Utilities, Case Nos. 8040, 8090, Aug. 26, 1981, C.C.H. Utility Law Reports, No. 23,456, in which the Kentucky Public Service Commission found that providing space on utility poles regulated by it for cable television pole attachments is a "service" within the meaning of the definition of service contained in Kentucky statutes.

20 (Popup)

[1]This amount is consistent with the Commission findings in Re Public Service Co. of New Hampshire (1980) 65 NH PUC 251, 269-271, wherein the Commission allowed the properties represented by this amount to be included in rate base as plant held for future use. None of the parties to this proceeding contest the inclusion of this amount.

21 (Popup)

[2]Corresponding adjustments will be made in expense calculations to reflect changes in depreciation basis and to ensure the Company full recovery for the expenses of the sale of the tax lease. Since the expenses of the sale are non-recurring, we will only allow the Company to amortize them over the 15-year life of the tax lease.

22 (Popup)

[3]See Section II above for a list of these adjustments.

23 (Popup)

[4]This reflects a conservative assumption that the first Seabrook Unit will not be operational until 1987. If Seabrook Unit 1 becomes operational earlier, the Line will be used to its full capability for a higher percentage of its useful life.

24 (Popup)

[5]The record indicates that at the time the settlement was filed, the Consumer Advocate did not accept the cost of equity stipulated by the other parties. The Consumer Advocate did not argue this point in his brief and, thus, we assume that he is now satisfied with the agreed upon rate of return. In any event, we have found that the stipulated rate is just, reasonable and supported by the record. To the extent that the Consumer Advocate's objection still stands, it is rejected.

25 (Popup)

[6]Because reviewability of costs is a prerequisite to inclusion of those costs in rates, we would be forced to deny recovery if the costs were nonreviewable. Contrary to PSNH's argument in brief, such denial of recovery would be consistent with constitutional limitations. This is because the nonrecoverable costs could be capitalized and would thus be recoverable if and

when construction is complete and plant costs are reflected in rates. Such deferred recovery, which is consistent with the methodology of capitalizing AFUDC historically employed by this Commission, cannot be deemed to be confiscatory.

26 (Popup)

[7]This discussion pertains only to the terms which were agreed to by all parties. Those terms which were reserved for litigation by one or more parties (i.e., Special Industrial Contract Policy and Lifeline Rates) will be the subject of separate discussion.

DISSENTING OPINION OF
COMMISSIONER AESCHLIMAN

27 (Popup)

[7]This discussion pertains only to the terms which were agreed to by all parties. Those terms which were reserved for litigation by one or more parties (i.e., Special Industrial Contract Policy and Lifeline Rates) will be the subject of separate discussion.

DISSENTING OPINION OF
COMMISSIONER AESCHLIMAN

28 (Popup)

[1]"Seabrook Project Overview", Management Analysis Company report to the Seabrook Joint Owners Group, December 29, 1983, p. PC-1.1.

29 (Popup)

[2]At the present time, Massachusetts Municipal Wholesale Electric Company is using December 1986 as the operational date for Unit 1 for its planning purpose.

30 (Popup)

[3]Bruce J. Ambrose, Vice President of National Economic Research Associates (NERA) in Los Angeles.

31 (Popup)

[4]This point is discussed at pp. 83-85, in the majority decision, and is incorporated here by reference.

32 (Popup)

[5]It is interesting to note that Central Maine Power, which is rated at investment grade, did not join EPRI in 1983 due to its financial difficulties. Re Central Maine Power Co. (Me 1983) 57 PUR4th 488.

33 (Popup)

[6]The 70-80% estimate assumed an on line date for Unit I of July 1985 and a project cost of $7 billion.

34 (Popup)

[7]Chairman McQuade declined to reconsider the Commission's findings in DE 81-312 when he joined with me in denying PSNH's motion for rehearing in June 1983.

35 (Popup)

[8]A 5% drop in the cost of common equity lowers the weighted equity portion in the cost of capital by about 2.5%. When this is multiplied by a $2 billion rate base, the effect is a $50 million reduction, which must then be doubled because of the tax effects.

36 (Popup)

[9]These are round numbers for illustration purposes. The $1.5 billion is likely to be understated because it is based on a December 1985 on line date for Seabrook I.

37 (Popup)

[1]The Commission notes that a hearing on the 28th would only be held if proper notice is made.

38 (Popup)

[1]In addition, a late filed Motion to Intervene was submitted by the Conservation Law Foundation ("CLF"). That Motion was granted and CLF was able to participate as a full party in this proceeding. Tr. February 8, 1984 at 52.

39 (Popup)

[2]A full articulation of the Commission's ruling may be found in the February 16, 1984 Transcript at 3-4 to 3-6 which is incorporated herein by reference. Commissioner Aeschliman dissented from the majority ruling. She would have ruled that a review of the Co-op's reevaluation of its participation in Seabrook Unit 2 pursuant to the Resolution of the Joint Owners (Exh. 10) is within the scope of a RSA Chapter 369 proceeding. See, Tr. at 3-6 to 3-9.

40 (Popup)

[3]Commissioner Iacopino concurs with this finding, although he would attach conditions as discussed more fully in his separate opinion. Commissioner Aeschliman dissents from this finding for the reasons set forth in her separate opinion.

41 (Popup)

[4]Id.

42 (Popup)

[1]We are currently reviewing the written submissions of the parties on the merits and expect to issue an Order in DR 83-200 within the next several weeks.

43 (Popup)

[2]This error is one of the hazards of attempting to meet the needs of the parties for an expeditious Order. The Commission understood that CVEC was holding up its billing pending the PPCA Order and we were attempting to be responsive. The result was that the Order was issued on January 24, 1984 (seven days after the January 17, 1984 hearing) which was the same day as the transcript in this docket was filed. Obviously, a more thorough review of the transcript would have delayed the Order, but, at the same time, would have resulted in a more accurate

Order.

44 (Popup)

[1]By Order No. 16,189 dated January 31, 1983 (68 NH PUC 42).

45 (Popup)

[2]This docket was originally opened as DE 83-260 on August 9, 1983. For administrative reasons, the docket was later consolidated with the discontinuance docket, No. DE 83-235 so both issues are being addressed in this Report and Order.

46 (Popup)

[3]In docket No. DE 83-235.

47 (Popup)

[1]Virginia Electric & Power Co. Docket No. EL83-11-000, 26 FERC {{ 61,057, 61,160, 61,161, Jan. 20, 1984. (Where a utility sells a portion of a plant during construction, the net profits of the sale are to be credited against the cost of construction for rate base valuation purposes.)

48 (Popup)

[2]PSNH is referring to Section 102(a)(10)(A) of the Technical Corrections Act of 1982 which amended Section 168(f)(8)(d) of the Internal Revenue Code. The effective date of the provision was January 12, 1983; approximately 9 months after the tax benefits were sold. PSNH did not bring this "obscure" provision of the tax code to the Commission's attention until it filed its Motion for Rehearing; it is apparent that PSNH was not aware of this provision at the time it presented evidence and legal argument.

49 (Popup)

[3]CRR as a full party intervenor certainly could have presented additional direct evidence on Seabrook prudency.

50 (Popup)

[4]See, Docket No. DR 83-398 wherein PSNH is seeking to recover from ratepayers its share of the cost of the abandoned Pilgrim II project. We are currently deliberating on a PSNH Motion that the question of the applicability of RSA 378:30-a to the issue of abandoned plant be certified and transferred pursuant to RSA 365:20.

51 (Popup)

[1]In accord with RSA 363:17-b, this paragraph sets forth the Commission's decision with regard to the Association's reasons numbered 1, 2, 3 and 6 as above-stated.

52 (Popup)

[2]The Commission wishes to express its displeasure with the content and tenor of the Association's comments regarding the Commission's reasoning. The effective advocacy of all the participants has contributed to a full exposition of the issues in this case. As evidenced by our lengthy opinion and this report, we have given extensive consideration to these issues. While the Association's arguments are indeed persuasive, we have not found them to be determinative. We

recognize the parties have strong feelings as to the correctness of their respective positions. However, arguments by the Association that the Commission's interpretation of the Ellsworth letters is the "purest form of sophistry" detract from what would have otherwise have been strong advocacy. They are unnecessary and contribute nothing to the decision-making process.

53 (Popup)

*Aeschliman, commissioner: My dissent to Report and Order No. 16,884 (69 NH PUC at p. 53) adequately set forth my views on the issues decided by the Commission.

54 (Popup)

[1]The Order of Notice and subpoena were delivered in hand to Gary Armstrong on January 3, 1984.

55 (Popup)

[2]In addition to being signed by the parties, the agreement, recorded in the Rockingham County Registry of Deeds, Book 1886, page 151, was also signed by the then owners of ten lots in the development. Their signature to the agreement signifies their assent to it and their acceptance of the rights and obligations contained therein. The signatories were owners of ten lots numbered 49 through 58.

56 (Popup)

[3]The Association's By-Laws were submitted as Exhibit 3.

57 (Popup)

[4]The deed is recorded in the Rockingham County Registry of Deeds, Book 1886, Page 151.

58 (Popup)

[5]Gananoque's current charges are $46.75 per quarter or $187.00 per year.

59 (Popup)

[6]By warranty deed stated January 12, 1973 (Exhibit 1), the Dinsmores conveyed Lot #24 of their subdivision to Mr. Cunha. Sometime thereafter, the residence constructed by Mr. Cunha on the lot obtained water service from the system constructed by Mr. George Armstrong.

60 (Popup)

[7]NHPUC 604:03 requires that each water utility maintain normal operating pressures of not less than 20 psig nor more than 125 psig at the service connection.

61 (Popup)

[8]Mr. Gary Armstrong confirmed the existence of Mr. Cunha's low pressure problem. In his opinion, a second artesian well and pump are needed to alleviate the pressure problem and provide water to the system.

62 (Popup)

[9]Re Francestown Village Water Co. (1983) 68 NH PUC 364, and Re Eastman Water Co. (1981) 66 NH PUC 115.

63 (Popup)

[1]Since for the purposes of framing the legal issue, the facts are to be construed in the light most favorable to PSNH, it is unnecessary for us to hold hearings to put the gloss of our regulatory expertise on those facts. Our reading of the various Memoranda submitted by the parties convinces us that they are quite capable of presenting the proper arguments to the Court. Should the Court ultimately determine that the statute is not a barrier to recovery, we would expect on remand to apply our regulatory expertise to the issue of how the facts should be construed to determine the amount of recovery, if any.

64 (Popup)

[2]The Project was cancelled in September of 1981. PSNH did not request recovery until December of 1983. It is noteworthy that in the interim period PSNH had the opportunity to seek recovery by including the cost as an element of a PSNH rate case.

65 (Popup)

[3]In its February 24, 1984 Memorandum of Law, PSNH stated at 12-13: "Furthermore, an absolute ban on the recovery of the costs of Pilgrim 2 would have a serious effect on PSNH's financial integrity. While the write-off of some $16 million dollars would not, in and of itself, eliminate PSNH's retained earning, it would send a critical signal to the investment community regarding PSNH's ability to recover for other assets, principally Seabrook Unit 2 if a decision were ever made to cancel that Unit."

66 (Popup)

[4]We note PSNH's interpretation of RSA 541:13 which leads it to conclude that the Court will not defer to the Commission in matters of law. See, Memorandum of Law in Support of PSNH's Request to Certify a Question of Law to the Supreme Court, dated January 31, 1984 at 4.

67 (Popup)

[5]See procedural schedule set forth in the Procedural Order (69 NH PUC at p. 128). t in the interim period PSNH had the opportunity to seek recovery by including the cost as an element of a PSNH rate case.

68 (Popup)

[1]The cost of service study also indicated that the pricing for the existing MV service is considerably below cost. Thus, the function of encouraging a shift to more efficient HPS service is, to some extent, undermined because the two rates are roughly comparable. If the MV rates were to be cost based, the correct price signals would be in place and, presumably, customers would move to the lower cost, more efficient HPS lighting. However the lack of cost based pricing for MV service is not sufficient, in and of itself, to reject the proposed tariff. This is because: 1) the MV class will be closed which has the effect of requiring new customers to take HPS service; and 2) in order to allow the company to offer the new more efficient service it is necessary to ensure that the rates of the new service are cost based, rather than to adjust all existing rate schedules. The Company is hereby placed on notice that the Commission will expect an appropriate adjustment for this class of customers when the Company files its next general rate case.

69 (Popup)

[2]In order for this evidence to be accurate, the Commission would have to accept the assumption that there is no cross-elasticity between MV and HPS customers. In view of the comparability of the HPS and MV rates described supra at n.1, this is not an unreasonable assumption.

70 (Popup)

[3]We suggest that such additional information should contain a reasonable estimate of the impact of the proposed tariffs on revenues. We do not believe that such an estimate would be burdensome in view of the fact that the Company's affiliate, Exeter and Hampton Electric Company ("Exeter & Hampton") offers the same HPS service. Thus, it would be reasonable to use Exeter and Hampton data as a basis for an estimate of the impact of the HPS rate on Concord Electric Company revenues.

71 (Popup)

[1]Prior to purchase and installation of the new meters, Wentworth's rate base was $1.00.

72 (Popup)

[2]Staff accepts the $10.00 hourly fee for meter reading.

73 (Popup)

[1]The survey team will not provide fuel switching recommendations. Inquiries in this regard will be referred to appropriate personnel at the company.

74 (Popup)

[*]Commissioner Aeschliman's position is stated in Report and Order No. 17,037 in response to the petition of Chris Spirou.

75 (Popup)

[1]This analysis demonstrates that we are not required in this instance to address the issue of whether one of two alternative interpretations of statutory language is constitutional while the other is not. In that situation, a reviewing court will presume that the legislature intended to enact a constitutional statute and, accordingly, we choose the constitutional alternative. E.g., Bruckner v Bruckner (1980) 120 NH PUC 402. However, in the instant circumstances, the constitutional infirmities alleged would, if accepted, preclude any constitutional reading of the statute. Thus, the issue is not one of deciding between two alternative statutory meanings; rather it is one of determining whether a clear legislative grant of regulatory authority is constitutionally proper.

76 (Popup)

[*]It is Chairman McQuade's opinion that SAPL's Motion for reconsideration besides misconstruing RSA 541-A:17, should also have been addressed to the Chairman and not to the Commission as a whole. It is the province of the Chairman, and not of the combined Commission to rule on matters pertaining to 541-A:17. All future motions for intervention and related motions for reconsideration should be addressed to the Chairman and accordingly rule on by the Chairman.

77 (Popup)

[1]Our decision to limit the scope of this docket to financing issues should not be taken as disregard for the concerns pertinent to the Company's continuing ability to provide service. As a result of inter alia information developed in this docket, we believe that an immediate investigation is warranted. Accordingly, Orders of Notice are being issued this day opening dockets and scheduling hearings for June 6, 1984 for the purpose of determining inter alia how funds, including the proceeds of the proposed financing, should be directed to ensure that the Company continues to meet its obligations as a public utility.

78 (Popup)

[2]In this context, PSNH stated that the proposed financing would have no impact on the Company's revenue requirement because short term debt is not included in its capital structure. See e.g., Exh. 3, Response 23. The Commission relied on this representation in its evaluation of all issues arising in this docket. While the Company is certainly free to seek to include short term debt in its capital structure at some future time, we believe that we must fairly provide notice of our reliance on its noninclusion in capital structure in our evaluation of the instant Petition.

79 (Popup)

[3]ALthough the Petition was framed in terms of a request for supplemental authority, the Commission intends its findings to be broad enough to encompass any authority needed to go forward with the proposed transaction (with the exception of our reserved jurisdiction to approve the final terms of the issue and sale of the Notes). It is necessary to state this because of the Company's reliance on our Order No. 14,854, Re Public Service Co. of New Hampshire (1981) 66 NH PUC 151 as the source of its original authorization. See e.g., Petition at 2; Exh. 1 at 1-2. However, review of Order No. 14,854 reveals that the Commission ordered "... that interest on bank borrowings will be at the prime rate or a rate or rates based on the prime rate." 66 NH PUC at p. 153. Since the proposed notes will not be issued at the prime rate or at a rate or rates based on the prime rate (Tr. at 124-125), we cannot be certain whether Order No. 14,854 grants the authority relied upon by the Company. Nor is it clear whether such authority may be independently derived from RSA 369:7. In any event, such clarity is unnecessary because of the authority granted in this Order.

80 (Popup)

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authority granted in this Order.

81 (Popup)

[1]The issue of the effect of the particular interest rate on the $135,000,000 in notes approved in this proceeding is addressed on p. 279, supra.

82 (Popup)

[1]Examples are the New Hampshire elimination of mileage charges on local service rates and the rejection of a 20 coin rate.

83 (Popup)

[1]The Commission notes that any step adjustment is not simply reviewed according to the formula laid out in the step wording, but also the reasonableness and prudency of the inputs are analyzed.

84 (Popup)

[1]The 90 day level by October 1, 1984 would be consistent with Consolidation's commitment because Consolidation's labor contract with the United Mine Workers expires on or about that date.

85 (Popup)

[2]This information will be subject to the provisions of the Commission's protective order in this docket, Order No. 17,070 ([1984] 69 NH PUC 308).

86 (Popup)

[3]Id.

87 (Popup)

[1]For the purpose of this analysis, the recovery of the cost of abandoned plant is treated as falling within the definition of "construction work", the recovery of which is prohibited by RSA 378:30-a. See, Re Public Service Co. of New Hampshire (1984) 124 NH —, 60 PUR4th 16, 480 A2d 20.

88 (Popup)

[2]For the purposes of this Order, we see no reason to abandon the legal analysis in Granite State. The Intervenors argued that the cases cited in Granite State are not applicable to the instant situation and, in addition that the Commission did not consider the effect of Arkansas Electric Co-op. Corp. v Arkansas Pub. Service Commission (1983) 461 US 375, 52 PUR4th 514, 76 L Ed 2d 1, 103 S Ct 1905. Since we have already set forth our analysis of the caselaw cited in Granite State, it is not necessary to repeat it here. The Arkansas Electric Co-op. Corp. case, which was not discussed in Granite State, does not upset the Granite State analysis. In Arkansas Electric Co-op. Corp., the Court implicitly reversed its holding in Rhode Island Pub. Utilities Commission v Attleboro Steam & Electric Co. 273 US 83, PUR1927B 348, 71 L Ed 549, 47 S Ct 294. Attleboro had previously been read as applying a constitutional barrier to the regulation by the States of electric sales for resale on the interstate transmission system. In Arkansas Electric, the Court revised its analyses by holding that the Arkansas PSC could regulate the wholesale rates of an electric cooperative located within the state. The Arkansas situation

involved an electric cooperative which is not subject to FERC regulation under the FPA; nor, as the Court held, was it subject to preemptive rate regulation by the Rural Electrification Administration. Thus, in addition to the lack of constitutional limitations, there was a lack of statutory limitations. In the instant situation, both CVEC and New England Power Co. are investor owned electric utilities which, pursuant to legislation lawfully enacted by Congress, are subject to wholesale rate regulation by the FERC. Thus, the cases holding that the States are preempted from wholesale rate regulation by the superceding authority of the FERC granted by statute continue to apply to this docket.

89 (Popup)

[3]We are not addressing here our authority to review whether a distribution utility acted properly when it agreed to purchase power from a particular wholesaler. That issue has not been raised in this case. Thus, our conclusion herein assumes that the decision to enter into a purchase power transaction with a particular wholesaler was a reasonable and proper exercise of managerial discretion.

90 (Popup)

[4]The record reflects that, under the FERC approved RS-2 tariff, the parties will have an opportunity to participate in ongoing proceedings. If the Commission or the Intervenors should prevail in those proceedings, the RS-2 rate provides for retroactive adjustment.

91 (Popup)

[5]Since the discussions leading up to the settlement were privileged (Settlement at Section 3.7), we cannot rely on them as manifesting any parties' intent. In addition, we have no record explanation of the terms since the Commission accepted the settlement without a hearing. Thus, we may rely on only the settlement document itself and the Commission order accepting that document.

92 (Popup)

[1]Utilization of this figure should not be interpreted as accepting a 10 year depreciable life.

93 (Popup)

[*]Commissioner Aeschliman did not participate in this proceeding but will research the record and in the event she concurs therewith will add her signature at a later date.

94 (Popup)

[*]Chairman McQuade was absent on the date of the decision, but will review the decision upon his return. In the event he concurs, his signature will be added herewith.

95 (Popup)

[1]Report and Fourth Supplemental Order No. 16,619 and Report and Fifth Supplemental Order No. 16,664 will be collectively referred to in this Report as the Interim Order.

96 (Popup)

[2]Our adoption of these principles is consistent with the important objective of utilizing, to the extent possible, the same methodology, computer resources, and assumptions in rate

proceedings for SPP purchases that the Commission uses in rate proceedings for PSNH's retail sales. To the extent this is possible, several benefits will result, including consistency of assumptions, ease of understanding, reduced administrative costs, timely enhancements and reduced requirements for regulatory proceedings.

97 (Popup)

[3]The merits and specific values of each adder are further discussed in the Interim Order at 17-18 and in Exhibit 12 at 10-12.

98 (Popup)

[4]The Commission acknowledges PSNH's reservation of rights to argue at a later time that the eligibility criteria adopted in this Order should be narrowed. See, Exh. 12 at 18.

99 (Popup)

[5]The detail on Cases 0, 1, 2 and the Stipulated case may be found at Exhibit 12, Attachment 7.

100 (Popup)

[6]Of course, levelized rates, by definition, will allow ratepayers the benefit of rates which are lower than the short-term avoided cost for SPP power purchased at the tail end of the obligation.

101 (Popup)

[7]As noted, supra, at p. 354, the provisions of this Order are designed to encourage economically efficient SPPs while being just and reasonable to PSNH's ratepayers. The only way these two standards can be reconciled is to define economically efficient SPPs as those SPPs who can produce electricity at a cost which is at or below the avoided cost of the purchasing utility. We do not believe that either LEEPA or PURPA embody policies which would require us to encourage SPP development which is not economically efficient.

102 (Popup)

[*]Chairman McQuade was absent on the date of the decision, but will review the decision upon his return. In the event he concurs, his signature will be added herewith.

103 (Popup)

[*]The permanent rates.

104 (Popup)

[**]Commissioner Aeschliman was absent on the date of the decision, but will review the decision upon her return. In the event she concurs, her signature will be added herewith.

105 (Popup)

[1]This finding applies to the assertions contained in paragraphs 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Motion for Rehearing.

106 (Popup)

[2]The standards to be reconsidered were: 1) whether the burden of proof should continue

to be allocated to the Company, as the Petitioner, rather than the Railroad, as the party seeking to impose a payment; and 2) whether the average cost standard adopted in the Decision should continue to be used to determine the level of payment as distinguished from an incremental cost standard.

107 (Popup)

[3]Our review of the record here confirms the absence of evidence that would support a value based standard (real estate appraisals, etc.). See also, the Railroad's Motion at paragraph 8 which stated, inter alia, that: "The Commission erred in declining to accept the B&M's cost analysis relative to the proposed charges". (Emphasis supplied.)

108 (Popup)

[4]Since we have included a return or profit element in cost, the Railroad's contention that the Commission neglected to consider such an element is groundless. See also, Decision at 11 ("After review, we find that it is proper to include all of the above listed components, including the return, in the Railroad's calculation of cost.")

109 (Popup)

[1]CAP and CRR will be collectively referred to as the Intervenors.

110 (Popup)

[2]See, Re Public Service Co. of New Hampshire (1984) 69 NH PUC 275.

111 (Popup)

[3]See, Re Public Service Co. of New Hampshire (1984) 69 NH PUC 67, 57 PUR4th 563.

112 (Popup)

[4]See e.g., 69 NH PUC at p. 315, "PSNH will be placed on notice that if the Commission finds that its continuing efforts to secure an adequate supply of fuel are deficient, the Commission will issue appropriate Orders which may require, inter alia, segregation of customer revenues to be used solely for fuel supply." See also, RSA 541-A:1 III (Definition of "Contested case").

113 (Popup)

[5]See, Re Public Service Co. of New Hampshire, supra, 69 NH PUC at p. 315, Footnote 2.

114 (Popup)

[1]If the risk was that output would be more reliable than predicted, PSNH's concern of overpayment would be more credible. We also find comfort in the underlying interim rate valuation of $22/Kw/ yr. which is considerably less than the 20 year capacity value of e.g. $80.48/Kw/yr set in the Permanent Order.

115 (Popup)

[1]The Consumer Advocate's Motion was filed in Docket Nos. DR 83-398, DF 84-167 and DR 84-168. Only one of the dockets mentioned by the Consumer Advocate was the subject of the CAP Motions. However, the issue raised by the Consumer Advocate in his Motion is identical to that contained in the CAP Motions in all material respects.

116 (Popup)

[2]It is true that Report and Order No. 17,127 states (69 NH PUC at p.392): "Furthermore, the remarks were delivered at a time when there were no open Seabrook dockets before the Commission." CAP's Motions point out that certain dockets were open at the time of the remarks, even though those dockets were not active at the time of the remarks. We will hereby amend Report and Order No. 17,127 to reflect the existence of Seabrook dockets other than those referred to in the Consumer Advocate's Motion. However, the analysis in that Order clearly rests inter alia on whether the Chairman is capable of judging matters fairly on the basis of the evidence of record. That analysis contained in Report and Order No. 17,127 is applicable here.

117 (Popup)

[1]Those arguments assert, inter alia, that: 1) the Commission ignored the record arguments of the CAP and the CRR; 2) the Commission erred in waiving the 14-day notice rule; and 3) the Commission erred in issuing an order prior to the time that the hearing transcript was filed.

118 (Popup)

[2]We also note that we have examined the cost consequences of the oil inventory situation in our most recent Energy Cost Recovery Mechanism ("ECRM") docket (DR 84-128) and, in Report and Order No. 17,099 [1984] 69 NH PUC 344), we approved an ECRM rate that ensures that ratepayers are not asked to bear any of the consequences of PSNH's financial difficulties on past oil inventories.

119 (Popup)

[1]RSA 541-A:2 IV now reads as follows:

No rule shall be effective for a period of longer than 6 years, but the agency may adopt an identical rule under RSA 541-A:3 through 3-F.

120 (Popup)

[1]PSNH prefiled its testimony and exhibits on July 10, 1984 as required by the Order of Notice. The Staff submitted over seventy data requests to the Company and responses to the vast majority of the data requests were provided prior to the opening of the hearing on July 24, 1984.

121 (Popup)

[2]CLF was directed to act as lead counsel for a group of similarly interested intervenors consisting of CLF, SAPL and CRR. All of the three concerned parties objected on the ground that the Intervenors' interests were not identical. The objections were misplaced. CLF, SAPL and CRR were grouped to avoid duplication and in the interest of administrative efficiency. If their interests do not conflict, they must participate through lead counsel. As stated earlier, if their interests conflict, they will be given the opportunity to ask to develop their positions through separate cross examination and direct evidence. In all instances, all Intervenors will be permitted to file separate written pleadings and argument.

122 (Popup)

[3]All filings were timely with the exception of SAPL's, which was filed one day late. In

addition, PSNH filed a responsive pleading one day after the due date. In spite of the lack of timeliness, we have considered SAPL's filing and PSNH's response.

123 (Popup)

[4]The Commission is aware that it is allowing its schedule to be driven by PSNH's financial needs. While we do not appreciate being put in this position, we believe that it is more consistent with the public interest to recognize the realities of the situation as it exists today, and to act accordingly.

124 (Popup)

[5]In establishing the schedule, we shall attempt to reconcile the vital interests of all parties. We must also be cognizant, however, that PSNH's prefiled testimony and exhibits have been available since July 10, 1984, the Court's opinion in Re Easton 124 NH —, 480 A2d 88, has been available since July 13, 1984 and one round of discovery is substantially completed.

125 (Popup)

[6]It is important to note that we have here confined our analysis of the "alternatives to Seabrook" issue to the context of incremental cost. This is appropriate for this docket because only the alternatives to the "to go" cost are relevant for financing purposes.

126 (Popup)

[1]The Motion to Intervene of Chris Spirou was subsequently withdrawn (Tr. at 5).

127 (Popup)

[2]While the Company's creditors required equal treatment, there is some variation in the costs of the various restructured agreements. Thus, the extension of the Eurodollar Term Loans (Exh. 1, Attachment 2) allows the lenders the one time option of selecting the above described interest rate or a rate based on the London interbank rate ("LIBOR") plus 2 1/2%. In addition, the proposed revolving credit facility (Exh. 1, Attachment 1) requires the Company to pay to the banks an annual sum of approximately $721,000 whether or not the line of credit is utilized (Tr. at 146).

128 (Popup)

[3]Authority to use LIBOR is necessary because the Commission previously ordered that short term debt rates be based on prime. Re Public Service Co. of New Hampshire (1981) 66 NH PUC 151, 153.

129 (Popup)

[4]We are particularly concerned with the mechanics of the revolving credit loan and the facility fee associated therewith. The response to Staff crossexamination on the subject suggests that the facility fee will be incurred with only a slight probability that the Company will be able to draw on that line of credit.

130 (Popup)

[1]See e.g., Testimony of both Messrs. Bayless and Hildreth. See also, Exh. 8, Attachment 1-1, p. 1, Assumption No. 1. This assumption reflects total Seabrook project costs at $4 million/week during July and August and $5 million/week for the rest of the year. Thus, the total

Seabrook cash requirement prior to the "Newbrook" financing will be approximately $121 million. PSNH's approximate 35% share of that direct cash requirement will be $42.4 million. This is a small portion of the proposed financing; a portion which is well below the level of "bridge" financing acceptable to many Intervenors.

131 (Popup)

[1]The Intervenors did not submit any prefiled testimony. None of the parties submitted data requests of any other party.

132 (Popup)

[2]The Intervenors also maintain that the transfer of the water system valued at $385,000 plus the escrow funds expended constitute contributions in aid of construction.

133 (Popup)

[3]See also: Legislative Utility Consumers' Council v Public Service Co. of New Hampshire (1979) 119 NH 332, 31 PUR4th 333, 402 A2d 626; Legislative Utility Consumers' Council v New Hampshire Pub. Utilities Commission (1977) 117 NH 972, 23 PUR4th 128, 380 A2d 1083.

134 (Popup)

[4]We also reach this conclusion based upon the Company's failure to provide accurate and reliable information. As stated above, the information submitted by the Company contains so many internal contradictions that it is difficult to have confidence in any of the data contained in the record.

135 (Popup)

[5]His position and analysis are set forth in detail above.

136 (Popup)

[1]This includes the granting of full intervenor status to the Consumer Advocate pursuant to his statutory authority to participate in Commission proceedings.

137 (Popup)

[2]The issue numbers employed here are the same as those used in the August 2, 1984 Order of Notice. Those numbered issues are:

> 1) Whether the terms, conditions and amount of the proposed third phase financing are in the public good;
>
> 2) Whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders; and

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

138 (Popup)

[3]The argument reveals the discouraging fact that in the absence of Commission initiative, we would have once again been presented with a truncated time frame to review a financing Petition. It would not have been appropriate to wait until late October to file the "Newbrook" Petition if Commission action by December 31, 1984 is required.

139 (Popup)

[4]The need to move expeditiously requires PSNH to provide as much information as can be developed as quickly as possible. PSNH may not know as of August 31, 1984 precisely what the securities' indentures will contain. However, it should know at least the structure and amount of the "Newbrook" financing. By requiring the submission of this information early, we will be able to conduct an expeditious review.

140 (Popup)

[5]The Commission's understanding is that this testimony is affirmative in that it stands alone and does not depend on analysis of PSNH data. To the extent that Staff and Intervenor testimony on Issue 2b is dependent upon information contained in the August 31, 1984 filing, it will be included in the Responsive Prefiling due on November 15, 1984.

141 (Popup)

[6]The Commission recognizes that this deadline extends the schedule recommended by the parties. However, this extension is necessary to allow the Commission adequate time to determine whether the recommendations of its consultants, if any, should be presented in the form of public testimony.

142 (Popup)

[7]We recognize that hearings will commence before PSNH receives responses to its data requests. However, since the initial business of the hearings will be to receive public input and to hear crossexamination of PSNH witnesses, we believe that the December 3, 1984 commencement date is reasonable. Cross-examination of Staff and Intervenor witnesses will commence after the data responses are provided on December 7, 1984.

143 (Popup)

[*]Public Service Company has not been responsive to the information requests of the Commission. Attachment A lists requests that have not been responded to in a timely fashion.

144 (Popup)

[1]See, Order of Notice of July 2, 1984 and Report and Order No. 17,109 ([1984] 69 NH PUC 377) (Denial of Motion for Continuance filed by the Consumer Advocate).

145 (Popup)

[2]See also, Report and Supplemental Order No. 17,138 ([1984] 69 NH PUC 412, 413) ("First Procedural Order").

146 (Popup)

[3]A Motion for Rehearing on the Second Procedural Order was denied in Third Supplemental Order No. 17,168 ([1984] 69 NH PUC 456).

147 (Popup)

[4]See e.g., Brief of PSNH at 11. In addition to meeting its cash requirements, the Company is required by its commitment to creditors in its restructured agreements to raise at least $200,000,000 in external long term capital no later than October 1, 1984. See, Re Public Service Co. of New Hampshire (1984) 69 NH PUC 415.

148 (Popup)

[5]PSNH's share of these Seabrook expenditures is approximately 36%.

149 (Popup)

[6]2 Priest, Principles of Public Utility Regulation 474 (1969).

150 (Popup)

[7]As noted above, the ability of the Commission to impose reasonable conditions has been explicitly recognized by the Court. See e.g. Re Easton, supra (slip opinion at p. 6). See also, RSA 369:1.

151 (Popup)

[8]Those concerns include, inter alia, the genesis of the circumstances that led to the financing as proposed, the cost of the proposed financing and the effect of the exercise of the common stock warrants on the Company's capital structure.

152 (Popup)

[8]Those concerns include, inter alia, the genesis of the circumstances that led to the financing as proposed, the cost of the proposed financing and the effect of the exercise of the common stock warrants on the Company's capital structure.

153 (Popup)

[1]The terms outlined in the Company's petition and testimony indicate that each Unit will include 25 to 75 common stock warrants depending upon the final pricing terms. Thus, the 90,000 Units in the Exchange Offering may include anywhere from 2,250,000 warrants to 6,750,000 warrants. The 155,000 Units in the Public Offering may include anywhere from 3,875,000 warrants to 11,625,000 warrants. Each warrant is convertible into one share of common stock. Since the Company has requested authorization to issue up to 22,500,000 shares of common stock in satisfaction of the warrants, an authorization of this amount would exceed the maximum of 18,375,000 per the terms outlined in the petition. Thus, it is possible that at the time of pricing the Company could request that the number of warrants per Unit be increased.

154 (Popup)

[2]Since on a dollar-for-dollar basis equity is twice as expensive to ratepayers as debt

financing due to taxes, it is clear that the long term effects on rates may be very great indeed.

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155 (Popup)

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156 (Popup)

[4]See also Dissenting Opinion of Commissioner Aeschliman, DR 82-333, January 1984 (69 NH PUC 67, 93, 57 PUR4th 563, 588).

157 (Popup)

[5]As part of my duty to keep informed, (RSA 374:4) I am aware of other regulatory actions and events which have relevance to this issue. The FDIC has recently required the top management of Continental Illinois Bank to resign as a condition to providing relief to the Bank. The Staff of the Michigan Commission has indicated that the resignation of the Chairman and senior officers of Consumer Power Company is likely to be a central recommendation of the Staff in the Company's request to recover costs from the cancelled Midland nuclear power project. At Long Island Lighting Company the problems surrounding the Shoreham nuclear project led to an internal management change.

158 (Popup)

[1]The Commission recognizes that the Company's rates were established on the basis of average cost (Motion for Rehearing at paragraph (3)(d)). Under averaging, a particular customer's rates may be slightly higher or lower than the cost imposed on the system by that customer since the rates of the class as a whole do match costs. However, the averaging mechanism rests on the assumption that members of a class have similar usage characteristics which impose similar levels of cost on the system. Here, the record indicates that the usage characteristics of the City are different from class characteristics in a manner and degree unanticipated at the time the rates were established. Since the City is wrongly classified as a Service Classification G customer (even though there currently exists no other class that is more appropriate), the tariff rates as applied to that customer are not just and reasonable. In the past, the Commission has provided that individual customers may be entitled to individual non-tariff rates when warranted by the circumstances. Cf. e.g. Re Public Service Co. of New Hampshire (1984) 69 NH PUC 67, 91, 92, 57 PUR4th 563, 587, 588 (Adoption of Special Industrial Contract Policy sponsored by the Business and Industry Association of New Hampshire).

159 (Popup)

[2]The nature of the proceeding was an issue directly addressed at the outset. The Staff suggested that it would be most appropriate to treat this docket as a generic rate structure investigation (Tr. of Sept. 22, 1983 at 4-5). The Company suggested that the matter be treated as a consumer complaint (Tr. of Sept. 22, 1983 at 8-17). After comments by one Commissioner

suggesting that he viewed the case as a customer complaint (Tr. of Sept. 22, 1983 at 19, 20), the Commission directed the parties initially to attempt to resolve the matter informally (Tr. of Sept. 22, 1983); an action consistent with our treatment of this matter as a consumer complaint.

160 (Popup)

[3]In its Motion for Rehearing, the Company used the term "Department" as a label for the City. Motion for Rehearing at 1, paragraph 1.

161 (Popup)

[4]As noted in the Decision, the Company, as a wholesale purchaser of electricity, is billed for demand on the basis of the highest numbers of kilovoltamperes (KVA) of demand during a thirty minute interval in the billing period which occurs between the hours of 7:00 A.M. and 8:00 P.M. Monday through Friday, exclusive of holidays (Response to Data Request 2). Since any outdoor lighting KVAs consumed by the City do not contribute to the number of KVAs calculated at the time of system peak, the Company is not billed by its wholesaler for those outdoor lighting KVAs.

162 (Popup)

[5]It is true that the Company experienced a six o'clock system peak on October 26, 1981; a time when certain memorial field facilities were in use. (See, Tr. of April 17, 1984 at 10: City facilities are not used after November 15th plus one week. All other system peaks which occurred later than 3:00 P.M. set forth in response to data request No. 1 occurred after November 22nd.) However, one instance in three years of data of possible coincident use does not support the Company's assertion that the City has a high probability of coincident use; rather, the record supports a finding that the probability of coincident use is low.

163 (Popup)

[6]See, Re Concord Electric Co. DR 81-97, Exhibit 5D (C504), which sets forth a residential purchased power cost of $1,242,424. This cost is 39.93% of the $3,111,431 settled capacity charge developed in that docket.

164 (Popup)

[7]We note that the Decision encouraged the Company to expedite its marginal cost of service study. We also note that the Company represented in its Motion for Suspension that it is in the process of completing a load study in preparation for a rate proceeding. We will, of course, entertain the presentation of the Company's cost of service study if and when it is completed. If such a study supports an additional change in the City's rate, we will make the appropriate finding in the appropriate proceeding.

165 (Popup)

[8]Cf. Re Small Energy Producers and Cogenerators (1984) 69 NH PUC 352, 355, 61 PUR4th 132, 135 ("This Order ... requires certain rates, terms and conditions for those qualifying SPPs who elect to avail themselves of the ... rates, terms and conditions approved herein. Nothing in this Order will prevent any person from negotiating and entering into a contract for the purchase and sale of electric energy at rates and on terms and conditions other than those or in addition to those contained herein."

166 (Popup)

[1]As defined in the Order of Notice in this docket, issue 2b is "an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders."

167 (Popup)

[1]SAPL filed a Motion for Rehearing on Order No. 17,162 on August 16, 1984. That Motion was denied in Order No. 17,180 ([1984] 69 NH PUC 467), rev'd. Re Seacoast Anti-Pollution League (1984) 124 NH —, 482 A2d 509.

168 (Popup)

[2]In accordance with the terms of the Second Procedural Order, the Commission issued an August 2, 1984 Order of Notice which "pursuant to inter alia RSA 365:5, RSA 365:19, RSA 365:37, RSA 369:1-4, RSA 374:3-4, RSA 374:18, RSA 374:30, and RSA Ch. 366 ... [opened] DF 84-200 ... for the purpose of investigating, inter alia, the Company's financing plan to complete the construction of Unit I of the Seabrook facility" (Order of Notice at 1). The Commission explicitly provided: "that issues within the scope of the docket will include inter alia: 1) whether the terms, conditions and amount of the proposed third phase financing are in the public good; 2) whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined cost and the assumptions found by the Commission to be reasonable in recent Orders; and 3) whether it is financially feasible for the company to engage in its proposed construction program, including an evaluation of the level of revenues necessary to support the capital structure which would result from the successful completion of Unit I." (Order of Notice at 1). Pursuant to the Order of Notice, a procedural hearing in DF 84-200 was held on August 9, 1984 which resulted in Report and Order No. 17,164 ([1984] 69 NH PUC 446), see also, Report and Supplemental Order No. 17,201 ([1984] 69 NH PUC 503) (clarifying procedural schedule), Order No. 17,212 ([1984] 69 NH PUC 517) (Recusal of the Chairman), Order No. 17,196 ([1984] 69 NH PUC 499 (Designation of Commissioner Iacopino as Presiding Officer and Application to Governor for appointment of Special Commissioner pursuant to RSA 363:20 and 21). Currently, DF 84-200 is progressing in accordance with the established procedural schedule.

169 (Popup)

[3]We are aware that the August 31, 1984 date used in the Second Procedural Order has come and gone. However, we continue to believe that the evidence supports a finding that an untimely Order would act as a de facto denial of the Petition. While we cannot precisely pinpoint when a de facto denial would be triggered, the record supports the finding that such a consequence becomes more imminent with each passing day.

170 (Popup)

[4]See e.g., Tr. at 2-231 to 2-232, 2-225 to 2-226. c.f., Re Public Service Co. of New Hampshire (1984) 69 NH PUC 446 (Establishment of a procedural schedule for purpose of investigation of Seabrook issues of at least a five-month duration).

171 (Popup)

[5]See e.g., Tr. 2-18 to 2-26 and 3-26 to 3-42.

172 (Popup)

[6]See e.g., Exhibit 8, Attachment 1-1, p. 1, Assumption 1.

173 (Popup)

[7]In view of the events which have taken place since August 2, 1984, we will revalidate the scheduling provisions of the Second Procedural Order. However, since the schedule has already been accomplished, it would serve no purpose to readopt it here.

174 (Popup)

[8]See, e.g., Brief of PSNH at 11. In addition to meeting its cash requirements, the Company is required by its commitment to creditors in its restructured agreements to raise at least $200,000,000 in external long term capital no later than October 1, 1984. See Re Public Service Co. of New Hampshire, (1984) 69 NH PUC 415.

175 (Popup)

[9]There has been no timely request for the full Commission to sit on the instant proceeding pursuant to RSA 363:17. Even if such a request had been received, it would not be necessary to schedule further proceedings because a quorum of the Commission was present at the hearings already held. See, RSA 363:16.

176 (Popup)

[10]By making this statement, we are not making a finding that Company management is or is not blameless in creating the circumstances which precipitated the liquidity crisis. There has been no notice that this is an issue in the instant proceeding and, accordingly, we do not have a record which is sufficient to allow us to make such a finding. Thus, we are here only describing events which occurred and the Company's response to those events. The assignment of responsibility for the occurrence of those events is a matter which must be addressed in a properly noticed docket. To the extent that management's response to those events is pertinent to our review of the proposed financing, it is the subject of the instant evaluation.

177 (Popup)

[11]In its Preliminary Prospectus dated September 4, 1984 filed with the SEC, the Company estimated the cost to complete Seabrook I at $4.5 billion. The estimate of completion costs was increased to $4.5 billion and the Company's share of the costs at $1,782,700,000. Based on this estimated total cash cost to complete Unit I of approximately $830 million, the Company's share of such costs would be $295,300,000 (excluding AFUDC of approximately $451,100,000).

178 (Popup)

[12]Cash construction expenditures were estimated at the rate of $4-5 million per week for the thirteenweek period with PSNH's share approximating $23 million. The balance of $425 million would be devoted to non-Seabrook corporate purposes.

179 (Popup)

[13]The $5,000,000 level is applicable to total construction. PSNH's share will be 35.56942% of this amount.

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181 (Popup)

[1]The prohibition on the payment of preferred stock dividends also automatically precludes the payment of any common stock dividends under the requirements of the Company's Articles of Agreement.

182 (Popup)

[2]Minor corrections to the text of my August 28th opinion have been incorporated in the reproduction.

183 (Popup)

[3]The terms outlined in the Company's petition and testimony indicate that each Unit will include 25 to 75 common stock warrants depending upon the final pricing terms. Thus, the 90,000 Units in the Exchange Offering may include anywhere from 2,250,000 warrants to 6,750,000 warrants. The 155,000 Units in the Public Offering may include anywhere from 3,875,000 warrants to 11,625,000 warrants. Each warrant is convertible into one share of common stock. Since the Company has requested authorization to issue up to 22,500,000 shares of common stock in satisfaction of the warrants, an authorization of this amount would exceed the maximum of 18,375,000 per the terms outlined in the petition. Thus, it is possible that at the time of pricing the Company could request that the number of warrants per Unit be increased.

184 (Popup)

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Similarly, Mr. Bayless indicated that this financing will result in dilution with a capital D. (Trans. 5-205) The effect on present shareholders will be to substantially reduce future earnings per share. (Trans. 5-210)

185 (Popup)

[5]The Commission took administrative notice of the testimony of Frederick Potter. (Trans. 4-63) See Testimony of Frederick Potter, Commonwealth of Massachusetts Department of Public Utilities. 1627-A, Vol. 6, p. 40.

186 (Popup)

[6]See also Dissenting Opinion of Commissioner Aeschliman, DR 82-333, January 1984.

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[7]As part of my duty to keep informed, (RSA 374:4) I am aware of other regulatory

actions and events which have relevance to this issue. The FDIC has recently required the top management of Continental Illinois Bank to resign as a condition to providing relief to the Bank. The Staff of the Michigan Commission has indicated that the resignation of the Chairman and senior officers of Consumer Power Company is likely to be a central recommendation of the Staff in the Company's request to recover costs from the cancelled Midland nuclear power project. At Long Island Lighting Company the problems surrounding the Shoreham nuclear project led to an internal management change.

188 (Popup)

[1]The history of the proceedings is lengthy and has already been set forth in the Decision at 1-6.

189 (Popup)

[2]On September 26, 1984, PSNH filed an objection to the Motion for Rehearing. Additionally, on September 26, 1984, after due notice, a hearing was held at which PSNH presented the pricing information on the proposed financing. After review, the Commission issued Eighth Supplemental Order No. 17,228 ([1984] 69 NH PUC 558) which, inter alia, authorized PSNH to issue and sell the proposed securities in amounts and upon the terms stated at the hearing and with the conditions imposed in this docket. Subsequently, on September 27, 1984, PSNH filed a Petition for Original Jurisdiction with the Supreme Court seeking a determination that PSNH can issue valid securities on the strength of an unsuspended Commission Order without regard to the possibility that the Order may be overturned on appeal.

190 (Popup)

[3]Indeed adoption of the 4-6 month time frame for analysis of Seabrook issues proposed by SAPL and Conservative Law Foundation, Inc. ("CLF") among others would have frustrated the urgent necessity for timely action resulting in our Order of September 21, 1984 and our financing Order of September 26, 1984 (Eighth Supplemental Order No. 17,228).

191 (Popup)

[4]It is noteworthy that SAPL's argument in the previous paragraph of the Motion was that the Commission erred by not relying on information contained in that same document.

192 (Popup)

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193 (Popup)

[1]While I agree with the majority at this point in time, I must also point out that the need for an extended investigation should have been obvious to the Commission since the release of the new cost estimates in March. Had the Commission acted on my proposals to hire a financial consultant, last spring or even early this summer, the Commission would have been in a position to consider this financing petition with the scope it deemed proper in the original procedural order of July 30th.

194 (Popup)

[2]As my previous opinion indicated, I found the testimony of the Company and of Mr. Hildreth to be inconsistent and troubling in respect to the need to approve the entire $425 million financing package. (Dissenting Opinion of Commissioner Aeschliman, Seventh Supplemental Report and Order No. 17,222 [69 NH PUC at pp. 546, 549, 551].)

195 (Popup)

[1]In addition, this alternate 34.5 KV supply to the stepdown substation will allow Concord to connect new customers at that higher voltage level and, by allowing de-energizing of the underground system, will ensure the safety of Concord personnel working near and around the cable in the manholes.

196 (Popup)

[2]B&M's appeal of Exeter is currently pending in the New Hampshire Supreme Court.

197 (Popup)

[3]The burden of proving the necessity of the crossing should, of course, remaining with the petitioning utility.

198 (Popup)

[1]As we stated on page 11 of the Decision (66 NH PUC at p. 493), on June 13, 1984, the Company filed a Notice of Intent to File Rate Schedules.

199 (Popup)

[1]See, DRM 82-304 Report and Order No. 16,164 ([1983] 68 NH PUC 22, 26).

200 (Popup)

[1]No lower than the 20% minimum.

201 (Popup)

[1]See Report and Fifteenth Supplemental Order No. 17,062 ([1984] 69 NH PUC 295) in which the Commission allowed PSNH to implement the pilot targeted program as presented by PSNH.

202 (Popup)

[2]"Lifeline rates" is included as one of the PURPA standards set forth in Rule No. Puc 205.01(d).

203 (Popup)

[3]In so doing, the Commission rejected Mr. Steizinger's analysis in favor of PSNH's cost projections on which to base its analysis. Report and Order No. 16,855 (69 NH PUC at p. 90).

204 (Popup)

[1]In cross-examination, the staff established that this would mean that the rate would be lowered to $3.501/100 KWH from the existing rate of $3.634/100 KWH.

205 (Popup)

[1]The formula for the trigger mechanism will be as follows: 10% < [(known over/under

collection) + (estimated over/undercollection for remainder of period)] divided by [(known gas costs) + (estimated gas costs for remainder of period)].

206 (Popup)

[1]Calcogen filed responses to the remaining data requests.

207 (Popup)

[2]In anticipation of the receipt of satisfactory responses, PSNH accordingly withdrew its Motion as it pertained to data request nos. 6, 40, 43, 62 and 67.

208 (Popup)

[3]Calcogen agreed to file its work papers with the Commission for inspection by PSNH and other parties, but refused to agree that those work papers may be photocopied. Thus, our ruling will be limited to whether Calcogen must allow the photocopying of its workpapers by PSNH at PSNH's expense.

209 (Popup)

[4]We recognize that the Superior Court Rules are not directly applicable to Commission proceedings; however, in this instance we find the standards of the rule to be persuasive.

210 (Popup)

[1]Direct examination of the witness will be conducted by the Commission's Counsel consistent with his role as a Decisional Employee. See, Puc Rule No. 203.15, Tr. at 31-33, 1457-59.

211 (Popup)

[2]PSNH stated that SAPL submitted the request on October 5, 1984, rather than on the October 1, 1984 deadline. However, since PSNH provided a response in a timely manner, there is no need to address the issue of the deadline.

212 (Popup)

[1]This will include some timber production to cover expenses.

213 (Popup)

[2]Con. Val. estimates this cost to be approximately $5,000.

214 (Popup)

[1]On December 11, 1984, PSNH filed with the Federal Energy Regulatory Commission ("FERC") a Petition for a declaratory order declaring that the proposed termination of service by Concord and Exeter is unjust, unreasonable and contrary to the public interest. See, Re Public Service Co. of New Hampshire, FERC Docket No. EL85-15-000. That Petition has yet to be adjudicated.

DISSENTING OPINION OF CHAIRMAN
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