NH.PUC*01/02/86*[60694]*71 NH PUC 1*Fuel Adjustment Clause

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71 NH PUC 1

Re Fuel Adjustment Clause

Intervenors: Concord Electric Company, Exeter and Hampton Electric Company, Granite State Electric Company, and Connecticut Valley Electric Company, Inc.

DR 85-401, Supplemental Order No. 18,031

New Hampshire Public Utilities Commission

January 2, 1986

ORDER approving revised fuel adjustment clause rates for four electric utilities.

Automatic Adjustment Clauses, § 52 — Fuel clauses — Estimates and forecasts — Electric utilities.

Electric utilities were permitted to revise their fuel adjustment clause rates to reflect estimated fuel costs, sales forecasts, and past fuel adjustment clause undercollections.

APPEARANCES: For Concord Electric and Exeter & Hampton Electric Company, Elais G. Farrah, Esquire; for Granite State Electric Company, Philip Cahill, Esquire; for Connecticut Valley Electric Company, Joseph Kraus, Esquire.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on December 20, 1985, to review the Fuel Adjustment Clause (FAC) filings of Concord Electric Company, Exeter & Hampton Electric Company, Granite State Electric Company, and Connecticut Valley Electric Company for the second half of 1985.

I. Concord Electric Company and Exeter & Hampton Electric Company

Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") presented two witnesses, Heidi C. Blais and George R. Gantz.

Concord's FAC in effect during the period July 1, 1985, through December 31, 1985, was a credit of ($0.656) per 100 KWH and Exeter & Hampton's FAC was a credit of ($0.658) per 100 KWH during the same period (both credits are exclusive of franchise tax effects). These two

companies filed revised FAC surcharge credits of ($0.297) and ($0.289) per 100 KWH for Concord and Exeter & Hampton respectively.

On December 10, 1985, the companies filed testimony and on December 13, 1985, they filed an exhibit which supported the proposed revision to their respective FAC surcharge credits.

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Additional revisions were made during the hearing by a Company witness.

Concord proposed an FAC increase of $0.359 per 100 KWH and Exeter & Hampton of $0.369 per 100 KWH. Both companies attribute the increase to an increase in estimated fuel costs from the companies' sole electricity supplier, Public Service Company of New Hampshire (PSNH), and an undercollection of the FAC for the second half of 1985 for both Concord and Exeter & Hampton.

In prefiled testimony, the companies' witness Heidi C. Blais, presented an exhaustive study on lost and unaccounted for KWH. Ms. Blais broke the lost and unaccounted for category into four components consisting of company use, compensating adjustment, losses, and billing cycle lag. She analyzed each component and provided the Commission with a five year history of the lost and unaccounted for. Based on this data, Ms. Blais recommended that a three year average is best to use for both companies when developing a forecast. Based on the evidence provided, the Commission will accept Ms. Blais' recommendation as filed.

Other issues discussed during the hearing included the companies' sales forecast and the Schiller Agreement between PSNH and its wholesale customers.

Finally, during the hearing the Companies updated their filing. The originally filed rate of ($0.098)/100 KWH for Concord and ($0.090)/100 KWH for Exeter and Hampton, was revised to the aforementioned surcharge credits of ($0.297)/100 KWH and ($0.289)/ 100 KWH respectively. The revision was due to a revised estimate of fuel costs by PSNH, submitted to the Companies subsequent to their original filing of December 13, 1985.

The revised rate of ($0.297)/100 KWH and ($0.289)/100 KWH for Concord and Exeter & Hampton is approved as filed.

II. Granite State Electric Company

Granite State Electric Company (Granite State) made its January - June 1986 filing for a FAC and an Oil Conservation Adjustment rate ("OCA") on December 12, 1985. Granite State had an FAC rate of $0.636 per 100 KWH in effect for July 1, 1985, through September 30, 1985, and an OCA rate of $0.140 per 100 KWH in effect for July 1, 1985 through September 30, 1985. In October 1985, Granite State revised its FAC to reflect a substantial undercollection through September 1985 because of an outage in Brayton Point]3. The rate for October was a surcharge of $1.268 per 100 KWH.

The rates requested on December 12, 1985, were $0.593 per 100 KWH for FAC, and $0.157 per 100 KWH for OCA. In addition, Granite State filed a revised Qualified Facilities average rate of 5.072.

A comparison of the estimated rate as filed and the rate in effect through December is not

appropriate. The October rate was designed to refund a undercollection in a two month period, as well as provide for a substantial increase in energy costs, whereas the filed rate is designed to collect costs over a six month period. Generally, however, the cost of fuel charged to Granite State is decreasing due to an overall change in generation mix from New England Power Company (NEPCO), Granite State's major source of power.

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Issues raised during the hearing included:

1. the estimated oil, coal and natural gas prices for the upcoming period;

2. projections of generating station capacity factors;

3. the sales projection for the period January - June, 1986;

4. the calculations of the Qualified Facilities rate (QF); and

5. lost and unaccounted for KWH.

Based on the evidence provided, the Commission will accept the filed FAC rate of $0.593 per 100 KWH, the OCA rate of $0.157 per 100 KWH, and the average QF rate at primary distribution of 5.072.

III. Connecticut Valley Electric Company, Inc.

Connecticut Valley Electric Company, Inc. (Conn. Val.) on December 12, 1985, filed a revised FAC rate for the period January - June, 1986. The filed rate of $1.39/100 KWH was a revision from the previous period rate of $1.40/100 KWH.

The Company provided three witnesses to support their filing. Mr. James A. Lahtinen testified to the sales forecast used in calculating the FAC, Mr. Clifford E. Giffin testified to the Central Vermont System Energy Rates which Conn Val pays, and Mr. C. J. Frankiewicz testified to the calculation of the FAC and the reconciliation of the prior period FAC.

Through testimony and cross examination by Staff and Commission of these witnesses, the following issues were discussed:

1. sales forecast;

2. lost and unaccounted for and company use;

3. the Vermont Yankee Nuclear Power Station outage;

4. Hydro Quebec Highgate purchases;

5. Millstone 3 energy; and

6. the purchase of electric power from small power producers.

Based on the evidence provided, the Commission finds the FAC rate of $1.39/100 KWH to be just and reasonable and will approve the rate for the six month period beginning January, 1986, and ending June, 1986.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that 2nd Revised Page 20A of Concord Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge credit of ($0.297) per 100 KWH for the months of January through June, 1986, be, and hereby is, permitted to go into effect on January 1, 1986; and it is

FURTHER ORDERED, that 28th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of ($0.289) per 100 10KWH for the months of January through June, 1986, be and hereby is, permitted to go into effect on January 1, 1986; and it is

FURTHER ORDERED, that 15th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of $0.157 per 100 10KWH for the months of January through June, 1986, be, and hereby is, permitted to go into effect on January 1, 1986; and it is

FURTHER ORDERED, THAT 19th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 Electricity, providing for a fuel sur10charge for the months of January through June, 1986 of $0.593 per 100 KWH, be, and hereby is, permitted to go into effect on January 1, 1986; and it is

FURTHER ORDERED, that 5th Revised Page 11C of Granite State Electric Company tariff, NHPUC No. 10 -Electricity, providing for a Qualifying Facility Power Purchase Rate be, and hereby is, accepted for effect during January through June, 1986; and it is

FURTHER ORDERED, that 106th 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 period of January through June, 1986, be, and hereby is, permitted to go into effect on January 1, 1986.

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 (68 NH PUC 461).

By Order of the Public Utilities Commission of New Hampshire this second day of January, 1986.

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NH.PUC*01/03/86*[60695]*71 NH PUC 5*TDEnergy, Inc.

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71 NH PUC 5

Re TDEnergy, Inc.

Intervenors: Public Service Company of New Hampshire, Northeast Power Associates, Ashland

Power Associates, Dodge Falls Hydro Corporation, and Maine Energy Partners

DR 85-13, DR 85-65, Order No. 18,036

New Hampshire Public Utilities Commission

January 3, 1986

ORDER denying, on jurisdictional grounds, petitions to establish rates to be paid by in-state New Hampshire electric utilities for power purchased from out-of-state small power producers.

Parties, § 18 — Motion for intervention — Grounds for granting.

Intervention in commission proceedings is governed by New Hampshire Administrative Rule Puc 203.02 which provides, in part, that the commission may grant motions to intervene "at any time, upon determining that such intervention would not impair the orderly and prompt conduct of the proceedings;" in granting intervention, the commission may impose conditions limiting a party's participation. [1] p. 8.

Cogeneration, § 4 — State jurisdiction — Purchases from out-of-state small power producers — Rate determinations.

The commission does not possess the jurisdiction necessary to establish the rates to be paid by in-state New Hampshire electric utilities for power purchased from out-ofstate small power producers; neither the Public Utility Regulatory Policies Act of 1978 nor the New Hampshire Limited Electrical Energy Producers Act explicitly confers jurisdiction on the commission to establish rates for the purchase of power from out-of-state small power producers, and such jurisdiction cannot be inferred from those statutes. [2] p. 13.

Cogeneration, § 4 — State jurisdiction — Purchases from out-of-state small power producers — Rate determinations.

Statement, in dissenting opinion, that the majority erred in holding that the commission lacks the jurisdiction to require an instate electric utility to purchase power from a qualifying facility located outside the state, or to establish rates for the purchase of such power; the dissenting commissioner argued that the majority holding incorrectly analyzed jurisdictional issues raised by the Public Utility Regulatory Policies Act. p. 15.

(AESCHLIMAN, commissioner, dissents, p. 15.)

APPEARANCES: Thomas Dinwoodie, Louis Cohen and Robert Bordner on Behalf of TDEnergy, Inc.; Sulloway, Hollis and Soden by Margaret Nelson, Esquire on behalf of Public Service Company of New Hampshire; Orr and Reno by Howard M. Moffett, Esquire on behalf of Northeast Power Associates; Robert Olson, Esquire on behalf of Ashland Power Associates, Dodge Falls Hydro Corporation and Maine Energy Partners; Larry Smukler,

Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On January 14, 1985, TDEnergy, Inc. (TD) of Boston, Massachusetts filed a petition for a long term rate pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), for its 16 mw facility located in Florida, Massachusetts.[1(1)] An Order of Notice was issued on February 14, 1985 setting a procedural hearing for March 15, 1985. Prior to the hearing, both Public Service Company of New Hampshire (PSNH) and Ashland Power Associates (Ashland) filed timely Motions to Intervene pursuant to Commission Rule No. Puc 203.02. In addition, Ashland filed a Motion to Consolidate this docket with DR 85-65, a docket opened by the Commission to consider Ashland's long-term rate petition regarding its 12,000 kw facility located in Ashland, Maine.

At the hearing, the Commission granted both PSNH and Ashland's Motion to Intervene. In addition, the Commission granted Ashland's Motion to Consolidate upon the condition that Ashland give proper notice by publication.[2(2)]

It also established a procedural schedule on the issue of whether the Commission has jurisdiction to set rates for the purchase of power from out-ofstate small power production facilities (SPP) by New Hampshire electric utilities. Lastly, the Commission permitted the parties leave to file a stipulation as to the underlying facts necessary to resolve the jurisdictional issue and legal memoranda.

On March 20, 1985, Northeast Power Associates (NEPA) filed a Petition to Intervene. Although not timely filed, the Commission granted NEPA's petition in Report and Order No. 17,529 issued on April 4, 1985 (70 NH PUC 145). NEPA's intervention was limited to the legal/jurisdictional issue and conditioned upon its acceptance of the procedural schedule and factual stipulation.

TD, PSNH and Ashland timely filed the stipulation. Legal memoranda were also timely submitted by TD and PSNH. Ashland filed no memorandum.

Thereafter, on May 17, 1985, NEPA filed a Petition for Leave to File a Memorandum of Law. In addition, by a petition of even date, Dodge Falls Hydro Corporation (Dodge Falls), a New Hampshire Corporation with a principal place of business in Claremont, New Hampshire, filed a Petition to Intervene. Likewise on May 24, 1985, a Motion to Intervene and a Motion to Make a Late Filing of Memorandum on Jurisdictional Issues was filed by Maine Energy Partners (MEP) a New Hampshire partnership.

In its petition, Dodge Falls states that it proposes to develop a 5-megawatt small hydro-electric power project on the Connecticut River in East Ryegate, Vermont and Bath, New Hampshire and wheel the power tne project produces to PSNH. It argues that, as an out-of-state SPP, any ruling on the jurisdictional issue would affect its rights

and interest. Therefore, Dodge Falls requests the Commission's leave for late intervention as a full party. Dodge Falls will accept the present procedural status of this case, including the factual stipulation filed on March 27, 1985.

Like Dodge Falls, MEP also proposes to develop hydropower facilities outside New Hampshire. In its petition MEP states that it intends to purchase two such facilities in Hampden and Brownville Maine and will seek to have PSNH purchase the power therefrom. Thus, it seeks full Intervention status because the outcome of this docket will affect its rights and interests. MEP avers that at the time this docket was established, it had not considered the development of the Hampden and Brownville projects. It too will accept the current procedural status of this proceeding and the terms and conditions of the March 27, 1985 stipulation. Both Dodge Falls and MEP seek to have the Commission consider the legal memoranda filed with their petitions.

NEPA's petition acknowledges that it failed to timely file a legal memorandum as provided by Report and Order No. 17,529. It cited no reason for that failure. However, it nonetheless seeks to have the Commission consider its filing.

PSNH filed responses to the NEPA, Dodge Falls and MEP filings on May 29, 1985. With regard to NEPA, PSNH argues NEPA's request for leave to file a late memorandum should be denied. In support thereof, it cites Report and Order No. 17,529 which granted NEPA's late-filed intervention petition on the condition that it, inter alia, file a legal memoranda by April 15, 1985. Because NEPA did not meet that condition, PSNH argues that NEPA's request should be denied. PSNH also states that this late-filed memorandum is in effect a "reply brief" given that NEPA has had an opportunity to review, analyze and respond to the memoranda timely filed by the other parties. Should the Commission grant NEPA's petition, PSNH requests an opportunity to likewise file a "reply" memorandum.

PSNH also objects to the Dodge Falls and MEP filings. It argues that their filings were not timely made and should therefore be rejected. PSNH contends that should the Commission permit Dodge Falls and MEP to intervene, it limit that intervention like NEPA's to the legal/jurisdictional issues only and that, as with NEPA, it be permitted to file a reply memorandum.

By letter dated August 27, 1985, PSNH notified the Commission that based upon an article in the July 5, 1985 issue of Cogeneration Report, it understood that TD had apparently determined to sell the output of its Florida, Massachusetts facility to Boston Edison Company. PSNH requested therein that TD should be required to inform the Commission whether it still intends to sell power to PSNH prior to the issuance of Report and Order so that the interests of administrative economy can be served.

TD filed a response thereto on September 5, 1985. Therein, it advised the Commission that TD had in fact signed a power sales agreement with Boston Edison and will not be selling the output of its Florida, Massachusetts project to PSNH. However, TD requested that the Commission proceed with this docket because of the importance of the generic issues raised herein. It noted that a number of similar entities are parties or have petitioned to intervene and that the interests of

administrative economy would best be served by resolving the generic issues. Moreover, TD stated that because it is in the early stages of developing other out-ofstate projects, it has a continuing interest in this docket.

II. PROCEDURAL ISSUES

[1] At the outset, we note that this docket was opened in response to TD's petition for a long term rate for its 16 MW facility in Florida, Massachusetts. While not formally withdrawn, that petition is, in effect, no longer before us. However, because of the consolidation, Ashland's filing is still properly before us. Thus, the jurisdictional issue remains ripe for determination. We therefore will proceed to decide the jurisdictional issue presented by the Ashland petition. We next turn to the issue of Dodge Falls and MEP's late-filed motions to intervene and NEPA's motion to late file a memoranda.

Intervention in Commission proceedings is governed by N.H. Admin. Rule Puc 203.02. N. H. Admin. Rule Puc 203.02 (c) provides that the Commission may grant motions to intervene "at any time, upon determining that such intervention would not impair the orderly and prompt conduct of the proceedings." In granting intervention, the Commission may impose conditions upon a party's participation. See N.H. Admin. Rule Puc 203.02 (c)(1).

After a complete review, we will grant Dodge Falls and MEP's motions to intervene upon the same conditions that NEPA's intervention was permitted. Thus, their intervention is limited to the jurisdictional issue and conditioned upon their acceptance of the stipulated facts. We find that the participation of these parties will assist the Commission in producing a complete exposition and review of the legal arguments regarding the jurisdictional issue. Further, we find that their participation under the aforementioned conditions will not impair the orderly and prompt conduct of these proceedings.

Lastly, we will deny PSNH's request for time to file a reply memorandum to the NEPA, MEP and Dodge Falls memoranda. We recognize that those intervenors had the benefit of PSNH's memoranda in preparing their arguments and that those memoranda are in effect "reply briefs". However, the memoranda presented thus far fully discuss the jurisdictional issue and a further PSNH filing would in all likelihood not add anything to our consideration. Should PSNH take lssue with our determination herein and decide to file a motion for rehearing, it may file an additional memoranda therewith.

III. POSITION OF THE PARTIES

This Commission's jurisdiction to set rates for power sold by SPPs to electric utilities is set forth in Section 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA) 16 U.S.C. §824 a-3 and RSA 372-A, the New Hampshire Limited Electrical Energy Producers Act (LEEPA). Those statutes have been discussed in depth in prior Commission reports and need not be repeated here.[3](3) Subsequent to the enactment of these statutes, the Commission commenced formal proceedings and as

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a result set rates to be paid to SPPs.[4](4)

To facilitate the resolution of this issue, TD and Ashland stipulated to the following facts:

1. Public Service Company of New Hampshire (PSNH) is a New Hampshire business corporation which sells electricity on a wholesale and retail basis in the State of New Hampshire;

2. PSNH is a regulated public utility subject to the jurisdiction of the New Hampshire Public Utilities Commission (the Commission).

3. TDEnergy, Inc. (TDEnergy) is a Massachusetts corporation which asserts that it is in the process of requesting authorization to conduct business in New Hampshire.

4. TDEnergy proposes to construct a wind powered small power production facility up to 16 MW located in Florida, Massachusetts.

5. TDEnergy proposes to have the power generated at its Florida, Massachusetts facility wheeled through the transmission system of New England Electric System (NEES) and sold to PSNH.

6. TDEnergy asserts that NEES will wheel the output of TDEnergy's proposed facility at no cost to PSNH.

7. TDEnergy is requesting that the Commission establish long term rates at avoided costs for its Florida, Massachusetts facility in accordance with its Order No. 17,104 in Docket DE 83-62 for a twenty-year term. TDEnergy is not requesting any front end loading.

8. Ashland Power Associates (Ashland) is a New Hampshire limited partnership.

9. Ashland proposes to construct a 12,000 KW wood fired small power production facility in Ashland, Maine in the service territory of Maine Public Service Company.

10. Ashland proposes to directly interconnect its facility with Maine Public Service Company. Ashland asserts that Maine Public Service Company is willing to coordinate transmission of the facility's output to Central Maine Power Company. According to Ashland, Central Maine Power Company has indicated its willingness to work with PSNH to bring about a transmission agreement.

11. Ashland is requesting that the Commission establish long term rates at avoided costs for its facility in accordance with Order No. 17,104 in Docket DE 83-62. Ashland proposes that these rates be front end loaded and levelized over a twenty-year term.

The stipulatlon provides that these facts are accepted as true only for purposes of determining the jurisdictional issue. While not actual parties to the stipulation, as noted above, NEEPA, Dodge Falls and MEP accept the stipulation. Like TD and Ashland, they propose to construct small power production facilities outside New Hampshire and seek to have PSNH purchase their output under the Commission-determined long term rates.

Section 210 of PURPA directs FERC to establish rules encouraging the development of cogeneration and small power production and to require

electric utilities to purchase electricity from SPPs at a price not to exceed the utility's avoided costs. The provisions of Section 210 relevant to the issue under consideration herein are set forth

in 16 USC 824 a-3 (a) and (b). These state as follows:

(a) Not later than 1 year after the date of enactment of this Act [enacted Nov. 9, 1978], the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities of not more than 80 megawatts capacity, which rules require electric utilities to offer to (1) sell electric energy to qualifying cogeneration facilities and qualifying small power production facilities and

(2) purchase electric energy from such facilities ... .

(b) The rules prescribed under subsection (a) shall ensure that, 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

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers. No such rule prescribed under subsection (a) shall provide for a rate which exceeds the cost to the electric utility of alternative electric energy.

Pursuant to this statutory mandate, FERC has promulgated regulations to implement Section 210 of PURPA. 18 CFRR 292.303 governs electric utility obligations. Sections (a) through (e) provide as follows:

(a) Obligation to purchase from qualifying facilities Each electric utility shall purchase, in accordance with §292.304, any energy and capacity which is made available from a qualifying facility:

(1) Directly to the electric utility; or

(2) Indirectly to the electric utility in accordance with paragraph (d) of this section.

(b) Obligation to sell to qualifying facilities. Each electric utility shall sell to any qualifying facility, in accordance with §292.305, any energy and capacity requested by the qualifying facility.

(c) Obligation to interconnect.

(1) Subject to paragraph (c)(2) of this section, any electric utility shall make such interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under this subpart. The obligation to pay for any interconnection costs shall be

determined in accordance with §292.306.

(d) Transmission to other electric utilities. If a qualify;ng facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this subpart as if the qualifying facility were supplying energy and capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted

up or down to reflect line losses pursuant to §292,304(e)(4) and shall not include any charges for transmission.

(e) Parallel operation. Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with any applicable standards established in accordance with §292.308.

These statutory provision and FERC regulations are cited by TD, NEPA, Dodge Falls and MEP in support of their contention that this Commission has authority to set rates for PSNH power purchases from out-of-state SPPs.

With regard to Section 210, they argue that nothing therein limits or appears to limit the applicability of Section 210's requirements to energy sales from SPPs located in the same state as the purchasing utility. Given Congress' awareness of the interstate nature of the electric industry and the traditional division of regulatory authority between FERC and the state commissions, they contend that Congress could have imposed such a limitation. According to TD and the other SPP intervenors, the only limitation of jurisdiction contained in the statute is that each state commission's implementation of the FERC guidelines shall be limited to the purchasing utility over which it exercises authority. 16 USC § 824 a-3(f)(1).

TD and the other SPP intervenors contend that the legislative history of PURPA and Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742, 47 PUR4th 1, 72 L.Ed.2d 532, 102 S.Ct. 2126 (1982) support their conclusion that Section 210 should be read to extend Commission authority over out-of-state SPP's selling energy to utilities within this state.[5(5)] According to TD and the intervenor SPP's, the language contained therein establishes that PURPA was designed to combat a nationwide energy crisis; its purpose was to alter the electric utility industry's dependence on imported oil and gas by encouraging development of cogeneration and small power production. If Section 210 is read to preclude this Commission from setting rates for outof-state SPPs, they argue that the intent of the statute to redress a nationwide problem would not be furthered and in fact would be frustrated in that the out-of-state SPP power might never be sold. According to these parties, construing PURPA in that manner would create an "artificial barrier" for the

exchange of power between states which the Federal Power Act, as supplemented by PURPA, is intended to prevent.

The FERC regulations cited by TD, NEPA, MEP and Dodge Falls are set forth in 18 C.F.R. §292.303 (a) and (b) which are reproduced in full above. Paragraph (a) obligates each electric utility to purchase "any energy and capacity which is made available ... (1) Directly to the electric utility; or (2) Indirectly to the electric utility ... " In pertinent part, paragraph (d) provides that any electric utility to which energy or capacity is transmitted shall purchase that energy and capacity as if the small power producer "were supplying energy or capacity directly to such utility ... " subject to allowances for line losses. They argue that these regulations clearly establish an unqualified obligation on an electric utility to purchase the energy and capacity directly or indirectly made available to it regardless of the location of the SPP. According to the SPP parties, the critical jurisdictional issue is not the location of the SPP but that PSNH is

located in New Hampshire.

While TD, Dodge Falls and NEPA confine their arguments to the abovestated PURPA sections and F.E.R.C. regulations, MEP also addresses this Commission's jurisdiction under LEEPA. Enacted by the New Hampshire legislature in 1978, LEEPA can be considered the New Hampshire equivalent of PURPA. The purpose of this statute is set forth in RSA 372-A:1 which states as follows:

It is found to be in the public interest to provide for small scale and diversified sources of supplemental electrical power to lessen the state's dependence upon other sources which may, from time to time, be uncertain.

LEEPA requires an electric public utility to purchase the entire output offered to it for sale by any SPP in its franchise area. RSA 372-A:3. Like PURPA, it requires that the rate to be paid to the SPP shall be based upon the purchasing utility's avoided cost. RSA 372-A:4.

MEP contends that the language of RSA 362-A:3 does not explicitly proscribe Commission authority over outof-state SPPs.

6(6) However, it agrees that when read literally, RSA 372-A:3 seemingly limits the benefit of LEEPA to those SPP's located within the franchise area of the utility to which the SPPs desire to sell. MEP argues that this interpretation is incorrect for two reasons. First, such a reading would preclude requiring a utility to purchase SPP power wheeled to it from any other utility within the state. According to MEP, this conclusion is without expressed or apparent justification and would be contrary to the Commission's implementation of PURPA for the New Hampshire Electric Cooperative in Docket DR 81-133. Second, MEP asserts that such a restricted reading of LEEPA would frustrate its purpose of fostering small power production and cogeneration to reduce the State's dependence on other sources of electricity. MEP states at page 23 as follows:

While the language and relatively sparse legislative history of LEEPA

provide no direct statement on the kind of uncertain power sources the legislature intended to displace, LEEPA's time of passage coincided with the nation's energy crisis, and the well-publicized dependence, at the time, of PSNH and other New England utilities on oil fired electrical generation.

Thus, MEP contends that LEEPA should not be interpreted in such a restrictive manner but rather should be read as a corollary to the F.E.R.C. regulation 292.303(d) set forth above which requires an electric utility to purchase SPP power "made available" to it.

PSNH argues that PURPA and LEEPA do not confer jurisdiction on state commissions to establish rates for facilities not located within their jurisdictions. With regard to PURPA, PSNH contends that nothing in the statute or the FERC regulations promulgated pursuant thereto explicitly confers that authority. PSNH asserts that while PURPA and FERC regulations require the state regulatory bodies to formulate policies that support PURPA's goals, they cannot be read to expand a state agency's jurisdiction to include establishing interstate rates which have exclusively been the province of the federal government.

In support of this conclusion PSNH cites Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742, 47 PUR4th 1, 72 L.Ed.2d 532, 102 S.Ct. 2126 (1982). In that case the Supreme Court found, inter alia, that PURPA did not infringe on state sovereignty as guaranteed by the 10th Amendment to the Constitution because it merely required the state regulatory commission to exercise functions similar to those it already performed. In addition, the Court held that PURPA is an appropriate exercise of the federal government's right to regulate interstate commerce.

PSNH argues that interpreting PURPA in the manner requested by the SPP parties in this case would be contrary to the Court's holding in Federal Energy Regulatory Commission v. Mississippi, supra. It asserts that setting rates for out-of-state SPPs would require this Commission to become involved in the interstate regulation of projects not in its jurisdiction. This is not, PSNH asserts, a function similar to those already exercised by the Commission. Moreover, PSNH contends that such an expansion of this Commission's jurisdiction would usurp the federal government's traditional regulation over interstate commerce.

As with PURPA, PSNH argues that nothing in the statutory language of LEEPA supports the SPP parties' position in this case that this Commission can set rates for out-of-state SPP projects. Rather, it contends that LEEPA was enacted to encourage the development of small power production in New Hampshire and concludes that it cannot serve as a source of authority for the Commission to establish rates for out-of-state projects.

IV. COMMISSION ANALYSIS

[2] We begin by noting, as have the parties, that nothing in PURPA or RSA 362-A explicitly confers jurisdiction on this Commission to establish rates for the purchase of both energy and capacity from out-of-state SPPs by New Hampshire electric utilities. The determination of this issue therefore turns on whether such jurisdiction can be

inferred from those statutes. As stated above, the SPP parties to this proceeding contend that jurisdiction can be inferred from the pertinent provisions of these statutes while PSNH argues to the contrary. We shall address each of their arguments in turn.

We first must determine whether state commission jurisdiction to set rates for out-of-state SPP power purchases by in-state electric utilities can reasonably be inferred from Section 210 of PURPA. The SPP parties cite no specific language from which we can infer that jurisdiction. Rather, they argue that because it is not prohibited, this Commission possesses that jurisdiction. We disagree. The Commission cannot base its jurisdiction solely on a statute's failure to prohibit such jurisdiction but must look to the concrete language of the statute. The SPP parties cite no such language and we cannot find any.

In addition, we disagree that to interpret Section 210 narrowly would frustrate that statute's intended purpose, namely, to help ease a nationwide energy crisis by encouraging small power production. There is nothing in the record to support their conclusion that power not sold to PSNH would in all likelihood be lost.

The SPP parties also argue that the regulations promulgated by F.E.R.C. as set forth above

confer jurisdiction upon this Commission to set rates for out-ofstate SPP power sales to in-state electric utilities. Unlike their argument regarding Section 210, the SPP parties cite the language of 18 C.F.R. §292.303 that an electric utility shall purchase energy and capacity made "directly" or "indirectly" available to it. We do not agree that jurisdiction over out-of-state SPPs can be inferred from this language. It is addressed to the utility obligation to purchase SPP power and not to the determination of rates for that power. While that language may require an electric utility to purchase power from an out-of-state SPP, it does not establish either explicitly or implicitly that the state commission having jurisdiction over the electric utility is to set the rates for that power.

Moreover, even if the FERC regulations could be read to confer such authority on state commissions we could not undertake to set rates for out-ofstate SPPs in reliance thereon. We agree with the dissent that Congress may require state administrative agencies to implement and exercise jurisdiction over federal matters. That is precisely the holding of Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742, 47 PUR4th 1, 72 L.Ed.2d 532, 102 S.Ct. 2126 (1982). However, we do not read that case to hold that a federal agency, a mere creation of Congress, may likewise confer such jurisdiction on this Commission.

The purchase of power from a SPP located in State A by an electric utility in State B is an interstate sale of electricity. If in-state electric utilities are obligated to purchase out-of-state power under the FERC regulations, the issue becomes who determines the rate. The regulation of interstate sales of electricity has specifically been reserved by Congress under the Federal Power Act for FERC. As we have found, there is nothing in PURPA which shifts that responsibility from FERC to state commissions. Thus, PURPA did not amend the fundamental ratemaking provisions of the Federal Power Act. Given these findings, we therefore conclude that this Commission has no authority under PURPA to establish rates for out-of-state SPPs.

The entire output of electric energy of such limited electrical energy producers, if offered for sale to the electric utility, shall be purchased by the electric public utility which serves the franchise area in which the installations of such producers are located.

In addition, contrary to the SPP parties assertions, LEEPA cannot form the basis of our jurisdiction over out-ofstate SPPs. Its specific provisions confine this Commission's jurisdiction to in-state SPPs. RSA 362-A:3 requires an electric utility to purchase, if offered, the entire output of the SPP located within its franchise area at rates set by this Commission. It does not address out-of-state SPP power purchases given FERC's exclusive jurisdiction to set rates for the interstate sale of electricity.

Lastly, it should be noted that this Commission has been faithful to both the letter and the spirit of PURPA. Shortly after PURPA's implementation, this Commission initiated proceedings to consider the various ratemaking standards. While PURPA only mandated "consideration", this Commission in fact implemented most of those standards. In addition, with regard to small power production, this Commission has been diligent in setting the avoided cost rates to be paid by PSNH to in-state SPPs pursuant to PURPA and LEEPA. Thus, our decision herein should not be read as a reversal of our commitment to the spirit and purpose of PURPA. As we have stated,

in our view PURPA and LEEPA simply do not confer the jurisdiction necessary to determine the rates to be paid by instate New Hampshire electric utilities for out-of-state SPPs power.

In view of the above, we find that the Commission has no jurisdiction to establish rates for out-of-state SPP's. Accordingly, the petitions of Ashland and TD are hereby denied.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the petitions of TDEnergy, Inc. and Ashland Power Associates for the Commission to establish rates pursuant to Report and Order No. 17,104 (69 NH PUC 352, 61 PUR4th 132) be, and hereby are, denied.

By order of the Public Utilities Commission of New Hampshire this third day of January, 1986.

Dissenting Opinion of Commissioner Aeschliman

I disagree with the conclusion of the majority holding that we do not have the jurisdiction to require Public Ser10vice Company of New Hampshire (PSNH) to purchase power from a Qualifying Facility (QF) under the Public Utility Regulatory Policies Act of 1978, P.L. 95-617, 92 Stat. 3117 (PURPA)[1(7)] . That holding is clearly inconsistent with federal law, which is controlling in this instance, and with federal and state policy.

In analyzing the jurisdictional issue raised by PURPA, it is necessary to start with the regulatory structure that existed prior to PURPA to determine what Congress accomplished with that legislation. Prior to the enactment of PURPA, there existed a so-called "bright line" between federal and state jurisdiction of electric utilities. Rhode Island Pub. Utilities Commission v. Attleboro Steam & Electric Co., 273 U.S. 83, PUR1927B 348, 71 L.Ed. 549, 47 S.Ct. 294 (1927); Federal Power Act (FPA), Part II, 16

U.S.C.A. §§ 824-824K.[2(8)] Generally, the states regulated sales to retail customers and the Federal Power Commission, now the Federal Energy Regulatory Commission (FERC), regulated sales for resale which are deemed to be interstate transactions. Federal Power Commission v. Southern California Edison Co., 376 U.S. 205, 52 PUR3d 321, 11 L.Ed.2d 638, 84 S.Ct. 644 (1964). The interstate nature of sales of electricity for resale which triggers federal jurisdiction has been affirmed even when the selling and buying utilities are both located in the same state. Federal Power Commission v. Florida Power & Light Co., 404 U.S. 453, 92 PUR3d 149, 30 L.Ed.2d 600, 92 S.Ct. 637 (1972). Thus, prior to PURPA, a QF seeking to sell electricity for resale would have been subject to the regulation of the FERC. This would have been true whether the QF was located within the same state as the purchasing utility or in a different state.[3(9)] Federal Power Commission v. Florida Power & Light Co., supra.

PURPA significantly changed the federal state regulatory structure. A class of small power production and cogeneration facilities was identified in PURPA § 201, 16 U.S.C.A. § 796 (hereafter referred to as QFs as previously defined supra at note 1). Section 210 of PURPA, 16

U.S.C.A. § 824a-3, inter alia, directed the FERC to promulgate rules to require electric utilities to purchase electricity from QFs and required the states to implement the FERC rules. The FERC duly promulgated its regulations at 18 C.F.R. §§ 292.101 et seq., 45 Fed.Reg. 17,959 et seq. (March 20, 1980), 45 Fed.Reg. 12,214 et seq. (Feb. 25, 1980).[4](10) Those regulations require the states to implement programs to require regulated electric utilities to purchase electricity from QFs and to set avoided cost rates for such purchases. See, 18 C.F.R. §§ 292.303, 292.304 and 292.401. Thus, for the limited class of QF sellers the states were required to exercise jurisdiction over sales of electricity for resale; a class of transactions that previously had been considered exclusively within the federal province.

The ability of the Congress to require state administrative agencies to implement and exercise jurisdiction over federal matters was challenged by the State of Mississippi. In Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742, 47 PUR4th 1, 72 L.Ed.2d 532, 102 S.Ct. 2126 (1982), the Court rejected the Mississippi claim. The Court provided:

Testa v. Katt (1947) 330 U.S. 386, 91 L.Ed. 967, 67 S.Ct. 810, is instructive and controlling on this point. There, the Emergency Price Control Act, 56 Stat 34, as amended, created a treble damages remedy, and gave jurisdiction over claims under the act to state as well as federal courts. The courts of Rhode Island refused to

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entertain such claims, although they heard analogous state causes of action. This court upheld the federal program. It observed that state courts have a unique role in enforcing the body of federal law, and that the Rhode Island courts had "jurisdiction adequate and appropriate under established local law to adjudicate this action." 33 U.S. at p. 394, 67 S.Ct. at p. 814. Thus the state courts were directed to heed the constitutional command that "the policy of the federal act is the prevailing policy in every state," id., 330 U.S. at p. 393, 67 S.Ct. at p. 814, " `and should be respected accordingly in the courts of the state' ". Id., 330 U.S. at p. 392, 67 S.Ct. at p. 813, quoting Mondou v. New York, N.H. & H.R. Co., 223 U.S. 1, 57, 56 L.Ed. 327, 32 S.Ct. 169, 178.

So it is here. The Mississippi commission has jurisdiction to entertain claims analogous to those granted by PURPA, and it can satisfy § 210's requirements simply by opening its doors to claimants. That the commission has administrative as well as judicial duties is of no significance. Any other conclusion would allow the states to disregard both the preeminent position held by federal law throughout the nation, cf. Martin v. Hunter's Lessee (1816) 1 Wheat 304, 340, 341, 4 L Ed 97, and the congressional determination that the federal rights granted by PURPA can appropriately be enforced through state adjudicatory machinery. Such an approach, Testa emphasized, "flies in the face of the fact that the states of the union constitute a nation", and "disregards the purpose and effect of Art VI of the Constitution." 330 U.S. at p. 389, 67 S.Ct. at p. 812.

456 U.S. at pp. 760, 761, 47 PUR4th at p. 11, 72 L.Ed.2d at pp. 547, 548 (footnote omitted).

Thus, there can be no question that the states are required to exercise regulatory jurisdiction over purchase and sale transactions between QFs and regulated electric utilities. A state refusal to exercise this jurisdiction would inhibit QF development, which both federal and state policy

encourages (PURPA § 2, 16 U.S.C.A. § 2601; and RSA 362-A:1), and thus would be an unlawful burden on interstate commerce. New England Power Co. v. New Hampshire, 455 U.S. 331, 45 PUR4th 641, 71 L.Ed.2d 188, 102 S.Ct. 1096 (1982).

Pursuant to both the state and federal mandates, this Commission has implemented a program for QFs located within the State wishing to sell electricity to New Hampshire electric utilities. See e.g., Re Small Energy Producers and Cogenerators, 69 NH PUC 352 (1984) and 68 NH PUC 531 (1983). For the purposes of a jurisdictional determination, there is no difference between power purchased by New Hampshire electric utilities from in-state QFs and from QFs located outside the state which arrange to have power delivered to New Hampshire utilities. Both transactions are sales for resale subject to certain regulatory authority delegated to the states by PURPA. Our economic authority over QFs in these matters is limited (PURPA § 210(e) and RSA 362-A:2); rather, that authority is more properly directed at the purchasing jurisdictional utility. The FERC, in promulgating its regulations recognized that the states are best qualified to

determine avoided costs and engage in other implementation and enforcement directed at regulated electric utilities. See e.g., 45 Fed.Reg. 12,230-12,232 (Feb. 25, 1980).

Moreover, the FERC recognized that a QF may wish to sell its output to a utility which is not located at the site of the QF. This, the FERC explicitly directed at 18 C.F.R. § 292.303(d):

If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to § 292.304(e)(4) and shall not include any charges for transmission.

There is no restriction in this rule which cuts off the transmission at state boundaries. Such a restriction would not be rational given the interstate nature of the electric transmission line grid. Cf., New England Power Co. v. New Hampshire, supra. In its preamble to the regulation, the FERC commented at 45 Fed.Reg. 12,220 (Feb. 25, 1985):

... [P]aragraph (d) provides that a utility which receives energy or capacity from a qualifying facility may, with the consent of the qualifying facility, transmit such energy to another electric utility. However, if the first facility does not agree to transmit the purchased energy or capacity, it retains the purchase obligation. In addition, if the qualifying facility does not consent to transmission to another utility, the first utility retains the purchase obligation. Any electric utility to which such energy or capacity is delivered must purchase this energy under the obligations set forth in these rules as if the purchase were made directly from the qualifying facility.

One commenter stated that this provision could result in energy being transmitted to a utility which has little or no information regarding the reliability of the qualifying facility. The Commission believes that, prior to these transactions occurring, it wi11 be in the interest of the qualifying facility to inform any utility to which energy or capacity is delivered, of the nature of those deliveries, so that such energy or capacity can be usefully integrated into that utility's

power supply. (Emphasis supplied).

The provision which requires the utility to purchase " ... as if the purchase were [s.i.c.] made directly from the qualifying facility ... " accurately describes the nature of the transaction. In the instant case, the QF will have arranged to have its electricity delivered to PSNH. Thus, from our point of view and from PSNH's point of view, the transaction looks as if the seller is located at the point of delivery to PSNH. In this context, it is no different from a purchase from a QF located in PSNH's service territory. Thus, this Commission should require PSNH to purchase the power and set the avoided

cost for such a purchase pursuant to the PURPA mandate.

It should be noted that in setting the avoided cost, there may exist variables which warrant a different purchase rate. One example of this is line losses, explicitly recognized by the FERC in 18 C.F.R. § 292.303(d). In the preamble of the regulations, the FERC commented at 45 Fed.Reg. 12,220:

The electric utility to which the electric energy is transmitted has the obligation to purchase the energy at a rate which reflects the costs that it can avoid as a result of making such a purchase. In cases in which electricity actually travels across the transmitting utility's system, the amount of energy delivered will be less than that transmitted, due to line losses. When this occurs, the rate for purchase can reflect these losses. In other cases, the energy supplied by the qualifying facility will displace energy that would have been supplied by the purchasing utility to the transmitting utility. In those cases, a unit of energy supplied from the qualifying facility may replace a greater amount of energy from the purchasing utility. In that case, the rate for purchase should be increased to reflect the net gain. These provisions are also set forth in paragraph (d).

Thus, the purchasing utility's costs avoided and, accordingly, the avoided cost rate for QFs located outside the state may be different from those costs avoided by purchases from in-state QFs. This does not affect the jurisdictional determination in this opinion; rather it recognizes the subsequent pricing determinations which must be made if the jurisdictional analysis is properly conducted.

Because I do not believe that the majority correctly analyzed the jurisdictional issue, I dissent.

FOOTNOTES

[1]The rates established in Report and Order No. 17,104 were updated by the Commission in Re Small Energy Producers and Cogenerators, 70 NH PUC 753, 69 PUR4th 365 (1985).

[2]On March 19, 1985, the Commission issued an Order On Notice in this regard. Ashland filed an affidavit of publication on March 28, 1985 which evidences timely publication of the Order of Notice.

[3]See the discussion at pp. 5-7 of the Report (69 NH PUC at pp. 355, 356, 61 PUR4th at pp.

135, 136).

[4]The rates are contained in Report and Order No. 17,104 (69 NH PUC 352, 61 PUR4th 132) and were updated in Report and Order No. 17,838 (70 NH PUC 753, 69 PUR4th 365).

[5]In Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742, 47 PUR4th 1, 72 L.Ed.2d 532, 102 S.Ct. 2126 (1982), the United States Supreme Court upheld the constitutionality of PURPA.

[6]RSA 372-A:3 provides as follows:

Dissenting Opinion of Commissioner Aeschliman

[1]For a definition of the small power producers and cogenerators who are eligible for QF status under PURPA, see 18 C.F.R. §§292.201 et seq.

[2]The constitutional foundation for the "Bright line" identified in Attleboro was, subsequent to the enactment of PURPA, modified by the court in Arkansas Electric Co-op. Corp. v. Arkansas Pub. Service Commission, 461 U.S. 375, 52 PUR4th 514, 76 L.Ed.2d 1, 103 S.Ct. 1905 (1983). That modification does not effect the federal and state regulatory structure governing investor-owned electric utilities subject to the FPA See, note 2 in Re Connecticut Valley Electric Co., Inc., 69 NH PUC 319, 323 (1984), rev'd on other grounds, Re Sinclair Machine Products, Inc., — N.H. —, 498 A.2d 696 (1985).

[3]If the QF was not located in the buyer's service territory, the FERC would also regulate, to a certain extent, the rates charged for transmission or wheeling services. FPA, § 201.

[4]The Court subsequently affirmed certain challenged provisions of those regulations in American Paper Institute, Inc. v. American Electric Power Service Corp., 461 U.S. 402, 52 PUR4th 329, 76 L.Ed.2d 22, 103 S.Ct. 1921 (1983).

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NH.PUC*01/06/86*[60696]*71 NH PUC 20*Bridgewater Steam Power Company

[Go to End of 60696]

71 NH PUC 20

Re Bridgewater Steam Power Company

Intervenors: Town of Bridgewater, Town of Ashland, and Squam Lakes Association et al.

DE 85-262, Supplemental Order No. 18,037

New Hampshire Public Utilities Commission

January 6, 1986

ORDER denying rehearing of a decision granting a zoning exemption to a public utility.

Procedure, § 33 — Rehearings — Grounds for granting.

State statute RSA 541:3 provides that within 20 days after an order is entered by the commission, "any party to the action or proceeding before the commission or any person affected thereby, may apply for rehearing." [1] p. 21.

Zoning — Exemption from ordinance — Denial of rehearing — Definition of public utility.

A decision granting a zoning exemption to a company that met the legislative definition of a public utility was upheld notwithstanding the arguments that the company was not a public utility because it fell within other legislatively defined categories — namely, small power producers and cogenerators — or because it had not yet obtained permission to operate as a public utility; the commission must accept the legislative definition of a public utility as being determinative. [2] p. 22.

Procedure, § 33 — Rehearings — Grounds for denial — Commission discretion.

A motion for rehearing of a decision granting a zoning exemption to a public utility was denied notwithstanding the argument that requirements of due process were violated by commission denial of motions for a preliminary hearing and a prehearing conference; in denying the motion for rehearing, the commission found that the decision to schedule a preliminary hearing or hold a prehearing conference is a matter within the discretion of the commission and that there was no basis to conclude that its discretion was improperly exercised. [3] p. 23.

Evidence, § 27 — Expert witnesses — Professional fees — Bias.

The fact that expert witnesses were paid professional fees for their testimony in a proceeding to determine whether a public utility should be granted a zoning exemption was not, in and of itself, sufficient to support a finding of bias. [4] p. 24.

APPEARANCES: As Previously Noted.

By the COMMISSION:

REPORT

On December 6, 1985, the Commission issued Report and Order No. 17,976 (Decision) (70 NH PUC 1013) in this docket which granted the Petition of Bridgewater Steam Power Company (BWS) for an exemption from a zoning ordinance of the Town of

Bridgewater pursuant to RSA 674:30. Timely Motions for Rehearing were filed by Wayne and Catherine Blais, the Town of Bridgewater, the Town of Ashland and Squam Lakes Association. This Order will rule on the Motions for Rehearing.

MOTION OF WAYNE AND CATHERINE BLAIS

An initial issue is raised by the filing of a Motion for Rehearing by Wayne and Catherine Blais. Wayne and Catherine Blais were not parties to the instant proceedings. Mr. Blais did submit a public statement (Tr. at 1-49 to 1-50); thus, under our rules, Mr. Blais was permitted to enter a limited appearance. N.H. Admin. Rules, Puc 203.03. Mr. Blais' participation through the

entering of a limited appearance allows us to conclude that he had actual notice of the proceedings. If Mr. Blais wished to participate as a party at that time, he could have filed a Motion to Intervene. No subsequent Motion was filed requesting intervention as a party pursuant to N.H. Admin. Rules, Puc 203.02, although Wayne and Catherine Blais' attorney entered an appearance subsequent to the conclusion of the evidentiary phase of the proceedings on October 15, 1985. That appearance was accompanied by a Memorandum in opposition to the Petition which was considered by the Commission. However, inasmuch as no request for intervenor status was filed, no such status was conferred. Thus, we must determine here how to treat a Motion for Rehearing by one who is not a party to the proceedings.

[1] RSA 541:3 provides, inter alia, that within 20 days after an Order is entered by the Commission:

... any party to the action or proceeding before the commission or any person affected thereby, may apply for a rehearing ...

In view of the fact that Wayne and Catherine Blais were not parties, we must determine whether they are persons affected by the Commission's decision.

The Motion for Rehearing avers that Wayne and Catherine Blais are abuttors to the proposed BWS site. Further information was provided in the course of Mr. Blais' record statement. Accordingly, we can conclude that Wayne and Catherine Blais are persons affected by the Commission's decision and, as such, entitled to request rehearing pursuant to RSA 541:3. We will therefore consider their Motion in this Order.

Our consideration of the Motion of Wayne and Catherine Blais will be on the basis of the record already developed in the course of these proceedings. To the extent that the Motion seeks to have the Commission consider new evidence available to Wayne and Catherine Blais at the time of the evidentiary proceedings, it will be rejected. We are not required to grant Motions for Rehearing to hear evidence that could have been presented at the original hearing. Re Gas Service, Inc., 121 N.H. 797, — A.2d — (1981); O'Laughlin v. New Hampshire Personnel Commission, 117 N.H. 999, — A.2d — (1977).

REMAINING ISSUES

The Motions for Rehearing claim that the Commission's Order is unlawful and unreasonable. The contentions fall into three general areas: 1) the Commission erred in determining that BWS is a public utility eligible for an

exemption under RSA 674:30; 2) the Commission erred in denying the parties certain procedural rights; and 3) the Commission erred in several of its factual determinations.

After review and consideration, we will deny the Motions for Rehearing. We shall address below the major issues raised in those Motions. To the extent that we do not discuss a particular claim raised in one of the Motions for Rehearing, that claim is denied.

Jurisdictional Issues

[2] Squam Lakes Association and Town of Ashland claim that the Commission erred as a

matter of law in its conclusion that BWS is a public utility for the purpose of RSA 674:30. Our analysis of this issue, is set forth in the Decision at 2-5. Briefly, that analysis is based on RSA 362:2 (Supp. 1985) which includes within the definition of "public utility" " ... every corporation, company, association ... 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, transmission or sale of electricity ultimately sold to the public." We concluded that BWS falls within that definition.

No party has argued that BWS falls outside the above definition. Rather, the parties argue that since BWS also falls within other legislatively defined categories (i.e., small power producers or cogenerators under RSA 362-A:1) or because BWS has not yet sought or obtained other authorizations (i.e., permission to operate under RSA 374:22), the RSA 362:2 definition should be deemed inapplicable. This argument cannot be accepted. We must accept the legislative definition as being determinative unless a particular entity is otherwise exempted. Although facilities such as BWS had previously been exempted in RSA 362-A:2, that exemption was effectively removed by a 1983 amendment to the Limited Electrical Energy Producers Act (LEEPA). The evidence supports the inference that must be accepted by the Commission that, by amending the provisions of RSA 362-A:2, the legislature intended to rescind the overall exemption of RSA 362-A facilities from the public utility definition of RSA 362:2. Thus, we concluded that BWS falls within the definition of public utility and has not been exempted for the purposes of this proceeding.[1(11)]

The Movants presented no new evidence or argument which warrants a change from the above analysis. Thus, the Motions for Rehearing will be denied on this ground.

The Town of Bridgewater raised as an additional ground the argument that RSA 674:30 is unconstitutional. Motion at paragraph 3. We cannot accept this argument. As an administrative body, we cannot question the constitutionality of statutes duly enacted by the legislature. That function is reserved to the courts. Thus, we must accept RSA 674: 30 as a constitutional provision for the purposes of this proceeding. See, Re Public Service Co. of New Hampshire, 69 NH PUC 174, 178 (1984). Accordingly, the Motion for Rehearing will be denied on this ground.

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Procedural Issues

[3] Squam Lakes Association, the Town of Ashland and the Town of Bridgewater claim that the Decision denied them due process because certain procedural requests were denied. We have reviewed the record and find nothing to disturb our conclusion that the requirements of due process were satisfied.

The basis for the procedural arguments is the Commission's denial of a Motion for Preliminary Hearing and Decision on Petition as a ``Utility" and for Prehearing Conference filed by Squam Lakes Association on September 9, 1985. This Motion was filed in conjunction with a Motion to Dismiss and all parties, including the Rehearing Movants, agreed that the two Motions were similar and could be treated as one. Tr. 1-7 and 1-10. In essence, we were requested first to dispose of the threshold legal issue of whether BWS is a utility before moving on to the factual issue of whether BWS should be exempted from the Town of Bridgewater zoning ordinance in

this instance. The basis of the request was administrative economy; Squam Lakes argued that it would be more efficient to grant the Procedural Motion because if the Commission concluded that BWS is not a utility for RSA 674:30 purposes, it need not hold evidentiary hearings. There was no request to engage in discovery. Thus, we could not deny such a request. All parties were entitled to ask for whatever information they deemed relevant and material, either in the form of data requests or in the course of the hearings. See e.g , Re Public Service Co. of New Hampshire, 69 NH PUC 649 (1984).

After due consideration, the Commission determined that administrative economy would be served by hearing the legal arguments of the parties, taking the matter under advisement and utilizing the remaining time, when the parties were present and ready to proceed, for making an evidentiary record. See e.g. Tr. 1-8. The issue of whether this procedure denied parties the opportunity to prepare for the evidentiary phase of the proceedings did not surface until 13 days later at the second day of evidentiary hearings. At the conclusion of the proceedings, Counsel for Squam Lakes argued that he had not been afforded sufficient preparation time to engage in discovery or present witnesses. He was joined in that argument by Counsel for the Town of Ashland and Counsel for the Town of Bridgewater. 2 Tr. 379-382. The Commission's Counsel requested an Offer of Proof so that the Commission could ascertain the nature of the discovery to be pursued or the evidence to be presented if additional time was accorded. 2 Tr. 382, 384-385. The Movants did not object to that request, but declined to provide an Offer of Proof. 2 Tr. 385. In the absence of the specificity which would be provided by an Offer of Proof, we are left with a request for procedural steps based purely on the fact that such procedural steps may be available in some instances. We have been provided with no information on why those procedural steps are important to the parties in this instance. The decision to schedule a pre-hearing conference or to bifurcate a proceeding is discretionary. Given the absence of the requested information in the form of an Offer of Proof either at the hearing or subsequently in the Motions for Rehearing, we have no basis to conclude that our discretion was

improperly exercised. Accordingly, the Motions for Rehearing will be denied on this ground.

Factual Issues

The Movants advance a variety of arguments which, in essence, contend that BWS failed to meet its burden of proof and, accordingly, the Commission's findings are not supported by the record. We have reexamined the record and have considered the arguments of the Movants and we find no reason to disturb our findings.

As discussed in the Decision, once we determined that BWS is a utility for the purposes of RSA 674:30, our analysis was to examine the need for the project and whether that need is outweighed by local concerns.

We based our analysis of need on the clear policy, articulated by both the Congress and the General Court, of encouraging the development of natural, renewable, non-fossil fueled energy resources. BWS falls within that definition. Moreover, the evidence supported the finding that the Bridgewater site was the best available site for this type of facility in the central New Hampshire area. Thus, guided by the legislative determination, we found that BWS implements

the development of natural renewable non-fossil fuel energy resources in New Hampshire. (70 NH PUC at p. 1020.)

We next turned to the local interests and, based on substantial record evidence, including a view, found that the site is suitable for the utility structure, that the physical character of the neighborhood is compatible with the proposed use, that the plant will not have an undue adverse effect on residential development, and that abutting landowners will not experience an undue adverse effect. Thus, we concluded that local concerns could not in this instance outweigh the state-wide public interest which was the basis for our determination of need.

[4] The Motions for Rehearing do not contain any information or analysis that was not considered in reaching the Decision. Contrary to the assertions of the Movants, there was no credible evidence of bias in the testimony offered by expert witnesses other than the fact that they received professional fees for their expert testimony. This is not sufficient in and of itself to support a finding of bias in this instance. The testimony and exhibits, as well as our reading of the applicable authority, provide substantial support for our findings and we have no reason to disturb those findings here. Accordingly, the Motions for Rehearing will be denied on this ground.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion for Rehearing of Wayne and Catherine Blais be, and hereby is, denied; and it is

FURTHER ORDERED, that the Motion for Rehearing of the Town of Ashland and Squam Lakes Association be, and hereby is, denied; and it is

FURTHER ORDERED, that the Motion for Rehearing of the Town of Bridgewater be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this sixth day of January, 1986.

FOOTNOTE

[1]Contrary to the Movant's argument at paragraph 2, we did not hold that RSA 362-A confers public utility status. Rather, RSA 362:2 confers that status. The analysis of the provisions of RSA 362-A was for the purpose of ascertaining whether BWS had been exempted from the RSA 362:2 definition.

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NH.PUC*01/09/86*[60698]*71 NH PUC 45*Dunbarton Telephone Company

[Go to End of 60698]

Re Dunbarton Telephone Company

DR 84-282, Order No. 18,040

New Hampshire Public Utilities Commission

January 9, 1986

ORDER authorizing a local exchange telephone carrier to sell its qualified customer premises equipment.

Service, § 435 — Telephone — Customer premises equipment — Detariffing — Transfer of equipment to customers.

In furtherance of a commission plan for the detariffing of telephone customer premises equipment (CPE), a local exchange telephone carrier was authorized to sell its CPE to its customers, subject to the following conditions: (1) CPE must be priced at the adjusted net-book value as of December 31, 1985; (2) payments may be by lump sum, or installments based on current monthly lease fees; (3) customers not wishing to purchase in-place CPE must return the equipment to the company; (4) customers must be allowed 60 days to indicate their intent to purchase or return CPE; (5) customers failing to choose an option shall be considered installment purchasers; (6) all revenues from the sale shall be handled as salvage and credited to the depreciation account; and (7) following the 60-day selection period, any remaining CPE will be transferred to an unregulated or below-the-line operation.

By the COMMISSION:

ORDER

In consideration of the foregoing report (71 NH PUC 25), which is made a part hereof; it is

ORDERED, That Dunbarton Telephone Company be, and hereby is, authorized to sell its Qualified Customer Premises Equipment (CPE), subject to the following conditions:

a. CPE will be priced at the adjusted net-book value as of December 31, 1985.

b. Optional payments shall comprise lump sum (to appear on the first statement following notice of intent to purchase) or installments based upon current monthly lease rates. (Equipment sold from inventory is excluded from installment plan.) Unsold CPE will be returned to the Company.

c. A transaction fee not to exceed $5.00 may be applied to installment purchases to cover added administrative costs.

d. Subscribers will be notified of their options no later than March 1, 1986,

and will be allowed 60 days to indicate their intent to purchase or return the CPE to the

Company.

e. Subscribers failing to choose an option by the end of the sales period shall be considered installment purchasers.

f. All revenues from the sales shall be handled as salvage and credited to the depreciation account. Transaction fees, if any, shall be credited to "other operating revenues".

g. Following the 60-day selection period, Dunbarton will transfer any remaining CPE to an unregulated or a below-the-line operation. An accounting shall be made to the Commission at that time with the status of the depreciation account, its associated reserve and deferred taxes, identifying any over- or underrecovery.

and it is

FURTHER ORDERED, that the following revisions to the Dunbarton Telephone Company Tariff No. 5 be, and hereby are, rejected:

Index - 2nd revised Sheet 2

Section 3 - Original Sheets J-6 through J-9

- 1st Revised Sheets I-1 through I-3 and K-1 through K-3

- 2nd Revised Sheets J-1, J-4, and J-5

- 3rd Revised Sheet C-1

and it is

FURTHER ORDERED, that Dunbarton Telephone Company file appropriate revisions to said Tariff No. 5 to incorporate the findings of this Report and Order, such revisions bearing an effective date of January 1, 1986.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1986.

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NH.PUC*01/09/86*[60699]*71 NH PUC 47*Granite State Telephone

[Go to End of 60699]

71 NH PUC 47

Re Granite State Telephone

DR 84-289, Order No. 18,041

New Hampshire Public Utilities Commission

January 9, 1986

ORDER authorizing a local exchange telephone carrier to sell its qualified customer premises equipment.

Service, § 435 — Telephone — Customer premises equipment — Detariffing — Transfer of equipment to customers.

In furtherance of a commission plan for the detariffing of telephone customer premises equipment (CPE), a local exchange telephone carrier was authorized to sell its CPE to its customers, subject to the following conditions: (1) CPE must be priced at the adjusted net-book value as of December 31, 1985; (2) payments may be by lump sum, or installments based on current monthly lease fees; (3) customers not wishing to purchase in-place CPE must return the equipment to the company; (4) customers must be allowed 60 days to indicate their intent to purchase or return CPE; (5) customers failing to choose an option shall be considered installment purchasers; (6) all revenues from the sale shall be handled as salvage and credited to the depreciation account; and (7) following the 60-day selection period, any remaining CPE will be transferred to an unregulated or below-the-line operation.

By the COMMISSION:

ORDER

In consideration of the foregoing report (71 NH PUC 25), which is made a part hereof; it is

ORDERED, That Granite Telephone (Granite) be, and hereby is, authorized to sell its Qualified Customer Premises Equipment (CPE), subject to the following conditions:

a. CPE will be priced at the adjusted net-book value as of December 31, 1985.

b. Optional payments shall comprise lump sum (to appear on the first statement following notice of intent to purchase) or installments based upon current monthly lease rates. (Equipment sold from inventory is excluded from installment plan.) Unsold CPE will be returned to the Company.

c. A transaction fee not to exceed $5.00 may be applied to installment purchases to offset added administrative costs.

d. Subscribers will be notified of their options no later than March 1, 1986,

and will be allowed 60 days to indicate their intent to purchase or return the CPE to Granite.

e. Subscribers failing to choose an option by the end of the sales period shall be considered installment purchasers.

f. All revenues from the sales shall be handled as salvage and credited to the depreciation account. Transaction fees, if any, shall be credited to "other operating revenues".

g. Following the 60-day selection period, Union will transfer any remaining CPE to an unregulated affiliate or a below-the-line operation. An accounting shall be made to the Commission at that time with the status of the depreciation account, its associated reserve and deferred taxes, identifying any over- or underrecovery.

and it is

FURTHER ORDERED, that Section 7, Original Sheets 6 through 10, be, and hereby are, rejected; and it is

FURTHER ORDERED, that Granite Telephone file appropriate revisions to its Tariff No. 6, such revisions to incorporate the findings herein and to become effective on January 1, 1986.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1986.

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NH.PUC*01/09/86*[60700]*71 NH PUC 49*Kearsarge Telephone Company

[Go to End of 60700]

71 NH PUC 49

Re Kearsarge Telephone Company

DR 84-57, Order No. 18,042

New Hampshire Public Utilities Commission

January 9, 1986

ORDER authorizing a local exchange telephone carrier to sell its qualified customer premises equipment.

Service, § 435 — Telephone — Customer premises equipment — Detariffing — Transfer of equipment to customers.

In furtherance of a commission plan for the detariffing of telephone customer premises equipment (CPE), a local exchange telephone carrier was authorized to sell its CPE to its customers, subject to the following conditions: (1) CPE must be priced at the adjusted net-book value as of December 31, 1985; (2) payments may be by lump sum, or installments based on current monthly lease fees; (3) customers not wishing to purchase in-place CPE must return the equipment to the company; (4) customers must be allowed 60 days to indicate their intent to purchase or return CPE; (5) customers failing to choose an option shall be considered installment purchasers; (6) all revenues from the sale shall be handled as salvage and credited to the depreciation account; and (7) following the 60-day selection period, any remaining CPE will be transferred to an unregulated or below-the-line operation.

By the COMMISSION:

ORDER

In consideration of the foregoing report (71 NH PUC 25), which is made a part hereof; it is

ORDERED, That Kearsarge Telephone Company be, and hereby is, authorized to sell its Qualified Customer Premises Equipment (CPE), subject to the following conditions:

a. CPE will be priced at the adjusted net-book value as of December 31, 1985.

b. Optional payments shall comprise lump sum (to appear on the first statement following notice of intent to purchase) or installments based upon current monthly lease fees. (Equipment sold from inventory is excluded from installment plan.)

c. A transaction fee not to exceed $5.00 may be applied to installment purchases to cover added administrative costs.

d. Subscribers will be notified of their options no later than March 1, 1986, and will be allowed 60 days to

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indicate their intent to purchase or return the CPE to the Company.

e. Subscribers failing to choose an option by the end of the prescribed sales period shall be considered installment purchasers.

f. All revenues from the sales shall be handled as salvage and credited to the depreciation account. Transaction fees, if any, shall be credited to "other operating revenues".

g. Following the 60-day selection period, Kearsarge will transfer any remaining CPE to an unregulated or a below-the-line operation. An accounting shall be made to the Commission at that time with the status of the depreciation account, its associated reserve and deferred taxes, identifying any over- or underrecovery.

and it is

FURTHER ORDERED, that Section 3, Original Sheets 77 through 79 of the Kearsarge Telephone Company Tariff No. 5 be, and hereby are, rejected; and it is

FURTHER ORDERED, that Kearsarge Telephone Company file appropriate revisions to said tariff bearing an effective date of January 1, 1986, such revisions to incorporate the findings herein.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1986.

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NH.PUC*01/09/86*[60701]*71 NH PUC 51*Meriden Telephone Company

[Go to End of 60701]

71 NH PUC 51

Re Meriden Telephone Company

DR 85-357, Order No. 18,043

New Hampshire Public Utilities Commission

January 9, 1986

ORDER authorizing a local exchange telephone carrier to sell its qualified customer premises equipment.

Service, § 435 — Telephone — Customer premises equipment — Detariffing — Transfer of equipment to customers.

In furtherance of a commission plan for the detariffing of telephone customer premises equipment (CPE), a local exchange telephone carrier was authorized to sell its CPE to its customers, subject to the following conditions: (1) CPE must be priced at the adjusted net-book value as of December 31, 1985; (2) payments may be by lump sum, or installments based on current monthly lease fees; (3) customers not wishing to purchase in-place CPE must return the equipment to the company; (4) customers must be allowed 60 days to indicate their intent to purchase or return CPE; (5) customers failing to choose an option shall be considered installment purchasers; (6) all revenues from the sale shall be handled as salvage and credited to the depreciation account; and (7) following the 60-day selection period, any remaining CPE will be transferred to an unregulated or below-the-line operation.

By the COMMISSION:

ORDER

In consideration of the foregoing report (71 NH PUC 25), which is made a part hereof; it is

ORDERED, That Meriden Telephone Company be, and hereby is, authorized to sell its Qualified Customer Premises Equipment (CPE), subject to the following conditions:

a. CPE will be priced at the adjusted net-book value as of December 31, 1985.

b. Optional payments shall comprise lump sum (to appear on the first statement following notice of intent to purchase) or installments based upon current monthly leasing fees. (Equipment purchased from inventory are excluded from installment plan.)

c. A transaction fee not to exceed $5.00 may be added to installment sales to offset administrative costs.

d. Subscribers will be notified of their options no later than March 1, 1986, and will be allowed 60 days to

indicate their intent to purchase or return CPE to the Company.

e. Subscribers failing to choose an option by the end of the prescribed sales period shall be considered installment purchasers.

f. All revenues from the sales shall be handled as salvage and credited to the depreciation account. Transaction fees, if any, shall be credited to "other operating revenues".

g. Following the 60-day selection period, Meriden will transfer any remaining CPE to an unregulated affiliate or a below-the-line operation. An accounting shall be made to the Commission at that time with the status of the depreciation account, its associated reserve and deferred taxes, identifying any over- or underrecovery.

and it is

FURTHER ORDERED, that Meriden Telephone Company file revisions to its Tariff No. 4 incorporating the findings herein and to bear an effective date of January 1, 1986.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1986.

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NH.PUC*01/09/86*[60702]*71 NH PUC 53*Merrimack County Telephone Company

[Go to End of 60702]

71 NH PUC 53

Re Merrimack County Telephone Company

DR 84-281, Order No. 18,044

New Hampshire Public Utilities Commission

January 9, 1986

ORDER authorizing a local exchange telephone carrier to sell its qualified customer premises equipment.

Service, § 435 — Telephone — Customer premises equipment — Detariffing — Transfer of equipment to customers.

In furtherance of a commission plan for the detariffing of telephone customer premises equipment (CPE), a local exchange telephone carrier was authorized to sell its CPE to its customers, subject to the following conditions: (1) CPE must be priced at the adjusted net-book value as of December 31, 1985; (2) payments may be by lump sum, or installments based on current monthly lease fees; (3) customers not wishing to purchase in-place CPE must return the equipment to the company; (4) customers must be allowed 60 days to indicate their intent to purchase or return CPE; (5) customers failing to choose an option shall be considered installment purchasers; (6) all revenues from the sale shall be handled as salvage and credited to the depreciation account; and (7) following the 60-day selection period, any remaining CPE will be transferred to an unregulated or below-the-line operation.

By the COMMISSION:

ORDER

In consideration of the foregoing report (71 NH PUC 25), which is made a part hereof; it is

ORDERED, That Merrimack County Telephone Company (MCT) be, and hereby is, authorized to sell its Qualified Customer Premises Equipment (CPE), subject to the following conditions:

a. CPE will be priced at the adjusted net-book value as of December 31, 1985.

b. Optional payments shall comprise lump sum (to appear on the first statement following notice of intent to purchase) or installments based upon current monthly lease fees.

c. A transaction fee not to exceed $5.00 may be applied to installment purchases to offset administrative costs.

d. Subscribers will be notified of their options no later than March 1, 1986, and will be allowed 60 days to indicate their intent to purchase or return the CPE to the MCT.

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e. Subscribers failing to choose an option by the end of the sales period shall be considered installment purchasers.

f. All revenues from the sales shall be handled as salvage and credited to the depreciation account. Transaction fees, if any, shall be credited to "other operating revenues".

g. Following the 60-day selection period, MCT will transfer any remaining CPE to an unregulated affiliate or to a below-the-line operation. An accounting shall be made to the Commission at that time with the status of the depreciation account, its reserve and deferred taxes, identifying any over- or under-recovery.

and it is

FURTHER ORDERED, that the following revised pages to the Merrimack County Telephone Company Tariff No. 7 be, and hereby are, rejected:

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

Contents -   Third Revised Page 2
Index -   Fifth Revised Page 1
  Sixth Revised Page 2
  Sixth Revised Page 3
  Third Revised Page 4
  Fifth Revised Page 5
  Fourth Revised Page 6
  Second Revised Page 7
  Third Revised Page 8
  Third Revised Page 9
  First Revised Page 10
  First Revised Page 11

Part II - Section 1, Original Page 4
 Local
Part III - Section 1, Second Revised Page 1
 General
 Section 2, Third Revised Page 1
  Second Revised Page 2
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 Original Page 3,4,5,6
  and 7
Section 5, First Revised Page 1
  and 2
 Second Revised Page 3
Section 12, First Revised Page 1
Section 13, First Revised Page 1
Section 20, First Revised Page 1
Section 21, First Revised Page 1
Section 22, First Revised Page 1
Section 24, First Revised Page 1
Section 26, First Revised Page 1
Section 31, First Revised Page 1
Section 40, First Revised Preface
  Page 1
 Original Preface Page 2
 Second Revised Page 2
 First Revised Page 2.1
 First Revised Page 2.2
 Second Revised Page 2.3
 First Revised Page 2.4
 Second Revised Page 2.5
 First Revised Page 2.6
 Original Page 2.7
  through 2.18
 Second Revised Page 3
 Original Page 3.1, 3.2
  and 3.3
 Second Revised Page 4
 Original Page 4.1, 4.2
  and 4.3
 Original Page 6.9
  through 6.13
 Original Page 7, 7.1
  and 7.2
 Original Page 8 and 8.1
 Original Page 9 and 9.1
 Original Page 10, 10.1
  and 10.2

Part VI - Section 5, Second Revised
  Charges - Page 12;
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and it is

FURTHER ORDERED, that MCT file revisions to its Tariff No. 7, said revisions incorporating the decisions herein and bearing an effective date of January 1, 1986.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1986.

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NH.PUC*01/09/86*[60703]*71 NH PUC 55*Union Telephone Company

[Go to End of 60703]

71 NH PUC 55

Re Union Telephone Company

DR 84-299, Order No. 18,045

New Hampshire Public Utilities Commission

January 9, 1986

ORDER authorizing a local exchange telephone carrier to sell its qualified customer premises equipment.

Service, § 435 — Telephone — Customer premises equipment — Detariffing — Transfer of equipment to customers.

In furtherance of a commission plan for the detariffing of telephone customer premises equipment (CPE), a local exchange telephone carrier was authorized to sell its CPE to its customers, subject to the following conditions: (1) CPE must be priced at the adjusted net-book value as of December 31, 1985; (2) payments may be by lump sum, or installments based on current monthly lease fees; (3) customers not wishing to purchase in-place CPE must return the equipment to the company; (4) customers must be allowed 60 days to indicate their intent to purchase or return CPE; (5) customers failing to choose an option shall be considered installment purchasers; (6) all revenues from the sale shall be handled as salvage and credited to the depreciation account; and (7) following the 60-day selection period, any remaining CPE will be transferred to an unregulated or below-the-line operation.

By the COMMISSION:

ORDER

In consideration of the foregoing report (71 NH PUC 25), which is made a part hereof; it is

ORDERED, That Union Telephone Company be, and hereby is, authorized to sell its Qualified Customer Premises Equipment (CPE), subject to the following conditions:

a. CPE will be priced at the adjusted net-book value as of December 31, 1985.

b. Optional payments shall comprise lump sum (to appear on the first statement following notice of intent to purchase) or installments based upon current monthly lease rates. (Equipment sold from inventory is excluded from installment plan.) Unsold CPE will be returned to the Company.

c. A transaction fee not to exceed $5.00 may be applied to installment purchases to offset added administrative costs.

d. Subscribers will be notified of their options no later than March 1, 1986,

and will be allowed 60 days to indicate their intent to purchase or return the CPE to the Company.

e. Subscribers failing to choose an option by the end of the sales period shall be considered installment purchasers.

f. All revenues from the sales shall be handled as salvage and credited to the depreciation account. Transaction fees, if any, shall be credited to "other operating revenues".

g. Following the 60-day selection period, Union will transfer any remaining CPE to an unregulated affiliate or a below-the-line operation. An accounting shall be made to the Commission at that time with the status of the depreciation account, its associated reserve and deferred taxes, identifying any over- or underrecovery.

and it is

FURTHER ORDERED, that Union Telephone Company's filing of the following revisions to its Tariff No. 7 be, and hereby are, rejected:

Part III, Section 2, Original Pages 1 through 7; and it is

FURTHER ORDERED, that Union Telephone Company file appropriate revisions to said Tariff No. 7 incorporating the decisions herein, such tariff pages bearing an effective date of January 1, 1986, and issued in lieu of those pages rejected herein.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1986.

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NH.PUC*01/09/86*[60704]*71 NH PUC 57*Wilton Telephone Company

[Go to End of 60704]

71 NH PUC 57

Re Wilton Telephone Company

DR 84-377, Order No. 18,046

New Hampshire Public Utilities Commission

January 9, 1986

ORDER authorizing a local exchange telephone carrier to sell its qualified customer premises equipment.

Service, § 435 — Telephone — Customer premises equipment — Detariffing — Transfer of equipment to customers.

In furtherance of a commission plan for the detariffing of telephone customer premises equipment (CPE), a local exchange telephone carrier was authorized to sell its CPE to its customers, subject to the following conditions: (1) CPE must be priced at the adjusted net-book value as of December 31, 1985; (2) payments may be by lump sum, or installments based on current monthly lease fees; (3) customers not wishing to purchase in-place CPE must return the equipment to the company; (4) customers must be allowed 60 days to indicate their intent to purchase or return CPE; (5) customers failing to choose an option shall be considered installment

purchasers; (6) all revenues from the sale shall be handled as salvage and credited to the depreciation account; and (7) following the 60-day selection period, any remaining CPE will be transferred to an unregulated or below-the-line operation.

By the COMMISSION:

ORDER

In consideration of the foregoing report (71 NH PUC 25), which is made a part hereof; it is

ORDERED, That Wilton Telephone Company be, and hereby is, authorized to sell its Qualified Customer Premises Equipment (CPE), subject to the following conditions:

a. CPE will be priced at the adjusted net-book value as of December 31, 1985.

b. Optional payments shall comprise lump sum (to appear on the first statement following notice of intent to purchase) or installments based upon current monthly lease rates. (Equipment sold from inventory is excluded from installment plan.) Unsold CPE will be returned to the Company.

c. A transaction fee not to exceed $5.00 may be applied to installment purchases to offset added administrative costs.

d. Subscribers will be notified of their options no later than March 1, 1986,

and will be allowed 60 days to indicate their intent to purchase or return the CPE to the Company.

e. Subscribers failing to choose an option by the end of the sales period shall be considered installment purchasers.

f. All revenues from the sales shall be handled as salvage and credited to the depreciation account. Transaction fees, if any, shall be credited to "other operating revenues".

g. Following the 60-day selection period, Wilton will transfer any remaining CPE to an unregulated affiliate or a below-the-line operation. An accounting shall be made to the Commission at that time with the status of the depreciation account, its associated reserve and deferred taxes, identifying any over- or underrecovery.

and it is

FURTHER ORDERED, that the following revised pages of the Wilton Telephone Company Tariff No. 5 be, and hereby are, rejected:

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

Contents -  1st Revised Page 2

 Index -  1st Revised Page 1

   3rd Revised Page 2

   1st Revised Page 3
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1st Revised Page 7

Part III - General SECTION 2

3rd Revised Page 2

Original Page 3

Original Page 4

Original Page 5

Original Page 6

Original Page 7

Part III - General SECTION 3

3rd Revised Page 3

3rd Revised Page 4

Part V - Toll SECTION 7

1st Revised Page 1

and it is

FURTHER ORDERED, that Wilton Telephone Company files appropriate revisions to its Tariff No. 5 in lieu of those rejected herein, said revisions to incorporate the decisions of the attached report and bearing an effective date of January 1, 1986; and it is

FURTHER ORDERED, that the Commission finds the Wilton proposal to offer Billed Number Screening Service in the public interest and will allow such service effective on January 1, 1986 through filing of Part V, Section 7, 2nd Revised Page in lieu of 1st Revised Page 1, herein rejected.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1986.

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NH.PUC*01/09/86*[60705]*71 NH PUC 59*Southern New Hampshire Water Company, Inc.

[Go to End of 60705]

71 NH PUC 59

Re Southern New Hampshire Water Company, Inc.

DR 85-196, Supplemental Order No. 18,047

New Hampshire Public Utilities Commission

January 9, 1986

ORDER authorizing increase in water rates.

Rates, § 595 — Water — Rate increase — Capital additions.

A water utility was authorized to increase its rates to support capital additions comprised of two new well sources and additional pipeline.

APPEARANCES: Robert W. Phelps for the Petitioner; Daniel D. Lanning, Robert B. Lessels, and James C. Nicholson for the Commission Staff.

By the COMMISSION:

REPORT

Southern New Hampshire Water Company, Inc. (Southern) filed a petition on June 4, 1985, requesting an increase in revenues relative to certain capital additions made to its Litchfield and Hudson systems. Pursuant to RSA 378:6, the Commission, on June 17, 1985, suspended this filing pending investigation. An Order of Notice setting the matter for hearing on October 30, 1985, was issued on October 3, 1985.

Southern seeks, by this petition, to increase its revenues by $204,866 to support the installation of two new well sources, i.e.: the Dame & Ducharme wells, and the installation of a pipeline from the petitioners Hudson system to the Pennichuck Water Works system in Nashua. This pipeline is attached to and crosses the Merrimack River on the Taylor Falls Bridge, and continues through a meter and pump station to connect with the Pennichuck system in Nashua. At the present time, this pipeline will only be used as an emergency vehicle should the need arise from either Southern or Pennichuck.

Southern has presented evidence that the capital additions were placed in service as follows: Dame Well, June 11, 1984; Ducharme Well, July 13, 1985; and the Taylor Falls Bridge Crossing on October 18, 1985.

The Commission, in its Report and Order in Docket DR 80-218/15,057, stated at page 13," ... this utility will be allowed immediate rate recognition of any new wells drilled and completed for improvement in water quality or quantity". In addition, we have stated in DE 84-145/17,159 (69 NH PUC 436)

that the construction of the main connecting the two water systems is in the public good.

The petition filed by Southern reports: capital additions of $803,141 and a request for revenue increase of $204,866. At the hearing held in the Office of the Commission on October 30, 1985, Southern showed where adjustments were to be made increasing capital addititions. They also showed where the calculation of additional revenue requirements to cover taxes was to be revised. Prior to the close of the hearing, Chairman Iacopino suggested the Commission would await the results of staff audit prior to approval or disapproval of the petition.

The capital additions were verified by audit conducted at the office of Southern in Hudson, New Hampshire by PUC staff. The audit, completed November 5, 1985, verified through documentation of the cost of capital additions amounting to $886,176, an increase from

$803,141. The audited capital additions are:

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

Dame Well $487,850
Ducharme Well 139,219
Taylor Falls-Bridge Crossing 259,107
TOTAL $886,176

Revised calculation of additional revenue authorized Southern by DR 80218/15,057 reduces the petition request of $204,866 to $174,472 as follows:

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

Additional Rate Base $886,176
Stipulated Rate of Return .1376
Return to Cover Return $121,938
Return to Cover Tax:
$886,176 x 5.82%
.4954 Less: $51,575 52,534
Revenue authorized to support rate
base additions per DR 80-218/15,057 $174,472

The Commission will authorize Southern to increase rates by $174,472.

The capital additions as detailed in this Report are solely for the use and benefit of the interconnected Hudson and Litchfield systems of Southern, and as such all rate schedules of these systems shall be increased by an equal percentage.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Southern New Hampshire Water Company, Inc. may increase its rates by $174,472 on a permanent basis; and it is

FURTHER ORDERED, that all tariff pages filed in this proceeding are hereby rejected; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. file tariff pages spreading the rate increase of $174,472 to divisions and rate blocks per the attached report.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1986.

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NH.PUC*01/09/86*[60706]*71 NH PUC 61*New England Telephone and Telegraph Company

[Go to End of 60706]

71 NH PUC 61

Re New England Telephone and Telegraph Company

Intervenors: New England Telephone Company, Community Action Program, Consumer

Advocate, Volunteers Organized in Community Education, Department of Defense, Comm-Tech Pay Services, Inc., Chester Telephone Company, Inc., Kearsarge Telephone Company, Inc., Merrimack County Telephone Company, Wilton Telephone Company, Inc., Union Telephone Company, Inc., Science and Technology Committee of the General Court, and Continental Telephone of New Hampshire, Inc. et al.

DR 85-182, Order No. 18,048

New Hampshire Public Utilities Commission

January 9, 1986

ORDER granting an independent telephone company motions to intervene in a commission investigation into the rate structure of New England Telephone and Telegraph Company.

Parties, § 18 — Intervenors — Limitations — Coordination — Rate investigation — Telephone utilities.

Intervention by independent telephone companies in an investigation into the rate structure of a dominant local exchange telephone company was conditioned upon the independents agreeing to consult with each other and to coordinate their participation; an independent may participate individually if it is advancing a position that is materially different from the remaining independents and all parties are notified of that position.

APPEARANCES: Christopher Bennett, Esquire, Phillip Houston, Esquire and McLane, Graf, Raulerson & Middleton by Robert A. Wells, Esquire for New England Telephone Company; Gerald M. Eaton, Esquire for Community Action Program, Michael Holmes, Esquire, Consumer Advocate; Alan Linder, Esquire for Volunteers Organized In Community Education; Paul VanMaldeghem, Esquire for the Department of Defense; Brigett M. Gulliver, Esquire for Comm-Tech Pay Services, Inc.; Roger Aveni, pro se; Devine, Millimet, Stahl and Branch by Frederick J. Coolbroth, Esquire for Chester Telephone Company, Inc.; Kearsarge Telephone Company, Inc., Merrimack County Telephone Company and Wilton Telephone Company, Inc.; Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire for Union Telephone Company, Inc.; Orr and Reno by Charles H. Toll, Jr., Esquire and Thomas C. Platt III, Esquire for Continental Telephone Company of New Hampshire, Inc.; Larry M. Smukler, Esquire, General Counsel, Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

This docket was opened by our

Order No. 17,639 in Re New England Teleph. & Teleg. Co., 70 NH PUC 496 (1985), for the purpose of investigating the rate structure of New England Telephone. An Order of Notice was

issued on September 20, 1985 which scheduled a prehearing conference for October 23, 1985, provided for publication of notice and provided a due date for Motions to Intervene.

Pursuant to the Order of Notice, a prehearing conference was held on October 23, 1985 at which the Commission heard argument on the issues of intervention, scope and schedule. At the prehearing conference, the Commission granted the request for full intervenor status of Community Action Program (CAP), the Consumer Advocate, the Department of Defense, Volunteers Organized In Community Education (VOICE), Comm-Tech Pay Services, Inc. and Mr. Roger Aveni. The Commission also heard the request of the Science and Technology Committee of the General Court through its Chairman, Representative Arnold Wight to participate as an observer in the negotiation phase of the proceedings. The issue of observer status was taken under advisement. Finally, the Commission heard a proposal for a procedural schedule involving a series of negotiation sessions among the parties, which sessions would address, inter alia, issues of the scope of this docket and the nature of the data to be developed for this docket. The Commission approved the schedule as proposed.

Subsequent to the prehearing conference, the Commission received latefiled Motions to Intervene from Chester Telephone Company, Inc., Kearsarge Telephone Company, Inc., Merrimack County Telephone Company, Wilton Telephone Company, Inc., Union Telephone Company, Inc. and Continental Telephone Company of New Hampshire, Inc. (collectively referred to as the Independents). On December 20, 1985, the Commission, by Secretarial letter, notified the parties that the Staff had recommended that the Motions to Intervene of the Independents be granted, but that the Independents be directed to coordinate their positions and, to the extent possible, consolidate their participation. The parties were given until December 27, 1985 to object to the Motions to Intervene or to comment on the staff recommendations. Timely comments were filed by all the Independents.

The purpose of this Order is to rule on the Motions to Intervene and the schedule. We shall initially address the Motions to Intervene of the Independents. We will then address the request for observer status of the Science and Technology Committee. Lastly, we will address any outstanding scheduling issues.

After review and consideration, we will grant the Motions to Intervene of the Independents. Pursuant to RSA 541-A:17III and N.H. Admin. Rules, Puc 203.02(c), we shall require the Independents to consult with each other, and coordinate their participation. It should be noted that this coordination and consolidation has already taken place inasmuch as four of the Movants are already represented by one counsel, while the remaining two have elected to be individually represented. We also note the comments of all Independents indicating their willingness to adhere to the above limitation, but expressing concern that the limitation not be so broadly stated as to foreclose

an Independent party from participating individually should its position be materially different than that of the remaining Independents. We are mindful of the above concern and of the need to ensure that limitations on intervention " ... shall not be so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention." RSA

541-A:17IV. Thus, although we intend the above limitation to be an absolute requirement that the Independents consult with one another and attempt to coordinate their positions, we will assure that, to the extent that an individual Independent believes that it must take a position that is inconsistent with that of other Independents, said Independent may make a motion to participate individually for the purpose of advancing that particular position. In each such instance, the individual Independent will be required to notify all parties of the fact that it has filed a motion to participate individually and the position it is taking on a particular issue which is inconsistent with that of the other Independents.[1(12)] For the remaining issues, where positions are consistent, the Independents are directed to consolidate their participation through lead council. We expect that consistent positions will be consolidated so that there will be no duplication. It is not in the interest of any party for those with consistent positions to each spend the time necessary individually to advance those positions.

We have also considered the request of the Science and Technology Committee to participate in the negotiation sessions as an observer. We note that no party has objected to the request. We note further the commitment of the committee representatives to abide by the ground rules governing the parties' participation in the negotiation sessions. We are also mindful that the Committee is involved in considering legislation that is directly related to the subject matter of the negotiations. Under the particular circumstances of this proceeding, we believe that it is appropriate to accord observer status to the designated representatives of the Science and Technology Committee.

With respect to the scheduling issues, we are mindful that the parties have been meeting on a regular basis and that additional meetings are scheduled. Our understanding is that the parties are in the process of developing recommendations to the Commission on: 1) the scope of this proceeding; and 2) the data to be developed in the course of this proceeding. We believe that it is appropriate for the parties to attempt to develop such recommendations through the negotiation process. We will therefore approve the negotiation sessions currently scheduled. We expect that scope recommendations will be submitted initially. Data recommendations will then be developed and submitted after the Commission rules on scope. We will consider each set of recommendations as they are submitted, schedule a hearing on those recommendations if appropriate, and thereafter issue a ruling.

Our Order will issue accordingly.

ORDER

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

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ORDERED, that the Motions to Intervene of Chester Telephone Company, Inc., Kearsarge Telephone Company, Inc.; Merrimack County Telephone Company, Wilton Telephone Company, Inc., Union Telephone Company, Inc., and Continental Telephone Company of New Hampshire, Inc. (jointly referred to as the independents) be, and hereby are, granted; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17IV, the Independents coordinate their positions and, to the extent possible, consolidate their participation; and it is

FURTHER ORDERED, that the duly designated representatives of the House Science and Technology Committee may participate as observers in the negotiation sessions, provided that they are subject to the same ground rules governing the parties; and it is

FURTHER ORDERED, that the negotiation schedule will be as agreed by the parties with hearings to be scheduled at the call of the Commission.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1986.

FOOTNOTE

[1]If any party objects to such individual participation because that party believes that there is not in fact a divergence of positions, the matter will be resolved by the Commission.

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NH.PUC*01/09/86*[60707]*71 NH PUC 65*Connecticut Valley Electric Company, Inc.

[Go to End of 60707]

71 NH PUC 65

Re Connecticut Valley Electric Company, Inc.

DR 85-404, Order No. 18,050

New Hampshire Public Utilities Commission

January 9, 1986

ORDER accepting a revised purchase power cost adjustment factor.

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

A proposed increase in the purchase power cost adjustment clause of a retail electric utility, which was based on an estimated increase in the cost of power purchased from a wholesale power producer, was approved subject to (1) the results of a separate hearing concerning whether the Federal Energy Regulatory Commission approved wholesale rate is a just and reasonable operating expense of the retail utility, and (2) reconciliation of the revenues to expenses incurred during the effective period of the cost adjustment factor.

Rates, § 47 — Conflicting jurisdiction — Federal control — Purchased power adjustment clause.

Discussion, in an order approving an increase in the purchased power cost adjustment clause of a retail electric utility, of the effect of a Federal Energy Regulatory Commission approved wholesale power rate on a determination of the reasonableness of the operating expenses of a retail utility that purchases power from the wholesaler at the FERC approved rate. p. 66.

APPEARANCES: For Connecticut Valley Electric Company, Inc. Michael Franko, Esquire; Daniel D. Lanning on behalf of the Commission staff.

By the COMMISSION:

REPORT

On November 27, 1985 Connecticut Valley Electric Company, Inc. (Conn. Val.) filed certain tariff revisions proposing to increase its purchase power cost adjustment clause (PPCA) by $0.4788/100KWH to $2.8858/100KWH. This rate is based on the estimated cost of power from Conn. Val.'s sole source of energy, Central Vermont Public Service Corporation (CVPSC) during the calendar year 1986. CVPSC filed its 1986 wholesale power cost rate with the Federal Energy Regulatory Commission (FERC) simultaneously with the instant Conn. Val. petition.

A duly noticed hearing was held on December 23, 1985 at the Commission's office in Concord, New Hampshire to review the filing, at which time the Company presented one witness

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and two exhibits with attachments. Through Conn. Val.'s witness' testimony and cross-examination by staff and the Commission the following issues were explored:

(1) the procedure used to approve the CVPSC's wholesale rate at the FERC and the effect this process has on Conn. Val. ratepayers;

(2) the effect a Commission decision concerning the Supreme Court remand will have on this docket;

(3) the inclusion of Construction Work In Progress (CWIP) in CVPSC'S wholesale rate (RS-2); and

(4) a comparison of CVPSC'S wholesale rate with other wholesale power vendors in New Hampshire.

The issue concerning the Supreme Court remand merits further discussion. The Supreme Court, in Appeal of Re Sinclair Machine Products, Inc., — N.H. —, 498 A.2d 696 (1985), remanded the decision by the Commission which allowed the purchase of power by Conn. Val. from CVPSC. See, Re Connecticut Valley Electric Co., Inc., 69 NH PUC 319 (1984). This is because Conn. Val. did not meet its burden of proving that the expense for said power is just and reasonable.

The court stated that the Commission was correct in presuming that CVPSC's wholesale rate, approved by the FERC, is just and reasonable and therefore the Commission is preempted from making a collateral determination concerning said rate. However, the Supreme Court further stated that the "... central question before the PUC in a retail rate case such as this [DR 83-200] is whether costs incurred under a wholesale rate, which has been approved as being a just and reasonable charge by the wholesaler, are just and reasonable operating expenses of the retail utility" Slip Opinion at 2, emphasis in original.

The Commission stated in previous Conn. Val. PPCA orders that the issues concerning purchased power which are remanded by the Supreme Court should not be resolved in a PPCA

docket such as this. (70 NH PUC 748.) Instead a separate hearing on the remand has been scheduled in DR 83-200 for February 18, 1986. Approval of a PPCA rate in the instant docket or in previous dockets are subject to adjustment pending final determination of the issues remanded to the Commission.

The witness presented by Conn. Val. provided testimony concerning the procedure the CVPSC wholesale rate must go through to be approved. According to this witness, the rate request which initiated the instant docket has been filed with the FERC and, absent a request for hearing by an intervenor or the FERC staff, will become effective automatically on January 1, 1986. This rate will be in effect for one year. Following the completion of the year, CVPSC files a reconciliation of the revenue to actual expenses during 1986 and recoups or refunds the difference with a surcharge.[1](13)

Based on the fact that this rate will be reflective of Con Val's costs and that it is subject to reconciliation, and in consideration of the foregoing discussion concerning the Supreme Court remand, the Commission approves the proposed PPCA rate of $2.8858/100 KWH.

Our order will issue accordingly.

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ORDER

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

ORDERED, that the 11th Revised page 17 of Connecticut Valley Electric Company, Inc.'s tariff, NHPUC No. 4 - Electricity, providing for a purchase cost adjustment factor of $2.8858 per 100 KWH, be, and hereby is, accepted.

By Order of the Public Utilities Commission of New Hampshire this ninth day of January, 1986.

FOOTNOTE

[1]Investigation into the wholesale rate is usually conducted by the FERC staff when the reconciliation is filed.

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NH.PUC*01/13/86*[60708]*71 NH PUC 67*Public Service Company of New Hampshire

[Go to End of 60708]

71 NH PUC 67

Re Public Service Company of New Hampshire

DE 85-375, Order No. 18,052

New Hampshire Public Utilities Commission

January 13, 1986

ORDER authorizing an electric utility to maintain distribution lines over and across public waters.

Electricity, § 6 — Distribution lines — Water crossings.

An electric utility was authorized to maintain distribution lines over and across public waters where each crossing had been found to be essential for continued service to the public.

APPEARANCES: For the petitioner, Pierre O. Caron, Esquire.

By the COMMISSION:

REPORT

On October 24, 1985, Public Service Company of New Hampshire (PSNH) filed with this Commission a petition to license 35 existing electric transmission and distribution lines over and across certain public waters in the State of New Hampshire.

On October 30, 1985, an Order of Notice was issued setting a hearing for December 19, 1985, at 10:00 a.m. No- tices were sent to Pierre O. Caron, Esquire, PSNH (for publication); John McAuliffe, Railroad Administrator, Department of Public Works and Highways; Kelton E. Garfield, Supervisor of Public Records, New Hampshire Department of Public Works and Highways; John Chandler, Commissioner, New Hampshire Department of Public Works and Highways; Robert X. Danos, Director, Department of Safety Services; James Carter, Chief of Land Management, Department of Resources and Economic Development; Christopher J. Kersting, New Hampshire Aeronautics Commission; and the Office of the Attorney General.

On November 18, 1985, the petitioner filed certification that publication had been made in the Union Leader on November 8, 1985.

The petitioner offers that it is in the

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process of reviewing all its existing installations of lines and wires across the waters of the State and the classification of waters as public waters. That review has led to a determination that increased public use for recreation and other purposes requires certain installations to be modified and relicensed. Accordingly, nine of the crossings in this docket, having been previously properly licensed, were found to be in need of upgrading. In these cases, the installations had been made prior to the establishment of the National Electric Safety Code standards establishing minimum heights over water. When those crossings were installed, the heights were determined after consultation with various State agencies in conjunction with this Commission. The increased recreational activity of recent years, with specific attention to sailboating activity, has caused the National Electric Code to set minimum distances over water which are higher than currently exist. The nine licenses before us authorize the company to meet present standards. The construction modifications have already been made.

In the course of their review, the company identified twenty-six existing water crossings which were without licenses. They testify, in fact, that there will be additional subsequent filings as the company expands its investigation and identifies even more unlicensed crossings.

The twenty-six new crossings are all in place. Easements for the crossings are in existence and require no modifications. Each crossing has been found to be essential for continued service to the public. Installation dates for the various crossings range from the early 1950's to as recent as 1983.

The company attributes its failure to properly license its crossings to an overzealousness on the part of its district personnel to provide prompt service upon request by a customer. They assure the Commission that future installations will be properly licensed prior to construction.

Upon consideration of this petition, the Commission finds that it is in the public good to approve the requested licenses. The company has shown that each crossing is necessary to serve specific customers. There is no challenge by other State agencies or individuals as to the crossing locations. We approve the petition the petition [sic].

Our order will issue accordingly.

ORDER

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

ORDERED, that authority be granted to the Public Service Company of New Hampshire to maintain electric distribution lines over and across public waters of the State of New Hampshire at the following locations which are specifically identified in the petition in this docket.

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

TOWN TOPO EXHIBIT PLAN

Antrim 1A1 1A2 275
1B1 1B2 276
1C1 1C2 277
Atkinson 2A1 2B2 278
2B1 2B2 279
2B3 280
2C1 2C2 281
2C3 282
2D1 2D2 283
2D3 284
2E1 2E2 285
2E3 286
Barrington 3A1 3A2 287
Bennington 4A1 4A2 288
Center Harbor 5A1 5A2 289
Conway 6A1 6A2 290
Derry 7A1 7A2 291
Francestown 8A1 8A2 292

Laconia 9A1 9A2 293
Lyndeborough 10A1 10A2 294
10A3 295
Madison 11A1 11A2 296
New Durham 12A1 12A2 297
12A3 298
Ossipee-Freedom 13A1 13A2 299
13A3 300
Rindge 14A1 14A2 301
14B1 14B2 302

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  14B3 303
 14C1 14C2 304
 14D1 14D2 305
Stoddard 15A1 15A2 306
 15B1 15B2 307
Strafford 16A1 16A2 308
 16B1 16B2 309
 16C1 16C2 310
 16D1 16D2 311
Tilton 17A1 17A2 312
Tuftonboro 18A1 18A2 313
Wakefield 19A1 19A2 314
 19B1 19B2 315
Washington 20A1 20A2 316
Weare 21A1 21A2 317
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By order of the Public Utilities Commission of New Hampshire this thirteenth day of January, 1986.

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NH.PUC*01/14/86*[60709]*71 NH PUC 70*Concord Natural Gas Corporation

[Go to End of 60709]

71 NH PUC 70

Re Concord Natural Gas Corporation

DR 85-346, Order No. 18,053

Re Northern Utilities, Inc.

DR 85-347;

Re Gas Service, Inc.

DR 85-348;

Re Manchester Gas Company

DR 85-349

New Hampshire Public Utilities Commission

January 14, 1986

ORDER revising cost of gas adjustment clause reconciliation filing requirements.

Automatic Adjustment Clauses, § 68 — Reconciliation — Filing requirements.

A requirement that gas utilities utilizing a semi-annual cost of gas adjustment clause file monthly reconciliations on or before the twentieth day of the month was rescinded and replaced with a requirement that the utilities file a reconciliation on the first day of the second month following the month reconciled; the change was ordered in response to utility requests for more time to prepare reconciliation reports.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

I. Background

On October 1, 1985, Concord Natural Gas Corporation (Concord), Northern Utilities, Inc., (Northern), Gas Service, Inc., (GSI), and Manchester Gas Company, (MGC) (collectively referred to as the "Companies"), filed tariff revisions to their respective Cost of Gas Adjustments (CGA) for the winter period beginning November 1, 1985 and ending April 30, 1986. Following a duly noticed hearing, the Commission issued its report and order Nos. 17,928 (70 NH PUC 870), 17,934 (70 NH PUC 881), 17,930 (70 NH PUC 875), and 17,931 (70 NH PUC 878) for Concord, GSI, Northern and MGC respectively.

Each of these orders separately approved a CGA rate for the above mentioned companies. In addition, through these orders the Commission also approved a "trigger mechanism" for the CGA, which allows the CGA rates to be adjusted if the gas company is collecting ten percent over or under the cost of gas for a given semiannual period. This trigger was established by the Commission to avoid excessive over or under recoveries of gas costs.

In each of the above cited reports and orders, the Commission also mandated a reporting process so that the trigger mechanism could be monitored. These stated as follows:

To assure an expeditious and adequate review of the data used in determining the trigger, we will

mandate that the gas utilities utilizing the semi-annual 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. (NHPUC Report and Order Nos. 17,928 (70 NH PUC at pp. 871, 872), 17,930 (70 NH PUC at pp. 877), 17,931 (70 NH PUC at p. 880), and 17,934 (70 NH PUC at p. 884).

The companies have each filed a motion for reconsideration and modification concerning the twenty day time period mandated by the Commission for reporting the reconciliation of the CGA. The companies allege that twenty days do not provide them with an adequate period of time to gather actual fuel cost data and report a reconciliation of the fuel cost versus CGA revenue to the commission. It is their contention that the appropriate period of time needed to report the reconciliation is forty days following the end of a month.

II. Commission Analysis

When the Commission established the twenty day period for reporting the CGA reconciliation, our goal was to have information regarding the effectiveness of the CGA rate as expeditiously as possible. This would permit the CGA to be adjusted as soon as possible if the trigger was invoked. Extending the period does not give the Commission enough lead time to review and approve adjustments to the CGA rate when it may be necessary.

Further, allowing a forty day period for reporting actual results, as the companies have requested, would result in a lag in time before the trigger can be initiated. The lag will be as long as two months or one-third of a semi-annual period. There would not be adequate notice of the need to change the rate (trigger) until after the first of the month which followed the period actual transactions had occurred and were reported.

The Commission, however, feels it is necessary to provide the Companies with some consideration for their reporting and data processing limitations. All the Companies state that it is possible to have the information available to produce the required report by thirty days following the end of the month to be reported. We would expect this to be the maximum time needed to produce this report because the Companies should have had their month end closing accounting entries completed by that time. The information needed to complete the reconciliation is the same information used in the month end closing entries. Thus, it is appropriate to mandate that the reconciliation become due on the first day of the second month following the month to be reported, e.g., the reconciliation for November 1985 will be due January 1, 1986.

For consistency we will also provide Keene Gas Corporation and PetrolaneSouthern New Hampshire Gas Company, Inc. with the same period to report their reconciliations of the CGA.

This will provide the Companies with adequate time to complete their reconciliation and report such. In addition, it will provide a short but sufficient notice to customers if a change in the CGA rates become necessary. RSA 378:9, 378:27. Finally, it will permit the rate to change in an expeditious

manner to avoid excessive over or under collections.

Our order will issue accordingly.

ORDER

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

ORDERED, that the twenty day requirement for reporting the reconciliation of the Cost of Gas Adjustment for Northern Utilities, Inc., Manchester Gas Company, Concord Gas Corporation, Gas Service, Inc., Keene Gas Corporation, Southern New Hampshire Gas Company, Inc., be, and hereby is rescinded; and it is

FURTHER ORDERED, that said utilities shall submit a reconciliation of the CGA on the first day of the second month following the month reconciled, in accordance with the attached report.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of January, 1986.

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71 NH PUC 73

Re EUA Power Corporation

Additional petitioners: Maine Public Service Company, Central Maine Power Company, Bangor Hydro-Electric Company, and Central Vermont Public Service Company

Intervenor: Office of Consumer Advocate

DF 85-338, DF 85-351, Order No. 18,058

New Hampshire Public Utilities Commission

January 15, 1986

ORDER authorizing a wholesale power corporation to engage in business as a public utility for the purpose of participating as a joint owner in the construction of Seabrook nuclear power plant and, upon completion of construction, for the purpose of selling its share of the output of the plant.

Public Utilities, § 73 — Electric — Authority to engage in utility business — Grounds for granting.

A wholesale power corporation was granted authority to engage in business as a public utility for the purposes of acquiring a common stock ownership interest in the Seabrook nuclear generating station, participating in the completion of the station, and marketing its share of the output of the station for resale to the public; the grant of authority was made pursuant to a commission finding that such authority was in the public good as required by state statute RSA § 374:26 — i.e., the proposed services were needed and the corporation had the ability to meet that need. [1] p. 77.

Public Utilities, § 73 — Electric — Authority to engage in utility business — Grounds for granting.

A wholesale power corporation was granted authority to engage in business as a public utility for the purposes of acquiring a common stock ownership interest in the Seabrook nuclear generating station, participating in the completion of the station, and marketing its share of the output of the station for resale to the public; the grant of authority was based on a commission finding that the corporation's proposed participation would reduce the uncertainty surrounding the Seabrook project, thus reducing costs and increasing the likelihood that power from the project would become available to meet New England's power needs. [2] p. 77.

Consolidation, Merger, and Sale, § 18 — Grounds for approval — Compliance with prior orders — Acquisition of common stock — Nuclear plant ownership.

A wholesale power corporation formed for the purpose of participating as a joint owner in the Seabrook nuclear power project was granted authority to acquire a share of the common stock of New Hampshire Yankee Electric Corporation, the managing agent for Seabrook; the proposed acquisition was found to be consistent with commission findings and conclusions in

prior orders. [3] p. 79.

Security Issues, § 44 — Factors affecting authorization — Degree of risk — Nuclear power project.

Financing authority was granted to a wholesale power corporation, which was formed for the purpose of participating as a joint owner in the Seabrook nuclear power

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project, notwithstanding the fact that the proposed returns significantly exceeded current market returns for other types of utility investments; the commission found that the high degree of risk associated with the uncompleted Seabrook project required higher returns, however, the financing authority was conditioned on the returns being lowered following completion of the project. [4] p. 79.

Security Issues, § 44 — Factors affecting authorization — Wholesale power corporation — FERC action — Nuclear power project.

A grant of financing authority to a wholesale power corporation formed for the purpose of participating as a joint owner in the Seabrook nuclear power project was conditioned on the Federal Energy Regulatory Commission issuing a declaratory order, or its equivalent, stating that the capital structure resulting from the proposed securities would be just and reasonable for cost based wholesale rate-making purposes. [5] p. 79.

Consolidation, Merger, and Sale, § 12 — Commission jurisdiction — Out-ofstate utilities — Transfer of utility assets — Nuclear power project.

While state statute RSA 374:30, which requires utilities to obtain commission authorization to transfer utility assets, would not normally be applicable to out-of-state utilities, it was held to apply, on a limited basis, to Maine and Vermont utilities by virtue of their participation in a New Hampshire electric power facility — i.e., Seabrook nuclear generating station. [6] p. 83.

Consolidation, Merger, and Sale, § 19 — Grounds for approval — Public benefit — Transfer of utility assets — Nuclear power project.

Certain Maine and Vermont public utilities were authorized to transfer their ownership interests in Seabrook nuclear generating station to a wholesale power corporation; the transfers were found to be in the public good as required by state statute RSA § 374:30. [7] p. 83.

(AESCHLIMAN, commissioner, concurs, p. 84.)

APPEARANCES: Devine, Millimet, Stahl & Branch by Frederick J. Coolbroth, Esquire and Gaston, Snow & Ely Bartlett by Alan L. Lefkowitz, Esquire for EUA Power Corporation; Ransmeier and Spellman by Dom S D'Ambruoso, Esquire and Jon Ransmeier, Esquire for Maine Public Service Company, Central Maine Power Company, Bangor Hydro-Electric Company and Central Vermont Public Service Company; Michael Holmes, Esquire, Consumer Advocate; Larry M. Smukler, Esquire, General Counsel, Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On September 25, 1985, EUA Power Corporation (EUA Power) filed a Petition for Certain Authority in Connection with the Acquisition of One or More Ownership Interest(s) in Seabrook Station. An Order of Notice was issued on October 2, 1985 which opened Docket No. DF 85-338 and scheduled a procedural hearing and a prehearing conference for October 22, 1985.

On September 27, 1985, Maine Public Service Company, Central Maine Power Company, Bangor Hydro-Electric Company and Central Vermont Public Service Company (jointly referred to the Maine and Vermont Utilities) filed Petitions for Permission to Transfer Their Respective Ownership Interests in Seabrook Station. An Order of Notice was issued on October 2, 1985 which opened Docket No. DF 85-351 and scheduled a procedural hearing and a prehearing conference for October 22, 1985.

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At the October 22, 1985 procedural hearing and prehearing conference, the Commission consolidated Docket Nos. DF 85-338 and DF 85-351 because they involved substantially similar issues and identical parties. The Commission also granted the Motion to Intervene of the Consumer Advocate. After hearing the recommendations of the parties, the Commission scheduled evidentiary hearings for December 2, 1985 and December 6, 1985.

The evidentiary hearings were held as scheduled. At those hearings the Commission heard the testimony of John F. G. Eichorn, Jr., President and Chief Executive Officer of the holding company (Eastern Utilities Associates or EUA); Donald G. Pardus, Executive Vice-President, Chief Financial Officer, Treasurer of EUA and Vice President and member of the Board of Directors of each subsidiary of EUA; Richard A. Crabtree, Financial Vice-President and Chief Financial Officer of Central Maine Power Company; Robert S. Briggs, Vice President and General Counsel of Bangor Hydro-Electric Company; G. Melvin Hovey, President and Chief Executive Officer of Maine Public Service Company; and James A. Lahtinen, Director of Economic and Regulatory Analyses of Central Vermont Public Service Corporation.[1(14)] The evidentiary phase of the proceedings was closed at the conclusion of the December 6, 1985 hearing. Provision was made for the submission of post-hearing information and post-hearing memoranda.

On December 18, 1985, EUA Power filed a post-hearing Memorandum of Law and a Motion to Amend the Petition. On December 20, 1985, the Maine and Vermont Utilities filed a post-hearing Memorandum of Law accompanied by the additional information to be submitted at the request of the Commission and the parties.

II. POSITION OF THE PARTIES

A. EUA Power

In this proceeding, EUA Power seeks authority to commence business as a utility pursuant to RSA 374:22. EUA Power also seeks authority to purchase certain shares of the common stock of New Hampshire Yankee Electric Corporation (NHY) pursuant to RSA 374:33. Finally, EUA

Power also seeks certain financing authority pursuant to RSA 369:1-4 and 7.

With respect to its request for authority to commence business as a utility, EUA Power submits that it was formed for the purpose of acquiring certain ownership shares in Seabrook Station. After the acquisition of those ownership shares, EUA Power proposes to participate in and contribute to the completion of construction as a Seabrook joint owner and, subsequent to the completion of construction, market its share of Seabrook's power output for resale to the public. EUA Power notes that the above-described business falls within the definition of "public utility" set forth at RSA 362:2 and, accordingly, requests the authority of this Commission pursuant to RSA 374:22 to commence business as a public utility for the above-described purposes.

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As noted, one of the purposes of the business of EUA Power would be to acquire certain ownership shares of Seabrook Station. Previously, this Commission authorized NHY to commence business as a utility for the limited purpose of managing the construction and operation of Seabrook Station. The Seabrook joint owners own shares of NHY in proportion to their respective ownership interests in Seabrook. Since EUA Power is proposing to acquire certain ownership shares in Seabrook Station, it would also acquire a proportionate share of the common stock of NHY. Accordingly, EUA Power is seeking the authority of this Commission to acquire a percentage of the 1,000 shares of common stock, $1.00 par value, issued or to be issued by NHY corresponding to the percentage ownership interest in the Seabrook project acquired by EUA Power.

To further its corporation purposes, EUA Power proposes to establish its initial capitalization through the issuance and sale of securities as follows:

a) The issuance and sale to Eastern Utilities Associates (EUA), EUA Power's holding Company, of 10,000 shares of EUA Power's common stock, $.01 par value, at a price of $1.00 per share (common stock);

b) The issuance and sale to EUA of not more than 500,000 shares of EUA Power's Class A 25% Preferred Shares, $100 par value, at a price of $100.00 per share (Preferred Stock);

c) The issuance and sale to institutional and private investors of not more than $170,000,000 of EUA Power's unsecured, non-recourse notes, not guaranteed by any party, in one or more series bearing interest at not more than 30% per annum Notes); and

d) Unsecured borrowings, not exceeding $25,000,000 outstanding at any one time, made from time to time by EUA Power from EUA or from commercial banks, such borrowings to bear interest at a rate or rates based on the prime rate, to have a maturity of less than one year from the date thereof (Short Term Debt).

Accordingly, EUA Power is seeking approval and authorization for the issuance of securities of EUA Power pursuant to RSA 369:1-4 and approval and authorization for the incurring of short term debt by EUA Power pursuant to RSA 369:7.

In its December 18, 1985 amended Petition, EUA Power averred that it was considering certain changes to the terms and conditions of the proposed Preferred Stock. Accordingly, EUA

Power requested that the Commission: (1) authorize preferred stock to provide for either cumulative or noncumulative dividends; (2) grant EUA Power the option to offer the Preferred Stock upon terms providing for its eventual mandatory conversion on a share-by-share basis into shares of Common Stock; authorize the issuance of one share of Common Stock in exchange for each share of Preferred Stock surrendered in connection with such conversion. EUA Power argued that the record supports the additional authority requested in the amended Petition.

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B. The Maine and Vermont Utilities

The Maine and Vermont Utilities are the sellers of the Seabrook shares to EUA Power. While not admitting that the approval of this Commission is necessary to complete the proposed transaction, they nevertheless seek such approval pursuant to RSA 374:30. Their position is that the proposed transfer is for the public good in that it will facilitate the completion of Seabrook Station.

C. Position of the Consumer Advocate

The Consumer Advocate took no position on the proposed transaction, but expressed a concern about the effect of the transfer of Seabrook shares and the consequent entry of EUA Power into the wholesale power market on the ability of Public Service Company of New Hampshire (PSNH) to minimize rates by increasing wholesale energy sales.

III. COMMISSION ANALYSIS

After review and consideration, we will grant the Petitions of EUA Power and the Maine and Vermont Utilities. We shall address each of the issues raised by the Petitions in turn.

A. Petition of EUA Power

[1, 2] As noted previously, EUA Power is seeking authority to commence business as a public utility, purchase shares of NHY, and issue and sell certain securities.

1. Authority to Commence Business As a Public Utility.

RSA 362:2 (supp) provides, inter alia,:

The term "public utility" shall include every corporation ... owning, operating or managing any plant or equipment or any part of the same ... for the manufacture or furnishing of light, heat, [or] power ... for the public, or in the generation, transmission or sale of electricity ultimately sold to the public ...

EUA Power is a New Hampshire corporation formed for the purpose of acquiring an ownership interest in a New Hampshire generating facility under construction. It intends to participate in the completion of the plant and to then market its share of the output of that plant for resale to the public. Accordingly, EUA Power is a public utility as defined in RSA 362:2.

RSA 374:22 I provides, inter alia:

No person or business entity shall commence business as a public utility within this state, or shall engage in such business ... without first having obtained the permission and approval of the Commission.

As a public utility proposing to commence business in New Hampshire, EUA Power is seeking the permission and approval of the Commission pursuant to RSA 374:22. Our consideration of whether to grant the requested authority is governed by RSA 374:26 which provides, inter alia:

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 ...

We recently addressed the above standard when we considered whether to grant to NHY the authority to commence business as a public utility. Re New Hampshire Yankee Electric Corp., 69 NH PUC 590 (1984). There we provided:

The Commission in determining whether the granting of permission to a public utility to engage in business is in the public interest must consider two main criteria (1) the need for service; and (2) the ability of the applicant to provide the service.

69 NH PUC at p. 593.

It is in the context of these two tests that we will evaluate the EUA Power Petition.[2(15)]

With respect for the need for service, it must be noted initially that EUA Power proposes two phases of utility service: (1) participation as a joint owner in the completion of the construction of Seabrook; and (2) the marketing of its share of Seabrook output for resale to the public. In recent decisions, this Commission has found that Seabrook is a necessary capacity addition not only for PSNH, but also for New England. See e.g., Re Public Service Co. of New Hampshire, 66 PUR4th 349, 388-394 (1985), affirmed, Re Conservation Law Foundation of New England, Inc., —N.H.—, 507 A.2d 652 (1986). We have also found that EUA Power's participation as proposed will reduce the uncertainty surrounding the Seabrook project, thus reducing costs and increasing the likelihood that the project will be completed on schedule. Re Public Service Co. of New Hampshire, 70 NH PUC 787 (1985), appeal pending. The instant record substantially supports those findings and, on the basis of the instant record, we reaffirm those findings here. The record indicates that a market will exist for EUA Power's share of Seabrook and that without EUA Power's participation, the uncertainty about the ability of the joint owners to complete construction will be increased. Thus, we find that there is a need for the proposed service.

We have reviewed the concern of the Consumer Advocate of the effect of increased competition in the wholesale power market on PSNH. We do not believe that such a concern warrants a denial of the Petitions in this instance. The completion of Seabrook will add 1150 MW to the overall capacity of the New England Power Pool (NEPOOL). The amount of Seabrook capacity available upon the plant's completion does not change as a result of the proposed transaction. There will continue to be 1150 MW available to the New England market. To the extent that the various New England utilities continue to need that power, the market will be unchanged. Thus, the only changes brought about by the proposed transfer are: (1) the

identity of the buyers and sellers of power and the economic consequences that flow therefrom; and (2) the increased likelihood that Seabrook will ultimately become available to meet New England's power needs.

There was little dispute about EUA Power's ability to meet the need. EUA Power's affiliates already provide electric service at both retail and wholesale levels to communities in Massachusetts and Rhode Island. One affiliate, Montaup Electric Company, has been and continues to be a Seabrook joint owner. EUA Power's President, Mr. Eichorn, is Chairman of the Executive Committee of the Joint Owners' Management Committee. Mr. Eichorn is also the Chairman of Management Committee of NEPOOL. Given the resources of the EUA organization and the experience and expertise of its personnel, we find that EUA Power has the ability to provide the needed service.

On the basis of our findings that there is a need for the service and that EUA Power has the ability to meet that need, we find that the proposed business of EUA Power would be for the public good. RSA 374:26. Accordingly we will grant the permission and approval of the Commission to EUA Power for the purpose of engaging in the public utility business as proposed. RSA 374:22.

2. Purchase of NHY Shares

[3] In Re New Hampshire Yankee Electric Corp., 69 NH PUC 590 (1984), the Commission granted to NHY the authority to engage in the public utility business of managing the construction of the Seabrook plant and to issue and sell 1,000 shares of common stock to the Seabrook joint owners. In Re New Hampshire Yankee Electric Corp., 70 NH PUC 563 (1985), the Commission enlarged NHY's authority to include the management of the operation of Seabrook as well as its construction. In addition, the Commission approved nisi the acquisition of the NHY common stock previously authorized by the Seabrook joint owners.[3](16)

Since EUA Power will become a Seabrook joint owner, it is seeking authority pursuant to RSA 374:33 to acquire its proportionate share of the NHY common stock.

The acquisition of NHY common stock in proportion to EUA Power's ownership share is consistent with our findings and conclusions pertinent to the granting of public utility authority to EUA Power for certain specified purposes under RSA 374:22, supra. It is also consistent with the findings and conclusions of the Commission in Re NHY, DF 84-339, supra (70 NH PUC 563), and Re NHY, DF 84-229, supra (70 NH PUC 229). Accordingly, EUA Power's Petition for authority to acquire certain shares of the common stock of NHY will be granted.

3. Authority to Issue and Sell Certain Securities

[4, 5] To finance its public utility business, EUA Power is proposing to issue and sell certain securities as described supra. Our evaluation of a proposed financing involves a determination of whether the proposal is consistent with the public good. RSA 369:1. The Commission's responsibility under the statute is to evaluate all the circumstances of a financing - a determination that includes considerations beyond the terms of the proposed borrowing. Re Easton, 125 N.H. 205, 480 A.2d 88 (1984). Recently, the Commission

defined the elements of a particular financing evaluation as including an evaluation of: (1) the terms, conditions and amount of the proposed financing; (2) the purpose of the proposed financing; and (3) the financial feasibility of the proposed financing. Re Public Service Co. of New Hampshire, 66 PUR4th 349 (1985); see also, Re Public Service Co. of New Hampshire, 69 NH PUC 671 (1984). We shall in this Order, address the issues in the context of the abovedefined elements.

Terms, Conditions and Amount

It is the terms and conditions of the proposed financing which raise issues of concern to the Commission. EUA Power is proposing to issue virtually all of its equity in the form of 25% preferred stock, a mechanism which would lock in entitlement to a 25% equity return for the life of the instruments. Additionally, EUA Power is proposing a highly leveraged capital structure with unsecured long-term debt costs of up to 30%. The proposed debt and equity returns significantly exceed current market returns for other types of utility investments.

EUA Power argues that the above returns are justified given the unusual nature of its proposed utility business. That business involves the construction and operation of a single asset __ the Seabrook plant. EUA Power points out that there is a high degree of risk that the joint owners will not be able to complete the plant, that the plant may be completed at a cost which significantly exceeds current projections, and that EUA Power will be unable to market its share of Seabrook output in the competitive wholesale power market at a rate sufficient to allow it to meet its costs. EUA Power further argues that the advice of its investment banker, Merrill Lynch, indicates that the returns proposed are commensurate with the risks and are necessary to enable EUA Power to market the securities.

After review and consideration, we accept the EUA evaluation of the risk. We note that the terms and conditions of the securities as proposed in the amended Petition differentiate between the risk that will exist subsequent to the completion of Seabrook and the risk that will exist subsequent to the commercial operation date of Seabrook. Thus, although EUA Power anticipates issuing 5 to 10 year Notes, it will be able to retire that long-term debt without penalty after 3 years. 1 Tr. 90. Consequently, after the completion of Seabrook, EUA Power will be in a position to refinance the high-cost debt with lower cost debt more consistent with the returns offered on other utility debt instruments. Additionally, EUA Power is proposing that its 25% preferred stock be noncumulative and convertible to common stock after a certain period of time. Such conversion could be mandatory. This feature will allow the equity investor returns commensurate with the risk during the construction period and the presumably lower market established return for utility common equity thereafter. We believe that the terms and conditions described in the amended petition which allow for differentiation of the risk and associated costs of the financing for the construction and operation phases of the business significantly improve the proposal and, accordingly they will be approved.

With respect to the amount of the proposed financing, the record warrants a finding that the proceeds will

be sufficient to meet EUA Power's projected costs. Since there is no prefinancing requirement, we are satisfied that EUA Power will not be over-capitalized.

The costs associated with the proposed business include the cost of purchasing the Seabrook shares of the Maine and Vermont Utilities. EUA Power will purchase those shares for a base price of $65,400,000, a price which is reimbursement of 8.3 cents on the dollar for plant investment and full reimbursement for fuel investment. Exh. 1 at 7.[4](17) Additionally, EUA Power will pay to the Maine and Vermont Utilities the continuing cost of fuel and construction from June 1, 1985 until the closing plus accrued interest and additional monthly payments if the closing is delayed beyond October 31, 1985.[5](18) If the closing takes place on March 31, 1986, those additional pay- ments will be $78,448,000 for plant and $4,943,000 for fuel leading to a total investment of $148,791,000. See, Exh. 1 at 9 and Exh. 11.

In addition to the cost of purchasing the Seabrook shares from the Maine and Vermont Utilities, EUA Power will have to support the continuing construction of Seabrook.[6](19) EUA Power will also have to pay the expenses of issuing its securities ($6,915,000), a Merrill Lynch Transaction Fee ($1,500,000), the cost of purchasing NHY stock ($8,000), the amount necessary to fund working capital and contingencies ($23,281,000), and other miscellaneous corporate expenses ($100,000). Exh. 12. Thus, total projected costs are commensurate with the $220,010,000 proceeds to be realized by the proposed borrowing. Id. See also, Exhs. 13, 14 and 15.

Additional flexibility is offered by the proposed $25,000,000 in short-term debt. Since this borrowing is in the nature of a line of credit and need not be utilized if it is not needed, the flexibility carries little or no risk or cost. If EUA Power does need to draw on its short-term credit, the cost of that borrowing, which is equal to prime, is reasonable and commensurate with market costs for this type of debt.

On the basis of the above analysis, we find that the terms, conditions and amount of the proposed financing are consistent with the public good.

Purpose

As noted previously, the purpose of the proposed financing is to enable EUA Power to engage in the business of a public utility as proposed. That purpose has been fully analyzed supra in our evaluation of whether to grant EUA Power the authority to commence business pursuant to RSA 374:22. Our analysis of the purpose of the financing is also inherent in the evaluation of the Maine and Vermont Utilities' Petitions described infra. We have found that there is a need for the service proposed by EUA Power and that EUA Power has the ability to provide that service. Those findings and the analysis which formed the basis of those findings are adopted here for our evaluation of the purpose of the proposed

financing. Accordingly, we find that the purpose of the proposed financing is consistent with the public good.

Financial Feasibility

We have generally evaluated financial feasibility in the context of whether the capital structure resulting from a proposed financing offers adequate protection to ratepayers and investors. The investor interest is in recovery of the investment and a reasonable return thereon. The ratepayer interest is available utility service at just and reasonable rates.

In the instant case, the circumstances are unusual. The unusual factors include: (1) the capital structure of the utility; (2) the rate of return inherent in the cost of the proposed financing; and (3) the fact that the determination of just and reasonable rates will not be undertaken by this Commission, but rather by the Federal Energy Regulatory Commission (FERC) which regulates wholesale rates.

With respect to the capital structure, we note that the 80% - 20% debt equity ratio is unusual and that this highly leveraged capital structure presents increased risk to the debt investors. However, the cost of the debt reflects this risk. Thus, in terms of our evaluation of investor exposure and given the unusual nature of EUA Power's business, we find that the capital structure is reasonable.

With respect to ratepayer interests, we note again that rates will be regulated by the FERC. We have also previously evaluated the costs of each individual component of the capital structure in our analysis of the terms and conditions, supra. EUA Power estimates that the rates to support this capital structure will approximate 12 cents per kwh prior to refinancing. See e.g., 1 Tr. 37-38. EUA Power has petitioned the FERC for, inter alia, a declaratory order that the cost based rates resulting from the proposed capital structure will be just and reasonable. The FERC has accepted the Petition, Re EUA Power Corp., Docket No. EL85-46000, and has established an expedited procedural schedule.[7(20)] Since it is the FERC which must ultimately approve wholesale rates and since the FERC has been asked to rule on the matter, we will make our findings contingent upon the findings of the FERC. Thus, subject to any determinations that may be made by the FERC, we find that the financial feasibility of the proposed financing is consistent with the public good.

Conclusion

We have found that the terms, conditions, amount, purpose and (subject to a FERC Order) financial feasibility of the proposed financing are consistent with the public good. Accordingly, pursuant to RSA 369:1-4 and 7, we will grant the requested financing authority. It must be emphasized that the facts which form the basis of our analysis are very unusual. Consequently, our findings and conclusions must be limited to the facts contained in the instant record and cannot be used as precedent by other jurisdictional utilities seeking financing authority. These unusual facts justify a highly leveraged

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capital structure with costs of debt and equity which significantly exceed the debt and equity capital costs of other New Hampshire utilities. Financing requests of other jurisdictional utilities will be evaluated on their own facts and our findings herein cannot be taken as indicative of a Commission finding of market-based costs for utility debt or equity securities.

B. Petitions of the Maine and Vermont Utilities

[6, 7] The Maine and Vermont Utilities are proposing to sell their Seabrook shares to EUA Power. They seek required Commission authority pursuant to RSA 374:30 to transfer their interests.

As an initial matter we note that such authority is required by RSA 374:30. The Maine and Vermont Utilities serve ratepayers in their respective states rather than in New Hampshire

8(21) and, accordingly, would not generally be required to seek RSA 374:30 approval to transfer all or a position of their assets. See also, RSA 374:24. However, the Maine and Vermont Utilities, by their Seabrook ownership, do participate in a New Hampshire electric power facility, RSA 374-A:1 III, and therefore are required to comply with applicable laws and regulations to the extent that they are applicable to the construction, operation and use of such facilities. RSA 374-A:7 II(b). Since the proposal is to transfer the Maine and Vermont Utilities' interest in a New Hampshire electric power facility, the RSA 374:30 requirement is applicable to the proposed transaction.

The RSA 374:30 requirement to obtain authorization to transfer assets is related to the RSA 374:22 authority to engage in business as a public utility. In both instances, this Commission is regulating the market; RSA 374:22 regulates market entry and RSA 374:30 regulates market exit. The criteria applicable to an RSA 374:22 determination are relevant to our determination here. We have found herein that there exists a need for the service; but, under the circumstances of this case, EUA Power is better able to ensure that the service will be provided than the Maine and Vermont Utilities. Those circumstances include, inter alia, findings by the Maine and Vermont regulatory authorities and determinations by the Maine and Vermont Utilities that the transfer of Seabrook shares would be in the public interest. Those regulatory findings and management determinations have increased the level of uncertainty about the ability of the joint owners to complete the construction of Seabrook. EUA Power is not subject to those regulatory findings and it has determined it is in its interest to acquire the Seabrook shares of the Maine and Vermont Utilities. Therefore, approval of the transfer significantly decreases the level of uncertainty that needed service will be provided. Accordingly, we

find that the proposed transfer is for the public good and, pursuant to RSA 374:30, we will grant the necessary authorizations.

Our Order will issue accordingly.

Concurring Opinion of Commissioner Aeschliman

While I concur with the decision of Chairman Iacopino, my analysis differs in some respects and this opinion will address those points. Chairman Iacopino's opinion relies upon findings made by the Commission majority in the Public Service Company of New Hampshire Seabrook financing case. (Re Public Service Co. of New Hampshire, 66 PUR4th 349, 388-394 (1985).) Since I filed a separate opinion in that case and the related New Hampshire Electric Cooperative case, which made different findings relative to the need for power, the economics of Seabrook completion and the effect of completion on New Hampshire ratepayers, it is important for me to

address the relevance of those findings to the findings in this case.

In addressing the petition of EUA Power Corporation (EUA Power), the Commission must first determine whether there is a need for the utility service EUA Power proposes to supply. The purpose for the formation of EUA Power is to facilitate the completion of the construction of Seabrook by having EUA Power purchase the Seabrook shares of Joint Owners who wish to sell their Seabrook shares. There is no dispute that transfer of the shares as proposed will reduce regulatory and financial uncertainty and increase the likelihood that the project will be completed in a timely manner. Consequently, the purpose in the instant situation is consistent with the public good if Seabrook completion is consistent with the public good.

My analysis in prior opinions has reached the following conclusions relative to Seabrook completion:

1. That completion of Seabrook is an economic question, in that there will not be actual capacity shortages if Seabrook is not completed;

2. That the potential economic benefit of Seabrook completion was marginal based upon an incremental economic analysis of Seabrook completion measured from January 1, 1985 compared with alternative sources of power;[1(22)]

3. That PSNH and the New Hampshire Electric Cooperative would face bankruptcy if Seabrook were not completed and that bankruptcy posed substantial risks for ratepayers that should be avoided if possible;

4. That it was in the public interest to complete Seabrook subject to appropriate conditions to protect ratepayers.

Since the time of that analysis there has been substantial additional investment in the Seabrook project and progress toward its completion. Consequently, one would expect that an incremental economic analysis performed at this time would be substantially more favorable to Seabrook completion relative to alternatives. However, the rate impact issues are essentially unchanged

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because rates are based upon total costs rather than incremental costs. I have found Seabrook completion to be in the public interest only under conditions which provide necessary protection to New Hampshire ratepayers. The majority of the Commission has not concurred with those conditions and appeals are pending on the financing cases for both Public Service Company of New Hampshire and New Hampshire Electric Cooperative, Inc.

While I continue to adhere to the findings in my prior decisions, I must assume for the purpose of this decision that we will proceed with Seabrook on the basis of the majority decisions. The question presented in this docket then is whether approval of the EUA Power petition improves the situation for New Hampshire utilities and ratepayers. Clearly, approval improves the situation for both the utilities and ratepayers by improving the likelihood of expeditious completion of Seabrook.

Because of the manner in which EUA Power is structured and financed there are no

additional risks to New Hampshire ratepayers or to the ratepayers of EUA Power's affiliated corporations. Investors will assume the entire risk that Seabrook is not completed and will lose their entire investment in that event. Assuming that Seabrook is completed, New Hampshire ratepayers will be affected only to the extent that a New Hampshire utility purchases power from EUA Power. In such a case, this Commission is required to review the prudence of the purchase relative to available alternatives in determining retail rates. Re Sinclair Machine Products, Inc., — N.H. —, 498 A.2d 696 (1985).

Some concern has been raised relative to the effect that EUA Power as a wholesaler might have on PSNH's ability to sell excess capacity. The fact that EUA Power's Seabrook power will be substantially cheaper than PSNH's Seabrook power is really not determinative in this regard. The price of wholesale capacity transactions among NEPOOL utilities, other than. requirements service contracts, will be based upon the market value of capacity and energy within NEPOOL. The market price will depend upon the overall supply of power available to NEPOOL utilities relative to the demand for power, and will not be affected by the identity of particular Seabrook owners or what their individual Seabrook costs are. In fact, while EUA Power Corporation will be selling Seabrook capacity and energy, it is likely that the operating utilities will use their nuclear capacity for base load and will sell excess capacity and energy from other generating plants.

Consequently, the formation of EUA Power Corporation, in and of itself, should not affect PSNH's ability to sell capacity. That ability will depend upon the capacity situation of NEPOOL as a whole. The price at which sales can be made will be very significantly below the full cost of PSNH's Seabrook power in any event. PSNH has estimated that full cost to be 23/KWH in 1986, declining to 17/KWH by 1992. On the other hand PSNH has estimated the price of an oil purchase to be 7.8/KWH in 1986 increasing to 9.4/KWH by 1992. (Re Public Service Co. of New Hampshire, 66 PUR4th 349, 450 [1985].) One can readily determine from this data that there will be enormous economic losses from the sale of excess capacity on the PSNH system in the early years of Seabrook operation. However, the economic losses are

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caused by the fact that PSNH's Seabrook power costs two to three times the market value of power in the years 1986-1992, rather than by the formation of EUA Power.

Based upon this analysis, I concur with the decision of Chairman Iacopino.

ORDER

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

ORDERED, that pursuant to RSA 374:22 and 26, EUA Power Corporation be, and hereby is, authorized to engage in business as a public utility solely for the purpose of participating as a joint owner in the construction of the Seabrook power plant and, upon completion of construction, for the purpose of selling its share of the output of the plant for resale; and it is

FURTHER ORDERED, that pursuant to RSA 374:33, EUA Power Corporation be, and hereby is, authorized to acquire shares of the stock of New Hampshire Yankee Electric Corporation in proportion to its ownership interest in the facility; and it is

FURTHER ORDERED, that pursuant to RSA 369:1-4, and subject to the condition set forth herein, EUA Power Corporation be, and hereby is, authorized to (i) issue and sell to EUA not more than 10,000 shares of common stock, $.01 par value, and not more than 500,000 shares of Class A 25% Preferred stock, $100 par value, and (ii) issue and sell to institutional and private investors not more than $170,000,000 in aggregate principal amount of unsecured Notes; and it is

FURTHER ORDERED, that the 500,000 shares of Class A 25% Preferred Stock, $100, par value may provide for either cumulative or noncumulative dividends and may be offered upon terms providing for its eventual mandatory conversion on a share-forshare basis into shares of common stock, $.01 par value; and it is

FURTHER ORDERED, that in the event the Class A 25% Preferred Stock is issued under terms providing for its eventual mandatory conversion into common stock, as authorized herein, EUA Power Corporation be, and hereby is, authorized to issue one share of common stock in exchange for each share of Preferred Stock surrendered in connection with such conversion; and it is

FURTHER ORDERED, that pursuant to RSA 369:7, EUA Power Corporation be, and hereby is, authorized to incur unsecured short-term borrowings from banks or EUA in an aggregate principal amount not exceeding $25,000,000 at any one time in the manner and upon the terms presented herein; and it is

FURTHER ORDERED, that the approval of the issuance, sale and the terms and conditions of the proposed securities is subject to the condition that the Federal Energy Regulatory Commission issue a declaratory order or the equivalent that the capital structure resulting from the proposed securities as they will actually be issued and sold will be just and reasonable for cost based wholesale ratemaking purposes; and it is

FURTHER ORDERED, that EUA Power Corporation 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, provided that said terms are consistent with the findings and conclusions of this Order; and it is

FURTHER ORDERED, that on July first and January first in each year, EUA Power Corporation 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 securities being authorized until the expenditure of the whole of said proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that pursuant to RSA 374:30 and RSA 374-A:7, Maine Public Service Company, Central Maine Power Company, Bangor Hydro-Electric Company and Central Vermont Public Service Corporation be, and hereby are, authorized to transfer their ownership interests in Seabrook Station to EUA Power Corporation.

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

1986.

FOOTNOTES

[1]Mr. Lahtinen sponsored the testimony of Steven J. Allenby, Assistant Vice-President of Corporate Planning, Rates and Financial Analysis of Central Vermont Public Service Corporation. Exhibit 19. We accepted the testimony as that of Mr. Lahtinen since it was his own individual expertise and analysis which allowed him to adopt Mr. Allenby's submission and he was the witness available for cross-examination.

[2]EUA Power also cited certain language in Grafton County Electric Light & P. Co. v. New Hampshire, 77 N.H. 539, PUR1915C 1064, 94 Atl. 193 (1915) as pertinent to the public good standard. That case applied to the determination of whether financing authority should be granted to a public utility already doing business in New Hampshire. We do not believe that the same standards governing whether an existing public utility business may issue and sell securities are necessarily pertinent to the market entry considerations inherent in an RSA 374:22 determination.

[3]The authority was granted nisi because the request was filed by NHY rather than the joint owners and, as entities directly affected by a Commission decision, we believed that the joint owners should be made parties to the proceeding and given an opportunity to comment. No adverse comments were filed by the joint owners and the nisi order became effective under its terms on July 17, 1985.

[4]As of June 1, 1985 the Maine and Vermont Utilities had invested $433,894,000 in plant and $29,441,000 in fuel. EUA Power will pay a base price of $35,959,000 for plant and $29,441,000 for fuel. Exh. 9.

[5]Those additional monthly payments are $1.9 million per month for November and December, 1985 and $4.7 million per month for January, February and March 1986.

[6]The continuing cost of construction from April 1, 1986 is estimated to be $39,415,000 assuming an October 31, 1986 commercial operation date. Exh. 12.

[7]On December 27, 1985, the parties to the FERC proceeding filed a settlement agreement with the FERC which, if accepted, will be the equivalent to a declaratory order that the cost based rates resulting from the capital structure which is a part of the settlement agreement will be just and reasonable for wholesale ratemaking purposes.

[8]It is true that Connecticut Valley Electric Company (CVEC) a wholly owned subsidiary of Central Vermont Public Service Corporation (CVPS), is a New Hampshire public utility serving New Hampshire retail ratepayers. CVEC does not as a separate corporate entity own any Seabrook shares. Although CVEC currently purchases practically all of its power requirements from CVPS, such a buyer-seller relationship must be investigated and approved by the Commission. Re Sinclair Machine Products, Inc., — N.H. —, 498 A. 2d 696 (1985). If CVEC's purchases from CVPS are found to be imprudent, the Commission can take appropriate action. Currently, the Commission is investigating CVEC's power supply relationship with CVPS pursuant to the Court's remand in Re Sinclair, supra. See, Order of Notice in Re Connecticut Valley Electric Co., Inc., DR 83-200, Jan. 2, 1986.

Concurring Opinion of Commissioner Aeschliman

[1]It is interesting to note that witnesses for both Central Maine Power Company and Central Vermont Public Service Company testified that their economic analysis produced the same conclusion. (Trans. Vol. II at 26, 70.)

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NH.PUC*01/15/86*[60711]*71 NH PUC 88*Pennichuck Water Works, Inc.

[Go to End of 60711]

71 NH PUC 88

Re Pennichuck Water Works, Inc.

Intervenor: Anheuser-Busch, Inc.

DE 85-161, Order No. 18,060

New Hampshire Public Utilities Commission

January 15, 1986

ORDER amending special contract water rates.

Rates, § 218 — Special contract rates — Grounds for amendment — Cost of service — Water.

Special contract water rates were amended in order to allow the utility to accurately and reliably recover its fairly allocated costs of serving the special contract customer; the commission found that without the rate amendment the utility would be unable to recover its cost of service.

APPEARANCES: Gallagher, Callahan & Gartrell by John B. Pendleton, Esquire and James L. Kruse, Esquire on behalf of Pennichuck Water Works, Inc.; Ransmeier & Spellman by Dom S. D'Ambruoso, Esquire on behalf of Anheuser-Busch, Inc.

By the COMMISSION:

REPORT

I. Procedural History

On May 17, 1985, Pennichuck Water Works, Inc. (Pennichuck), a public utility engaged in gathering and distributing water to the public in Nashua and Merrimack, New Hampshire, filed a petition pursuant to RSA 378:18 seeking approval of a proposed amendment to its special contract with Anheuser-Busch, Inc. (AB). The petition was filed in conjunction with Pennichuck's pending rate case, Docket No. DR 85-2.

Thereafter, on July 12, 1985, AB, as an intervenor in DR 85-2, filed a Motion To Consolidate

DR 85-2 with this docket. That motion was never addressed by the Commission. On October 18, 1985 the Commission issued Report and Order No. 17,911 in DR 85-2 (70 NH PUC 850) which approved an increase in annual revenues of $445,321 for Pennichuck. However, the Commission suspended the implementation of that increase until this docket was completed and a final decision rendered by the Commission.[1(23)] An Order of Notice was issued on November 14, 1985 scheduling a hearing in

this docket for December 5, 1985. At the December 5 hearing Pennichuck and AB presented prefiled testimony and exhibits. The Commission Staff did not present any testimony.

II. Position of the Parties

Pennichuck urges the Commission to approve the amendment to the special contract because it provides an adjustment to the rates paid for water service by AB, which, it contends, is necessary to make AB's rates more consistent with Pennichuck's actual cost to serve AB as shown by Pennichuck's Cost of Service Study (Exhibit No. 2). Pennichuck argues that the interests of all other customers are best served and protected by having AB pay the costs Pennichuck incurs in serving AB and that the proposed amendment is the most accurate and reliable way to accomplish that end.

AB also urges the Commission to approve the amendment to the special contract because, in its view, special circumstances continue to exist (Exhibit No. 1, pp. 4-6) and because the rates as applied to AB under the amendment will be consistent with Schedule C-6, Alternate F of Pennichuck's Cost of Service Study (Exhibit No. 2) which is part of the Settlement Agreement accepted by the Commission in Report and Order No. 17,911. In addition, AP argues that the amendment to the Special Contract is consistent with its philosophy and goal nationwide to pay its fairly allocated cost of service. (Exhibit No. 1, pp. 6 7).

Both AB and Pennichuck assert that special circumstances continue to exist to justify continuation of the special contract, that modification and adjustment of the rates in the special contract is necessary to make the contract rates more consistent with the cost allocation chosen by the Commission to be just and reasonable for Pennichuck, and that the resulting rates in the amended special contract are fair to AB and to Pennichuck's other customers. Both AB and Pennichuck also take the position that the Commission has no basis to abrogate the special contract during its term.

III. Commission Analysis

On February 28, 1969, Pennichuck filed with the Commission a petition to engage in business as a public utility in a limited area of the Town of Merrimack and for approval of a special contract for water service with AB. (Docket DE 5551). By its Order No. 9679 in DE 5551, the Commission granted the petition to serve Merrimack, and by separate Order No. 9685 in a segregated docket (Informed Docket No. IR 12,984), the Commission approved Pennichuck's Special Contract No. 5 with AB for a term of twenty-five years. The Commission found that sufficient special circumstances existed to justify approval of the special contract under RSA 378:18.

Under Special Contract No. 5, Pennichuck agreed to install a 24-inch water main to accommodate special needs associated with AB's new brewery in Merrimack and,in exchange, AB agreed to pay for water service at 50% of the lowest rate per 100 cubic feet of Pennichuck's tariff in effect from time to time on file with the Commission. AB also agreed to pay a fixed annual amount of $70,000, reducible as Pennichuck received revenues from new customers who hooked up to the 24inch main to the Merrimack franchise

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AREA. Over time, the minimum payment has been reduced to approximately $40,000-$45,000.

The special contract was necessary due to AB's unique size when compared to other existing customers and the need for a method to properly recover costs incurred by Pennichuck in serving AB. The special contract provided Pennichuck with a high load factor customer which stabilized and improved the peak to average water production, supplied revenue stability, and enabled the entire Merrimack area to develop for smaller users.

The immediate reason for the filing of an amendment to the special contract was the recognition by Pennichuck that its terms varied from the findings of a recently completed Cost of Service Study (Exhibit No. 2) which the Commission had ordered Pennichuck to conduct. (See Docket DR 80-134, Pennichuck's 1980 rate case.) This cost study showed that it was appropriate and necessary to make an adjustment to the rates generally and to the rates in the special contract.

The originally proposed amendment provided that AB would pay 70% of the last block of Pennichuck's proposed three block rate structure, and pay a $90,000 fixed annual minimum, whether or not AB takes any water. This originally proposed amendment was based upon the proposed three block rate structure and upon Pennichuck's requested revenue level, both of which have changed as the result of the Commission's rate order in DR 85-2.

On page 8 of the Report accompanying Order No. 17,911, the Commission stated that (70 NH PUC at p. 854):

[T]he rate structure portion of the Settlement Agreement contemplates that Pennichuck's general metered (G-M) service rates will be restructured consistent with schedule C-6 of the Alternate F tariff design contained in the Study except that consumption charges will consist of a two block rate design instead of the current three block rate design which the Study recommended be continued. The Amendment to the Special Contract is therefore inconsistent with the rate design proposed by the Settlement Agreement. Accordingly, Pennichuck and AB have agreed that the proposed Amendment is void and will be renegotiated.

To make the Special Contract consistent with the Settlement Agreement, AB and Pennichuck will propose a new Amendment and will be the same as the one originally proposed with the exception of the percentage figure contained in paragraph 3. That figure will be revised so that when applied to the last block of the two block design proposed in the Settlement Agreement, it will yield the revenue allocation set forth in Schedule C-6 of Alternate F in the Study. (emphasis supplied).

Accordingly, the parties revised the proposed amendment to make it consistent with Schedule C-6, Alternate F of the Cost of Service Study as per the Commission's directive above. The proposed amendment (Exhibit No. 5) provides that AB will pay 77% rather than 70% of the last block of Pennichuck's two block rate structure found by the Commission to be just and reasonable in DR 85-2 (see the Report accompanying the rate order pp. 5-10; see also September 4, 1985 Settlement Agreement, 5.0), and a $90,000 fixed annual minimum whether or not AB

takes any water. The 77% factor is calculated in Attachment A to the testimony of Mr. Robert Merlo of AB (Exhibit No. 1). We have reviewed the calculation and find that it is responsive to the Commission's directive cited above and that it yields the revenue allocation set forth in Schedule C-6, Alternate F of the Cost of Service Study.

Since the Cost of Service Study was based upon Pennichuck's requested revenue level of $6,475,000, the parties made an adjustment to reflect the $5,838,720 of revenues actually allowed by the Commission in its rate order. The reduction in overall revenue reduces the "total Merrimack" contribution to revenues from $373,743 (Exhibit No. 2, Schedule B-1, p. 1) to $333,557 (Exhibit No. 4). The AB share of the "total Merrimack" contribution is likewise reduced from $244,644 under the originally proposed amendment to $218,339 (Exhibit No. 4). The goal of the amendment then is to calculate a percentage figure which "when applied to the last block of the two block rate design ... will yield the revenue allocation" of $218,339. The 77% factor in the amendment, at AB's test year usage, will yield $221,871, an amount slightly higher than the total costs incurred by Pennichuck to serve AB (Exhibit No. 4).

The AB special contract rates will become effective consistent with Commission Supplemental Order No. 17,700 (70 NH PUC 595) which established Pennichuck's existing rates as temporary rates as of June 3, 1985. By using the June 3 effective date, the results of the new rate structure and the Cost of Service Study will be applied consistently to all of Pennichuck's customers.

In view of the above, we find that the 77% figure set forth in the amendment and calculated in Exhibit No. 1, Attachment A, properly recovers Pennichuck's costs to serve AB under Schedule C-6, Alternate F, which has been chosen by the Commission as the proper cost allocation in the rate proceeding. We also find that special circumstances continue to exist which justify the continued existence of the special contract. AB is still unique in its size, the volume of its usage and the stability of its load. Also, the special contract provides a method for Pennichuck to accurately and reliably recover its fairly allocated costs in serving AB. Without the amendment to the special contract, old contract provisions would remain in effect, and Pennichuck would not recover its costs to serve AB. Accordingly, we hereby approve the amendment to the special contract.

Our order will issue accordingly.

ORDER

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

ORDERED, that the proposed amendment to Special Contract No. 5 between Pennichuck

and AB as described in the foregoing Report be, and hereby is, approved and shall be effective as of June 3, 1985.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1986.

FOOTNOTE

[1]The Commission's rationale for suspending implementation is discussed in full at pp. 6-11 of the Report accompanying Order No. 17,911 (70 NH PUC at pp. 853-856).

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NH.PUC*01/16/86*[60712]*71 NH PUC 92*Portsmouth Water Works

[Go to End of 60712]

71 NH PUC 92

Re Portsmouth Water Works

DR 85-281, Supplemental Order No. 18,066

New Hampshire Public Utilities Commission

January 16, 1986

ORDER approving an increase in municipal water utility rates.

Return, § 26.1 — Capital structure — Municipal water utility.

In determining the capital structure of a municipal water utility, the municipality's last bond rating was used as a surrogate for both the " cost of equity" — i.e., accumulated retained earnings — and the cost of a general fund loan obtained from the municipality. [1] p. 93.

Rates, § 597 — Special factors — Change in rate structure — Revenue deficiency — Municipal water utility.

A municipal water utility requested to recover less than its full proven revenue deficiency in its revised tariffs because it expected that a change in rate structure from a declining block to flat rate would result in the receipt of revenues in excess of the requested deficiency; the utility agreed that if the change in rate structure resulted in recovery of more than the proven deficiency, it would file to reduce rates. [2] p. 93.

Rates, § 597 — Special factors — Accounting and reporting requirements — Municipal water utility.

State statute RSA § 362:4 states that a municipal corporation furnishing water outside its municipal boundaries shall not be considered a public utility for the purpose of accounting, reporting, or auditing functions with respect to said service; therefore, when setting rates for municipal water utilities, the commission must depend on a municipal utility's willingness to (1)

report on revenues earned and (2) file for tariff revisions where excess revenues are earned. [3] p. 93.

Public Utilities, § 57 — Municipal water utilities — Regulatory status — Operations beyond municipal limits — Commission jurisdiction.

In cases involving municipal water utilities, the commission has regulatory jurisdiction only over rates charged and service rendered to those customers outside the municipal boundaries. [4] p. 94.

Rates, § 234 — Procedures and formalities — Filing requirements — Municipal water utility.

Statement, in an order approving a rate increase and changes in the rate structure for a municipal water utility, that, in the future, the commission will require that the municipal utility complete all the filing requirements in a proper manner and provide substantial support for changes in rate design. p. 95.

APPEARANCES: Rance G. Collins, Superintendent, and Susan Diaz, Accountant for the Portsmouth Water Works;

Daniel D Lanning, Assistant Finance Director, and Robert B. Lessels, Water Engineer for the Commission Staff.

By the COMMISSION:

REPORT

I. Procedural History

On October 9, 1985, Portsmouth Water Works (Portsmouth), a public utility for service provided to limited areas of the Towns of Durham, Greenland, Madbury, and Newcastle, filed certain revisions to its tariff reflecting an increase in total gross revenues of $316,004 and other minor, non-revenue producing tariff changes. By Order No. 17,923, issued on October 31, 1985, the Commission suspended this filing.

An Order of Notice was issued on November 7, 1985, setting the matter for hearing which was held on December 17, 1985.

II. Revenue Requirement

[1] In the October 9, 1985 filing, Portsmouth proposed a rate base of $8,620,895, a rate of return of two and one half percent and a revenue deficiency of $430,772.07. At the request of staff and Portsmouth the hearing on December 17, 1985 was delayed while the two parties conferred concerning the calculations of the above.

Following the prehearing conference, Portsmouth presented its filing to the Commission. During the hearing Portsmouth revised its filing to reflect a rate base of $2,531,578.75, a rate of return of seven and one half percent and a revenue deficiency of $405,118.09.

The decrease in rate base is due to the recognition of $6,126,36.78 worth of customer

advances not included in the original filing.

The capital structure was provided as follows (hearing exhibit 1A):

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

Cost	Weight			
	$	%	%	%
Equity	$1,683,659	81.7	7.6	6.2
Long-term Debt	40,000	2.0	5.0	.1
General fund				
loan	336,947	16.3	7.6	1.2
	2,060,606	100.0		7.5

The cost of the general fund loan was determined by utilizing the City of Portsmouth's last bond rating as a surrogate. The city's last bond rating was also used in determining the cost on equity.[1](24)

The Commission believes this is an appropriate surrogate for the cost of equity, as well as the cost of borrowing from the city's general fund to the water works.

Based on the evidence provided in this filing, and the proposed changes therein, the Commission approves the proposed revenue deficiency of $405,119.09

[2, 3] As a final note, although Portsmouth has proven a revenue deficiency of $405,119.09, the requested increase is only $316,004 (as noted above). The reason given by Portsmouth for not requesting the full deficiency is that this tariff revision includes a change in the rate structure from declining block to a flat rate. Portsmouth is unsure of the revenue impact of this change in rate structure. Therefore, they are requesting the rates calculated to recover $316,004.00 assuming that the rates will actually collect more.

Portsmouth has assured the Commission that if the change in rate

structure begins to recover more than the deficiency allowed in this docket there would be a filing by the Water Works to reduce rates. This assurance is important to the Commission due to the fact that our ability to review the effectIveness of the approved rates is hampered by statute RSA 362:4. This statute states:

" ... . A municipal corporation furnishing water outside its municipal boundaries shall not be considered a public utility under this title for the purpose of accounting, reporting, or auditing functions with respect to said service."

The Commission, therefore, must depend on Portsmouth's willingness to report on the revenue earned from these rates. In this way we can perform our duties as the State Public Utilities Commission to protect those customers outside city limits which are served by Portsmouth Water Works.

We will accept Portsmouth's assurance that revenue earned in excess of that approved in this Report and Order will be reported and tariff revisions made as necessary.

III. Rates

In this docket, Portsmouth has filed various percentage changes to its general service and private fire protection rate structures. It is proposed that the minimum use customer, i.e., those who use less than 1400 cubic feet per four month period, be granted a rate reduction of 27% with the reasoning that most of these customers are "elderly people living alone".

The initial charge in the current and proposed tariff continues a scaled amount increasing with the size of the customer's meter and allowing a minimum use of 1200 cubic feet over a four month period. These charges have been increased by 10%.

The consumption charge for all water consumed above 1200 cubic feet, or 300 per month, is currently a three step declining block rate. It is proposed that all consumption above this level be at a single unit charge. Data filed by Portsmouth Indicates that revenues derived from this charge would be increased by 29%.

The charge for water sold to other utilities remains at a single unit charge, increased by 10%. The scaled charges for private fire protection service have also been increased by 10%.

[4] It is our opinion that absent a cost study that demonstrates and justifies the application of varying levels of increase to different functions, that a general rate increase should be by equal percent increases to all rates. In this docket, and in all cases involving municipal water utilities, we have jurisdiction only over those customers served outside the municipal boundaries. In the instant docket that is approximately 12% of the total customers served; however, Portsmouth applies the tariff before us to all customers. For that reason we will accept the rates as proposed, but we strongly suggest that Portsmouth, in any future request brought before this Commission, apply equal percent increases to all rates.

We concur in the basic metered rate design that Portsmouth has now proposed, i.e.: the single unit charge for all consumption. We have approved such a charge in dockets DR 81-388, Manchester Water Works, and DR 84-5, Derry Wate Works.

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IV. Conclusion

Portsmouth has requested a substantial increase and a significant change in its rate structure in the instant proceedings. The justification for both is surprisingly lacking. For future filings, the Commission will require that Portsmouth complete all the filing requirements for rate proceedings in a proper manner and provide substantive support for changes in rate design.

Further, to expand on our earlier statements concerning reporting, we will request that staff meet with Portsmouth and explore methods of reporting financial statement on a continuing basis which may be agreeable with Portsmouth. This will provide the Commission with some continually reported financial information. It is necessary to have this information so that the seven hundred plus customers served outside the city limits may be provided knowledgeable representation by this Commission. We hope Portsmouth will cooperate with this effort.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Portsmouth Water Works having demonstrated a revenue deficiency of $405,119.09, that the tariff revisions filed by Portsmouth Water Works on July 30, 1985, and October 9, 1985, and suspended by Order No., 17,923, dated October 31, 1985, be and hereby are accepted; and it is

FURTHER ORDERED, that these tariffs pages shall be effective on all bills rendered on or after January 1, 1986, and shall further bear the notation "Authorized by N.H. P.U.C. Order No. 18,066 in Case DR 85-281, dated 1/16/86 1986;"

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1986.

FOOTNOTE

[1]Equity in this filing is the accumulated retained earnings for the water works.

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NH.PUC*01/20/86*[60713]*71 NH PUC 96*Public Service Company of New Hampshire

[Go to End of 60713]

71 NH PUC 96

Re Public Service Company of New Hampshire

Additional petitioners: Community Action Program and New Hampshire Division of Human Resources

Intervenor: Volunteers Organized in Community Education

DR 82-333B, 20th Supplemental Order No. 18,068

New Hampshire Public Utilities Commission

January 20, 1986

ORDER denying motion for rehearing of an order rejecting a proposed lifeline electric rate program.

Rates, § 125 — Reasonableness — Lifeline rates — Participation rate — Benefit/burden balance.

In denying a motion for rehearing of an order rejecting a proposed lifeline electric rate program, the commission reiterated its earlier finding that the projected program participation rate was too low to justify the burden of program costs; the commission held that a 43.4% threshold participation rate represents the absolute minimum necessary to trigger re-evaluation of its rejection of the lifeline program. [1] p. 97.

Rates, § 125 — Reasonableness — Lifeline rates — Participation rate — Benefit/burden

balance.

Notwithstanding its denial of a motion for rehearing of an order rejecting a proposed lifeline electric rate program, the commission granted the petitioners leave to file a new request for implementation of the lifeline program based on an analysis of empirical data developed during the winter months, if the petitioners believed that such data would support a finding that participation levels would be sufficiently high to support the burden of program costs. [2] p. 97.

Rates, § 125 — Reasonableness — Lifeline rates — Impact of Seabrook rates on low-income customers — Grace period.

In denying a motion for rehearing of an order rejecting a proposed lifeline electric rate program, the commission rejected a contention that it erred in finding that there exists a grace period in which to study methods of alleviating the burden of Seabrook electric rates on low-income customers; justification for the grace period was held to continue to exist because rates resulting from the inclusion of Seabrook 1 in rate base could not possibly become effective until after the commercial operation date of the plant. [3] p. 99.

Rates, § 125 — Reasonableness — Lifeline rates — Factors justifying approval.

In denying a motion for rehearing of an order rejecting a proposed lifeline electric rate program, the commission held that arguments concerning the need for the program could not stand as an independent justification for approval. [4] p. 99.

APPEARANCES: As previously noted.

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By the COMMISSION:

REPORT

On December 13, 1985, the Commission issued its Report and Nineteenth Supplemental Order No. 17,994 (Decision) (70 NH PUC 1045) in this docket which denied without prejudice the request of Public Service Company of New Hampshire (PSNH), Community Action Program (CAP) and the State of New Hampshire Division of Human Resources (DHR) (jointly referred to as Petitioners), to implement a targeted lifeline program on a systemwide basis. The Commission allowed the existing pilot program to continue and provided that if the data generated by that program during the winter of 1985/1986 indicated a participation rate above the thresholds identified by PSNH in testimony, the Petitioners may renew their request by filing an appropriate petition. On January 2, 1986, the Petitioners filed a timely Motion for Rehearing and Modification averring pursuant to RSA 541:3 that the Decision is unlawful, unjust and unreasonable. On January 10, 1986, Volunteers Organized in Community Education (VOICE) filed an objection to the Petitioners' Motion.

In their Motion, the Petitioners' contend that rehearing or modification is warranted because:

1) The Commission's conclusion that "... a low participation rate tips the benefit/burden balance toward the burdens" (70 NH PUC at p. 1053) is based, in part, on a finding which is

contrary to the evidence;

2) There is new evidence indicating that the Petitioners' will be able to achieve participation rate thresholds;

3) The assumption in the Decision of an eligible population of 6,000 in the pilot area was erroneous;

4) The Commission erred in its finding that a "grace" period continues to exist;

5) It is unreasonable to defer the implementation of a program that is needed immediately by the low-income population.

After review and consideration we will deny the Petitioners' Motion. We shall discuss in turn each of the grounds identified above.

The Benefit/Burden Balance

[1, 2] The Petitioners argue that the Commission was incorrect in its finding that all low-income eligible ratepayers who are not certified will be paying higher rates. Since this finding supports the Commission's conclusion that the burdens of a targeted program exceed the benefits when there is a low participation rate, the Commission should grant Petitioners' Motion for Rehearing or Modification.

Our review of the evidence cited by the Petitioners reveals that the Motion is correct to the extent that it argues that up to 20.6% of PSNH's low-income customers could pay higher rates if the targeted program is not implemented. It is important to note, however, that the 20.6% figure is a maximum. The figure reflects the percentage of lowincome ratepayers who on average have

monthly usage of over 501 kwh.[1(25)] To the extent that the figure includes ratepayers whose average monthly usage is between 500 to 550 kwh, it is overstated because the burden of paying for benefits to low usage customers is not imposed until a customer's monthly usage is 550 kwh or more. The 20.6% figure could also be misleading because low-income ratepayers who have higher usage are more likely to be receiving Fuel Assistance Program benefits and accordingly may not be experiencing the impact of the rate shift.

In any event, even if the Commission accepts arguendo the 20.6% figure, it would not change our conclusion. In that case, we would be confronted with the targeted program where 21.7% of the eligible ratepayers benefit and the residual 78.3% bear the burden compared to the non-targeted program where 79.4% of the population who would have been eligible under the targeted program benefit and only the residual 20.6% bear the burden. The conclusion dictated by the benefit/burden balance does not change. As we stated in the Decision (70 NH PUC at p. 1053):

... PSNH witness Rodier testified that if the program could not achieve a participation rate of at least 43.4%, or 18,000 certified customers, there is some defect in the program and it should be abandoned. 1 Tr. 35. While we do not necessarily agree that a participation rate of 43.4% is sufficient to find that the benefits exceed the burdens, we need not reach that question here. There is no dispute that the achieved participation rate of 21.7% is too low.

Thus, if it were ultimately to be accepted, the 20% figure applicable to the non-targeted rate may affect the definition of the particular participation rate at or above 18,000 where benefits exceed burdens. However, since no evidence exists, even in the Motion for Rehearing, that the Petitioners have achieved the threshold participation level of 43.4% (or 18,000), we need not reach the issue here of pin-pointing the precise level of participation necessary to warrant system-wide implementation of the program. Accordingly, the Motion for Rehearing will be rejected on this ground.

New Evidence

The Petitioners assert that new evidence warrants a reexamination of probable participation rates. Initially, we must note that the new empirical data identified by the Petitioners indicates that the program continues to fall short of the 43.4% (or 18,000 customer) threshold participation rate that represents the absolute minimum necessary to trigger Commission re-evaluation. Secondly, we note that in the Decision we recognized that the Petitioners may have achieved disappointing participation rates because the pilot program ran during the summer months. By approving the continuation of the pilot program through the winter of 1985/86, we allowed the Petitioners the opportunity to develop empirical support for their assertion that acceptable participation rates would be achieved if the program ran during the winter months.

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Since we are in the midst of those winter months, the Petitioners' request to review our findings, based as it is on inadequate new data, is premature. The Petitioners continue to have leave to file a new request for system-wide implementation based on an analysis of empirical data developed during the winter of 1985/86 if they believe that the data to be developed supports such a new filing. We believe that such a new filing could not occur until after the winter season has ended.

Eligible Population

The Petitioners argue that the Commission erred in accepting the assumption of 6,000 eligible population in the pilot area. The Commission's finding was based on substantial record evidence. That evidence included testimony by the Petitioners' own witnesses that the 6,000 figure was based on census data and was the best information available. It is true that those same witnesses expressed discomfort with the number, but they failed to offer a preferable alternative. After a full evaluation of all the evidence, we found that the assumption of an eligible population of 6,000 in the pilot area was reasonable. No evidence or argument which was unavailable at the time of the original hearings has been proffered.[2(26)] After review, we can ascertain no reason to disturb our original finding. Accordingly, the Motion for Rehearing will be denied on this ground. Grace Period

[3] The Petitioners contend that the Commission erred in its finding that there exists a "grace" period in which to study methods of alleviating the burden of Seabrook electric rates on lowincome customers. The Petitioners' argument is based on PSNH's estimate of an October 31, 1986 commercial operation date for Seabrook Unit I. Our finding of a grace period in the Decision was that a similar period between the Decision and Seabrook commercial operation

exists here as existed at the time the Commission decided to study a targeted lifeline rate in Re Public Service Co. of New Hampshire, 69 NH PUC 67, 57 PUR4th 563 (1984). This situation was caused by the delay identified in PSNH's March, 1984 cost and schedule estimates. The current assumption of an October 31, 1986 commercial operation date does not disturb our analysis. We continue to be able to develop data and analysis during the 1985/1986 winter period for use in designing programs. The rates resulting from the inclusion of Seabrook I in rate base could not possibly become effective prior to the commercial operation date of Seabrook, RSA 378:30-a, and, thus, could not be effective until the winter of 1986/1987 at the earliest. Since an appropriate grace period continues to exist, we will deny the Motion for Rehearing on this ground.

Need For the Program

[4] The Petitioners contend that the Commission erred in rejecting a program that is needed immediately by low-income ratepayers. This argument misapprehends the scope of the instant proceeding. As discussed fully in the Decision, the policy decisions about the appropriate design of a lifeline rate

were made in Re Lifeline Rates, 68 NH PUC 216 (1983). This proceeding is not an opportunity to relitigate the issues resolved in that docket. Rather, this proceeding is an attempt to design a program particularly applicable to PSNH because factors unique to PSNH justified a waiver of the Commission's general standards. As we found in Re PSNH, supra and affirmed in the Decision, those related factors are: "... 1) the need to address major rate increases resulting from the completion of Seabrook; and 2) the inappropriateness of a rate design which encourages conservation given the need to address the upcoming problem of revenue erosion." (70 NH PUC at p. 1047.) If the above factors disappeared, the rationale supporting a waiver from the Commission's lifeline standard would likewise disappear. Since reasons external to the factors justifying a waiver have already been litigated, considered and resolved in Re Lifeline Rates supra, they cannot stand as independent justifications for a targeted lifeline rate in this proceeding. Accordingly, the Motion for Rehearing will be denied on this ground.

Our Order wi11 issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the January 1, 1986 Motion for Rehearing and Modification in Connection with Report and Nineteenth Supplemental Order No. 17,994 (70 NH PUC 1045) of Public Service Company of New Hampshire, Community Action Program and State of New Hampshire, Division of Human Resources be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentieth day of January, 1986.

FOOTNOTES

[1]The low-usage benefits of the existing nontargeted rate are paid by those customers whose usage is between 550 and 800 kwh. The Petitioners' Exhibit TL-11 shows that 14% of the certified low-income customers had monthly usage ending in the 501-800 kwh block and 6.6% of the certified low-income customers had monthly usage which exceeded 801 kwh.

[2]We are not required to grant Motions for Rehearing to hear evidence or argument available at the original proceedings. Re Gas Service, Inc., 121 N.H. 797, — A.2d — (1981); O'Laughlin v. New Hampshire Personnel Commission, 117 N.H. 999, — A.2d — (1977).

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NH.PUC*01/20/86*[60714]*71 NH PUC 101*Gas Service, Inc.

[Go to End of 60714]

71 NH PUC 101

Re Gas Service, Inc.

Intervenors: W. R. Grace & Company, and Anheuser-Busch, Inc.

DR 85-390, Order No. 18,078

New Hampshire Public Utilities Commission

January 20, 1986

ORDER approving interruptible gas sales contracts.

Rates, § 380 — Gas — Contract rates — Interruptible sales — Commission approval.

Interruptible sales contracts between a natural gas distribution company and two industrial customers were approved based on a finding that the contracts resulted in a margin of approximately $450,000 that would not otherwise have been returned to customers, being returned to customers through the cost of gas adjustment mechanism; the contracts were approved notwithstanding the fact they were initially entered and exercised without commission approval, in violation of state statute RSA § 378:18.

By the COMMISSION:

ORDER

WHEREAS, on November 14, 1985, Gas Service, Inc. filed with this Commission a letter requesting approval of interruptible sales contracts with two customers, W. R. Grace & Company and Anheuser-Busch, Inc. for the period April through October, 1985, and

WHEREAS, these contracts were exercised without Commission approval as required pursuant to RSA 378:18; and

WHEREAS, a description of the pricing mechanism, the actual prices charged, and the volume sold during the 1985 period, as well as the rationale for adopting the pricing mechanism, were presented as evidence and are part of the record in DR 85-348; and

WHEREAS, this Commission in its Order No. 17,934 in DR 85-348 (70 NH PUC 881), caused Gas Service, Inc. to be fined $5,000 for failing to attempt to obtain approval for these contracts pursuant to the cited statute and

WHEREAS, said fine was directed toward the improper administration of the contract in question, and was not directed at the propriety of the contract provisions themselves; and

WHEREAS, upon investigation and review of the testimony and exhibits in DR 85-348, the Commission finds that the execution of the contracts resulted in a margin of approximately $450,000 being returned to the company's customers through the cost of gas adjustment, a sum which would not have

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been returned had the contracts not been executed; and

WHEREAS, the Commission is satisfied that the public interest was served by execution of the contract, it is

ORDERED, that interruptible sales contracts with W. R. Grace & Company and Anheuser-Busch, Inc. for the period April to October, 1985, be and hereby are approved; and it is

FURTHER ORDERED, that executed copies of those contracts be filed with this Commission by February 1, 1986.

By order of the Public Utilities Commission of New Hampshire this twentieth day of January, 1986.

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NH.PUC*01/20/86*[60715]*71 NH PUC 102*City of Claremont

[Go to End of 60715]

71 NH PUC 102

Re City of Claremont

Additional petitioner: E. Charles Goodwin Community Center

DE 85-417, Order No. 18,080

New Hampshire Public Utilities Commission

January 20, 1986

ORDER granting limited public utility status to a community center for the purpose of operating two customer-owned, coin-operated telephones.

Service, § 456 — Telephone — Customerowned, coin-operated telephones.

A community center was granted limited public utility status for the purpose of operating two customer-owned, coin-operated telephones where said telephones (1) were registered with the Federal Communications Commission, (2) would be connected to the telephone network via measured business service, and (3) would be operated under the guidance of a prior commission order.

By the COMMISSION:

ORDER

WHEREAS, on December 13, 1985, the E. Charles Goodwin Community Center in the city of Claremont, New Hampshire filed with the Commission its petition for status as a limited public utility for the purpose of installing and operating two customer-owned, coin-operated telephones (COCOTs) in said city; and

WHEREAS, the Center proposes to install COCOTs manufactured by Automatic Electric which bear FCC Registration No. B4X8NY-13913-CX-R; and

WHEREAS, said telephones are to be connected to the network via measured business service and will be operated under the guidance of Commission Order No. 17,486 (70 NH PUC 89) pending issue of final rules and regulations; it is

ORDERED, that the City of Claremont, New Hampshire; Department of Parks and Recreation; E. Charles Goodwin Community Center, be, and hereby is, granted limited public utility status for the purpose of operating two COCOTs located at the Center, 130 Broad Street, Claremont, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this twentieth day of January, 1986.

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NH.PUC*01/23/86*[60716]*71 NH PUC 103*Essex Hydro Associates

[Go to End of 60716]

71 NH PUC 103

Re Essex Hydro Associates

Intervenor: Public Service Company of New Hampshire

DR 85-407, Order No. 18,086

New Hampshire Public Utilities Commission

January 23, 1986

ORDER nisi approving a petition for a thirty-year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Junior lien.

A small power producer's petition for a thirty-year rate order for a hydroelectric project was approved where the petitioner granted the interconnecting utility a junior lien covering the buy out value of the project.

By the COMMISSION:

ORDER

WHEREAS, on December 4, 1985, Essex Hydro Associates (EHC) filed a long term rate petition for the Briar Hydro - Rolfe Canal Project; and

WHEREAS, EHC filed amendments to its filing on December 11, 1985, December 30, 1985 and January 14, 1986; and

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

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

WHEREAS, EHC 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 of the Project; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to EHC's Petition for a thirty-year rate order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]) in all respects other than the lien; it is therefore,

ORDERED NISI, that EHC's Petition for a thirty-year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheets is approved; and it is

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

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

By order of the Public Utilities Commission of New Hampshire this twentythird day of January, 1986.

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NH.PUC*01/29/86*[60717]*71 NH PUC 104*Concord Steam Corporation

[Go to End of 60717]

71 NH PUC 104

Re Concord Steam Corporation

Intervenor: New Hampshire State Hospital

DR 85-304, Second Supplemental Order No. 18,095

New Hampshire Public Utilities Commission

January 29, 1986

ORDER granting an increase in temporary steam heating rates.

Rates, § 630 — Temporary rates — Steam heating — Factors affecting rate levels — Actual versus projected data.

State statute RSA § 378:27 provides that temporary rates are to be based on information contained in reports filed with the commission by the utility, unless there appears to be reasonable ground for questioning that data; where utility supplied data supporting an increase in temporary rates was based on projected rather than actual data, and actual data was available from the commission staff, the actual data was found to be more consistent with the statutory standard and, accordingly, was used in setting temporary rates for a steam heating utility. [1] p. 106.

Rates, § 630 — Temporary rates — Effective date — Effect on permanent rates.

The issue of determining the effective date of the temporary rates is important because state statute RSA §§ 378:29 and 30 requires that the permanent rates finally established be retroactive to the effective date of the temporary rates. [2] p. 107.

Rates, § 630 — Temporary rates — Effective date — Two-tier system.

In an order increasing previously approved temporary steam heating rates, a two-tiered system of retroactive rates was established; the first tier was limited to the temporary rates established in the previous order, and was applied between the effective date established in the previous order and the effective date of the order granting the increase in temporary rates; the second tier rates would equal the permanent rates finally established and would become effective as of the effective date of the increased temporary rates. [3] p. 107.

Rates, § 630 — Temporary rates — Effective date — Notice to ratepayers.

Because ratepayers do not have notice of temporary rate increases prior to the issuance of a commission order, absent extraordinary circumstances warranting an earlier effective date, the commission will generally establish the issuance date of its order establishing temporary rates as the effective date of the temporary rates. [4] p. 107.

Rates, § 630 — Temporary rates — Effective date — Retroactive temporary rates.

The disproportionate effect of January steam sales in combination with an approved level of temporary rates below that calculated by the commission staff, was found to constitute an extraordinary

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circumstance which warranted departure from the general practice of establishing the date of issuance of a temporary rate order as the effective date of that order, and to justify the establishment of an earlier effective date encompassing the month of January. [5] p. 107.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On December 17, 1985, Concord Steam Corporation (Company) filed with the Commission, a request for approval of a meter rate of $10.00 per M pounds of steam on Service Classification G (General) effective January 1, 1986. The Company further requested that temporary rates be established at the $10.00 per M pound level effective January 1, 1986. On January 6, 1986, the Commission issued an Order of Notice scheduling a hearing for January 23, 1986 on the issue of whether to grant the requested temporary rates effective January 1, 1986 or thereafter and to establish a procedural schedule for resolving the remaining issues in this docket. The hearing was held as scheduled on January 23, 1986 and was concluded on January 24, 1986. Testimony was presented by Richard LeClair, CPA; William D. Biser, CPA; Roger G. Bloomfield, President of the Company; and Daniel Lanning, the Commission's Assistant Finance Director.

As provided in the Order of Notice, the issues at the hearings of January 23 and 24, 1986 were the establishment of a procedural schedule for adjudicating the issues in this docket, whether to grant temporary rate relief and, if so, the level and effective date of such relief. We shall address each issue in turn.

PROCEDURAL SCHEDULE

The parties submitted the following proposed procedural schedule to the Commission:

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

February 14, 1986 Due date for tariff
 filing data.
April 4, 1986 Due date for data
 requests.
April 18, 1986 Due date for responses
 to data requests.
May 9, 1986 Due date for submission
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 of prefiled testimony
 and exhibits of Staff and
 intervenor.
May 16, 1986 Due date for data requests.
May 30, 1986 Due date for responses to
 data requests.
June 3 & 4, 1986 Hearings.
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We have reviewed the proposed schedule. We note that the April 4, 1986 deadline for data requests allows sufficient time for the Staff to complete an audit of the Company. We find that the proposed procedural schedule is reasonable and, accordingly, it will be approved.

TEMPORARY RATES

By Report and Supplemental Order No. 17,893 (70 NH PUC 837) in this docket the Commission approved temporary rates in the amount of $9.05 per M pounds of steam for all service rendered on or after October 1, 1985. Subsequent to that time, the Company has amended its rate request upward to $10.00 per M pounds of steam and requested that the temporary rates be increased to that level. The Staff agreed that the Company had satisfied its burden of demonstrating the need for increased temporary rates. After review and consideration, we find that an

increased level of temporary rates will be just and reasonable and, accordingly, such an increase will be approved. The remaining issues to be determined are the level and effective date of the increased temporary rates.

Level of Temporary Rates

The Company requested that temporary rates be established at a level of $10.00 per M pounds of steam in accordance with the schedules filed in support of its request for permanent relief. Those schedules were based on a test year ending June 30, 1985 as modified by post test year projections. The Staff recommended that temporary rates be established at a level of $9.49 per M pounds of steam based on the actual data in the Company's books and records for the year ending December 31, 1985. Both the Staff and the Company utilized the rate of return previously found reasonable by the Commission. The New Hampshire State Hospital supported the Staff.

After review and consideration we will approve temporary rates at a level of $9.38 per M pounds of steam. Our decision is based upon our acceptance of the Staff rationale as adjusted for updated information unavailable before the hearing.

[1] The Staff calculations are set forth on Exhibit T-6. The significant differences between the Staff calculations and the Company calculations are: 1) the Staff used actual data rather than projected data; 2) the Staff rate base calculations reflected actual reductions in the Company's working capital; and 3) the Staff did not include federal income tax liability because the Company is a Subchapter S corporation and accordingly has no corporate federal income tax liability. For the purposes of temporary rates, the Staff's analysis is to be preferred. RSA 378:27 provides, inter alia, that temporary rates are to be based on the information contained in the reports of the utility filed with the Commission, unless there appears to be reasonable ground for questioning that information. The use of actual data is more consistent with this statutory

standard than the use of projected data. We also believe that the Staff properly calculated the rate base for temporary rate purposes. The Company argued that the working capital component of rate base as reflected in the books is understated because management applied previous losses to working capital. The Staff argued correctly that the decision to reduce working capital as distinguished from meeting needs by additional financing or requests for rate relief was in the hands of management. For temporary rate purposes, we shall accept those decisions at face value. We expect to review the prudency of management decisions in the course of the upcoming permanent rate proceedings and to make whatever adjustments to rates as may be warranted by that review. Finally, we believe that the issue of the inclusion of federal income tax liability in the rates of a Subchapter S corporation is too complex for a temporary rate proceeding. Thus, the issue should be deferred until we can review the record to be developed in the upcoming permanent rate proceedings.

As noted, the Staff analysis supported a rate of $9.49 per M pounds of steam (Exh. T-6). This analysis was based on historic 1985 annual sales of 312,306 M pounds as reflected in the reports filed with the Commission. In the course of the January 24, 1986

hearing, the Company revealed that it had discovered an error in the data filed with the Commission. Thus, the Company's historic sales for the year ending December 31, 1985 were 315,858 M pounds. Mr. Lanning testified that the use of the corrected sales figures would lower the rate to $9.38 per M pounds of steam. Since we are basing our decision on the level of temporary rates on the updated actual financial information, RSA 378:27, it is appropriate to incorporate the corrected sales figures into the calculation. Accordingly, we will approve herein temporary rates of $9.38 per M pounds of steam.

Effective Date

[2, 3] The issue to be determined here is the effective date of the $9.38 temporary rates. This issue is important because the permanent rates to be established in this docket will be retroactive to the effective date of temporary rates. RSA 378:29 and 30.

All parties agreed on the reconciliation of the effective date to be established herein with the temporary rates established in Order 17,893. To the extent that permanent rates do not exceed $9.05 per M pounds of steam, such rates will be retroactive to the October 1, 1985 effective date established in Order 17,893. To the extent that permanent rates are established at a level which exceeds the $9.05 temporary rate level previously noticed and established, a two-tier system of retroactive rates will be established.[1](27) The first tier will be limited to the $9.05 rates approved in Order 17,893 and will be applied between October 1, 1985 and the effective date for temporary rates established herein. The second tier rates will equal the permanent rates to be approved in this docket and will be effective as of the effective date of the temporary rates established herein.[2](28) We accept and adopt this reconciliation method.

Having established the method of reconciliation, it remains to set an effective date for the temporary rates established herein—an effective date which will also apply retroactively to permanent rates if they exceed $9.05 per M pounds of steam. The parties disagree on the issue of an appropriate effective date.

The Company argues in favor of the January 1, 1986 effective date proposed in its filing. The Company supported its argument by referring to data which, if accepted in the permanent rate phase of this proceeding, would establish that the $9.05 rate level is insufficient to maintain the Company's financial integrity. The Company further argues that since 20% of its sales take place in January (Exh. T-3), an effective date that excludes January would have a disproportionate adverse effect.

[4, 5] The Staff and the New Hampshire State Hospital argue that the temporary rate effective date should coincide with the date of their Order. This argument is based on the issue of notice. Since the Company's ratepayers cannot have notice that second-tier

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temporary rates will be approved until the Commission issues an Order, they have no notice that they are subject to higher rates and cannot base buying decisions accordingly. The Staff and the New Hampshire State Hospital concede that the Commission may establish an effective date retroactive to the date requested by the Company; however, they argue that such a retroactive date should only be approved under extraordinary circumstances. A review of the Company's cash flow indicates that such extraordinary circumstances do not exist in this case.

After review and consideration, we will approve temporary rates effective for service rendered on or after January 1, 1986.

Our analytical framework is identical to the analysis recommended by the Staff. This Commission has the authority to set temporary rates retroactive to the filing date of the Company request at the earliest, Re Pennichuck Water Works, 120 N.H. 562, — A.2d — (1980).[3(29)] However, the establishment of an early limit does not require us to choose that early effective date in all instances. Thus, the selection of an effective date is an exercise of Commission discretion requiring us to consider a number of relevant factors. In Re Pennichuck, the court noted that customers have a right to rely on the rates which are in effect at the time that they consume the services provided by the utility, at least until they have notice that those rates are subject to change. 120 N.H. at p. 566. Consequently, a critical factor governing the exercise of our discretion in the establishment of an effective date for temporary rates is notice to a utility's customers of their exposure to higher rate levels. Since a request for either a temporary or a permanent rate increase could be denied by the Commission, a utility's customers cannot ascertain with certainty the level of rates which will be approved until the Commission issues an order. Accordingly, the issuance of a Commission order is the preferred method of notice to the utility's customers.

The result of the above analysis is that absent extraordinary circumstances warranting an earlier effective date, the Commission will generally exercise its discretion by establishing the issuance date of the Commission's order as an effective date for temporary rates. The Staff argued that such extraordinary circumstances do not exist in this case. The Company argued that such circumstances justify the establishment of a January 1, 1986 date. For the reasons set forth below, we find that the Company has met its burden of demonstrating that extraordinary circumstances exist which justify an earlier effective date.

The Staff's analysis was based on its assessment of the impact of the temporary rate effective date on the Company's cash flow. If an early effective date makes the difference between a negative and positive cash flow, then an early effective date may be justified. We agree. In this case, the inclusion or exclusion of the month of January in the temporary rate period has a significant and disproportionate effect on the Company's cash flow. This is because approximately 20% of Concord Steam Corporation's annual sales take place in the month of January.

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Exhibit T-3. The record in this proceeding supports a finding that the Company's cash flow would be marginally acceptable if temporary rates were established at a level of $9.50 per M pounds of steam effective February 1, 1986. In that instance, the Company could expect to generate a positive cash flow of approximately $11,000 through June 30, 1986.[4(30)] However, as discussed above, we are establishing temporary rates at a level of $9.38 rather than at $9.50, a rate which, if effective February 1, 1986, would decrease the $11,000 positive cash flow and could, in fact, result in a negative cash flow. Thus, a marginally acceptable situation has become a marginally unacceptable situation. The disproportionate effect of January sales in combination with an approved level of temporary rates below that calculated by the Staff[5(31)] has cash flow consequences which are the extraordinary circumstances warranting the establishment of an early effective date in this instance. We also note the unusual procedural history of this case which may have delayed the Company's filing for increased temporary relief. Under normal circumstances, we would expect the Company to plan its filings so that there is ample time to adjudicate the matter without the necessity of retroactive relief. Accordingly, we will allow temporary rates to be effective for all service rendered on or after January 1, 1986.

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 shall be as set forth in the foregoing Report; and it is

FURTHER ORDERED, that Concord Steam Corporation's proposed temporary rates of $10.00 per M pounds of steam be, and hereby is, denied; and it is

FURTHER ORDERED, that pursuant to RSA 378:27, Concord Steam Corporation be, and hereby is, permitted to charge temporary rates of $9.38 per M pounds of steam for Service Classification G (General) effective for all service rendered on or after January 1, 1986; and it is

FURTHER ORDERED, that pursuant to RSA 378:30, said temporary rates be collected under bond subject to refund pending final determination of permanent rates.

By order of the Public Utilities Commission of New Hampshire this twentyninth day of January, 1986.

FOOTNOTES

[1]Although permanent rates may exceed $9.05 per M pounds of steam, they cannot exceed the $10.00 level of relief requested by the Company absent a further formal request by the Company and appropriate notice to the public. See e.g., Re Pennichuck Water Works, 120 N.H. 562, — A.2d — (1980); RSA 541-A:16 III.

[2]If permanent rates exceed $9.05 but are less than $9.38, the Company will refund the difference between the permanent rates allowed and the $9.38 second-tier temporary rates established herein. If permanent rates exceed $9.38, the Company will be permitted to recover the difference between the permanent rates and the $9.38 second-tier temporary rates established herein. See e.g., RSA 378:29 and 30.

[3]In the instant docket, the Company filed its request on December 17, 1985. However, in that filing it requested an effective date of January 1, 1986. Consequently, January 1, 1986 is the earliest effective date that could be established for the second-tier temporary rates established herein.

[4]See, Exihibit T-4 at 2 which shows an increase in working capital of $25,000 if the Company were permitted a rate of $9.50 in the January to June, 1986 period. Mr. Biser testified that if the January rate stayed at $9.05 and the February to June rate increased to $9.50, the impact would be an approximate loss of $14,000 in January net income. This $14,000 decrease is reflected in the six month total which decreases the $25,000 increase to $11,000.

[5]As noted above, accurate information on the Company's sales was not provided in the Company's monthly reports to the Commission. This was disclosed by the Company at the January 24, 1986 hearing. The utilization of the most accurate sales information decreased the rate calculated by Staff from $9.49 to $9.38 per M pounds of steam.

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NH.PUC*01/30/86*[60718]*71 NH PUC 110*Goodrich Falls Hydroelectric Corporation

[Go to End of 60718]

71 NH PUC 110

Re Goodrich Falls Hydroelectric Corporation

Respondent: Public Service Company of New Hampshire

DR 86-14, Order No. 18,096

New Hampshire Public Utilities Commission

January 30, 1986

ORDER nisi approving a petition for a thirty year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Waiver of lien

requirement.

In an order approving a small power producer's petition for a thirty year rate order for a hydroelectric project, the requirement that the petitioner must provide a surety bond or junior lien covering the buyout value of the project to the interconnecting utility was waived where the "front loading risk" to the interconnecting utility and its ratepayers was determined to be the same as would exist with a twenty year rate order.

By the COMMISSION:

ORDER

WHEREAS, on January 17, 1986 Goodrich Falls Hydroelectric Corp. (Goodrich Falls) filed a long term rate petition for the Goodrich Falls Hydroelectric project; and WHEREAS, the Petition requested inter alia a thirty year rate order levelized for the first twenty (20) years and tracking the avoided costs thereafter; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), rate orders for terms in excess of 20 years require, inter alia, that the Petitioner provide a surety bond or a junior lien on the project to cover the "buy out" value of the project; and

WHEREAS, Goodrich Falls requests a waiver from the requirement to offer Public Service Company of New Hampshire (PSNH) a surety bond or junior lien on the Goodrich Falls Hydroelectric project; and

WHEREAS, the "front loading risk" to PSNH and its ratepayers is the same as would exist with a twenty year rate order; and

WHEREAS, Goodrich Falls requests the long-term rates as set forth in their Petition to become effective as of September 1, 1985; and

WHEREAS, PSNH did not receive notice of the request until the January 17, 1986 filing and could not have notice of the Commission's ruling on the request until the issuance of this Order; and

WHEREAS, the Commission finds that in this instance the rates should

not be retroactive beyond the date of this Order; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to Goodrich Fall's Petition for a thirty year rate order; and

WHEREAS, Goodrich Fall's Petition appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, supra (69 NH PUC 352, 61 PUR4th 132) and Docket No. DR 85215 (70 NH PUC 753, 69 PUR4th 395 [1985]); it is therefore

ORDERED NISI, that Goodrich Fall's Petition for a thirty year rate order for approval of its

interconnection agreements with PSNH and for approval of rates set forth on the long term rate worksheets for the Goodrich Falls Hydroelectric project without a surety bond or junior lien are approved; and it is

FURTHER ORDERED, that the interconnection agreement and the rates set forth on the long term worksheets shall be retroactive from the effective date of this Order to the date of the issuance of this Order; and it is

FURTHER ORDERED, that Goodrich Falls and PSNH may file comments, exceptions or such other response to the instant Petitions as they deem 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 thirtieth day of January, 1986.

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NH.PUC*01/30/86*[60719]*71 NH PUC 112*Franklin Falls Hydroelectric Corporation (Salmon Brook)

[Go to End of 60719]

71 NH PUC 112

Re Franklin Falls Hydroelectric Corporation (Salmon Brook)

Respondent: Public Service Company of New Hampshire

DR 86-15, Order No. 18,097

New Hampshire Public Utilities Commission

January 30, 1986

ORDER nisi approving a petition for a thirty year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Waiver of lien requirement.

In an order approving a small power producer's petition for a thirty year rate order for a hydroelectric project, the requirement that the petitioner must provide a surety bond or junior lien covering the buyout value of the project to the interconnecting utility was waived where the "front loading risk" to the interconnecting utility and its ratepayers was determined to be the same as would exist with a twenty year rate order.

By the COMMISSION:

ORDER

WHEREAS, on January 17, 1986 Franklin Falls Hydroelectric Corp. (Franklin Falls) filed a long term rate petition for the Salmon Brook Hydroelectric project; and

WHEREAS, the Petition requested inter alia a thirty year rate order levelized for the first twenty (20) years and tracking the avoided costs thereafter; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), rate orders for terms in excess of 20 years require, inter alia, that the Petitioner provide a surety bond or a junior lien on the project to cover the "buy out" value of the project; and

WHEREAS, Franklin Falls requests a waiver from the requirement to offer Public Service Company of New Hampshire (PSNH) a surety bond or junior lien on the Salmon Brook Hydroelectric project; and

WHEREAS, the "front loading risk" to PSNH and its ratepayers is the same as would exist with a twenty year rate order; and

WHEREAS, Franklin Falls requests the long-term rates as set forth in their Petition to become effective as of September 1, 1985; and

WHEREAS, PSNH did not receive notice of the request until the January 17, 1986 filing and could not have notice of the Commission's ruling on the

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request until the issuance of this Order; and

WHEREAS, the Commission finds that in this instance the rates should not be retroactive beyond the date of this Order; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to Franklin Fall's Petition for a thirty year rate order; and

WHEREAS, Franklin Fall's Petition appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, supra (69 NH PUC 352, 61 PUR4th 132), and Docket No. DR 85215 (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore

ORDERED NISI, that Franklin Fall's Petition for a thirty year rate order for approval of its interconnection agreements with PSNH and for approval of rates set forth on the long term rate worksheets for the Salmon Brook Hydroelectric project without a surety bond or junior lien are approved; and it is

FURTHER ORDERED, that the interconnection agreement and the rates set forth on the long term worksheets shall be retroactive from the effective date of this Order to the date of the issuance of this Order; and it is

FURTHER ORDERED, that Franklin Falls and PSNH may file comments, exceptions or

such other response to the instant Petitions as they deem 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 thirtieth day of January, 1986.

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NH.PUC*01/30/86*[60720]*71 NH PUC 114*Franklin Falls Hydroelectric Corporation

[Go to End of 60720]

71 NH PUC 114

Re Franklin Falls Hydroelectric Corporation

Respondent: Public Service Company of New Hampshire

DR 86-16, Order No. 18,098

New Hampshire Public Utilities Commission

January 30, 1986

ORDER nisi approving a petition for a thirty year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Waiver of lien requirement.

In an order approving a small power producer's petition for a thirty year rate order for a hydroelectric project, the requirement that the petitioner must provide a surety bond or junior lien covering the buyout value of the project to the interconnecting utility was waived where the "front loading risk" to the interconnecting utility and its ratepayers was determined to be the same as would exist with a twenty year rate order.

By the COMMISSION:

ORDER

WHEREAS, on January 17, 1986 Franklin Falls Hydroelectric Corp. (Franklin Falls) filed a long term rate petition for the Franklin Falls Hydroelectric project; and

WHEREAS, the Petition requested inter alia a thirty year rate order levelized for the first twenty (20) years and tracking the avoided costs thereafter; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), rate orders for terms in excess of 20 years require, inter alia, that the Petitioner provide a surety bond or a junior lien on the project to cover the "buy out" value of the project; and

WHEREAS, Franklin Falls requests a waiver from the requirement to offer Public Service Company of New Hampshire (PSNH) a surety bond or junior lien on the Franklin Falls Hydroelectric project; and

WHEREAS, the "front loading risk" to PSNH and its ratepayers is the same as would exist with a twenty year rate order; and

WHEREAS, Franklin Falls requests the long-term rates as set forth in their Petition to become effective as of September 1, 1985; and

WHEREAS, PSNH did not receive notice of the request until the January 17, 1986 filing and could not have notice of the Commission's ruling on the

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request until the issuance of this Order; and

WHEREAS, the Commission finds that in this instance the rates should not be retroactive beyond the date of this Order; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to Franklin Fall's Petition for a thirty year rate order; and

WHEREAS, Franklin Fall's Petition appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, supra (69 NH PUC 352, 61 PUR4th 132), and Docket No. DR 85215 (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore

ORDERED NISI, that Franklin Fall's Petition for a thirty year rate order for approval of its interconnection agreements with PSNH and for approval of rates set forth on the long term rate worksheets for the Franklin Falls Hydroelectric project without a surety bond or junior lien are approved; and it is

FURTHER ORDERED, that the interconnection agreement and the rates set forth on the long term worksheets shall be retroactive from the effective date of this Order to the date of the issuance of this Order; and it is

FURTHER ORDERED, that Franklin Falls and PSNH may file comments, exceptions or such other response to the instant Petitions as they deem 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 thirtieth day of January, 1986.

71 NH PUC 116

Re Claremont Gas Light Company

DR 84-380, Second Supplemental Order No. 18,105

New Hampshire Public Utilities Commission

February 7, 1986

ORDER denying a motion for rehearing of an order requiring a natural gas distribution utility to begin utilizing a semiannual cost of gas adjustment instead of a monthly historical cost of gas adjustment.

Automatic Adjustment Clauses, § 49 — Billings, collections, and adjustments — Method of calculation — "Therms produced" versus "therms sold" — Gas distribution utility.

The commission rejected a natural gas distribution utility's argument that an order requiring the utility to begin utilizing a semiannual cost of gas adjustment (CGA) instead of a monthly historical CGA was unlawful in that it deprived it of previously authorized revenues through the erroneous use of a methodology and calculation based on "therms sold" rather than "therms produced;" the commission determined that it is not appropriate to use "therms produced" in any CGA. [1] p. 117.

Automatic Adjustment Clauses, § 53 — Billings, collections, and adjustments — Overcollections — Gas distribution utility.

Notwithstanding its denial of a motion for rehearing of an order directing a gas distribution utility to adopt a semiannual cost of gas adjustment mechanism, the commission rescinded that section of the order that required the utility to refund a clearly demonstrated overcollection to ratepayers; the commission determined that the proper place to determine if and when the overcollection should be refunded would be in the utility's upcoming semiannual cost of gas adjustment proceeding, thereby affording the utility the opportunity to present arguments. [2] p. 120.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On November 15, 1985, the Commission issued Report and Supplemental Order No. 17,949

(70 NH PUC 937) in this docket which directed Claremont Gas Light Company (Claremont) to begin utilizing a semiannual cost of gas adjustment (CGA) instead of a monthly historical CGA. It ordered Claremont to file by December 1, 1985 a semiannual cost of gas adjustment for the current winter period (November 1985 - April 1986) for inclusion on all bills rendered on or after January 1, 1986 until April 30, 1986. In response thereto, Claremont filed a Motion for Rehearing (Motion) pursuant to RSA 541 on November 27, 1985.1(32)

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In the Report accompanying Order No. 17,949 the Commission analyzed the advantages and disadvantages of both the monthly historical and the semiannual CGA and concluded that the semiannual mechanism was vastly superior to the monthly historical method. The primary reason for this finding was the monthly CGA's lack of a mechanism to determine whether Claremont overcollected or undercollected from its customers in a particular month. In connection therewith, the Commission went back to the time Claremont began utilizing the monthly historical CGA in November, 1984, performed such an analysis, and determined that Claremont had overcollected $45,000 from its customers. That analysis is set forth at pages 11 and 12 of the Report. The Commission ordered Claremont to include a reconciliation of that amount in its December 1, 1985 semi-annual filing.

In its Motion, Claremont argues that the Commission's Report and Order is unlawful for the following reasons:

1. Claremont is deprived of $52,280.00 in revenues previously authorized by the Commission in Order No. 17,110 dated July 16, 1984 in Docket No. DR 83-215 (69 NH PUC 379).

2. The Commission's $45,000.00 overcollection calculation is based upon a calculation and a methodology rejected in Report and Order No. 17,110; and

3. Claremont actually undercollected $42,909.00 during the period November, 1984 through July, 1985 under the monthly historical CGA.

[1] Claremont contends that the reason for these alleged errors is that the Commission erroneously utilized a methodology and calculation based on "therms sold" rather than on "therms produced". In support thereof, it states in its Motion at page 2 as follows:

In Docket DR 83-215 the Commission Staff, after discussion with Claremont during settlement negotiations, proposed that Claremont change from a monthly forward looking COGA to a monthly historical COGA. Prior to DR 83-215, Claremont calculated its COGA based on "therms sold." Staff position in DR 83-215 was that Claremont would benefit by changing to a monthly historical COGA based on a calculation and methodology including "therms produced." Staff represented that the "therms produced" methodology would permit Claremont to collect $58,282.00 under the COGA. The Order changes to a "therms sold" methodology and which effectively deprives Claremont of that $58,282.00 of revenue.

Likewise, with respect to numbers 2 and 3 above, Claremont also argues that utilizing this alleged erroneous methodology results in the aforementioned $42,909.00 undercollection, not the approximately $45,000 overcollection calculated by the Commission.

After review and consideration we

will deny Claremont's Motion. We shall in turn address each of their grounds.

As discussed in the Report, Claremont's CGA was altered in its last rate case (Report and Order No. 17,110 issued in DR 83-215 on July 16, 1984). At page 2 of the Report, the Commission summarized the settlement agreement entered into by Claremont and the Commission Staff as follows (69 NH PUC at p. 380):

5. Based upon the proformed test year, the settlement proposed that the Company's total annual revenues (net of the Franchise Tax) be increased by $119,669. This $119,669 would be achieved by:

a. A restructuring of the utility's Cost of Gas Adjustment (COGA) to enable the utility to have its fuel related revenues (including approximately 46.2/therm to be included in base rates) through base rates and the COGA to match its fuel expenses. A deferred account to the COGA should contribute approximately $58,282 of the $119,669 increase.

(paragraphs b through e contain the remainder of the settlement highlights)

The changes made to Claremont's CGA by that proceeding can thus be listed as follows:

1. the nature of the CGA was changed from monthly forwardlooking to monthly historical;

2. the cost of gas amount included in base rates was increased from 36.2 per therm to 46.2 per therm; and

3. the establishment of a deferred account to the monthly historical COGA to enable Claremont to recover 58,282 more in revenue on an annual basis.

In its Motion Claremont argues that one further modification was also intended by the settlement agreement, namely, that Claremont was to begin calculating its CGA using "therms produced" instead of "therms sold." Claremont contends that the Commission staff represented that this modification would enable Claremont to recover the additional $58,282 in revenues. However, nowhere in the Report or Order is there any reference to this purported modification. Moreover, the language of the settlement agreement set forth above clearly establishes that the $58,282 was to be acquired by the establishment of a deferred account to the COGA.[2](33)

More importantly, an analysis of Claremont's current monthly historical CGA reveals that Claremont, like all New Hampshire gas utilities, is in fact utilizing "therms sold" in calculating its CGA. This is illustrated by examining Claremont's CGA for November, 1984 which is set forth on page 6 of the Report and reproduced below:

(a) Cost of gas for month of OCTOBER $23,638.00

(b) Total therms sold for month of 16004

(c) 46.2 per therm BASE 7,394.00

(d) Fuel charge for month $16,244.00

(e) Fuel charge for month of NOVEMBER 1984 is 1.01. Divide by 99 to include Gross

Receipts Tax.

(f) Fuel charge of 1.02 will be applied to all bills in November 1984.

The $1.01 pretax CGA is derived by dividing $16,244, the actual October gas cost to be recovered through the CGA, by the 16,004 therms sold in that same month. Claremont is correct in differentiating between "therms sold" and "therms produced." A gas company sells less gas than it purchases

because of line losses and company use. However, if therms produced were used in the above computation — a number greater than 16,004 — this would result in a lower CGA. For example, if therms produced (purchases) in the above were 17,000, the CGA would be 95. In this instance, Claremont would not recover its full cost of gas. It is therefore not appropriate to use therms produced in any CGA.

Likewise, in performing a reconciliation of actual monthly usage and gas costs under the monthly historical CGA Claremont, not the Commission, incorrectly utilized "therms produced" instead of "therms sold" thereby concluding that Claremont had undercollected $42,909.00. As set forth in the Report at page 2, the correct usage figure to be utilized in determining whether Claremont has overcollected or undercollected under the monthly historical CGA since November, 1984, is "therms sold." That, as shown on the chart on page 12 of the Report (70 NH PUC at p. 944), establishes that Claremont has in fact overcollected by $45,885.86.

We have searched the Commission files in docket number DR 83-215, Claremont's last rate case, in an effort to determine the documentary source, if any, of its misunderstanding regarding the above therms sold — therms produced discussion. Unfortunately, the file contains no written settlement agreement or transcript of the hearing at which said settlement was presented to the Commission. Whether those documents were lost, misplaced or, contrary to usual Commission practice, not prepared or even required, cannot be ascertained from the file. However, the only other context in which this distinction could be applied in a CGA is in determining the gas cost to be recovered. In the above calculation for November, 1984 monthly historical CGA, the total gas cost to be recovered is $23,638.00. This figure represents all the gas purchased by Claremont. As discussed above, this amount of gas is greater than that ultimately distributed because of lost and unaccounted for gas. Under that CGA and indeed under the semiannual calculation, the Commission allows a company to recover the cost of the total gas purchased for distribution from its customers which includes the cost of lost gas. If, prior to the last rate case Claremont was not including the dollar value of its lost gas in the cost of gas to be recovered in any particular month, they would then incorrectly be using therms sold instead of therms produced and consequently be underrecovering. It is perhaps to that situation that the Commission Staff's comments as set forth in Claremont's motion were addressed. While we cannot say with any degree of certainty that that is the source of Claremont's misunderstanding, it is indeed a reasonable conclusion given the apparent lack of documentation.

In its Motion Claremont also contended that the Commission's finding that Claremont's gas costs are not highly volatile is contrary to the evidence. We have reviewed the record evidence and once again will reject Claremont's contention in that regard. The record and the further price

changes included in the Motion do not support Claremont's argument that its gas costs are highly volatile.

Lastly, Claremont contends that Order No. 17,949 is unlawful and unreasonable because it does not order a trigger mechanism into Claremont's CGA as was provided in the accompanying Report. We find there is no need

for such an Order. We have ordered Claremont to begin utilizing the semiannual CGA mechanism approved by the Commission and currently utilized by all other gas companies under this Commission's jurisdiction. Given the presence of a trigger mechanism this standard methodology, it is not necessary to specifically order that it be contained in Claremont's semiannual CGA filing.

In view of the above, we therefore will deny Claremont's Motion for Rehearing. The original Report and Order issued in this proceeding on November 15, 1985 ordered Claremont to file a semiannual CGA for the November, 1985 to April 30, 1986 period by December 1, 1985 for inclusion on all bills rendered on or after January 1, 1986 until April 30, 1986. That was not accomplished because of the pendency of this Motion. Given that the winter period is more than one-half over, we will rescind our previous filing order and hereby order Claremont to file a semiannual CGA for the upcoming summer period (May 1, 1986 to October 31, 1986). That filing shall be accomplished by April 1, 1986. Hearings will be held during the month of April and a Report and Order approving, denying or modifying Claremont's requested CGA will be issued prior to May 1, 1986. Claremont shall continue to utilize the monthly historical CGA until that time.

[2] While we are denying Claremont's Motion, we find that our original Report and Order merits one modification. Therein we ordered Claremont to include a reconciliation of the approximately $45,000 overcollection in its first semiannual CGA filing so that it could be refunded to Claremont's customers. After review, we will rescind our original order that it must be refunded. As we have demonstrated above, Claremont has clearly overcollected that amount. However, the proper place to determine if and when that amount should be refunded to Claremont's customers is in its upcoming semi-annual CGA. Unlike this proceeding, Claremont will thereby be afforded an opportunity to present its arguments 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 Commission's Report and Order No. 17,949 (70 NH PUC 937) be, and hereby is, clarified, modified and amended as specifically provided in the foregoing Report; and it is

FURTHER ORDERED, that Claremont Gas Light Company's Motion for Rehearing be, and hereby is, denied in all other respects; and it is

FURTHER ORDERED, that Claremont Gas Light Company shall file a cost of gas

adjustment utilizing the semiannual mechanism discussed in the foregoing Report for the upcoming summer period (May 1, 1986 to October 31, 1986) by April 1, 1986.

By order of the Public Utilities Commission of New Hampshire this seventh day of February, 1986.

FOOTNOTES

[1]Claremont also filed a Motion for Extension of Time on November 27, 1985 requesting that the Commission extend the December 1, 1985 deadline until the Commission resolves the matters raised in its Motion for Rehearing. To date, the Commission has taken no action on the Motion for Extension of Time. Thus, in effect, the Commission has de facto granted the extension. The issue of when Claremont should begin utilizing the semiannual CGA method will be addressed herein.

[2]As far as we can determine, Claremont never implemented any such deferred account.

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NH.PUC*02/07/86*[60722]*71 NH PUC 121*UNITIL Power Corporation

[Go to End of 60722]

71 NH PUC 121

Re UNITIL Power Corporation

DF 86-24, Order No. 18,107

New Hampshire Public Utilities Commission

February 7, 1986

ORDER authorizing an electric power corporation to issue and sell notes, bonds, or other evidences of indebtedness.

Security Issues, § 51 — Factors affecting authorization — Intercorporate relations — Electric power corporation.

An electric power corporation, which was a party to a cash pooling and loan agreement involving its holding company parent and several other affiliated companies that formed an integrated electric power system, was authorized to issue and sell notes, bonds, or other evidences of indebtedness; citing concern about possible abuses that may result from the holding company structure and the cash pool, the commission conditioned the authorization on the corporation's first receiving an equity capital contribution from its corporate parent.

By the COMMISSION:

ORDER

WHEREAS, on January 22, 1986, UNITIL Power Corp. ("UNITIL Power") filed its petition for authority to issue securities; and

WHEREAS, by said petition, UNITIL Power proposes to issue and sell, and from time to time renew, up to Five Hundred Thousand Dollars ($500,000.00) of notes, bonds or other evidences of indebtedness, in accordance with RSA 369:7; and

WHEREAS, by said petition, UNITIL Power proposes that UNITIL Corporation will make an equity capital contribution to UNITIL Power in the amount of One Hundred Thousand Dollars ($100,000.00); and

WHEREAS, this Commission, in Supplemental Order No. 17,373 (69 NH PUC 701) and accompanying Report at page 13, denied without prejudice UNITIL Power's request that it be authorized to issue and sell for cash, or to renew notes or other evidences of short-term indebtedness in amounts not to exceed Ten Million Dollars ($10,000,000.00); and

WHEREAS, the Cash Pooling and Loan Agreement among the several UNITIL system companies authorizes loans from the Pool to various system affiliates upon appropriate terms and conditions but denies authority for such loans to UNITIL Power pending express authorization of this Commission; and

WHEREAS, by said Commission

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Order, UNITIL Power was entitled to file an appropriate petition seeking Commission approval to issue short-term debt; and

WHEREAS, the petition filed in this proceeding requests funds which are needed so that UNITIL Power can continue negotiations with potential power suppliers and the related drafting of transmission supply agreements and obtain the necessary regulatory approvals for the same; and

WHEREAS, UNITIL Power's request for short-term borrowing is also necessary because it will incur construction costs associated with obtaining power from Hydro-Quebec; and

WHEREAS, the Commission has reviewed the documents filed with this petition related to the sources and uses of funds and the requests in other dockets to expense the cost of the Power Department to Concord Electric Company and Exeter and Hampton Electric Company; and

WHEREAS, the Commission continues to be concerned about possible abuses that may result from the holding Company structure and the cash pool; it is hereby

ORDERED, that UNITIL Power's request for approval to issue securities by issuing and selling, and from time to time renewing, up to Five Hundred Thousand Dollars ($500,000.00) or notes, bonds or other evidences of indebtedness payable less than twelve months from the date thereof at current interest rates on the condition that it shall first receive and accept an equity capital contribution of One Hundred Thousand Dollars ($100,000.00) from its corporate parent, UNITIL Corporation, is granted; and it is

FURTHER ORDERED, that UNITIL Power shall continue to charge the costs of the Power Department which were previously approved as operating expense to the operating Companies until such time as UNITIL Power receives power from different suppliers and the rates of Concord Electric Company and Exeter and Hampton Electric Company are revised to reflect the new sources of supply; and it is

FURTHER ORDERED, that this Commission expressly authorizes UNITIL Power to receive Advances pursuant to the terms and conditions of the UNITIL system Cash Pooling and Loan Agreement in pursuance of some part or all of the above short-term borrowing authorization; and it is

FURTHER ORDERED, that on January 1 and July 1 of each year, said UNITIL Power 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 seventh day of February, 1986.

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NH.PUC*02/11/86*[60723]*71 NH PUC 123*Pinetree Power-Tamworth, Inc.

[Go to End of 60723]

71 NH PUC 123

Re Pinetree Power-Tamworth, Inc.

Respondent: Public Service Company of New Hampshire

DR 86-28, Order No. 18,112

New Hampshire Public Utilities Commission

February 11, 1986

ORDER nisi approving a petition for a twenty-year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order.

A small power producer's petition for approval of a twenty-year rate order and interconnection agreement was found to be consistent with commission requirements and, accordingly, approved.

By the COMMISSION:

ORDER

WHEREAS, on January 28, 1986, Pinetree Power-Tamworth, Inc. (Pinetree Power) filed a long term rate petition and

WHEREAS, Pinetree Power filed amendments to its filing on February 3, 1986 for the Project; and

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

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Pinetree Power's Petition for a 20-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore,

ORDERED NISI, that Pinetree Power's Petition for a 20-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

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

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

By order of the Public Utilities Commission of New Hampshire this eleventh day of February, 1986.

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NH.PUC*02/13/86*[60724]*71 NH PUC 124*New England Telephone and Telegraph Company

[Go to End of 60724]

71 NH PUC 124

Re New England Telephone and Telegraph Company

DR 86-36, Order No. 18,119

New Hampshire Public Utilities Commission

February 13, 1986

ORDER opening a docket for the purpose of determining how best to structure telephone mandatory measured business service rates.

Rates, § 539 — Telephone — Measured local service — Business lines.

Based on its determination that a local exchange telephone carrier's plan for the

implementation of mandatory measured business service raised concerns as to how to structure the measured business service rates so as to best serve the public good, the commission opened a docket for the purpose of determining what further action on the part of the commission and the local exchange carrier may be appropriate.

By the COMMISSION:

ORDER

WHEREAS, on June 3, 1985, in docket DR 84-95, the Commission issued Report and Order No. 17,639 (70 NH PUC 496) authorizing an annual increase in intrastate revenue for New England Telephone and Telegraph Company of New Hampshire (NET) of $21,460,000 effective on or after June 15, 1985; and

WHEREAS, on September 4, 1985, the Commission reopened Docket DR 84-95 by Supplemental Order No. 17,837 for the purpose of investigating measured business service; and

WHEREAS, on November 12, 1985, the Commission issued Supplemental Order No. 17,945 (70 NH PUC 926), which, among other things, required NET to file a plan with the Commission by February 1, 1986, therein assuring compliance with the Commission's Orders relating to measured business service and further assuring zero revenue impact resulting from said implementation; and

WHEREAS, on January 31, 1986, NET filed the required plan with the Commission in compliance with Order No. 17,945; and

WHEREAS, by Fourth Supplemental Order No. 18,118 (February 13, 1986) the Commission closed Docket DR 84-95 after providing that the NET plan be investigated in the context of a different docket; and

WHEREAS, the Commission, after reviewing the plan, finds that the plan as submitted raises concerns, specified below,regarding implementation of mandatory business service; and

WHEREAS, it is now apparent that

additional investigation is required regarding the implementation of measured business service; it is

ORDERED, that Docket No. DR 8636 be, and hereby is, opened for the purpose of determining what further action on the part of the Commission and NET may be appropriate regarding the implementation of measured business service and, in particular, how to structure NET's tariff for measured business service so as to best serve the public good; and it is

FURTHER ORDERED, that the issues to be addressed in said Docket No. DR 86-36 shall include, but not necessarily be limited to:

1. Whether the measured business service rate should be adjusted for potential revenue impacts.

2. The flat portion of the measured business service rate.

3. The appropriate message unit time intervals.

4. The number of message units to be included in the basic charge.

5. The appropriate charge per message unit.

6. Whether measured service charges should be capped and, if so, at what level.

7. Whether the measured business service tariff should include tapered rates.

8. Whether the Commission should require a period of dual billing to assist NET's customers in assessing the impact of measured business service on their businesses.

9. Whether the Commission should delay the implementation of mandatory measured business service beyond the date established in Order No. 17,945, which provided, in pertinent part, that all eligible business customers who are served by unlimited business service rates shall be transferred to measured business service rates on all bills rendered on or after July 1, 1986; and it is

FURTHER ORDERED, that there be a procedural hearing pursuant to RSA 541-A:16 and Puc 203.05 on March 21, 1986 at ten o'clock in the forenoon at the Commission office in Concord, 8 Old Suncook Road, Building No. 1; and it is

FURTHER ORDERED, that said petitioner notify all persons desiring to be heard to appear at said hearing, when and where they may be heard upon the question whether the prayer of said petition may be granted consistently with the public good, by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 7, 1986, said publication to be designated in an affidavit to be made on a copy of this order of notice and filed with this office; and it is

FURTHER ORDERED, that all interested parties be prepared to address, inter alia, at said procedural hearing:

1. Any motions then before the Commission in this docket.

2. A suggested procedural schedule.

3. Whether that portion of Order No. 17,945 which requires that mandatory business service be implemented by July 1, 1986 should be amended, modified or suspended.

and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and Puc 203.02, any party seeking to intervene in the proceeding must submit a motion to intervene, with a copy to the petitioner, at least three (3) days prior to the hearing

By order of the Public Utilities Commission of New Hampshire this thirteenth day of February, 1986.

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NH.PUC*02/18/86*[60725]*71 NH PUC 127*American Hydro Power Company

[Go to End of 60725]

71 NH PUC 127

Re American Hydro Power Company

Respondent: Public Service Company of New Hampshire

DR 86-34, Order No. 18,123

New Hampshire Public Utilities Commission

February 18, 1986

ORDER nisi approving a petition for a thirty-year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Junior lien.

A small power producer's petition for a thirty-year rate order for a hydroelectric project was approved where the petitioner granted the interconnecting utility a junior lien covering the buyout value of the project.

By the COMMISSION:

ORDER

WHEREAS, on February 4, 1986, American Hydro Power Co. (American) filed a long term rate petition; and

WHEREAS, American filed amendments to its filing on February 6, 1986; and

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

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

WHEREAS, American 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 of the Project; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to American's Petition for a thirty-year rate order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]) in all respects other than the lien; it is therefore,

ORDERED NISI, that American's Petition for a thirty-year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheets is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such

other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

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

By order of the Public Utilities Commission of New Hampshire this eighteenth day of February, 1986.

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NH.PUC*02/18/86*[60726]*71 NH PUC 128*Milford Elm Street Trust

[Go to End of 60726]

71 NH PUC 128

Re Milford Elm Street Trust

Respondent: Public Service Company of New Hampshire

DR 86-38, Order No. 18,124

New Hampshire Public Utilities Commission

February 18, 1986

ORDER nisi approving a petition for a twenty-year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order.

A small power producer's petition for approval of a twenty-year rate order and interconnection agreement was found to be consistent with commission requirements and, accordingly, approved.

By the COMMISSION:

ORDER

WHEREAS, on February 6, 1986, Milford Elm Street Trust (Milford) filed a long term rate

petition for the Pine Valley Hydro Project; and

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

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Milford's Petition for a 20-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore,

ORDERED NISI, that Milford's Petition for a 20-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

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

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

Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of February, 1986.

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NH.PUC*02/20/86*[60727]*71 NH PUC 129*Essex Hydro Associates

[Go to End of 60727]

71 NH PUC 129

Re Essex Hydro Associates

Respondent: Public Service Company of New Hampshire

DR 85-407, Supplemental Order No. 18,125

New Hampshire Public Utilities Commission

February 20, 1986

ORDER granting an electric utility an extension of time to respond to a small power producer's long term rate petition.

Cogeneration, § 19 — Small power production — Long term rates petition — Extension of time to respond to petition.

An electric utility was allowed a 20 day extension of time to file comments, exceptions, or other such responses to a small power producer's long term rate petition where the commission found that the extension would not unduly prejudice the small power producer.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on December 4, 1985, Essex Hydro Associates (EHC) filed a long term rate petition for the Briar Hydro -Rolfe Canal Project; and

WHEREAS, on January 23, 1986, by Order Nisi No. 18,086 (71 NH PUC 103), the Commission approved the long term rate petition of EHC; and

WHEREAS, said Order Nisi No. 18,086 allowed Public Service Company of New Hampshire (PSNH) 20 days to file comments, exceptions or such other response to EHC's petition as it deemed necessary; and

WHEREAS, by letter dated February 12, 1986, PSNH respectfully requested a 20 day extension of time in which to file a response to EHC's long term rate petition; and

WHEREAS, the Commission finds that PSNH's request for a 20 day extension of time to file a response to EHC's long term rate petition is reasonable; and

WHEREAS, the Commission finds that such an extension of time does not unduly prejudice EHC; it is therefore

ORDERED, that PSNH is allowed a 20 day extension of time to file comments, exceptions or such other response to EHC's long term rate petition as it deems necessary.

By order of the Public Utilities Commission of New Hampshire this twentieth day of February, 1986.

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NH.PUC*02/21/86*[60728]*71 NH PUC 130*Continental Telephone Company of New Hampshire

[Go to End of 60728]

71 NH PUC 130

Re Continental Telephone Company of New Hampshire

Intervenor: Office of Consumer Advocate

DR 85-219, Order No. 18,129

New Hampshire Public Utilities Commission

February 21, 1986

ORDER establishing rates for a local exchange telephone carrier.

Return, § 111 — Telephone — Local exchange carrier — Rate settlement.

Pursuant to a commission adopted rate settlement agreement, a local exchange telephone carrier was allowed a return on common equity of 13.58% and a cost of long term debt of 9.95%, thereby producing an overall return of 11.92% based upon the carrier's capital structure as of March 31, 1985. [1] p. 131.

Valuation, § 285 — Telephone — Adjustments to rate base — Rate settlement.

Pursuant to a commission adopted rate settlement agreement, the rate base of a local exchange telephone carrier was adjusted to reflect (1) the sale of customer premises equipment, (2) common plant used by other state jurisdictional utilities, and (3) changes in working capital requirement. [2] p. 131.

Rates, § 565 — Telephone — Public coin telephone service.

Pursuant to a commission adopted rate settlement agreement, a local exchange telephone carrier was required to maintain its public coin telephone rates at $.10 per call. [3] p. 133. Rates, § 532 — Telephone — Listing charges.

Pursuant to a commission adopted rate settlement agreement, non-published, unlisted, and additional listing rates charged by a local exchange telephone carrier were changed to agree with the rates charged by New England Telephone Company for the same service. [4] p. 133.

Rates, § 553 — Telephone — Semi-public sets.

Pursuant to a commission adopted rate settlement agreement, the rate charged by a local exchange telephone carrier for semipublic telephones was set at $7. [5] p. 133.

Rates, § 573 — Telephone — Extended area service.

Pursuant to a commission adopted rate settlement agreement, the extended area service charges of a local exchange telephone carrier were 090not090 unbundled from the basic local rates. [6] p. 133.

Rates, § 544 — Telephone — Business subscribers — Mandatory usage pricing.

Pursuant to a commission adopted rate settlement agreement involving a local exchange telephone carrier, mandatory usage pricing for all existing and future business subscribers was established; a grace period of six months was set up during which time business subscribers would be billed on a flat rate basis and on a usage basis in order that they would have the opportunity to plan for the effect of usage pricing. [7] p. 133.

Rates, § 553 — Telephone — Directory assistance.

Pursuant to a commission adopted rate settlement agreement involving a local

exchange telephone carrier, a directory assistance charge of $.23 per call, after an allowance of ten free calls per month, was established. [8] p. 133.

Rates, § 544 — Telephone — Residential subscribers — Optional usage pricing.

Pursuant to a commission adopted rate settlement agreement, a local exchange telephone carrier was required to offer usage pricing service for all residential subscribers on an optional basis; a penetration rate of 35%, subject to adjustment based on actual penetration, was used for determining the optional usage based pricing rate. [9] p. 133.

Rates, § 630 — Temporary rates — Local exchange telephone carrier — Rate surcharge.

Pursuant to a commission adopted rate settlement agreement, a local exchange telephone carrier was permitted to surcharge, over a three-month period, the difference between the permanent rates established by the settlement agreement and previously authorized temporary rates. [10] p. 133.

APPEARANCES: For Continental Telephone Company of New Hampshire, Charles H. Toll, Jr., Esquire and David W. Marshall, Esquire; Michael W. Holmes, Esquire for the Consumer Advocate; Eugene F. Sullivan, Finance Director; Sarah P. Voll, Chief Economist; Edgar D. Stubbs Jr., Assistant Chief Engineer for Commission Staff.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On June 5, 1985 Continental Telephone Company of New Hampshire ("Continental"), a public utility engaged in the business of supplying telephone service in the State of New Hampshire, filed a notice of intent to file rate schedules. On July 19, 1985, Continental filed revised tariff pages providing for an increase in rates of $325,460 effective August 19, 1985. The proposed rates were suspended by Order No. 17,786 dated August 12, 1985.

Continental filed on October 3, 1985 a petition for temporary intrastate rates pursuant to RSA 378:27 to be effective on August 19, 1985. The temporary rate filing was designed to be applied to basic rates to produce additional gross intrastate revenue of $239,000 annually with $119,979 effective August 1, 1985 and an additional $119,021 increase to be effective January 1, 1986.

On November 11, 1985 a duly noticed public hearing was held by the Commission to consider the proposed temporary rates and establish a procedural schedule. Felix Boccucci presented testimony in support of the Company's position and Commission Finance Director Eugene Sullivan testified to the staff's position. By Order No. 17,963 dated November 27, 1985 (70 NH PUC 988), the Commission approved temporary rates in the amount of $126,796 effective with the date of the Order and approved the procedural schedule.

With respect to the procedural schedule, the parties met on December 17 and 18, 1985 and on January 14 and 15, 1986 to narrow issues and to negotiate a settlement. As a result of the meetings the parties were able to reach agreement on the level of permanent rates and the rate structure.

[1, 2] The Commission held a hearing on February 4, 1986 at which time it received the proposed settlement which was marked as Exhibit 6. The proposed settlement provides for an

increase in revenues of $231,668, with the same effective date as temporary

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rates. The major features of the settlement agreement are as follows:

1. Stipulated rate of return; an allowed return on common equity of 13.58% and the cost of long term debt of 9.95% which produce an overall return of 11.92% based upon the capital structure as of March 31, 1985.

2. A stipulated rate base of $3,510,554 based upon the average intrastate rate base for the test year ended March 31, 1985. The rate base has been adjusted by $245,449 to reflect the sale of customer premises equipment, to adjust plant for common plant used by other state jurisdictional utilities, and to adjust working capital.

3. Rate structure should be modified to incorporate the changes agreed to by the parties, which will be addressed later in this report.

During the hearing, Witness David H. Rowley explained the various requests made by the Company relative to return on common equity, cost of long-term debt, and the overall rate of return calculations. He also explained the Staff position on each of the aforementioned items and listed the results that the Staff concluded from the calculations. He then set forth the results as common recommendations which were incorporated in the settlement agreement as set forth above. Tr. 14-16, 20-22.

In accordance with the settlement agreement, the calculation of the revenue requirement, cost of capital and rate base is as follows:

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

Rate Base

Plant in Service $5,131,783
Less: Accumulated Depreciation $1,155,271
Net Utility Plant $3,976,512
Plus: Materials & Supplies 31,285
 Cash Working Capital 136,805
 Prepayments 2,438

Less: Deferred Income Taxes (583,992)
 Customer Deposits ( 13,190)
 Accrued State Income Taxes 1,947
 Accrued Federal Income Taxes ( 30,171)
 Accrued Property Taxes ( 11,078)
Average Rate Base $3,510,556

Cost of Capital

 Component Component Weighted Ave.
 Ratio Cost Rate Cost Rate

Long Term Debt 45.75%  9.95%  4.55%
Common Equity 54.25% 13.58%  7.37%
 TOTAL 100.00  11.92%

Revenue Requirement

Rate Base $3,510,556
Rate of Return 11.92%
Required Net Operating Income $ 418,458
Adjusted Net Operating Income 304,195
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Income Deficiency 114,263
Tax Effect (° 49.32%) 231,668
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Rate Design

The Company's original filing included several changes to its current rate structure.

1. Basic exchange rates are presently based on the total number of access lines that can be reached on a toll free basis. The proposed rates would unbundle the home exchange lines from the extended area service (EAS) access lines and provide for a specific EAS additive for each exchange based on its EAS calling scope, placing an emphasis on mileage.

2. All four-party business and residential service was proposed to be

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discontinued. Customers would have the option to subscribe to an economy usage pricing offering at the same (or lesser) rate than the present four-party rates.

3. All new business customers would be required to subscribe to a usage pricing service offering.

4. Public and semi-public paystation local call rates were proposed to be increased from $.10 to $.25 per call. A monthly semi-public set charge of $7.00 was also proposed.

5. The rates for non-published listing, unlisted number and additional listing services were proposed to be priced in line with New England Telephone rates for similar services.

6. Directory assistance calls were proposed to be chargeable at $.20 per call with a five free call allowance.

7. Service connection charges were to be increased to place the rates more in line with costs.

8. An inside wire maintenance plan was proposed for residential oneparty subscribers. The rate for that service was proposed at $.50 per month. This plan was to be on an optional basis.

[3-10] The parties to the settlement agreement have stipulated to the following changes to the Company's proposed rate design:

1. Public Telephone coin rates remain at $.10 per call.

2. Non-published, unlisted and additional listing rates changed to agree with New England Telephone rates for the same service.

3. All four-party offerings eliminated.

4. Service connection charges based on time and motion study.

5. The proposed $.50 per month for maintenance charge would not be implemented until a decision is reached in the general docket on inside wiring.

6. A $7 semi-public telephone set charge would be established.

7. Extended Area Service (EAS) charges would not be unbundled from the basic local rates.

8. Mandatory usage pricing for all existing and future business subscribers would be established. A grace period of six months would be set up during which time the business

subscriber would be billed on a flat rate basis and on a usage basis in order that they would have the opportunity to plan for the impact of usage pricing.

9. Directory assistance charges would be established which charges customers $.23 per call after a 10-call free allowance per month.

10. Usage pricing service for all residential subscribers on an optional basis.

The proposed pricing for optional

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residential usage pricing was based on the Company's estimated penetration factor of 50%. The staff estimated that the penetration rate would be lower, based on actual experience with New England Telephone. The parties agreed to use a penetration rate of 35% for pricing of rates. They also agreed that twelve (12) months after the effective date of permanent rates the Company would submit a re-examination of the rates based upon the actual penetration of usage pricing for residential customers. The appropriate revision at that time would be based upon an appropriate revenue neutral rate change and applied on a prospective basis.

Contel has agreed to provide the Commission with the results of a cost of service study to be performed in Vermont and to review the pricing structure in New Hampshire at that time.

COMMISSION FINDINGS

The Commission accepts the settlement agreement. The proposal to offer dual billing to business customers is an option that we find to be in the best interest of the business customers in that it provides them with a period to plan or adjust their calling characteristics.

The parties have agreed and the Commission accepts the provision to allow the Company to surcharge the difference in temporary rates (which were made effective November 27, 1985) and the permanent rates in this order over a three month period. The Company should file a detailed calculation of the recoupment surcharge. Tariffs should be filed in accordance with the settlement agreement. Detailed schedules should also be submitted which show the determination of the annual revenues based upon the revised tariffs.

Our order will issue accordingly.

ORDER

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

ORDERED, that the following revisions to the Continental Telephone Company of New Hampshire (CONTEL-NH) Tariff No. 11 be, and hereby are, rejected:

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

Contents: 4th Revised Sheet 1
 2nd Revised Sheet 2
 1st Revised Sheet 3,4, and 5
Section 3: 10th Revised Sheet 1
 Original Sheets 1.1, 1.2, 1.3 and 1.4
 3rd Revised Sheet 9
 Original Sheet 9.1
Section 4: 2nd Revised Sheet 1
Section 7: 1st Revised Contents
 2nd Revised Sheet 2
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 Original Sheets 4 and 5
Section 12: 6th Revised Sheet 1
 Original Sheet 1.1
 1st Revised Supplement A
 5th Revised Sheet 2
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and it is

FURTHER ORDERED, that CONTEL-NH file revisions to said tariff in lieu of those rejected herein, such revisions to provide an increase in annual intrastate revenues of $231,668; and it is

FURTHER ORDERED, that said revisions incorporate changes in rate structure authorized in the attached report; and it is

FURTHER ORDERED, that such revised pages bear an effective date of March 1, 1986; and it is

FURTHER ORDERED, that CONTEL-NH file with this Commission its plan for recovery of the difference between temporary rates made effective on November 27, 1985 and it is

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FURTHER ORDERED, CONTELNH file detailed schedules demonstrating how direct tariff revisions recover the authorized revenues; and it is

FURTHER ORDERED, customers be provided a bill insert with the first bill rendered under this order, such insert summarizing the authorized changes.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of February, 1986.

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NH.PUC*02/26/86*[60729]*71 NH PUC 135*New England Telephone and Telegraph Company

[Go to End of 60729]

71 NH PUC 135

Re New England Telephone and Telegraph Company

DF 86-61, Order No. 18,130

New Hampshire Public Utilities Commission

February 26, 1986

ORDER authorizing a local exchange telephone carrier to issue and sell debt securities.

Security Issues, § 44 — Factors affecting authorization — Refinancing of high cost debt — Local exchange telephone carrier.

A local exchange telephone carrier was authorized to issue and sell debt securities for the purpose of redeeming certain high coupon bonds and replacing such indebtedness with lower cost debt securities; any proceeds in excess of the amounts necessary to refinance high price issues would be used to reduce the amount of shortterm debt outstanding.

By the COMMISSION:

ORDER

WHEREAS, New England Telephone and Telegraph Company ("New England Telephone") filed a petition for authority to issue debt securities under a shelf registration arrangement on February 19, 1986, with the actual issuance or issuances likely to occur during calendar year 1986; and

WHEREAS, New England Telephone proposes that the total amount of securities to be issued pursuant to this request will not exceed $550,000,000; and

WHEREAS, New England Telephone states that the total amount of debt securities to be issued under this proposal will most likely approximate $350,000,000, but in any case would not exceed $550,000,000; and

WHEREAS, New England Telephone states that the intended use of the proceeds of the proposed debt securities issuance or issuances will be to redeem certain high coupon bonds and to replace such indebtedness with lower cost debt securities, assuming the availability of financially advantageous rates of interest; and

WHEREAS, New England Telephone specifically identifies the issues to be

redeemed as the Thirty-Seven year 12.20% Debentures due 2017, with a total principal amount of $300,000,000, containing redemption provisions that allow the Company, at its option, to call all or any part of that offering as of May 15, 1985 on thirty day notice to bondholders and the outstanding $18,396,000 of its Forty Year 15.25% Debentures due 2018, which will be subject to call on June 15, 1986 under the redemption provisions of that issue; and

WHEREAS, any proceeds in excess of the amounts necessary to refinance high price issues will be used to reduce the amount of short-term debt outstanding; and

WHEREAS, appropriate economic conditions and interest rate levels could also provide the Company with the opportunity to refinance other existing high coupon debt securities issues, New England Telephone proposes that a balance of $200,000,000 of shelf registration be allowed to give the Company additional debt issuance capacity, to allow greater facility to execute issuance and to position it to capitalize on interest rate windows of opportunities; and

WHEREAS, New England Telephone proposes the flexibility to issue either long or intermediate bonds; and

WHEREAS, New England Telephone states that any re-financing would reduce the

embedded cost of debt and its overall cost of capital; it is

ORDERED, that New England Telephone be, and hereby is, authorized to issue and sell debt securities, not to exceed $350,000,000, at appropriate interest rates not exceeding 10%. The proceeds of which will be used to retire Thirty-Seven year 12.20% Debentures, due 2017, with a total principal amount outstanding of $300,000,000 and Forty Year 15.25% Debentures, due 2018, with a principal amount outstanding of $18,396,000; and it is

FURTHER ORDERED, that New England Telephone be, and hereby is, authorized to issue and sell, from time to time, additional debt securities in the aggregate principal amount of $200,000,000, the maturity date(s), the sale price(s) and interest rates thereof to be determined at a later date. The Company will submit to the 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 are just and reasonable and consistent with the public good; and it is

FURTHER ORDERED, that the effective time frame for these financings will be concurrent with the two year term of the proposed shelf registration, under which debt securities would be issued; and it is

FURTHER ORDERED, that New England Telephone shall provide the Commission with copies of the debt obligations if publicly offered or a copy of the proposed agreement if a private offering is to take place.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of February, 1986.

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NH.PUC*02/27/86*[60730]*71 NH PUC 137*Public Service Company of New Hampshire

[Go to End of 60730]

71 NH PUC 137

Re Public Service Company of New Hampshire

Intervenors: Office of Consumer Advocate, Conservation Law Foundation of New England, Inc., Community Action Program, Seacoast Anti-Pollution League, and Campaign for Ratepayers' Rights et al.

DR 83-398, Second Supplemental Order No. 18,131

New Hampshire Public Utilities Commission

February 27, 1986

ORDER determining the scope of the remaining issues in a commission investigation of the appropriate rate-making treatment of an abandoned electric plant.

Parties, § 18 — Intervenors — Effect of late filing.

The granting of a late-filed motion to intervene in a proceeding to determine the appropriate rate-making treatment of an electric utility's investment in an abandoned plant was subject to two conditions: (1) that the intervenor may not object to any matters determined prior to her intervention; and (2) that the intervenor combine her participation with that of another intervenor of like interest. [1] p. 138.

Valuation, § 202 — Abandoned plant — Statutory prohibition against rate recovery — Procedural issues — Electric utility.

In determining the scope of a proceeding regarding the appropriate rate-making treatment of an electric utility's investment in an abandoned plant, the commission rejected the argument that it must issue a final order denying the utility's request for rate recovery of its investment notwithstanding the fact that the commission is prohibited by state statute RSA § 378:30-a from allowing such recovery; the commission held that because it had not made any findings of fact relative to the utility's petition for rate recovery, it could not issue a final order; the parties were allowed to develop a record that would support findings and conclusions as to whether the investment at issue falls within the terms of state statute RSA § 378:30-a. [2] p. 139.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On December 30, 1983 Public Service Company of New Hampshire (PSNH or Company) filed a Petition requesting that the Commission investigate, determine and fix an appropriate ratemaking methodology to enable PSNH to recover costs associated with the Company's investment in Pilgrim Unit 2. As a result, the Commission opened this docket and, on March 9, 1984, reserved, certified and

transferred to the 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?

Re Public Service Co. of New Hampshire, 69 NH PUC 174, 175 (1984). The Supreme Court accepted the transfer and in Re Public Service Co. of New Hampshire, 125 N.H. 46, 480 A.2d 20 (1984), held that RSA 378:30-a does prohibit the Commission from allowing a utility to recover through rates investment in abandoned plant construction. The Court limited its ruling to the issue of statutory construction; it declined to rule on any issue bearing on the constitutionality of the statute. The Court provided that it could not consider the constitutional issues in the absence of a more fully developed record.

On August 3, 1984, PSNH filed a Motion to proceed with this docket in accordance with

RSA 365:5. After several postponements, a duly noticed procedural hearing was scheduled for July 17, 1985. At that procedural hearing the Commission heard argument on issues of intervention, scope and schedule.1(34) The purpose of this Order is to rule on the procedural issues raised and to establish a schedule that can resolve, to the extent possible, the remaining issues in this docket.

Intervention

[1] In the earlier phase of this proceeding, the Commission granted full party intervenor status to the Consumer Advocate, the Conservation Law Foundation of New England, Inc. (CLF), the Community Action Program (CAP) and the Seacoast Anti-Pollution League (SAPL). Re Public Service Co. of New Hampshire, 69 NH PUC 127 (1984). The Campaign for Ratepayers' Rights (CRR) filed a limited appearance, which was also allowed. Id., 69 NH PUC 127. There is no issue as to the status of those parties previously granted intervenor status; those parties continue to be full party intervenors. Nor is there an issue as to the status of CRR. At the July 17, 1985 procedural hearing CRR submitted a Motion to Intervene as a party and the Commission granted the Motion. Thus, the only remaining intervention issue arises from a Motion to Intervene filed subsequent to the July 17, 1985 procedural hearing.

On July 29, 1985, Representative Mary P. Chambers filed a Motion to Intervene. On August 16, 1985 PSNH filed an objection to the Motion to Intervene. After review and consideration, we will grant the Motion to Intervene and overrule the PSNH objection. However, we recognize PSNH's argument that Representative Chambers' Motion was submitted late. We also understand that Representative Chambers' interest in this matter is substantially similar, if not identical, to the interest of other full party intervenors. Thus, in order to prevent the impairment of the orderly and prompt conduct of the proceedings, RSA 541-A:17,

Representative Chambers' Motion is granted subject to the conditions: 1) that Representative Chambers takes the proceeding as it exists as of this Order and may not object to any matters determined prior to her intervention; and 2) that pursuant to RSA 541-A:17 III. (c) Representative Chambers combine her participation with that of another Intervenor of like interest. We expect that Representative Chambers will file with the Commission a written consent to the above conditions no later than 20 days from the date of this Order.

Scope

[2] At the July 17, 1985 procedural hearing, the Commission heard argument on the proposed scope of the remaining issues in this proceeding. On July 31, 1985, CRR filed a Motion for Final Order, which essentially contained further argument on the scope of this proceeding. PSNH filed an objection to the Motion for Final Order on August 19, 1985.

The issue of scope involves the nature of the factual record, if any, that remains to be developed in this docket. CRR argues that since PSNH is requesting recovery in rates of investment in abandoned construction and since the Commission does not have the discretion to allow such recovery, Re Public Service Co. of New Hampshire, supra, the Commission must issue a final order denying the PSNH request. PSNH argues that if it is denied an opportunity to

develop a record, it will likewise be deprived of a forum to contest the constitutionality of RSA 378:30-a.

After review and consideration, we will deny the CRR Motion for a Final Order. The Commission has not made any findings of fact relative to the PSNH petition. Such findings would be necessary before any final order could be issued. Thus, the motion of CRR for a final order is premature. We will allow the parties to develop a record that will support findings and conclusions that the investment at issue either does or does not fall within the terms of RSA 378:30-a. Accordingly, the issues to be determined are:

1) The level of investment;

2) The timing of the investment;

3) The purpose of the investment; and

4) The result of the investment (i.e., whether construction was completed or canceled).

It should be noted that the above issues do not involve the prudency of the investment at issue. RSA 378:30-a, as construed in Re Public Service Co. of New Hampshire, supra, provides that if the investment falls within the terms of the statute, it may not be recovered through rates even if it was prudent. Since any prudency findings can have no effect on any of the remaining issues before us, evidence of prudency or imprudency is irrelevant and outside the scope of this proceeding. See RSA 541-A:18II.; N.H. Admin. Rules, Puc 203.09(b); N.H. Rules of Evidence, 401 and 402.

Schedule

The remaining procedural matter concerns the establishment of a schedule to resolve the remaining issues in this docket. Our review indicates that the limited scope will not require an

extended procedural schedule. However, we will establish a procedural schedule premised on the assumption that every factual issue will be fully litigated. The factual record to be developed is narrow and could possibly be resolved by a stipulation of the parties. We encourage the submission of stipulated facts and hereby notify the parties that if they can agree to stipulated facts, the procedural schedule set forth below will be suspended upon the filing of such a stipulation. The procedural schedule will be as follows:

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

March 21, 1986 Submission of PSNH
 prefiled Testimony and
 Exhibits.
April 4, 1986 Data Requests.
April 18, 1986 Responses to Data Requests.
May 2, 1986 Prefiled Testimony and
 Exhibits of Staff and
 Intervenors.
May 16, 1986 Data Requests.
May 29, 1985 Responses to Data Requests.
June 5, 1986 Hearing.
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Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion to Intervene of Representative Mary P. Chambers be, and hereby is, granted subject to the conditions set forth in the foregoing Report; and it is

FURTHER ORDERED, that the Motion of CRR for a Final Order be, and hereby is, denied; and it is

FURTHER ORDERED, that the scope of the remaining issues is as set forth in the foregoing Report; 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 February, 1986.

FOOTNOTE

[1]At the procedural hearing, the Campaign for Ratepayers' Rights submitted an oral Motion to Recuse Commissioner McQuade. A follow-up written Motion was filed on July 31, 1985 and, on August 2, 1985, the Seacoast Anti-Pollution League filed a written joinder in the Motion. Inasmuch as Mr. McQuade is no longer a member of the Commission, the issue is moot and there is no need for a further ruling on the matter in this proceeding.

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NH.PUC*02/28/86*[60731]*71 NH PUC 141*Granite State Electric Company

[Go to End of 60731]

71 NH PUC 141

Re Granite State Electric Company

DR 85-333, Order No. 18,133

New Hampshire Public Utilities Commission

February 28, 1986

ORDER approving a revised purchased power cost adjustment rate.

Automatic Adjustment Clauses, § 13 — Purchased power cost adjustment — Electric utility.

A proposed revision to the purchased power cost adjustment rate of an electric utility was accepted as appropriate because it was based on the most recent information available; the revision was based on the rates that would be charged (pursuant to a wholesale power rate settlement agreement that was then awaiting Federal Energy Regulatory Commission approval)

by the wholesale power company that provides the power to the electric utility under a long-term primary power supply agreement. [1] p. 142.

Automatic Adjustment Clauses, § 68 — Administrative review — Reconciliation — Purchased power cost adjustment — Electric utility.

An electric utility was required to file with the commission a monthly reconciliation of purchased power cost adjustment revenues to purchased power costs; if a substantial over- or undercollection occurs in any month the utility must include an explanation and a recommendation as to any necessary action. [2] p. 142.

Automatic Adjustment Clauses, § 13 — Purchased power costs — Reasonableness — Electric utility.

Statement, in a purchased power cost adjustment proceeding, that the commission believes that it is reasonable for power supply contracts to be of considerably longer duration than fuel supply contracts because a utility requires a longer planning horizon to build facilities and plan for load requirements. p. 143.

Automatic Adjustment Clauses, § 65 — Administrative review — Purchased power costs — Reasonableness — Electric utility.

Statement, in a purchased power cost adjustment proceeding, that the commission will, in the future, require purchasing utilities to demonstrate that the termination period selected in purchased power agreements be supported by proper analysis of available alternatives; companies which purchase power from an affiliated generating facility will be required to demonstrate that their purchases represent the lowest cost power available consistent with long-term reliability of supply. p. 144.

APPEARANCES: Phillip H.R. Cahill, Esquire and Janice A Callison, Esquire for Granite State Electric Company; Larry M. Smukler, Esquire, General Counsel Public Utilities Commission of New Hampshire.

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By the COMMISSION:

REPORT

Granite State Electric Company (Granite), a utility which provides electricity to certain communities within the State of New Hampshire, on September 16, 1985 filed a notice of a price adjustment increasing its Purchase Power Cost Adjustment (PPCA) to $0.401/KWH. On January 10, 1986 this Commission issued an Order of Notice scheduling a hearing on the merits of said filing for February 3, 1986 at 10:00 A.M. at the Commission offices.

This filing was initiated after Granite's sole supplier of electricity, New England Power Company (NEP), filed for an increase in its basic rates (W-7) at the Federal Energy Regulatory Commission (FERC). Based on this filing, Granite recalculated its cost of purchased power using seven months actual and five months estimated data. On January 24, 1986 Granite reduced the

PPCA rate request to $0.385/100 KWH, based on twelve months ending December, 1985 actual KWH sales data. Subsequent to the hearing on February 11, 1986 Granite decreased its requested PPCA rate to $0.187/100 KWH due to a proposed settlement between NEP and other parties to NEP's W-7 rate case.

During the February 3, 1986 hearing, several issues were addressed, including:

1. The proposed settlement of NEP's W-7 rate and its effect on Granite's petition.

2. A periodic reconciliation of the PPCA.

3. The prudency of Granite's purchase power contract with NEP.

NEP's W-7 Rate

[1] As indicated above, NEP's W-7 rate petition has a proposed settlement agreement pending FERC approval. This agreement has been approved by all parties participating in the rate proceeding. Approval of this agreement by the FERC would reduce NEP's requested increase from $74.2 million to $39.6 million. This translates to a $0.187/100 KWH Granite PPCA rate which it has designated as PPCA W-7(s).[1(35)]

The Commission will accept the revised PPCA rate of $0.187/100 KWH based on NEP's settlement agreement. This rate is appropriate because it is based on the most recent information available. In addition, as part of the settlement NEP has agreed to place the lesser rate into effect as of March 1, 1986. This is the date Granite's filing is proposed to become effective; therefore, accepting the reduced rate will more accurately recover Granite's purchase power costs.

Periodic Reconciliation

[2] Historically, the PPCA, once approved, stays in effect until a new rate is filed by NEP or until the FERC provides a decision on a NEP filing. The Commission staff raised a concern that Granite's PPCA is not regularly reconciled in a set time frame. In response to this, the witness for Granite stated that although Granite does not reconcile the PPCA on a regular basis (such as once a year on December 31) it does

reconcile the PPCA every time there is a change in NEP's rate. Historically this has been at least once a year. Granite, therefore, believes that the establishment of a set schedule for reconciling the PPCA is not necessary.

Granite agreed, however, to provide a report which reconciles PPCA revenue to purchase power cost on a monthly basis. However, Granite stated that this information, when reviewed in isolation, would be misleading. This is because a reconciliation in one month may reflect an over or under collection which, over a period of a year, would not actually be such. The Commission understands Granite's concerns but we believe that monitoring the PPCA on a periodic basis is necessary. Thus, we will require a monthly reconciliation of the PPCA revenue to purchase power cost for Granite. If Granite reports a substantial over or under collected in any given month, Granite will include an explanation of said over or under collection and its recommendation of the appropriate action necessary, if any. This report will be used by the Commission solely for monitoring the PPCA rate, which we have approved herein.

Prudency of Purchase of Power by Granite State from NEP

The final issue to be addressed is whether Granite State has met its burden of proof in demonstrating that the wholesale rate received by New England Power Company is justified for Granite State Electric Company as the product of reasonable efforts to secure the lowest cost in light of appropriate alternatives available to Granite State.

Granite State Electric Company witnesses testified, subject to cross-examination of the Commission Staff, that the New England Power Company was the only source of reliable long-term primary power supply for Granite State. They further testified that the agreement incorporating the wholesale rate approved by FERC was the most economical power available to it. No evidence was presented to dispute the witnesses' testimony.

The Staff was concerned with the provision of the agreement that provides for a minimum seven-year notice to terminate the agreement. Staff questioned whether it was desirable to have more flexibility to terminate the agreement by having a shorter time frame to initiate a notice, particularly in a period which has volative fuel prices.

The Commission appreciates the concerns of Staff with regard to those issues. However, the desire to obtain the lowest cost short term source of power by a distribution company must be balanced against the need to secure a reliable long term supply source. A contract for long term power supply by a retail company with a generating company is different from a generating company's contract with a fuel supplier. In a fuel adjustment proceeding Staff is rightly concerned that a utility not be locked into long term fuel contracts when fuel prices are particularly volatile. In the case of long term power supply contracts, the fuel mix of the supplier is one element to consider in assessing the desirability of the long term supply contract. However, the Commission believes that it is reasonable for power supply contracts to be of a considerably longer time duration than fuel supply contracts because a generating utility requires a longer planning horizon to build facilities and plan for load requirements.

Nevertheless, a longer supply contract creates a greater burden of proof

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for a retail company in demonstrating the prudence of the purchase. The purchasing utility should present a comparison of forecasted rates over the time period of the supply contract relative to forecasted rates from alternative supply sources.

The Commission also recognizes that a corporate entity which has affiliates which generate power and only distribute power are in a different environment than a single company that only purchases power or generates power. We recognize that the corporate entity that includes both types of companies makes overall decisions that affect all of its affiliates and presumably such decisions take into consideration the economic benefits for the entire system.

In the future, we will require the purchasing utility to demonstrate that the termination period selected in the purchase power agreement is supported by proper analysis of the various alternatives that are available during that time period. For those companies which are purchasing utilities within a corporate structure wherein there is an affiliated generating facility, we will require that the purchasing company demonstrate that purchases from its generating affiliate

represent the lowest cost power available consistent with long term reliability of supply.

Considering the above, we must determine in this proceeding whether Granite State Electric has purchased the lowest cost power in light of the appropriate alternatives that were available to it during that time period.

Having reviewed the testimony and exhibits presented to the Commission, the Commission finds the purchase of wholesale power by Granite State from New England Power Company is reasonable. We accept the petition as filed and approve the PPCA W-7(s) rate of $0.187/100 KWH.

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 PPCA W-7(s) filing are approved for all services rendered on or after March 1, 1986.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of February, 1986.

FOOTNOTE

[1]The original filed rate was designated as PPCA W-7 by Granite.

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NH.PUC*02/28/86*[60732]*71 NH PUC 145*Connecticut Valley Electric Company, Inc.

[Go to End of 60732]

71 NH PUC 145

Re Connecticut Valley Electric Company, Inc.

Intervenors: Central Vermont Public Service Corporation and Office of Consumer Advocate

DR 83-200, Sixth Supplemental Order No. 18,148

New Hampshire Public Utilities Commission

February 28, 1986

ORDER authorizing a retail electric utility to continue to purchase power from an affiliated wholesale power company.

Rates, § 47 — Jurisdiction and powers — State commissions — Conflicting jurisdiction — Federal preemption.

Where wholesale rates paid for purchased power by a retail electric utility had been approved by the Federal Energy Regulatory Commission, the commission was federally preempted from

excluding abandoned plant costs included in that wholesale rate from the revenue requirement of the retail utility despite the existence of a state statute, RSA § 378:30-a, which prohibits the rate recovery of abandoned plant costs. [1] p. 146.

Rates, § 47 — Jurisdiction and powers — State commissions — Conflicting jurisdiction — Federal preemption.

The burden on a retail electric utility of proving the reasonableness of its wholesale power purchases is not completely satisfied by evidence of the Federal Energy Regulatory Commission approval of the wholesale rate; the power purchases must also be justified by the retail utility as the product of reasonable efforts to secure the lowest cost power in light of available alternatives. [2] p. 146.

Expenses, § 86 — Payments to affiliated interests — Purchased power costs — Commission authorization — Electric.

A retail electric utility was authorized to continue to purchase power from an affiliated wholesale power company where it demonstrated that the cost of said power compared favorably with available alternatives. [3] p. 146.

Expenses, § 86 — Payments to affiliated interests — Purchased power costs — Conflict of interest — Electric.

Statement, in an order authorizing a retail electric utility to continue to purchase wholesale power from an affiliate, that a potential conflict of interest existed because the management of the retail utility was not distinct from that of the wholesale utility; the commission suggested that the credibility of testimony concerning the purchase of power from the wholesale power company would be enhanced by assigning at least one manager to the task of advancing the interests of the retail utility. p. 147.

APPEARANCES: Joseph M. Kraus, Esquire for Connecticut Valley Electric Company; Michael Holmes, Esquire, Consumer Advocate; Larry M. Smukler, Esquire, General Counsel, Public Utilities Commission of New Hampshire.

By the COMMISSION:

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REPORT

[1, 2] On July 11, 1983, Connecticut Valley Electric Company, Inc. (CVEC) filed revised tariffs increasing revenues in the amount of $991,147. On June 18, 1984, the Commission issued its Report and Second Supplemental Order No. 17,075, Re Connecticut Valley Electric Co., Inc., 69 NH PUC 319 (1984), which inter alia granted rate relief in the amount of $811,998. That figure included certain costs associated with abandoned plant[1(36)] which were a part of the rates of CVEC's wholesale supplier, Central Vermont Public Service Corporation (CVPS). Since those wholesale rates had been approved by the Federal Energy Regulatory Commission (FERC), this Commission concluded that it was federally preempted from excluding abandoned plant costs

from the CVEC revenue requirement. The Order was appealed on the issue of federal preemption and, in Re Sinclair Machine Products, Inc., 126 N.H. 822, 498 A.2d 696 (1985), the Court reversed and remanded the matter to the Commission.

In Re Sinclair, the Court held that the Commission correctly concluded that:

... [T]he PUC is preempted from selectively disallowing portions of CVEC's cost of wholesale power which reflect Central Vermont's cost of abandoned plant. To the extent that our State's anti-CWIP statute, RSA 378:30-a, as interpreted in Re Public Service Co. of New Hampshire, 125 N.H. 46, 480 A.2d 20 (1984), would bar recovery of costs of abandoned plant in the absence of a federal regulatory presence, that rule is preempted in the context of this case. 126 N.H. at p. 830. (Emphasis in original.)

However, the Court went on to provide that CVEC has the burden of proving that its purchases of wholesale power from CVPS under the FERC approved RS-2 rate are reasonable.

That burden is not satisfied merely by submitting evidence of FERC approval of the RS-2 rate, where the approval fails to address the reasonableness of CVEC's participation. The wholesale rate must be justified by the utility as the product of reasonable efforts to secure the lowest cost in light of the appropriate alternatives available to the Company. 126 N.H. at p. 834.

Since CVEC had not met its burden of proof in this instance, the matter was remanded to the Commission.

[3] On January 2, 1986, the Commission issued an Order of Notice scheduling a hearing for February 18, 1986 on the remanded issue. At the February 18, 1986 hearing, CVEC pre- sented the testimony and exhibits of C. J. Frankiewicz, the Wholesale Rates Coordinator of CVPS and Clifford E. Giffin, the Assistant Vice President of System Operations for CVEC and CVPS.

The position of CVEC was that its participation in the RS-2 rate is reasonable. In support of its position, CVEC considered four alternatives:

1) continue to purchase 100% of requirements from CVPS;

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2) purchase 100% requirements from another wholesale supplier;

3) Furnish full requirements by purchasing entitlements from existing generating units owned by others;

4) build or purchase generation and purchase the remaining requirements from the existing generating units of others.

See, Exh. R-4 at 1-2. With respect to alternatives 1 and 2, CVEC examined the 1985 wholesale rates of CVPS, Central Maine Power Company (CMP), Public Service Company of New Hampshire (PSNH) and New England Power Company (NEP). Those rates were as follows:

CVPS $56.57/MWH

CMP $58.25/MWH

PSNH $62.64/MWH
NEP $62.36/MWH

See, Exh. R-1, Attach. CJF-2. The above analysis shows that the RS-2 rate compares favorably with the alternatives and, when the extraordinary Vermont Yankee outage costs are excluded, the RS-2 rate is the least expensive rate available to CVEC. With respect to alternatives 3 and 4, CVEC's analysis showed that, absent its relationship with CVPS, CVEC's capability responsibility would be 32,049 KW plus reserve; an increase in capability responsibility of 3,010 KW plus reserve. Exh. R-1 at 10. CVEC would have to meet this capability responsibility by becoming a separate member of the New England Power Pool (NEPOOL), building or purchasing transmission links, investing in increased metering capability and incurring certain additional administrative expenses in addition to the cost of contracting or purchasing generation. While these costs were not quantified, CVEC was able to conclude that they would be substantially more expensive than the alternative of continuing to purchase under the RS-2 rate. Exh. R-4 at 5.

After review and consideration, we find that CVEC has met its burden of proving that its participation in the RS-2 rate with CVPS is reasonable. While we do not fully accept all of CVEC's assumptions,[3](38) we have not identified any analytical deficiency which would alter the results in this instance. Accordingly, we will affirm our earlier conclusions that CVEC's purchases from CVPS under the RS-2 tariff result in just and reasonable rates.

Our findings and conclusions in this proceeding will not necessarily be the same in future dockets. The terms of the RS-2 tariff provide that CVEC may terminate the arrangement on one calendar year's notice. Exh. R-3 at Response 8.[4](39) It is appropriate here to set forth the Commission's concerns so that they can be appropriately addressed in future periodic Sinclair reviews.

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In this context, it is the identity of CVEC and CVPS management that will raise the most serious questions in future proceedings. The record establishes that CVEC in fact does not have any management that is separate and distinct from the management of CVPS. See e.g., Transcript of January 16, 1984 at 76-77. Management therefore has equal fiduciary responsibilities to the interests of CVPS and CVEC. The result of this is a potential conflict situation; all other things being equal, management will favor the interests of CVPS. Thus, the record clearly supports a finding that future attractive power supply options would be wholly allocated to CVPS; CVEC will only see the benefit of those options through CVPS' blended RS-2 wholesale rate. While this has been appropriate to date, it may not remain appropriate in the future.

The Commission recognizes that managerial decisions, including the assignment of responsibilities to particular individuals, must be made by the utility in the first instance. It is not our intent to substitute our judgment for that of management. However, as the regulatory body with the responsibility of protecting the interests of CVEC's ratepayers, we believe it is appropriate to suggest that there should be at least one person in CVEC's management who has as a primary responsibility the advancement of CVEC's interests.[5](40) In future proceedings, the testimony of such a person in support of a proposed power supply alternative will surely be more

credible than the testimony of CVPS witnesses in support of options that may be of primary benefit to CVPS. The record indicates that there may exist power supply opportunities, particularly purchases from PSNH based on its marginal cost, that could be of more direct benefit to CVEC customers if purchased by CVEC rather than CVPS. See e.g., Exh. R-1 at 13. However, if management adheres to its current policy, such benefits would be allocated to CVPS; CVEC would be, at best, an indirect beneficiary. In a future Sinclair review, management will have the burden of proving that such a policy is reasonable. That burden will be more easily satisfied by the testimony of a witness whose primary function is to advance the interests of CVEC.

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, Inc. be, and hereby is, authorized to continue to purchase power from Central Vermont Public Service Corporation under its RS-2

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wholesale tariff until further order of this Commission issued after due notice and opportunity for hearing.

By Order of the Public Utilities Commission of New Hampshire this twentyeighth day of February, 1986.

FOOTNOTES

[1]Costs associated with construction which is abandoned may not be recovered through retail rates. RSA 378:30-a; Re Public Service Co. of New Hampshire, 125 N.H. 46, 480 A.2d 20 (1984).

[2]The figure displayed excludes extraordinary Vermont Yankee outage costs of $317,541. Inclusion of those costs would yield a rate of $58.58/MWH. Exh. R-1, Attach. CJF-2 at 1.

[3]For example, we question the propriety of assuming that wheeling costs will not differ for purchases from NEP, a supplier with interconnection points close to the CVEC system. We also question CVEC's assumptions about the potential for small power producer or congeneration development in its service territory. As noted above, the effect of a rejection of these company assumptions, even in combination, is not sufficient to alter the results of the analysis.

[4]The Commission has previously provided that it favors power supply arrangements which will allow the Commission to review periodically the decisions of the regulated distribution company. Re Concord Electric Co., 69 NH PUC 701, 705, 706 (1984). The one-year termination provision in the CVPS RS-2 rate satisfies the Commission's concern in this area.

[5]One example of the action that could be taken by such an individual would be the arms-length questioning of certain costs in the RS-2 rate. For instance, CVPS' allowed return on equity under the current RS-2 tariff is 17%. This figure has not changed since 1982, a time when

capital costs were substantially higher than current costs. The FERC's own generic returns for electric utilities are in the 13 to 14% range and this Commission's allowed return on equity for CVEC (based on an assessment of the equity costs of its parent CVPS) is 14.85%. Re Connecticut Valley Electric Co., Inc., supra, 69 NH PUC at p. 321. Given that CVPS' major generation investments are nearing completion and, in any event, CVPS is allowed to include some of its construction work in progress in rate base, and given the general decline in capital costs since 1982, it would appear that an allowed equity return of 17% is excessive. A person with the responsibility of protecting CVEC's interests could have pursued this point in the course of FERC settlement discussions or adjudicative proceedings.

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NH.PUC*02/28/86*[60733]*71 NH PUC 149*Public Service Company of New Hampshire

[Go to End of 60733]

71 NH PUC 149

Re Public Service Company of New Hampshire

Intervenors: Catholic Medical Center and Office of Consumer Advocate

DE 85-285, Order No. 18,149

New Hampshire Public Utilities Commission

February 28, 1986

ORDER approving a special contract rate for electric service.

Rates, § 321 — Electric — Special contract rates — Factors justifying approval.

An electric utility was authorized to enter a special contract, which constituted a departure from general rate schedules, with one of its largest customers; the ability of the customer to take advantage of off-peak generation and the fact that the contract rates would produce revenues in excess of projected marginal costs, taken together with the threat that the customer would switch to natural gas as a space and water heating source, thereby adversely affecting the remaining customers on the system, was found to justify a departure from the general rate schedules of the utility. [1] p. 149.

Rates, § 142 — Reasonableness — Special contract rates — Commission approval — Statutory standard.

The standards governing authorization for special contract rates are found in state statute RSA 378:18, which provides that a special rate contract shall be approved where special circumstances exist which render departure from tariffed rates consistent with the public interest. [2] p. 149.

Rates, § 321 — Electric — Special contract rates — Factors justifying approval.

Approval of a special contract electric rate was conditioned on the utility agreeing to bear the

risk of any revenue shortfall that may occur as a result of the special contract. [3] p. 151.

APPEARANCES: Thomas B. Getz, Esquire and Sulloway, Hollis & Soden by Martin L. Gross, Esquire for Public Ser- vice Company of New Hampshire; Michael Holmes, Esquire, Consumer Advocate; Brown, Olson & Wilson by Robert Olson, Esquire for Catholic Medical Center; Larry M. Smukler, Esquire, General Counsel, Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

[1, 2] On July 31, 1985 Public Service Company of New Hampshire (PSNH or Company) filed a Petition requesting authority to enter into a special contract with Catholic Medical Center (CMC). On October 11, 1985 the Commission issued an Order of Notice with publication which inter alia opened the instant docket and

scheduled a hearing for December 4, 1985. The hearing took place as scheduled on December 4, 1985 and continued on December 12, 1985. The Commission allowed the intervention of the Consumer Advocate and CMC.

In this proceeding, PSNH is proposing to enter into a special contract with CMC; a contract that would be a departure from the Company's general rate schedules. PSNH states that CMC's usage is unique because of the installation of several 11,000 gallon storage tanks which allow CMC to manage its space and water heating requirements. The use of this system, which generally allows CMC to use off-peak electricity for space and water heating has been referred to as megatherm Kwh usage.

The proposed special contract separates CMC's megatherm Kwh usage from all other usage. The key features of the contract are:

1) The contract provides for separately metered off-peak electric service for megatherm requirements. This service is not available under PSNH's tariff.

2) The contract segregates and insulates this off-peak service from exposure to future rate increases not contemplated by PSNH through the use of contractually specified rates for the next five years. Those specified rates would be fixed and subject only to those price variations specifically set out in the contract by formula.

3) The contract allows CMC to monitor its megatherm usage to determine the effect of certain energy efficiency measures.

4) The contract allows greater flexibility in energy management for non-megatherm usage since the megatherm usage would not be part of the billing demand for non-space and water heating electricity.

In support of its proposed special contract, PSNH presented the testimony and exhibits of James T. Rodier, the Company's Rate Research and Regulation Services Manager, and Wyatt W. Brown, the Company's Manager of Energy Management. Mr. Rodier testified that the Company's

analysis is that the revenues derived through the CMC special contract will not be significantly different than those derived if CMC is billed under the tariff. Thus, the rates specified in the CMC contract will be sufficient to cover the Company's costs. Mr. Rodier testified that CMC management had a higher level of concern about future rates than PSNH. Consequently, in the absence of the certainty established by a special contract, CMC would switch to natural gas as a space and water heating energy source. Mr. Rodier testified that the loss of a large customer like CMC would have an adverse effect on the Company and its remaining ratepayers. For this reason, PSNH management deemed it prudent to offer CMC rate certainty through a special contract. Mr. Brown provided the technical information which formed the basis of Mr. Rodier's testimony. Mr. Brown testified that the proposed special contract will provide revenues which will be greater than PSNH's projected marginal cost. Additionally, Mr. Brown analyzed projected natural gas prices in order to demonstrate that natural gas could be considered as a serious competitive threat.

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After review and consideration, we will conditionally approve the proposed special contract between PSNH and CMC as set forth at Exhibit 1 of this docket.

The standards governing our determination are set forth at RSA 378:18:

Nothing herein shall prevent a public utility from making a contract for service at rates other than those fixed by its schedules of general application, if special circumstances exist which render such departure from the general schedules just and consistent with the public interest, and the commission shall by order allow such contract to take effect.

Thus, in order to approve the proposed special contract, we must find that special circumstances exist which render departure from the tariff just and consistent with the public interest.

In the context of PSNH's existing rate schedules, such special circumstances clearly exist. Those circumstances include the unique storage capabilities of CMC's megatherm Kwh usage which allow it to take full advantage of off-peak generation. The fact that the rates in the contract will yield revenues that are not significantly different than those yielded by the tariff (Exh. 4) provides assurance that CMC will be paying cost based rates. Additionally, CMC is one of the largest customers on the PSNH system. Given the credible competitive effect of gas and the adverse effect on PSNH of the loss of such a customer, it is reasonable to attempt to offer that customer the certainty it needs to remain on the system. Accordingly, the record is sufficient to support a finding of special circumstances.

[3] The difficulty presented to the Commission in this proceeding is the evaluation of whether the CMC rate will continue to be cost based over its five-year life. We can clearly conclude that those rates are cost based under current circumstances given that revenues will not vary significantly from those which would have been derived from Commission approved Company tariffs. However, absent the substantive adjudicative determinations which will form the basis of future rates, we cannot find that the contract rates will continue to provide appropriate revenue contributions. That determination cannot be made until we have gone through the process of establishing those future rates. As the Court recently observed in Re

Conservation Law Foundation of New England, Inc., — N.H. —, 507 A.2d 652 (1986):

It should ... be apparent that a rate or structure of rates charged to customers is reasonable within the meaning of the statute when it will produce an amount of revenue that has been determined, and limited, by balancing or relatively weighing investor and customer interests. The commission must exercise its judgment in balancing those interests when it determines the allowable extent of operating expenses, when it identifies the property whose prudently incurred cost is included in the rate base, and when it sets a reasonable rate of return on that rate base. Thus a reasonable rate is the rate resulting from a process that must consider the competing interests of investor and customer and must determine the appropriate recognition that each deserves.

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Conversely, given the existing statutes that we have cited, the reasonableness of a rate should not be determined either independently of the process by which expenses, rate base, and rate of return are set, or after that process has been completed. Although our cases have often referred to the standard of just and reasonable rates as the "ultimate test" of a commission's rate determination, see, e.g., [Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire, 119 N.H. 332, 341, 31 PUR4th 333, 338, 402 A.2d 626, 632 (1979)], the statutes provide neither a procedural nor a conceptual basis for judging reasonableness apart from the process that demands recognition of the customers', as well as the investors' interests when passing on expenses, rate base, and rate of return.

Indeed, any attempt to judge reasonableness apart from that process would entail redundancy and risk both illegality and unconstitutionality ... (Slip Opinion at 26-27).

Given the anticipated unprecedented nature of upcoming rate requests, the Company should be on notice that the Commission may consider de novo a range of issues including, inter alia, the applicability of marginal costs to the development of an appropriate rate structure.

Thus, despite the confidence displayed by PSNH that revenues derived from future contract rates will not be significantly different than those derived from tariff rates, the record in this proceeding does not and cannot support such a finding. The result of this analysis is that we cannot unconditionally approve the proposed special contract. The contract can only be approved if it is conditioned to protect ratepayers from fully bearing the cost of the special contract if PSNH's abovedescribed confidence should prove to be unjustified. Consequently, we will provide here that our approval of the special contract does not mean that any future revenue shortfall resulting from the contract will automatically be allocated to ratepayers. Our approval of the special contract is an approval of a management decision and management must accordingly bear the risk of any adverse consequences that may result from its decision. If PSNH experiences a revenue short-fall caused by the special contract, management must bear the risk that all or a part of that revenue short-fall will be allocated to investors. The amount of such a revenue short-fall, if any, and the resulting allocation of that short-fall cannot be determined until we have completed a future substantive rate process.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the special contract between Public Service Company of New Hampshire and Catholic Medical Center (Exhibit No. 1) be, and hereby is, approved subject to the condition that future revenue short-falls resulting from the special contract, if any, may be allocated to investors in the course of future ratemaking proceedings.

By Order of the Public Utilities Commission of New Hampshire this twentyeighth day of February, 1986.

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NH.PUC*03/11/86*[60734]*71 NH PUC 153*New England Telephone and Telegraph Company

[Go to End of 60734]

71 NH PUC 153

Re New England Telephone and Telegraph Company

Additional party: Department of Public Works and Highways

DE 86-17, Order No. 18,157

New Hampshire Public Utilities Commission

March 11, 1986

ORDER authorizing a local exchange telephone carrier to construct and maintain terminal facilities on state-owned land.

Certificates, § 123 — Telephone — Plant construction — Terminal facilities.

A local exchange telephone carrier was granted authority to construct and maintain terminal facilities on state-owned land; the evidence indicated that there were no acceptable alternatives to the site and no party objected to the grant of authority.

APPEARANCES: for the Petitioner, Sam Smith, Engineering Manager; for the New Hampshire Department of Public Works & Highways, Carol Murray, P.E.

By the COMMISSION:

REPORT

On January 17, 1986, the New England Telephone Company filed with this Commission a Petition for a License to construct and maintain terminal facilities upon and under land belonging to the State of New Hampshire Department of Public Works & Highways west of New Hampshire Route 3 (the Daniel Webster Highway) in Belmont, New Hampshire.

The Commission issued an Order of Notice on January 27, 1986 directing all interested

parties to appear at a public hearing at two o'clock p.m. on February 27, 1986 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 Kathleen Veracco, New England Telephone Company for publication; Carol Murray, Highway Design Division, Department of Public Works & Highways; Selectmen's Office, Belmont; and the Office of the Attorney General.

An affidavit of publication indicating that publication was made in the Union Leader on February 10, 1986, was received at the Commission's office at Concord, New Hampshire on February 19, 1986.

Sam Smith, Engineering Manager, explained that the petition results from a need to increase service to its Laconia customers. The increase is

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necessary in view of local residential and commercial service growth. The Company proposed to locate a ground mounted cabinet on a concrete pedestal at locations specifically identified in Exhibits submitted with the Petition. The plant will be located on a portion of land west of Route 3 immediately north of and adjacent to land now belonging to Youssef (formerly W. York) and the occupation of the property will be of varying width (but not greater than twenty feet) and approximately one hundred feet in length.

Testimony was received from Carol Murray, P.E. on behalf of the Department of Public Works & Highways that the Company had met criteria established by the Department and that they did not object to the filing.

Testimony revealed that there were no acceptable alternatives to the site.

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

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

The Commission finds this Petition for a License to construct and maintain terminal facilities upon and under land belonging to the State of New Hampshire Department of Public Works & Highways west of New Hampshire Route 3 in Belmont, New Hampshire, to be in the public interest.

Our order will issue accordingly.

ORDER

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

ORDERED, that authority be granted to the New England Telephone and Telegraph Company to construct and maintain terminal facilities upon and under land belonging to the State of New Hampshire Department of Public Works & Highways, west of New Hampshire Route 3 (the Daniel Webster Highway) in Belmont, New Hampshire as specifically defined in Petitioner's exhibits.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1986.

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NH.PUC*03/11/86*[60735]*71 NH PUC 155*Manchester Water Works

[Go to End of 60735]

71 NH PUC 155

Re Manchester Water Works

DE 86-30, Order No. 18,158

New Hampshire Public Utilities Commission

March 11, 1986

ORDER nisi authorizing a water utility to extend its service area.

Service, § 210 — Water — New territory.

A water utility was granted authority to extend its mains and service into a town outside its then existing service area; no other water utility had franchise rights in the area sought, and the town government was in accord with the service extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed February 3, 1986, seeks authority under RSA 374: 22 and 26 as amended, to further extend its mains and service in the Town of Hooksett; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Hooksett, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than April 8, 1986, and it is

FURTHER ORDERED, that Manchester Water Works effect said notification by publication of an attested copy of this Order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 19, 1986, and designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI, that

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Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Hooksett in an area herein described, and as shown on a map on file in the Commission offices:

Beginning at a point along the centerline of Golden Gate Drive and Castle Drive, at the easterly most existing franchise limit granted in docket D-E6218 and Order No. 10,553 and continuing easterly following the path and contour of the centerlines of Golden Gate Drive and Castle Drive 2,065 feet plus or minus to the easterly most line of subdivision Lot 9 and 10, of a 20 lot subdivision; meaning and intended to supply water service to subdivision lots 1 through 20

and it is

FURTHER ORDERED, that such authority shall be effective on April 9, 1986, unless a request for hearing is filed with the Commission as provided above or unless the Commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1986.

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NH.PUC*03/11/86*[60736]*71 NH PUC 157*Manchester Water Works

[Go to End of 60736]

71 NH PUC 157

Re Manchester Water Works

DE 86-31, Order No. 18,159

New Hampshire Public Utilities Commission

March 11, 1986

ORDER nisi authorizing a water utility to extend its service area.

Service, § 210 — Water — New territory.

A water utility was granted authority to extend its mains and service into a town outside its then existing service area; no other water utility had franchise rights in the area sought, and the town government was in accord with the service extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed February 3, 1986, seeks authority under RSA 374: 22 and 26 as amended, to further extend its mains and service in the Town of Hooksett; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Hooksett, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than April 8, 1986; and it is

FURTHER ORDERED, that Manchester Water Works effect said notification by publication of an attested copy of this Order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 19, 1986, and designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI, that

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Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Hooksett in an area herein described, and as shown on a map on file in the Commission offices:

A block area, bounded by existing franchise limits on the north; on the south by the Hooksett-Manchester Town Line; on the east by Mammoth Road and on the west by Hooksett Road (Route 3).

and it is

FURTHER ORDERED, that such authority shall be effective on April 9, 1986, unless a request for hearing is filed with the Commission as provided above or unless the Commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1986.

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[Go to End of 60737]

71 NH PUC 159

Re The China Lite Restaurant

DE 86-45, Order No. 18,160

New Hampshire Public Utilities Commission

March 11, 1986

ORDER granting limited public utility status to a restaurant for the purpose of operating a customer-owned coin-operated telephone.

Service, § 456 — Telephone — Customerowned coin-operated telephones.

A restaurant was granted limited public utility status for the purpose of operating a customer-owned coin-operated telephone (COCOT) where said telephone (1) was registered with the Federal Communications Commission, (2) would be connected to a measured business service line, and (3) would be operated in compliance with all commission rules and regulations now existing, or to be established, for COCOTs.

By the COMMISSION:

ORDER

WHEREAS, on March 11, 1985, this Commission issued its Order No. 17,486 in Dockets DE84-152, DE84-159 and DE84-174 (70 NH PUC 89) in which it authorized the use of customer-owned coin-operated telephones (COCOT) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS, Dean Hoy, dba The China Lite Restaurant, Route 12A, Colonial Plaza, West Lebanon, N. H. 03784, filed with this Commission on February 10, 1986 a petition seeking status as a public utility for the limited purpose of installing and operating one COCOT at the foregoing address; and

WHEREAS, Mr. Hoy assured the Commission that the instrument to be installed and operated is manufactured by International Communications, Inc., 1336 American Drive, Neenah, Wisconsin, 54596, and bears FCC registration number EEQ6CH-14382-CX-E; and

WHEREAS, Mr. Hoy also assures the Commission that his instrument meets all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established for COCOTs; it is

ORDERED, that interim license be, and hereby is, granted to Dean Hoy, dba The China Lite Restaurant for the operation of one COCOT to be located at the West Lebanon address cited above; and it is

FURTHER ORDERED, that noncompliance with guidelines and rules

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regarding the operation [sic] COCOTs in the state of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOT specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1986.

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NH.PUC*03/11/86*[60738]*71 NH PUC 160*Concord Natural Gas Corporation

[Go to End of 60738]

71 NH PUC 160

Re Concord Natural Gas Corporation

DF 86-40, Order No. 18,165

New Hampshire Public Utilities Commission

March 11, 1986

ORDER increasing the short-term debt authorization of a natural gas distribution company.

Securities Issues, § 88 — Short-term debt — Borrowing limitation.

The short-term debt authorization of a natural gas distribution company was increased from $1 million to $1.5 million where the company faced preliminary construction requirements of at least $1.7 million and had an outstanding short-term debt balance of $815,000, with a projected need in excess of $1 million.

By the COMMISSION:

ORDER

WHEREAS, Concord Natural Gas Corporation is presently authorized to issue its short-term notes and notes payable in the amount of $1,000,000 until December 31, 1985 by Order No. 17,379, issued in Docket No. Dr 85-7 (70 NH PUC 7); and

WHEREAS, Concord Natural Gas Corporation, by letter dated February 6, 1986, requested authority to issue its short-term debt and notes payable in the amount of $1,500,000 on a permanent basis or until December 31, 1986; and

WHEREAS, Concord Natural Gas Corporation is currently facing preliminary construction requirements of at least $1,700,000 for its Fiscal Year 1986, an increase over 1985 of $550,000, and

WHEREAS, Concord Natural Gas Corporation had an outstanding short term debt balance of $815,000 at January 31, 1986 with a projected need in excess of $1,000,000 occurring as soon as February 25, 1986; it is

ORDERED, that Concord Natural Gas Corporation be, and hereby is, authorized to issue and sell for cash its notes and notes payable in an aggregate amount of $1,500,000 until December 31, 1986; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation will file timely requests for short-term debt levels in excess of statutory requirements or authorized levels; and it is

FURTHER ORDERED, that on or before January 1st and July 1st of each year, Concord Natural Gas Corporation shall file with this Commission a

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detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of the notes or notes payable herein authorized, until the whole of said proceeds have been fully accounted for.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1986.

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NH.PUC*03/12/86*[60739]*71 NH PUC 161*Resource Electric Corporation

[Go to End of 60739]

71 NH PUC 161

Re Resource Electric Corporation

Respondent: Public Service Company of New Hampshire

DR 86-77, Order No. 18,166

New Hampshire Public Utilities Commission

March 12, 1986

ORDER nisi approving a petition for a twenty-year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order.

A small power producer's petition for approval of a twenty-year rate order and interconnection agreement was found to be consistent with commission requirements and, accordingly, approved subject to the filing of exceptions by the interconnecting utility.

By the COMMISSION:

ORDER

WHEREAS, on February 24, 1986, Resource Electric Corporation (REC) filed a long term rate petition for the Mini Power Plant located in Rochester, New Hampshire; and

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

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to REC's Petition for a 20-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore,

ORDERED NISI, that REC's Petition for a 20-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

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

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

the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1986.

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71 NH PUC 162

Re Wendell Water Power Project

Respondent: Public Service Company of New Hampshire

DR 86-51, Order No. 18,167

New Hampshire Public Utilities Commission

March 12, 1986

ORDER nisi approving a petition for a thirty-year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Junior lien.

A small power producer's petition for a thirty-year rate order for a hydroelectric project was approved where the petitioner granted the interconnecting utility a junior lien covering the buyout value of the project; approval was conditioned on the small power producer's satisfactory negotiation of the terms and conditions of the lease governing the project site.

By the COMMISSION:

ORDER

WHEREAS, on February 4, 1986, Matthew J. Bonaccorsi (Bonaccorsi) filed a long term rate petition for the Wendell Water Power Project; and

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

WHEREAS, the New Hampshire Fish and Game Commission approved leasing the Wendell Marsh Dam to Bonaccorsi and the New Hampshire Water Resources Board is negotiating the terms and conditions of said lease; and

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

WHEREAS, Bonaccorsi has averred that he will grant Public Service Company of New Hampshire (PSNH) a "junior lien" on the Wendell Water Power Project, to cover the "buy out" value of the Project; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to Bonaccorsi's Petition for a thirty-year rate order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]) in all respects other than the lien; it is therefore,

ORDERED NISI, that Bonaccorsi's Petition for a thirty-year rate order for approval of his interconnection agreement wiht PSNH and for approval of rates set forth on the long term worksheets is approved; and it is

FURTHER ORDERED, that the approval of Bonaccorsi's Petition is contingent on the satisfactory negotiation of the terms and conditions of the lease for the Wendell Marsh Dam with the New Hampshire Water Resources Board; 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 twelfth day of March, 1986.

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NH.PUC*03/12/86*[60741]*71 NH PUC 164*Franconia Power and Light Company

[Go to End of 60741]

71 NH PUC 164

Re Franconia Power and Light Company

Respondent: Public Service Company of New Hampshire

DR 86-35, Order No. 18,168

New Hampshire Public Utilities Commission

March 12, 1986

ORDER nisi approving a petition for the revocation of a previously approved 20-year rate order and approval of a new 20-year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order.

The commission approved a small power producer's petition for the revocation of a previously approved 20-year rate order and approval of a new 20-year rate order at rates that were unavailable at the time of the previous order; the previous order had been conditioned on an on-line date that could not be met, and the avoided cost rates available at the time of the instant petition were lower than those available under the previous order.

By the COMMISSION:

ORDER

WHEREAS, Franconia Power and Light, Inc. (Franconia) filed for a long term rate petition on August 15, 1984 pursuant to the 20 year rates established under Docket No. DE 83-62, Re Small Energy Producers and Cogenerators; and

WHEREAS, Franconia's filing was predicated on an on-line date of September 1, 1985; and

WHEREAS, on September 19, 1984 this Commission issued Order No. 17,216 in Docket No. DR 84-20 (69 NH PUC 519), approving Franconia long term rate petition; and

WHEREAS, on February 4, 1986, Franconia filed a new long term rate petition pursuant to 20 year rates established under Docket No. DR 85-215, Re Small Energy Producers and Cogenerators; and

WHEREAS, Franconia has represented that it has moved the location of its small power facility to a different site within the town of Lincoln and is now projecting a post-September 1, 1988 on-line date; and

WHEREAS, long term rates incorporating a post-September 1988 on-line date were not available under DE 83-62 and Franconia therefore seeks approval by the Commission for a new long term rate under Docket DR 85-215, supra; and

WHEREAS, currently approved avoided cost rates established in Docket DR 85-215, supra, are lower than those avoided cost rates established in Docket DE 83-62, supra; and

WHEREAS, the Commission will

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allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Franconia's petition for a new 20-year rate order; and

WHEREAS, the petition appears to be consistent with the requirements established in Docket DE 83-62, supra, and Docket DR 85-215, supra; it is therefore,

ORDERED NISI, that Franconia's petition pursuant to long term rates established in Docket DE 83-62, supra, as approved by the Commission on September 19, 1984 in Docket DR 84-20, supra, is hereby revoked; and it is

FURTHER ORDERED NISI, that Franconia's petition for a 20-year rate order for approval of its interconnection agreement with PSNH and for approval of rates established in Docket DR 85-215, supra, and as 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 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 twelfth day of March, 1986.

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NH.PUC*03/12/86*[60742]*71 NH PUC 166*Minnewawa Hydro Company, Inc.

[Go to End of 60742]

71 NH PUC 166

Re Minnewawa Hydro Company, Inc.

Respondent: Public Service Company of New Hampshire

DR 86-47, Order No. 18,169

New Hampshire Public Utilities Commission

March 12, 1986

ORDER nisi approving a petition for a thirty-year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Junior lien.

A small power producer's petition for a thirty-year rate order for a hydroelectric project was approved where the petitioner agreed to grant the interconnecting utility a junior lien covering the buyout value of the project.

By the COMMISSION:

ORDER

WHEREAS, on February 11, 1986, Minnewawa Hydro Co., Inc. (Minnewawa) filed a long term rate petition for its hydro project located in the town of Marlboro; and

WHEREAS, Minnewawa filed amendments to its filing on February 13, 1986; and

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

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

WHEREAS, Minnewawa 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 of the Project; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to Minnewawa's Petition for a thirtyyear rate order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]) in all respects other than the lien; it is therefore,

ORDERED NISI, that Minnewawa's Petition for a thirty-year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheets is approved; and it is

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

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

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1986.

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NH.PUC*03/12/86*[60743]*71 NH PUC 167*Nuclear Decommissioning Finance Committee

[Go to End of 60743]

71 NH PUC 167

Re Nuclear Decommissioning Finance Committee

DE 86-88, Order No. 18,170

New Hampshire Public Utilities Commission

March 12, 1986

ORDER approving the budget of the nuclear decommissioning finance committee and assessing the total budget amount against the owners of the Seabrook nuclear generating facility.

Commissions, § 58 — Fees and assessments against utilities — Nuclear decommissioning finance committee budget.

Pursuant to state statute RSA 162F:18, the 1986 budget of the commission's nuclear decommissioning finance committee was assessed against the owners of the Seabrook nuclear generating facility.

By the COMMISSION:

ORDER

WHEREAS, by letter dated February 28, 1986, the Nuclear Decommissioning Finance Committee (Committee), established pursuant to RSA 162F:15, filed with the Chairman of the New Hampshire Public Utilities Commission its budget for fiscal year 1986 (budget); and

WHEREAS, said budget was unanimously adopted by the Committee at its meeting of February 21, 1986, as follows:

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

$1,000 Administration (clerical, technical
 support RSA 162F:18)
 1,000 Travel (member reimbursement
 RSA 162F:17 III)
 250 Adverstisement & Public Notice
 (RSA 162F:21 I)
 250 Report, Publications & Supplies
 (RSA 162F:21 III)
$2,500 Total Budget Request
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WHEREAS, RSA 162F:18 provides that the reasonable expenses of each committee, including clerical and technical assistance, shall after approval by the Public Utilities Commission be a charge against the owner or owners of the facility; it is

ORDERED, that the budget as submitted is reasonable and is hereby approved; and it is

FURTHER ORDERED, that the total budget amount of $2,500 be assessed against the New Hampshire

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Yankee Division of Public Service Company of New Hampshire as agent for the joint owners of the facility pursuant to RSA 162F:18.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1986.

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NH.PUC*03/12/86*[60744]*71 NH PUC 168*SES Concord Company, L.P.

[Go to End of 60744]

71 NH PUC 168

Re SES Concord Company, L.P.

Respondent: Public Service Company of New Hampshire

DR 86-39, Order No. 18,171

New Hampshire Public Utilities Commission

March 12, 1986

ORDER nisi approving a petition for a thirty-year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Junior lien.

A small power producer's petition for a thirty-year rate order for a waste energy project was approved where the petitioner agreed to grant the interconnecting utility a junior lien covering the buyout value of the project.

By the COMMISSION:

ORDER

WHEREAS, on February 5, 1986, SES Concord Company, L.P. (SES) filed a long term rate petition for the Concord Regional Waste Energy Project; and

WHEREAS, SES filed amendments to its filing on February 13, 1986 and March 7, 1986; and

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

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

WHEREAS, SES 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 of the Project; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to SES's Petition for a thirty-year rate order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]) in all respects other than the lien; it is therefore,

ORDERED NISI, that SES's Petition for a thirty-year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheets is approved; and it is

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

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

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1986.

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NH.PUC*03/14/86*[60745]*71 NH PUC 169*New England Telephone and Telegraph Company

[Go to End of 60745]

71 NH PUC 169

Re New England Telephone and Telegraph Company

DE 86-4, Order No. 18,172

New Hampshire Public Utilities Commission

March 14, 1986

ORDER authorizing a local exchange telephone carrier to place and maintain submarine cable beneath public waters.

Certificates, § 123 — Telephone — Submarine cable.

A local exchange telephone carrier was granted authority to place and maintain submarine cable beneath public waters; the cable would serve existing and future homes located on an island and no party objected to the grant of authority.

APPEARANCES: For New England Telephone and Telegraph Co.; Samuel M. Smith, Outside Plant Supervisor Right-of-Way.

By the COMMISSION:

REPORT

On January 8, 1986, New England Telephone and Telegraph Company (NET) filed with the Commission its petition seeking authority under RSA 371:17 to place and maintain submarine cable plant beneath the public waters of Lake Winnipesaukee in Tuftonboro, New Hampshire. An Order of Notice was issued on January 14, 1986 setting the matter for public hearing at the Commission's Concord offices at 10 a.m. on February 11, 1986. Notices were sent to the petitioner for publication; and to the Commissioner of the Department of Public Works and Highways; the Director of Safety Services; the Chief of Land Management, Department of Resources and Economic Development; and to the Attorney General. Public notice was published in The Union Leader on January 18, 1986, with an affidavit attesting to same filed with the Commission on January 24, 1986.

The duly noticed hearing was convened as scheduled, with no intervenors present. Samuel M. Smith, Outside Plant Supervisor - Right-of-Way, appeared for the petitioner. Mr. Smith

described the crossing as 100-pair submarine cable plant originating on the

mainland at Pole 936D/6 proceeding underground about 20 feet to the shoreline, thence submarine for a distance of 2,100 feet to the shoreline of Chase's Island, thence approximately 120 feet underground to Pole 936D/7. Both poles are existing and are on private property with proper easement.

Entered as exhibits were:

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

Exhibit #1 - NET letter of January 6, 1986 transmitting the filing;
  "  #2 - Formal petition for the crossing;
  "  #3 - Drawing No. 29-73 depicting the
  crossing;
  "  #4 - Approval letter from the Water
  Supply and Pollution Control
  Commission;
  "  #5 - Approval of the Wetlands Board;
and
  "  #6 - Map of the area upon which the
  crossing is superimposed.
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Mr. Smith indicated that the location of the crossing is approximately the same as that of the New Hampshire Electric Cooperative which has supplied electric power to Chase's Island for several years. The 100-pair cable would serve existing homes on the island and allow for growth and/or spare pairs. All construction would follow proper codes.

With no objections voiced on this crossing, the Commission finds it in the public good. Our order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company be, and hereby is, granted authority to place and maintain a 100-pair submarine cable beneath the public waters of Lake Winnipesaukee in Tuftonboro, New Hampshire, said crossing originating at Pole No. 936D/6 and terminating at Pole 936D/7 on Chase's Island.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of March, 1986.

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NH.PUC*03/14/86*[60746]*71 NH PUC 171*Lakes Region Water Company, Inc.

[Go to End of 60746]

New Hampshire Public Utilities Commission

March 14, 1986

ORDER nisi authorizing a water utility to extend its service area.

Service, § 210 — Water — New territory.

A water utility was granted authority to extend its mains and service into a town outside its then existing service area; no other water utility had franchise rights in the area sought, and the utility agreed that new area would be served under its regularly filed tariff.

By the COMMISSION:

ORDER

WHEREAS, Lakes Region Water Company, Inc., a water public utility operating under the jurisdiction of this Commission, by a petition filed February 20, 1986, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Laconia; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than April 21, 1986; and it is

FURTHER ORDERED, that Lakes Region Water Company, Inc., effect said notification by publication of an attested copy of this Order once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than April 1, 1986, and designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI, that Lakes Region Water Company, Inc., be authorized pursuant to RSA 374:22, to

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extend its mains and service in the City of Laconia in an area herein described, and as shown on a map on file in the Commission offices:

Beginning at a point on Route 11B running 830' northeasterly along Wentworth Cove to

Lake Winnipesaukee; thence turning and running northwesterly approximately 1100' to land of Hilsinger and O'Hearn; turning southwesterly and running along land of Hilsinger and O'Hearn and land of Santosinosi approximately 1400' to Route 11B; crossing 11B running southwesterly 400' by land of Horace Cole and Public Service; turning southeasterly and running by land of R.H. Pardoe and City of Laconia approximately 1400' to land of Gate House Condominiums; turning northeasterly and running 575' to Route 11B and Wentworth Cove;

and it is

FURTHER ORDERED, that such authority shall be effective on April 22, 1986 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 fourteenth day of March, 1986.

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NH.PUC*03/14/86*[60747]*71 NH PUC 173*Pennichuck Water Works, Inc.

[Go to End of 60747]

71 NH PUC 173

Re Pennichuck Water Works, Inc.

Intervenor: Anheuser-Busch, Inc.

DR 85-2, Fifth Supplemental Order No. 18,174

New Hampshire Public Utilities Commission

March 14, 1986

ORDER authorizing a water utility to place its proposed rate design into effect pending further investigation.

Rates, § 597 — Water — Rate design — Special factors — Financial condition — Consistency with settlement agreement.

Based on a commission finding that a water utility had an immediate need for increased revenues that would be generated by an already approved rate increase, a water utility was permitted to place its proposed rate design into effect notwithstanding unresolved questions as to whether the rate design was consistent with a commission approved rate settlement agreement; however, should the commission, after further investigation, ultimately decide that the proposed rate design is inconsistent with the settlement agreement, the water utility would be ordered to file a new rate design, which could result in a refund or recoupment order and a modification of special contract rates.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On October 18, 1985, the Commission issued Report and Second Supplemental Order No. 17,911 (70 NH PUC 850) which conditionally approved an increase in annual revenues of $445,321 for Pennichuck Water Works, Inc. (Pennichuck) but did not allow that increase to take effect because that portion of the revenue deficiency to be allocated to Pennichuck's tariff customers could not be accurately calculated until the Commission issued a decision in docket number DE 85-161 regarding a proposed amendment to Pennichuck's special contract with AnheuserBusch, Inc. (AB). That amendment was approved by the Commission in Report and Order No. 18,060 issued on January 15, 1986 (71 NH PUC 88). In addition, on that same date the Commission issued Third Supplemental Order No. 18,061 which directed Pennichuck to file revised schedules, including an amended revenue deficiency calculation, reflecting the additional revenue to be derived from AB as a result of the approval of the special contract and revised tariff pages reflecting the rate structure approved in Report and

Order No. 17,911. Third Supplemental Order No. 18,061 also ordered Pennichuck to file its rate case expense surcharge calculation and temporary rate surcharge calculation.

Pursuant to the Commission's directives, Pennichuck filed on January 29, 1986 a revised revenue deficiency calculation and revised tariff pages (Fifteenth Revised Pages 22, 22-A, 23, 24) with an effective date of February 3, 1986. In addition, it also filed Original Tariff Page 25 which contains the temporary rate and rate case expense surcharges. Those surcharges are calculated using February 3, 1986 as the effective date for the implementation of the basic rate increase.

II. COMMISSION ANALYSIS

A. Revised Revenue Deficiency Calculations

Upon review, we find that the revised revenue deficiency calculation accurately reflects the settlement agreement and incorporates the additional revenue to be obtained from AB as a result of the Commission's approval of the amendment to the Pennichuck/AB special contract. Accordingly, it is hereby approved.

B. Revised Tariff Pages

After reviewing the revised tariff pages, it appears that the two-block rate design contained therein is not consistent with the provisions of the settlement agreement approved by the Commission in the original rate case decision, Report and Order No. 17,911, or in the least does not comport with the Commission's understanding of the settlement agreement.

Section 5.0 of the settlement agreement entitled Rate Matters states as follows:

The parties agree that the Company will propose a specific restructuring of its general

metered service rates (6-M) consistent with the Cost of Service Study, Alternate F tariff design, except that the consumption charges will consist of a two-step design in lieu of the three-step design as recommended in the study.

As to what the two "steps" are to be or how they are to be structured, it was clearly Staff's and indeed the Commission's understanding, that the twostep design was a compromise between the three-step design requested by Pennichuck in Alternate F and the flat consumption charge advocated by Staff as set forth in the testimony of Robert Lessels, the Commission's Water Engineer. Testifying at the September 4, 1985 hearing in support of the settlement agreement, Mr. Lessels' stated as follows:

The rate structure proposed by Staff in this docket has been accepted by the Commission in the most recent rate cases involving Hampton Water Works, Manchester Water Works, Hudson Water Company, and Derry Water. The consultant employed by Derry used the same base extra capacity method that Pennichuck used. It was his proposal without talking to Staff that the Town of Derry employ a flat consumption charge which they did and the Commission approved. I would conclude in this regard that the Commission has before it a filing by Portsmouth Water Works and it is their proposal to

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change from the three-block declining rate structure to a single consumption charge and it was the Superintendent's statement to me that he did not wish to continue a volume discount for large users. In this case and in this agreement, the Staff and the Company have agreed that we would only remove the last or the third block of the general service rate. (Emphasis added.) (Transcript of September 4, 1985 hearing, p. 59.)

BY COMMISSIONER AESCHLIMAN

Q. Mr. Lessels, is it the position of Staff accepting the two-block rate structure that even though you prefer a flat rate structure that you feel that 's a compromise and moving in the direction you would like? Is that the rationale of Staff?

A. I would answer yes; for those reasons, yes. (Transcript of September 5, 1985 hearing pp. 61-62.)

Thus, the terms of the settlement agreement and Mr. Lessels' uncontradicted testimony clearly establish that the twostep rate design would be structured by removing the third block of the Alternate F tariff design contained in Cost of Service Study.

The Alternate F tariff design contains the following rates for billing on a quarterly basis:

Step 1 0 to 10,000 cu. ft. 1.019

Step 2 10,001 to 100,000 cu. ft. .799

Step 3 all over 100,000 cu. ft. .68

The .119 difference between Steps 2 and 3 represents an 18% increase over Step 3 while the .22 increase between Steps 1 and 2 constitutes a 28% increase over Step 2. The three-step design filed by Pennichuck in its original filing mirrors the Alternate F design in that the percentage spread between the steps is identical. It is as follows:

Step 1 0 to 10,000 cu. ft. 1.091 (28%)

Step 2 10,001 to 100,000 cu. ft. .856

Step 3 all over 100,000 cu. ft. .728 (18%)

It should be noted that these steps are higher than the original Alternate F steps because the revenue level originally sought by Pennichuck is greater than that utilized in formulating the Cost of Service Study.

Removing the third block of the Alternate F rate design as contemplated by the settlement agreement should result in a two-step design with the distance or spread between Alternate F's first and second step remaining the same, that is, 28% greater than the second step. While the settlement agreement does not address what distance or spread between the two tiers should be, it does specifically adopt the Alternate F "tariff design." Given that the spread between the tiers is a tariff design's distinguishing characteristic, it seems that the settlement agreement implicitly adopts the tier spread in Alternate F.

The first step of the proposed twostep rate design however does not contain a 28% difference between the first and second step. Rather, the first step is an increase of 57% over the second block. That rate design is as follows:

First 10,000 cu. ft. $ .88 per 100 cu. ft.

Over 10,000 cu. ft. $ .56 per 100 cu. ft.

It therefore appears that the proposed rate design is contrary to that contemplated by the settlement agreement.

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In view of the above, the Commission questions whether the proposed tariff design is consistent with the settlement agreement approved by the Commission. While we are reluctant to let those rates take effect without further investigation, we recognize Pennichuck's need for the revenue to be generated by the already-approved rate increase. That need is amply documented in a letter to the Commission dated February 24, 1986 by Pennichuck's counsel. On the strength of that letter, and our analysis of Pennichuck's financial condition, we will allow it to place these rates in effect for all bills rendered on or after the date of this report and order. However, we will also schedule a further hearing at 10:00 a.m. on April 17, 1986 to allow Pennichuck, AB and the Commission Staff to address the above-stated concerns. If they so choose, the parties shall file written testimony or argument on the issue of whether the proposed rate design is consistent with the approved settlement agreement by April 3, 1986. Pennichuck shall also file by April 3, 1986 one or two alternative two-step designs with the first step being 28% higher than the second step (using the second step as the base from which to calculate the increase) as in Alternate F. Further, Pennichuck shall file by April 3, 1986 a comparison of the charges a typical user in each of the various customer classes would pay under the old, proposed and alternative rate structures requested above. That analysis should be identical to the one recently filed by Pennichuck in support of the proposed rate design.

The Commission will thereafter decide whether the proposed rates are consistent with the

settlement agreement. If the Commission finds they are not, Pennichuck will be ordered to file a new tariff design. It is important to note that the filing of a new tariff design could result in the possibility of an additional refund and/or further recoupment and will certainly result in a modification of the AB rate, which, pursuant to Report and Order No. 18,060 issued on January 16, 1986, establishes that rate as a certain percentage of the second block of the proposed rate structure.

C. Temporary Rate Recoupment and Rate Case Surcharge

As stated above, in addition to the revised tariff pages, Pennichuck also filed Original Tariff Page 25 which contains one surcharge to allow it to recoup the difference between the approved rate increase and temporary rates (Pennichuck's existing rates) back to June 3, 1986, and its rate case expenses. For ease of administration Pennichuck desires to recoup these items in one surcharge.

After receiving Original Tariff Page 25, the Commission directed the Staff to investigate the rate case expense sought to be recovered by Pennichuck through this surcharge. The Staff sent various data requests to both Pennichuck and its counsel. It and the Commission are currently reviewing the data and documentation supplied in the responses to the staff's data requests. Our initial review gives us concern as to the reasonableness of this requested surcharge. We therefore will afford Pennichuck an opportunity to address the reasonableness of its request at the aforementioned April 17, 1986 hearing. It should file any written testimony and argument on this issue by the above stated April 3, 1986 deadline.

The temporary rate recoupment contained on Original Tariff Page 25 appears to be correctly calculated. However, it contemplates an effective date of February 3, 1986. It will therefore have to be recalculated to the date of this report and order which is also the effective date of the rate increase. Because Pennichuck chooses to combine this and the rate case expense recoupment into one surcharge, Pennichuck's recovery of its temporary rate - rate increase differential will have to await final approval of the rate case expense surcharge.

D. Miscellaneous

Lastly, in reviewing the proposed tariff pages we note that Pennichuck proposes to eliminate rate class G-U which is the general service unmetered rate. The Report of Proposed Rate Changes filed with the tariff pages states only that that rate class is to be "discontinued". However, there is no mention of when that metering is to be accomplished or if it has already been completed. If Pennichuck intends to keep the G-U rate in effect pending the completion of the installation of the meters, we do not feel that these general service customers should be exempt from the rate increase all other general service customers are receiving. We therefore will order Pennichuck to file a written response to the following questions by April 3, 1986.

1. Has the metering of the G-U customers been completed? If not, when will it be completed.

2. If the metering is not completed, does Pennichuck intend to charge its unmetered customers the G-U rate until the meter installation is complete? If so, why did the Report of Proposed Rate Changes not include that fact?

In addition, Pennichuck shall also file the current number of customers on the G-U rate. If Pennichuck's responses reveal that the G-U rate will continue to be in effect for the foreseeable future, we will consider whether that customer class should bear their proportionate share of the rate increase.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Fifteenth Revised Tariff Pages 22, 22-A, 23 and 24 filed by Pennichuck Water Works, Inc. with the Commission on January 29, 1986 pursuant to Third Supplemental Order No. 18,061 be, and hereby are, approved subject to the conditions delineated in the foregoing Report; and it is

FURTHER ORDERED, that the rates set forth in said tariff pages shall take effect for all bills rendered on and after the date of this Report and Order; and it is

FURTHER ORDERED, that a hearing be held before the Commission at its offices at 8 Old Suncook Road, Building No. 1, Concord, New Hampshire at 10:00 in the forenoon on the seventeenth day of April, 1986 for the purpose of allowing the parties to this docket an opportunity to address the following issues:

1. whether the two-step rate design contained in the aforementioned

tariff pages is consistent with the provisions of the settlement agreement approved by the Commission in Report and Second Supplemental Order No. 17,911 (70 NH PUC 850); and

2. the reasonableness of the rate case expense surcharge contained in Original Tariff Page 25.

and it is

FURTHER ORDERED, that the parties, Pennichuck Water Works, Inc.; Anheuser-Busch, Inc. and the Commission staff shall file, if they so choose, testimony and/or argument on the above stated issues by April 3, 1986; and it is

FURTHER ORDERED, that as described in the foregoing Report, Pennichuck Water Works, Inc. shall file one or two alternative two-step rate designs with the first step being 28% higher than the second step (using the second step as the base from which to calculate that increase) as in the Alternate F Tariff Design contained in the Cost of Service Study filed by Pennichuck in this docket by April 3, 1986; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall also file by April 3, 1986 a billing analysis consisting of a comparison of the quarterly and/or monthly bills of a typical user in each of the various customer classes would pay under the old, proposed and the above-requested alternative rate designs; and it is

FURTHER ORDERED, that said billing analysis shall be identical to the one recently filed by Pennichuck in support of the proposed two-tier rate design; and it is

FURTHER ORDERED, that Pennichuck shall also file by April 3, 1986 the response to the inquiries raised by the Commission in Section D of the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of March, 1986.

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NH.PUC*03/14/86*[60748]*71 NH PUC 179*Hadley Falls Associates

[Go to End of 60748]

71 NH PUC 179

Re Hadley Falls Associates

Respondent: Public Service Company of New Hampshire

DR 86-59, Order No. 18,175

New Hampshire Public Utilities Commission

March 14, 1986

ORDER nisi approving a petition for a thirty year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Waiver of lien requirement.

In an order approving a small power producer's petition for a thirty year rate order for a hydroelectric project, the requirement that the petitioner must provide a surety bond or junior lien covering the buyout value of the project to the interconnecting utility was waived where the "front loading risk" to the interconnecting utility and its ratepayers was determined to be the same as would exist with a twenty year rate order.

By the COMMISSION:

ORDER

WHEREAS, on February 18, 1986 Hadley Falls Associates (Hadley Falls) filed a long term rate petition for the Hadley Falls Dam project located in Goffstown, New Hampshire; and

WHEREAS, the Petition requested inter alia a thirty year rate order levelized for the first twenty (20) years and tracking the avoided costs thereafter; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), rate orders for terms in excess of 20 years require, inter alia, that the Petitioner provide a surety bond or a junior lien on the project to cover the "buy out" value of the

project; and

WHEREAS, Hadley Falls requests a waiver from the requirement to offer Public Service Company of New Hampshire (PSNH) a surety bond or junior lien on the Hadley Falls Dam project; and

WHEREAS, the "front loading risk" to PSNH and its ratepayers is the same as would exist with a twenty year rate order; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to Hadley Fall's Petition for a thirty year rate order; and

WHEREAS, Hadley Fall's Petition appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, supra, (69 NH PUC 352, 61 PUR4th

Page 179

132), and Docket No. DR 85-215, (70 NH PUC 753, 69 PUR4th 365); it is therefore

ORDERED NISI, that Hadley Fall's Petition for a thirty year rate order for approval of its interconnection agreements with PSNH and for approval of rates set forth on the long term rate worksheets for the Hadley Falls Hydroelectric project without a surety bond or junior lien are approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petitions as they deem 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 fourteenth day of March, 1986.

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NH.PUC*03/14/86*[60749]*71 NH PUC 181*Power Recovery Systems'

[Go to End of 60749]

71 NH PUC 181

Re Power Recovery Systems'

Respondent: Public Service Company of New Hampshire

DR 86-48, Order No. 18,176

New Hampshire Public Utilities Commission

March 14, 1986

ORDER nisi approving a petition for a thirty-year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Junior lien.

A small power producer's petition for a thirty-year rate order for a resource recovery project was approved where the petitioner granted the interconnecting utility a junior lien covering the buyout value of the project.

By the COMMISSION:

ORDER

WHEREAS, on February 12, 1986, Power Recovery Systems' (PRS) filed a long term rate petition for the Derry Resource Recovery Project; and

WHEREAS, PRS filed amendments to its filing on February 14, 1986 and March 3, 1986; and

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

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

WHEREAS, PRS has averred that it will grant Public Service Company of New Hampshire (PSNH) a "junior lien" on the Derry Resource Recovery Project, to cover the "buy out" value of the Project; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to PRS's Petition for a thirty-year rate order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, (69 NH PUC 352, 61 PUR4th 132), and Docket No. DR 85-215, (70 NH PUC 753, 69 PUR4th 365) in all respects other than the lien; it is therefore

ORDERED NISI, that PRS's Petition for a thirty-year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheets is approved; and it is

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

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

effective date.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of March, 1986.

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NH.PUC*03/18/86*[60750]*71 NH PUC 182*Manchester Water Works

[Go to End of 60750]

71 NH PUC 182

Re Manchester Water Works

Intervenor: Town of Londonderry

DE 86-84, Order No. 18,177

New Hampshire Public Utilities Commission

March 18, 1986

ORDER nisi authorizing a water utility to extend its service area.

Service, § 210 — Extensions — Water — New Territory.

A water utility was granted authority to extend its mains and service into an area outside its then existing service area; whereas no other water utility had a franchise right in the area sought, the utility agreed that the new area would be served under its regularly filed tariff, and the town to be served was in accord with the service extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed March 6, 1986, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Londonderry; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Town of Londonderry has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is

ORDERED, that all persons interested in responding to the petition be notified that they may

submit their comments to the Commission or may submit a written request for a hearing

in this matter no later than April 20, 1986, and it is

FURTHER ORDERED, that Manchester Water Works effect said notification by publication of an attested copy of this Order once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 25,1986, and designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI, that Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Londonderry in an area herein described, and as shown on a map on file in the Commission offices:

Beginning at the intersection of Independence Drive with Liberty Drive, and continuing southerly 380 feet more or less along Independence Drive; meaning and intended to provide water service to the block area comprising Lot #81 as shown on Town of Londonderry Tax Map No. 16, as of the date of this. Order.

and it is

FURTHER ORDERED, that such authority shall be effective on April 21 , 1986 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 eighteenth day of March, 1986.

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NH.PUC*03/21/86*[60751]*71 NH PUC 184*Public Service Company of New Hampshire

[Go to End of 60751]

71 NH PUC 184

Re Public Service Company of New Hampshire

DR 85-398, Supplemental Order No. 18,178

New Hampshire Public Utilities Commission

March 21, 1986

ORDER granting the motion of an electric utility for the elimination of a requirement that it solicit competitive bids for the procurement of fuel oil.

Automatic Adjustment Clauses, § 32 — Energy cost recovery clauses — Fuel procurement — Competitive bidding.

In an order on rehearing of an energy cost recovery mechanism proceeding, the commission lifted the requirement that an electric utility solicit competitive bids for the procurement of fuel oil; the commission found that under well established ratemaking principles utility management has discretion to determine the manner in which contracts for the purchase of fuel are obtained; nevertheless, if the utility chooses not to utilize competitive bidding, it has the burden of establishing that it fully identified and considered various purchase options, including competitive bidding, and that the option chosen was reasonable.

APPEARANCES: As previously noted.

By the COMMISSION:

Report

Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire, initiated this docket on November 22, 1985 by petitioning for a change in its then effective Energy Cost Recovery Mechanism (ECRM) rate. Duly noticed hearings were held on December 18 and 19, 1985 to review the merits of said petition. Upon completion of these hearing [sic] the Commission issued its Report and Order No. 18,028 dated December 31, 1985 (70 NH PUC 1093), approving an ECRM rate of $3.408/100 KWH for January through June, 1986.

Thereafter, on January 20, 1986, PSNH filed a motion for rehearing pursuant to RSA 541:3 with regard to the Commission's directive on page 13 of the Report accompanying Order No. 18,028 that PSNH engage in competitive bidding for all future fuel procurement contracts. The Commission stated as follows (70 NH PUC at p. 1099):

PSNH recently extended its contract with Apex Oil Company for a one year period. The company did not seek competitive bids prior to awarding this extension to Apex. Staff questioned this practice. The Commission does also.

Although the terms of this contract appear favorable, if competitive bidding is not sought there will always be some doubt as to whether PSNH's management had negotiated the best contract for itself and its ratepayers. In fact, the Company may have found that under the pressure of competitive bidding Apex may have offered additional concessions in order to retain PSNH as a customer.

When this and all other current contracts for procurement of fuel have expired, PSNH is to seek bids and renegotiate said contract(s) accordingly. The bidding tabulations are to remain on file subject to Commission review.

In its motion PSNH states that the Commission's decision in Report and Order No. 18,028 is unlawful and unreasonable because:

1. the Commission did not provide adequate notice that it would be making a policy decision regarding PSNH's future fuel procurement;

2. the Commission's decision presents a paradox in that it accepts the renegotiated Apex contract for purposes of this proceeding but does not permit future renegotiations of contracts; and

3. the Commission's decision violates the "management discretion" standard adopted by the New Hampshire Supreme Court; and

4. the Commission' statement on page 13 that "[w]hen this and all other current contracts for procurement of fuel have expired, to seek bids and renegotiate said contract(s) accordingly" requires clarification inasmuch as seeking bids and renegotiating existing contracts are inconsistent endeavors.

After review, we will grant PSNH's motion. We agree that under this jurisdiction's well-established ratemaking principles, a utility's management is given discretion in the first instance to make purchases, including fuel, and to thereby incur expenses in the day-today operation of its business. Thus, while it is not generally necessary for a utility to get Commission approval before incurring expenses such as salaries, supplies and fuel, these operating expenses are reviewed by the Commission when the utility seeks their recovery through customer rates. To recover operating expenses through rates, a utility has the burden of establishing that such expenses are recurring, that is, they are reflective of its ongoing cost of providing service. In addition, the utility must demonstrate the reasonableness of its expense. As was stated in the last PSNH rate case decision, the Commission may disallow an expense if it finds that an expense "represents inefficiency, improvidence, economic waste, abuse of managerial discretion or other arbitrary action inimical to the public interest." Re Public Service Co. of New Hampshire, 69 NH PUC 67, 80, 57 PUR4th 563, 576 (1984).

While the Commission considers competitive bidding to be, in general, the preferable alternative in procuring fuel, PSNH clearly has some discretion under New Hampshire's regulatory scheme to determine the manner in

which contracts for the purchase of fuel are to be obtained. If, in the future, PSNH chooses not to utilize competitive bidding, it has the burden of establishing that it has fully identified and considered all the various purchase options, including competitive bidding, and that the action it has taken was reasonable.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, Public Service Company of New Hampshire's Motion for Rehearing, dated January 20, 1986, be, and hereby is, granted.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of March, 1986.

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[Go to End of 60752]

71 NH PUC 187

Re Manchester Water Works

Intervenor: Town of Londonderry

DE 86-86, Order No. 18,180

New Hampshire Public Utilities Commission

March 24, 1986

ORDER nisi authorizing a water utility to extend its service area.

Service, § 210 — Extensions — Water — New Territory.

A water utility was granted authority to extend its mains and service into an area outside its then existing service area; whereas no other water utility had a franchise right in the area sought, the utility agreed that the new area would be served under its regularly filed tariff, and the town to be served was in accord with the service extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed March 7, 1986, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Londonderry; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Town of Londonderry has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than April 14, 1986, and it is

FURTHER ORDERED, that Manchester Water Works effect said notification by publication of an attested copy of this Order once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later

than April 3, 1986 and designated in an affidavit to be made on a copy of this

Order and filed with this office; and it is

FURTHER ORDERED, NISI that Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Londonderry in an area herein described, and as shown on a map on file in the Commission offices:

Extension to existing franchise limit for Rockingham Road is to be confined to Lot #54, as shown on Town of Londonderry Tax Map #13; said Lot #54 being located along the southerly side of Rockingham Road, and beginning 180 feet more or less southeasterly of the centerline of the intersection of Rockingham Road with Stonehenge Road, so called.

and it is

FURTHER ORDERED, that such authority shall be effective on April 15, 1986, 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 twentyfourth day of March , 1986.

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NH.PUC*03/24/86*[60753]*71 NH PUC 189*John F. Chick and Son, Inc.

[Go to End of 60753]

71 NH PUC 189

Re John F. Chick and Son, Inc.

DE 86-81, Order No. 18,181

New Hampshire Public Utilities Commission

March 24, 1986

ORDER approving the transfer of ownership of a water utility.

Consolidation, Merger, and Sale, § 19 — Grounds for approval — Public benefit — Water utility.

The sale and transfer of a water utility was approved where after investigation and consideration the commission found that the sale and transfer would be in the public good.

By the COMMISSION:

ORDER

WHEREAS, in docket DE 83-265 and Order No. 16,723, (68 NH PUC 278), the water system owned and operated by John F. Chick & Son, Inc., in the Village of Silver Lake, Madison, N.H., was established as a public utility in the area where service is now being provided in accordance with the provisions of RSA 362:4; and

WHEREAS, in docket DE 83-265 and Order No. 17,435, (70 NH PUC 50), annual charges for such service were authorized; and

WHEREAS, by letter dated March 3, 1986, John F. Chick & Son, Inc., now seeks approval for the sale and transfer of the water utility to New Chick Water Company, Inc., a corporation organized under New Hampshire law; and

WHEREAS, New Chick Water Company, Inc., states that there will be no change in the assets, management or operations of the water utility; and

WHEREAS, after investigation and consideration the Commission is of the opinion that approval of the sale and transfer, as requested, will be in the public good; it is hereby

ORDERED, that the sale and transfer of the John F. Chick & Son, Inc., water utility to the New Chick Water Company Inc., be and hereby is, approved in accordance with the provisions of RSA 374:30.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 1986.

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NH.PUC*03/25/86*[60754]*71 NH PUC 190*Gas Service, Inc.

[Go to End of 60754]

71 NH PUC 190

Re Gas Service, Inc.

Intervenor: Office of Consumer Advocate

DR 85-405, Supplemental Order No. 18,182

New Hampshire Public Utilities Commission

March 25, 1986

ORDER granting a petition for temporary rates for natural gas distribution service.

Rates, § 630 — Temporary rates — Method of calculation — Natural gas distribution service.

A natural gas distribution utility's petition for temporary rates was granted where the methodology employed for calculating the temporary rate increase omitted most of the pro forma adjustments requested by the utility in its pending permanent rate increase filing; the commission

had approved the use of the methodology in a prior proceeding involving another gas distributor.

APPEARANCES: Orr and Reno by Charles H. Toll, Jr., Esquire, David W. Marshall, Esquire and Thomas C. Platt, III, Esquire; Michael W. Holmes, Esquire, Consumer Advocate; Daniel J. Kalinski, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On January 9, 1986, Gas Service, Inc. (Company), a public utility providing gas service in the State of New Hampshire, filed revised tariff pages reflecting an increase in gross annual revenues of $1,371,468 to be effective with bills rendered on or after February 9, 1986. By Order No. 18,106 issued on February 7, 1986 the Commission suspended the effective date of those tariff revisions pursuant to the provisions of RSA 378:6 in order to conduct an appropriate investigation.

On January 21, 1986, the Company filed a Petition For Temporary Rates pursuant to RSA 378:27 requesting an increase in revenues of $1,371,468, the same amount sought by its January 9, 1986 permanent rate filing, or, alternatively, an increase of $634,270. The Company requested that temporary rates take effect for all bills rendered on or after February 9, 1986. An Order of Notice was issued on February 10, 1986 setting a hearing for March 17, 1986 on the issues of temporary rates and an appropriate procedural schedule. Carolyn Huber, the Company's Manager of Regulatory Affairs,

and Michael J. Mancini, its Treasurer, provided testimony and exhibits in support of the petition. Neither the Staff nor the Consumer Advocate offered any witnesses.

The Company's $634,270 increase as set forth in Mrs. Huber's testimony was computed as follows:

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

Rate Base 17,060,661
Cost of Capital 14.00%
Required Net Gas
 Operating Income 2,388,493
Net Operating Income 2,045,987
Revenue Deficiency 342,506
Tax Effect (1.00 - .46) °54
 634,270
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The above rate base calculation (Exhibit 1, Schedule C) is comprised of the actual 13 month average rate base for a test year ending September 30, 1985 and the following proforma adjustments:

1. the working capital figure as set forth on Schedule C of Exhibit 1 reflects an allowance equal to 45 days of the Company's non-gas expense for operations and maintenance instead of

the allowance derived from the so-called "lead lag" study and requested by the Company in its permanent rate increase filing; and

2. the Company's deferred Federal Income Tax and pre-1970 investment Tax Credit are computed on the basis of a monthly linear calculation for 13-month average purposes instead of the methodology utilized by the Company in its permanent rate increase filing.

In addition to the lead-lag study working capital allowance and the deferred tax and investment tax credit computations, the Company also omitted for temporary rate purposes the pro-forma adjustments to rate base requested in the permanent rate increase filing (Exhibit 24, Schedules A through F of Exhibit 3 in this proceeding).

The income statement contained in the above revenue deficiency computation also utilizes actual test year data without the proforma adjustments requested in the permanent rate increase filing. The only adjustments requested for temporary rate purposes are as follows:

1. increased interest attributable to $2.5 million of additional long-term debt issued in May, 1985 pursuant to the Commission's authorization in DF 85-22 (Report and Order No. 17,560 [70 NH PUC 312]);

2. decreased interest expense attributable to the elimination of shortterm debt of $450,000 outstanding at the end of the test year which was replaced by an infusion of common equity from the Company's parent corporation; and

3. the tax effect of the adjustments set forth in 1 and 2.

Lastly, the 14.0% rate of return requested for temporary rate purposes as set forth in Exhibit 1, Schedule B, is calculated as follows:

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

Component Item	Component Ratio	Cost Rate	Weighted Average Cost Rate
Common Stock	0.4618	15.50	7.16%
Preferred Stock	0.0799	13.50	1.08
Long Term Debt	0.4583	12.57	5.76
Total	1.0000		14.00%

In addition to the above September 30, 1985 embedded preferred stock and

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long term debt cost rate, the Company utilized a 15.5% cost of common equity to arrive at a 14% overall return. 15.5% is the cost of common equity accepted by the Commission in allowing a step increase in conjunction with the Company's last rate case, DR 83345. See Order No. 17,061 (69 NH PUC 291) and Report and Order No. 17,782 (70 NH PUC 676).

Prior to the hearing, the Staff, Consumer Advocate and Company met in an effort to determine whether there was any agreement among the parties regarding the requested level of temporary rates and a proposed procedural schedule. At the hearing, Staff represented that it supports the requested increase because the methodology utilized by the Company as discussed above is the same as that approved by the Commission in the temporary rate decision for

Manchester Gas Company in DR 85-214. Report and Supplemental Order No. 17,972 (70 NH PUC 999.). Essentially, this methodology omits most pro forma adjustments requested in the permanent rate increase filing in setting temporary rates. The Consumer Advocate took no position on the requested increase. With regard to a procedural schedule, all the parties proposed the following:

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

May 16, 1986 Deadline for Staff and
 Intervenor Data Requests
May 30, 1986 Deadline for Company
 Responses to Staff and
 Intervenor Data Requests
June 13, 1986 Deadline for Staff and
 Intervenor to Submit
 Testimony
June 20, 1986 Deadline for Company
 data requests
July 11, 1986 Deadline for Staff and
 Intervenor responses to
 Company data requests
July 29, 30
 and 31, 1986 Hearing Dates
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In addition, the parties propose that temporary rates take effect with all bills rendered on or after April 1, 1986, not February 9, 1986 as originally requested by the Company, and that the increase be reflected in the Company's rate design by increasing its existing base rates, including the customer charge, on a pro rata basis.

After a complete review, we will approve the temporary rate level requested by the Company. The methodology employed by the Company in setting temporary rates is the same as that approved by the Commission in Report and Order No. 19,792 in DR 85-214 regarding Manchester Gas Company's temporary rate request. We find that the requested $634,270 revenue increase for temporary rate purposes shall be "sufficient to yield not less than a reasonable return on the cost of property of the utility used and useful in the public service ..." RSA 378:27. That increase shall become effective with all bills rendered on or after April 1, 1986.

In addition, with the exception of the July 29, 30 and 31 hearing dates, we find the proposed procedural schedule to be reasonable. As we pointed out at the hearing, the Commission will be away during that week. Accordingly, we will set hearings for August 5, 6 and 7, 1986.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Gas Service, Inc.'s petition for temporary rates pursuant to RSA 378:27 be, and hereby is, granted; and it is

FURTHER ORDERED, that as provided in the foregoing Report, Gas Service, Inc. be, and hereby is, authorized to set temporary rates sufficient to yield an increase in gross annual operating revenues of $634,270 to take effect with all bills rendered on or after April 1, 1986;

and it is

FURTHER ORDERED, that Gas Service, Inc. shall file revised tariff pages reflecting the temporary rates approved herein; and it is

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

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

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May 16, 1986 Deadline for Staff and
 Intervenor data requests
May 30, 1986 Deadline for Company
 responses to Staff and
 Intervenor data requests
June 13, 1986 Deadline for Staff and
 Intervenor to submit testimony
June 20, 1986 Deadline for Company data
 requests
July 11, 1986 Deadline for Staff and
 Intervenor responses to
 Company data requests
August 5, 6,
 and 7, 1986 Hearing Dates.
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By order of the Public Utilities Commission of New Hampshire this twentyfifth day of March, 1986.

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NH.PUC*03/25/86*[60755]*71 NH PUC 194*Mountain Springs Water Company, Inc.

[Go to End of 60755]

71 NH PUC 194

Re Mountain Springs Water Company, Inc.

DR 85-358, Supplemental Order No. 18,187

New Hampshire Public Utilities Commission

March 25, 1986

ORDER rescinding a grant of authority to operate as a public utility.

Public Utilities, § 3 — Termination of public utility status — Water utility.

A grant of authority allowing a water company to operate as a public utility was rescinded where the water company was purchased by a water service provider that did not come under the jurisdiction of the commission.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, in Docket DE 6481 and Order No. 12,430, (61 NH PUC 254), this Commission granted Mountain Springs Water Company, Inc., the authority to operate as a public utility in limited areas in the Towns of Haverhill and Bath, New Hampshire; and

WHEREAS, on January 15, 1986, the Mountain Lakes Water District acquired title to, and possession of, all of the Mountain Springs Water Company, Inc., plant and equipment; and

WHEREAS, as of January 15, 1986, the Mountain Lakes District is sole provider of water service to those customers previously served by Mountain Springs Water Company, Inc.; and

WHEREAS, in accordance with the provisions of RSA 362:2, water service provided by Mountain Lakes District does not come under the jurisdiction of this Commission; and

WHEREAS, after investigation and consideration it is the opinion of this Commission that it is in the public good that the authority granted to Mountain Springs Water Company, Inc., be rescinded; it is hereby

ORDERED, that the authority granted to Mountain Springs Water Company in docket DE 6481 and Order No. 12,430, to operate as a public utility in limited areas in the Towns of Haverhill and Bath, New Hampshire, be and hereby is rescinded.

By order of the Public Utilities Commission of New Hampshire this twentyfifth day of March, 1986.

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NH.PUC*03/25/86*[60756]*71 NH PUC 195*Manchester Water Works

[Go to End of 60756]

71 NH PUC 195

Re Manchester Water Works

DE 86-73, Order No. 18,188

New Hampshire Public Utilities Commission

March 25, 1986

ORDER nisi authorizing a water utility to extend its service area.

Service, § 210 — Extensions — Water — New territory.

A water utility was granted authority to extend its mains and service into an area outside its then existing service area; whereas no other water utility had a franchise right in the area sought, the utility agreed that the new area would be served under its regularly filed tariff, and the town to be served was in accord with the service extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed February 24, 1986, seeks authority under RSA 374: 22 and 26 as amended, to further extend its mains and service in the Town of Hooksett; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Hooksett, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than April 22, 1986, and it is

FURTHER ORDERED, that Manchester Water Works effect said notification by publication of an attested copy of this Order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than April 2, 1986 and designated in an affidavit to be made on a copy of this

Order and filed with this office; and it is

FURTHER ORDERED, NISI that Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Hooksett in an area herein described, and as shown on a map on file in the Commission offices:

Beginning at a point along the centerline of Londonderry Turnpike, said point being 2,290 feet north of the boundary line between Hooksett and Manchester, at the northerly limit of the franchise, granted in Docket DE 84-378, and Order No. 17,424 and continuing north, following the path and contour of the centerline of Londonderry Turnpike 3,600 feet plus or minus, to the northerly most property line of Lot #56. Meaning and intending to include all lots of record fronting on said portion of Londonderry Turnpike and as shown on Town of Hooksett Tax Map No. 49.

and it is

FURTHER ORDERED, that such authority shall be effective on April 23, 1986 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 twentyfifth day of March, 1986.

71 NH PUC 197

Re Manchester Water Works

DE 86-74, Order No. 18,189

New Hampshire Public Utilities Commission

March 25, 1986

ORDER nisi authorizing a water utility to extend its service area.

Service, § 210 — Extensions — Water — New territory.

A water utility was granted authority to extend its mains and service into an area outside its then existing service area; whereas no other water utility had a franchise right in the area sought, the utility agreed that the new area would be served under its regularly filed tariff, and the town to be served was in accord with the service extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed February 24, 1986, seeks authority under RSA 374: 22 and 26 as amended, to further extend its mains and service in the Town of Hooksett; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Hooksett, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than April 22, 1986, and it is

FURTHER ORDERED, that Manchester Water Works effect said notification by publication

of an attested copy of this Order once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than April 2, 1986; and designated in an affidavit to be made on a copy of this

Order and filed with this office; and it is

FURTHER ORDERED, NISI, that Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Hooksett in an area herein described, and as shown on a map on file in the Commission offices:

Beginning at a point along the centerline of Hackett Hill Road at the Manchester-Hooksett town lines, thence northerly along the path and contour of Hackett Hill Road, a distance of 2,000 feet more or less to a point at the northerly most limits of Lot #53 on Hackett Hill Road. Meaning and intending to include lots 51, 52, 53, 53-1 and 53-2 fronting along Hackett Hill Road, Hooksett, and as shown on Hooksett tax map No. 37 as of the date of this Report & Order.

and it is

FURTHER ORDERED, that such authority shall be effective on April 23, 1986 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 twentyfifth day of March, 1986.

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NH.PUC*03/25/86*[60758]*71 NH PUC 199*Manchester Water Works

[Go to End of 60758]

71 NH PUC 199

Re Manchester Water Works

DE 86-75, Order No. 18,190

New Hampshire Public Utilities Commission

March 25, 1986

ORDER nisi authorizing a water utility to extend its service area.

Service, § 210 — Extensions — Water — New territory.

A water utility was granted authority to extend its mains and service into an area outside its then existing service area; whereas no other water utility had a franchise right in the area sought, the utility agreed that the new area would be served under its regularly filed tariff, and the town to be served was in accord with the service extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed February 24, 1986, seeks authority under RSA 374: 22 and 26 as amended, to further extend its mains and service in the Town of Hooksett; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Hooksett, has stated that it is in accord with the Petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this Petition; it is hereby

ORDERED, that all persons interested in responding to the Petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than April 22, 1986, and it is

FURTHER ORDERED, that Manchester Water Works effect said notification by publication of an attested copy of this Order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than April 2, 1986 and designated in an affidavit to be made on a copy of this

Order and filed with this office; and it is

FURTHER ORDERED NISI, that Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Hooksett in an area herein described, and as shown on a map on file in the Commission offices:

Beginning at a point along the centerline of Mammoth Road, said point being at the northerly most existing franchise limit granted in Docket D-E6356 and Order No. 10,766 and continuing northerly following the path and contour of the centerline of Mammoth Road, 1150 feet plus or minus to the northerly most line of Lot #48, of a 48 lot subdivision; thence easterly approximately 3800 feet within the subdivision to include the proposed streets known as Autumn Run, Winter Drive and Debbie Street.

Meaning and intending to include Lots No. 1-48 inclusive of the Lemar Development Corporation (Martel Realty) subdivision east of Mammoth Road and those lots abutting Mammoth Road on the west to the northerly boundary of Lot number 48 on the east.

and it is

FURTHER ORDERED, that such authority shall be effective on April 23, 1986 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 twentyfifth day of March, 1986.

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NH.PUC*03/26/86*[60759]*71 NH PUC 201*TDEnergy, Inc.

[Go to End of 60759]

71 NH PUC 201

Re TDEnergy, Inc.

Additional petitioner: Ashland Power Associates

DR 85-13, DR 85-65, Supplemental Order No. 18,191

New Hampshire Public Utilities Commission

March 26, 1986

ORDER denying a motion for rehearing of a commission finding that it does not possess jurisdiction to set rates for the purchase of power by electric utilities from out-of-state small power producers.

Cogeneration, § 4 — State jurisdiction — Out of state power purchases — Electric utility.

The commission denied a motion for rehearing of its finding that it does not possess jurisdiction to set rates for the purchase of power by electric utilities from out-of-state small power producers where the motion did not present any information that had not been previously considered and rejected by the majority of the commission.

Cogeneration, § 4 — State jurisdiction — Out of state power purchases — Electric utility.

Statement, in dissenting opinion, that the clear intent of the Public Utility Regulatory Policies Act (PURPA) and of the rules promulgated by the Federal Energy Regulatory Commission to implement PURPA, is to require the state commissions which exercise jurisdiction over purchasing utilities to set avoided cost rates applying to all purchases of small power production regardless of the location of the qualifying facility, and that, accordingly, the commission has jurisdiction to set rates for the purchase of power by electric utilities from out of state power producers. p. 202.

(AESCHLIMAN, commissioner, dissents, p. 202.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On January 3, 1986, the Commission issued Report and Order No. 18,036 (Report) (71 NH PUC 5) in this docket which denied the petitions of TDEnergy, Inc. (TD) and Ashland Power Associates (Ashland) for a long term rate pursuant to Re Small Enerqy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984). The Commission found therein that Section 210 of the Public Utilities Regulatory Act of 1978 (PURPA), 16 U.S.C. § 824a-3, and RSA 372-A, the New Hampshire Limited Electrical Energy Producers Act (LEEPA), do not confer

jurisdiction on the Commission to establish the rate to be paid for power sold by out of state small power producers to Public Service Company of New Hampshire (PSNH). Thereafter, on January 13, 1986, Northeast Power Associates (NEPA) filed a Motion for Rehearing pursuant to RSA 541:3.[1(41)]

In its Motion, NEPA repeats arguments which were considered, addressed and rejected by a majority of the Commission in the Report. Neither those arguments nor the Commission's analysis need be repeated here. NEPA's Motion did not present any additional information which warrants a reconsideration of our original finding that this Commission does not possess jurisdiction to set rates for the purchase of power by PSNH from out of state SPPs. Accordingly, it 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 Northeast Power Associate's Motion for Rehearing be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of March, 1986.

Dissenting Opinion of Commissioner Aeschliman

I would grant the motion for rehearing of Northeast Power Associates (NEPA). I believe the analysis of the majority opinion is flawed by a basic misconception of the regulatory scheme mandated by PURPA.

The clear intent of PURPA and of the rules promulgated by FERC to implement PURPA is to require the State Commissions which exercise jurisdiction over the purchasing utility to set avoided cost rates applying to all purchases of SPPs wherever the qualifying facility is located. The location of the SPP, whether it is in the franchise area of the purchasing utility, in the same state as the purchasing utility or in another State, makes no difference in this regulatory scheme relative to the State Commission's jurisdiction. The location of the SPP may make a significant difference in the price (avoided cost rate) the purchasing utility pays for the power because of line losses or other factors.

If this Commission is concerned that PSNH may be required to make uneconomic purchases from SPPs then the appropriate remedy is to review the pricing and contract policies adopted by the Commission. The Commission has adequate regulatory tools without creating an artificial barrier by denying jurisdiction.

FOOTNOTE

[1]NEPA's Petition to Intervene in this docket was granted by the Commission in Report and Order No. 17,529 issued on April 4, 1985 (70 NH PUC 145). NEPA's intervention was limited to the legal/jurisdictional issue.

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NH.PUC*03/26/86*[60760]*71 NH PUC 203*UNITIL Corporation

[Go to End of 60760]

71 NH PUC 203

Re UNITIL Corporation

Intervenors: Granite State Electric Company and Office of Consumer Advocate

DR 85-326, Order No. 18,192

New Hampshire Public Utilities Commission

March 26, 1986

ORDER approving a tax sharing agreement among a utility holding company and its affiliated utility subsidiaries.

Expenses, § 117 — Consolidated tax returns — Tax sharing agreement — Allocation of benefits and burdens.

The commission approved a tax sharing agreement among a utility holding company and its affiliated utility subsidiaries where the agreement was based on the so called "basic" and "supplemental" methods of allocating consolidated tax return liability and benefits; the "basic" method provides for an allocation based on the amount of tax liability calculated on a separate return basis, and the "supplemental" method provides that the tax savings of credits and deductions in excess of the amount an individual company can use, but which can be used in consolidations, is allocated among the affiliates with tax liability and immediate reimbursement is provided to the companies unable to take advantage of the credits and deductions. [1] p. 205.

Expenses, § 117 — Consolidated tax returns — Tax sharing agreement — Effect on ratepayers.

Approval was given to a tax sharing agreement among a utility holding company and its affiliated utility subsidiaries whereby the holding company would be allowed to elect, on a year to year basis, to file a consolidated return with its affiliates and the affiliates would be required

to pay to the holding company the federal income tax for which the affiliates would have been liable for that year had they filed separate returns; because of its findings that the holding company must file for permission with the Internal Revenue Service before filing a separate return, and that permission would not be granted without good cause, the commission was satisfied that a provision allowing the holding company to elect whether or not it would file a consolidated return would not be used to the detriment of ratepayers. [2] p. 209.

Expenses, § 117 — Consolidated tax returns — Tax sharing agreement — Effect of Internal Revenue Code.

In recognition of the possibility that the Internal Revenue Code would soon be revised, approval of a tax sharing agreement among a utility holding company and its affiliated utility subsidiaries was held to be subject to revision and of no presidential value with respect to approval of future tax sharing agreements. [3] p. 209.

Expenses, § 117 — Consolidated tax returns — Tax sharing agreement — Commission discretion.

In approving a tax sharing agreement among a utility holding company and its affiliated utility subsidiaries, the commission found that it had the discretion to approve the agreement notwithstanding the fact that the method of allocating losses and gains among the affiliates was inconsistent with a United States Supreme Court decision dealing with allocation of losses for consolidated income tax purposes. [4] p. 209.

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Expenses, § 117 — Consolidated tax returns — Tax sharing agreement — Stand-alone method — Allocation of benefits and burdens.

The commission rejected as without sufficient presidential support a utility holding company's assertion that 090but for090 the use of the "stand-alone" method of allocating the benefits of consolidated tax filings, under which method cash flows resulting from the use of tax losses benefiting the consolidated tax group and contributed by the loss affiliates are made immediately available to the loss affiliates, the company would not be entitled to take advantage of accelerated depreciation under the Internal Revenue Code; the company was directed to obtain a private letter ruling from the Internal Revenue Service with respect to the issue of the use of the "stand-alone" method. [5] p. 209.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire, for UNITIL Corporation; LeBoeuf, Lamb, Lieby & MacRae by Paul K. Connolly, Jr., Esquire, for UNITIL Corporation; Janis A. Callison, Esquire, and Philip H. R. Cahill, Esquire, for Granite State Electric Company; Michael Holmes, Esquire, for the Consumer Advocate; Mary Hain, Larry Smukler, Esquire, and Eugene Sullivan for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket was initiated by a petition filed by UNITIL Service Corporation on October 1, 1985 pursuant to N.H. RSA §366 (1984). The petition concerns a tax sharing agreement among Concord Electric Company, Exeter and Hampton Electric Company, UNITIL Service Corporation, UNITIL Power Corporation and UNITIL Corporation.

An Order of Notice was issued on October 15, 1985, setting a hearing date of November 13, 1985. The Order opened Docket No. DR 85-362 pursuant to N.H. RSA §§366:5, 6 and 7 for the purpose of determining whether the Tax Sharing Agreement is just and reasonable, specifically, inter alia:

1) Whether paragraph 1 which allows the AFFILIATES to elect on a year-by-year basis to file a consolidated Income Tax Return is just and reasonable; and

2) Whether the Tax Sharing Agreement as filed is consistent with the rule of Federal Power Commission v. United Gas Pipe Line Co., 386 U.S. 237, 68 PUR3d 321, 18 L.Ed.2d 18, 87 S.Ct.1003 (1967) and, if it is not consistent with that rule, whether the Tax Sharing Agreement should be rejected.

The October 15, 1985 Order also set deadlines for the filing of motions to intervene and testimony. A motion to amend the October 15, 1985 Order of Notice was filed on October 30, 1985 requesting that the November 13, 1985 hearing be designated a procedural hearing instead of a hearing on the merits to allow for adequate discovery and sufficient preparation.

An Order of Notice was issued on November 4, 1985 amending the Order of Notice of October 15, 1985. This

order converted the November 13, 1985 hearing from a hearing on the merits to a prehearing conference and procedural hearing pursuant to N.H. RSA 541-A:16 (1984) and N.H. Admin. Code, Puc 203.01. In addition, it relieved the parties of the requirement of filing testimony and exhibits prior to the November 13, 1985 prehearing conference date.

At the November 13, 1985 hearing, the commission granted Granite State Electric Company's motion to intervene, and a procedural schedule was adopted as set forth in Report and Order No. 17,980 (70 NH PUC 1023).

Prefiled testimony of David B. Burger and Charles J. Kershaw, Jr. was filed on December 13, 1985 on behalf of UNITIL Service Corporation. The testimony of John T. Forryan was filed on December 16, 1985 on behalf of Granite State Electric Co.

A hearing on the merits of the petition was held on February 11, 1986. At the conclusion of the hearing, an exhibit number was reserved for testimony on a question of policy which witnesses for UNITIL were not prepared to answer. On February 25, 1986, such testimony was filed by UNITIL Service Corporation.

II. THE PROPOSED AGREEMENT

The UNITIL Service Corporation ("UNITIL Service" or "Company") is seeking Commission

approval, pursuant to N.H. RSA §366, of a tax sharing agreement among Concord Electric Company, Exeter & Hampton Electric Company, UNITIL Service Corporation, UNITIL Power Corporation, and UNITIL Corporation ("UNITIL").

The tax sharing agreement allows UNITIL to elect on a year-to-year basis to file a consolidated return with its affiliates. Upon such election, the agreement requires UNITIL and its affiliates to file such consents, elections, and documentation as is required or appropriate to this end.

Further, the agreement requires the affiliates to pay to UNITIL the Federal income tax, if any, for which the affiliates would have been liable for that year, computed in accordance with Treasury Regulations §1.1552-1(a)(2)(ii) as though that affiliate had filed a separate return for such year. Any affiliate which has a net operating loss, capital loss, foreign tax credit, and/or investment tax credit that reduces the consolidated tax liability will receive payment from UNITIL in the amount of the reduction attributable to them.

[1] This agreement is based on what is called the "basic" and "supplemental" allocation methods of consolidated tax return liability and benefits. The "basic" method provides for an allocation based on the amount of tax liability calculated on a separate return basis. IRC §1552(a). The "supplemental" method provides that the tax savings of credits and deductions in excess of the amount an individual company can use, but which can be used in consolidations, is allocated among the members with tax liability. Treas. Reg. §1.1502-33(d) Immediate reimbursement for the tax year is then provided to the company unable to take advantage of the credits and deductions under the agreement in accordance with Treas. Reg. §1.1502-33(d)(2)(ii).

III. POSITIONS OF THE PARTIES

UNITIL

UNITIL asserts that while this

agreement is not consistent with Federal Power Commission v. United Gas Pipe Line Co., 386 U.S. 237, 68 PUR3d 321, 18 L.Ed.2d 18, 87 S.Ct. 1003 (1967), it conforms to current F.E.R.C. policy as stated by the U. S. Court of Appeals in City of Charlottesville v. Federal Energy Regulatory Commission, — U.S.App.D.C. —, 661 F.2d 945 (1985) [sic#.

In FPC v. United, 386 U.S., at p. 240, 68 PUR3d at p. 324, the tax losses of unregulated companies were applied to the tax liability of other unregulated companies first to determine the proportion of the consolidated tax to be allocated to each corporate entity. If any net taxable income had remained in the unregulated group, the regulated companies would not share in the savings from the consolidated return and would be deemed to have paid a tax at the full tax rate. However, if losses of the unregulated companies exceeded their net income, the tax losses of the consolidated unregulated companies would be allocated among the regulated companies in proportion to their taxable income.

The company contends that it is the present policy of the F.E.R.C. that "a utility should be regulated on the basis of it being an independent entity; that is a utility should be considered as nearly as possible on its own merits and not on those of its affiliates". Re Florida Gas

Transmission Co., 47 FPC 341, 362, 93 PUR3d 477, 496, Opinion No. 611 (1972). They argue that the court noted this standard in the decision in City of Charlottesville v. Federal Energy Regulatory Commission, 661 F.2d at p. 952.

UNITIL argues that the F.E.R.C.'s standard is the "benefits/burdens" test. This test was articulated in Re Southern California Edison Co., 59 FPC 2167, 2174, 23 PUR4th 44, 51, Opinion No. 821 (1977) where the FPC stated that the source of the consolidated tax savings, normally will be attributable to business activities which are totally unrelated to the providing of electric utility service ... Certainly, if this were the case, it would be difficult to justify the appropriation of any tax savings attributable to [such activities# ... by the jurisdictional consumers when these same consumers did not pay the expenses which created the deductions for tax purposes.

In other words, ratepayers will receive the benefits of consolidated tax savings if they had the burden of paying the expenses that generated the savings.

The company argues that the benefits of their allocation methodology (also known as the "stand-alone" method) are as follows:

(1) cash flows resulting from the use of tax losses benefiting the consolidated tax group and contributed by the loss affiliates are made immediately available to the affiliates and reduce other cash requirements, (2) there is no loss from a time value of money standpoint as funds are made immediately available to the party suffering the loss, (3) all affiliates are treated in an equitable manner and there is (sic) no tax disincentives to affiliated and non-affiliated entities which may be giving support to utility operations. (Transcript at 37).

In support of the "stand-alone" method, UNITIL cites two private letter rulings of the Internal Revenue Service (IRS), #8525156 and #8523067. The

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company argues that in #8525156, the IRS ruled that Florida Power Corporation would not be in compliance with the normalization requirements of the IRC §§167(1) and 168(e)(3) if for purposes of determining its current and deferred tax expense for ratemaking purposes it uses a consolidated effective rate of tax which is lower than the statutory rate of tax due to losses incurred by its nonutility affiliates with whom it files its federal income tax return on a consolidated basis. UNITIL argues further that in the Private Letter Ruling #8523067, the IRS took a similar position with respect to Iowa Power's calculation of deferred federal income taxes based on a less than 46% statutory rate. This resulted from the normalization of the federal deduction for state income taxes resulting from book/tax depreciation differences. This calculation of deferred taxes had been ordered by the Iowa State Commerce Commission. Re Iowa Power & Light Co., 51 PUR4th 405 (Iowa S.C.C. 1983). The Commerce Commission changed its position in Iowa Power & Light Co. v. Iowa State Commerce Commission, No. AA2-426 (Iowa Dist. Ct., Polk County, April 1, 1985) Settlement Stipulation, because it believed that "in light of the IRS Revenue Ruling (sic)[1(42)] , that to compel Iowa Power to defer federal income taxes at the 41.63% rate would cause Iowa Power to lose the right to claim accelerated depreciation on its federal income tax return." Iowa Power & Light Co. v. Iowa State Commerce Commission, No. AA 2-426 (Iowa Dist. Ct., Polk County, April 1, 1985) Settlement

Stipulation, p. 3 #10.

UNITIL asserted that the affiliates have agreed to follow SEC accounting policy with respect to pricing services. This policy provides for pricing services to affiliates at cost without any profit being considered. UNITIL claims that its policy of not charging an equity component to its affiliates under the Service Agreement between the Service Company and those affiliates is a requirement of SEC Chart of Accounts.

The company further avers that if any of the benefits of tax losses or investment tax credits of its unregulated affiliates were "passed on" to the regulated companies using the "flowthrough" method of consolidated tax return filing, that Concord Electric Company and Exeter & Hampton Electric Company would lose the benefits of accelerated depreciation.

The company testified that the "stand-alone" method provides zero cost financing to the ratepayers for start up programs. The company asserted that "stand-alone" is the most equitable method of consolidated tax filing. It allows the so called "loss company" to take advantage of the tax benefits which they created. There is no temporary windfall to a flow through company as occurs in the flow through method and no resultant earnings fluctuations. The tax benefits available to the loss company were intended by Congress to get "start up" companies going. Without this "stand-alone" method these benefits would be lost to their intended beneficiary and the "start up" companies would no longer be competitive on that basis.

STAFF

The Staff did not advocate any particular position in this case, but sought to clarify the issues raised in the

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Order of Notice through cross-examination.

Relative to the question of the ability of affiliates to elect on a year-by-year basis whether to file a consolidated tax return, Staff cross-examination elicited testimony from UNITIL that a company must establish good cause with the IRS to file separately after having previously filed a consolidated tax return. This good cause must consist of amendments to the IRC regulations, laws, or circumstances which have a substantial adverse effect on the consolidated filing.

Relative to the question of whether the Tax Sharing Agreement is consistent with the rule of Federal Power Commission v. United Gas Pipe Line Co., Staff and all parties agreed that the Tax Sharing Agreement was not consistent with the rule. The Staff pursued in cross-examination the question of whether Federal tax changes subsequent to the United Gas Pipeline decision in 1967 which require normalization for ratemaking purposes in order to receive accelerated depreciation and investment tax credits also necessitated the use of the "basic" and "supplemental" allocation methods. The question raised is whether the private letter rulings of the IRS relative to Florida Power Corporation and Iowa Power and Light are adequate or whether UNITIL should attempt to obtain its own ruling.

Staff also pursued the question of whether a reduction in tax liability resulting from capital investment would be passed onto the regulated companies in the service charges. Mr. Forryan, testifying for New England Power Service Company, indicated that the benefit of the

amortization of the investment tax credit as opposed to the tax flow benefit could be passed on to ratepayers. F.E.R.C. is presently requiring New England Electric Systems to pass the amortization benefit through to ratepayers. A further question raised by Staff cross-examination relative to this point concerns the effect of a change in the tax rate on the deferred tax reserve of the affiliated service company. A lowering of the rate would result in an excess in the deferred tax reserve account of the affiliate.[2(43)]

CONSUMER ADVOCATE

The Consumer Advocate did not advocate any position in this case, but explored several issues in cross-examination for Commission consideration.

The Consumer Advocate questioned whether the IRC §168(e)(3)(c) requirement that the taxpayer file their taxes based on the normalization method required the Public Utilities Commission to set rates based on that method. He questioned whether such dual treatment would result in the inability of UNITIL to take advantage of accelerated depreciation in their federal income tax filing.

The Consumer Advocate elicited company testimony with respect to the company's reliance on the private letter rulings of the IRS that the "ruling is directed only to the taxpayer who requested it" and may not be used or cited as precedent under Section 6110 (j)(3) of the Internal Revenue Code. Private Letter Ruling #8525156 at 9.

He elicited further testimony that there has been no change in the Code or regulations since FPC v. United and

Page 208

no subsequent court reversal; and that there have been no court interpretations or IRS regulations of IRC §§167 and 168 with respect to the issue of the availability of accelerated depreciation to companies which file consolidated tax returns and use the "basic" and "supplemental" methods combined, as UNITIL has in its agreement.

The Consumer Advocate questioned the Company witness about the value of the consent requirements under Treas. Reg. §1.1502-75 where the parent company owns 100% of the subsidiaries' stock.

The Consumer Advocate also questioned the witness on the issue of whether the affiliates would obtain a greater benefit from deductions and credits by retaining them. The Company answered that this would only occur where the loss was carried forward to a future year where the tax rate was higher.

IV. COMMISSION ANALYSIS

[2-5] After review of all the testimony we have decided to approve the proposed tax sharing agreement. The commission does not, however, establish any precedent here with respect to its approval of future tax sharing agreements.

With respect to the first issue before this commission, i.e., whether paragraph 1 which allows the affiliates to elect on a year to year basis to file a consolidated income tax return is just and reasonable, UNITIL's testimony that the company must file for permission with the IRS

establishing good cause to file separately is well taken. Since the company must establish good cause in order to file a separate statement and since this good cause must consist of amendment to the Internal Revenue Code regulations, laws or circumstances, the commission is satisfied that this provision of this tax sharing agreement will not be used to the detriment of the ratepayer.

However, the Commission recognizes that Congress is considering major revisions to the IRC. Since amendments or changes to the IRC regulations, laws or circumstances may form the basis for establishing good cause for purposes of electing to file separate returns in the future, the Commission puts the Company on notice that changes in the IRC may subject this decision to revision.

With respect to the second issue before this commission, i.e., whether the tax sharing agreement should be consistent with the ruling in Federal Power Commission v. United Gas Pipe Line Co., this commission finds that it has the discretion to allow a tax sharing agreement which is not necessarily the same type allowed in Federal Power Commission v. United Gas Pipe Line Co.

The Commission is concerned with UNITIL's assertion that but for the use of the "stand-alone" method of tax calculations under the tax agreement, the company would not be entitled to take advantage of the accelerated depreciation rate under the IRS Code. However, the commission is not satisfied that the Private Letter Rulings presented by the company as precedent for this proposition are actually sufficient precedent. Private Letter Rulings are not considered by the IRS as precedent for any other taxpayer. The Commission will expect the Company to obtain a private letter ruling on this issue.

The Commission also notes that the SEC chart of accounts does not require

UNITIL to "not charge an equity component to its affiliates under the Service Agreement between the Service Company and [the# affiliates" as is stated by the company, infra., p. 207. The Commission notes that UNITIL is presently exempt from such regulations under 17 C.F.R. §250.2. In a future rate case, the Commission will examine any company policy which does not allow the reduction in service company costs due to the use of tax benefits to reduce service company rates to regulated utilities. The Commission will also review the effect of any federal tax rate changes on deferred tax reserve accounts of affiliates.

Because of the narrow finding in this case, this order should not be considered as precedent with respect to the other arguments concerning the reasonableness of the tax sharing agreement. The Commission is mindful of potential abuses of tax sharing agreements and we will exercise our investigatory authority whenever necessary to monitor this situation.

ORDER

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

ORDERED, that the Tax Sharing Agreement (Exhibit 2) be, and hereby is, approved.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of March, 1986.

FOOTNOTES

[1]The Iowa State Commerce Commission mistakenly referred to this decision of the IRS as a "revenue ruling" when it is in fact a private letter ruling. Iowa Power Co. #8523067.

[2]A change in the federal tax rate will necessitate Commission review of deferred tax reserves for all of the utilities and a policy determination of the appropriate treatment of any excess tax reserves.

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NH.PUC*03/26/86*[60761]*71 NH PUC 211*Echo Valley Campground v. Public Service Company of New Hampshire

[Go to End of 60761]

71 NH PUC 211

Echo Valley Campground
v.
Public Service Company of New Hampshire

DC 85-411, Supplemental Order No. 18,193

New Hampshire Public Utilities Commission

March 26, 1986

ORDER denying rehearing of a decision authorizing an electric utility to terminate service to a customer for violation of tariff provisions prohibiting resale.

Service, § 170 — Resale of service — Submetering — Effect of failure to derive a profit — Electricity.

The failure of a campground to derive any profit from its practice of submetering individual camp sites for the purpose of monitoring site usage and billing individual site residents for their share of the total electric bill received by the campground was held to be irrelevant for purposes of determing whether the campground was selling or reselling electricity in violation of the electric utility's tariff. [1] p. 214.

Service, § 170 — Resale of service — Submetering — Tariff prohibitions — Electricity.

An electric utility was justified in seeking to disconnect service to a campground for noncompliance with a tariff provision prohibiting the resale of electricity; the campground had submetered individual campsites for the purpose of monitoring site usage and billing individual site residents for their share of the total electric bill received by the campground. [2] p. 214.

Public Utilities, § 137 — Resale of service — Submetering — Statutory prohibitions — Electricity.

A campground that had submetered individual campsites for the purpose of monitoring site usage and billing individual site residents for their share of the total electric bill received by the campground was held to have acted as a public utility without having obtained permission from the commission in violation of state statute RSA 362: 22-I. [3] p. 214.

Service, § 170 — Resale of service — Submetering — Tariff prohibitions — Electricity.

A section of a utility tariff prohibiting the resale of electricity that stated that the utility may consent to the resale of electricity was held to apply to wholesale sales or sales for resale to existing retail electric public utilities, not to resale by retail customers. [4] p. 214.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

By a telephone call to the Commission's Consumer Assistance Director, Gerald and Grace Vergato, owners of the Echo Valley Campground (Campground), a four season trailer park located in Lyndenborough, New Hampshire, notified the Commission of their dispute with Public Service Company of New Hampshire (PSNH) regarding PSNH's intention to terminate service to the Campground. At Mrs. Vergato's request, a hearing was scheduled for December 16, 1985 and the parties so notified by letter of Wynn E. Arnold, the Commission's Executive Director and Secretary, dated December 10, 1985. Grace Vergato, Gerald Vergato and Donald Ricketts testified on behalf of the Campground at the December 16, 1985 hearing. Offering testimony in support of PSNH was Pierre Caron, Esquire.

On January 14, 1986, the Commission issued Report and Order No. 18,055 which dismissed the Vergato's complaint and also authorized PSNH to terminate service to the Campground by February 22, 1986 unless the Vergatos ceased reselling electricity and removed the 17 meters they had installed by that date. The Vergatos complied with the Order and removed the meters on January 15, 1986.

By letter dated January 27, 1986 and received at the Commission on February 3, 1986, the Vergato's by and through their counsel, filed a motion for rehearing pursuant to RSA 541:3. PSNH filed an objection thereafter on February 12, 1986. In response thereto the Commission issued an Order of Notice on February 12, 1986 which scheduled a hearing for March 14, 1986 for the purpose of considering the parties' arguments on whether the motion should be granted or denied. Both the Vergatos and PSNH appeared at the March 14, 1986 hearing and offered testimony and argument in support of their respective positions.

As the Commission stated in the Report accompanying Order No. 18,055, the essential facts of this complaint are not in dispute. Electric service to the Campground is provided by PSNH and measured by a single meter. There are electric outlets at each of the 17 camping sites. In

October, 1985 the Vergatos installed electric meters at each site so that they could measure and monitor each site's usage. Thereafter, the Vergatos began billing the individual site's residents for their share of the total PSNH bill based upon data obtained from the meters they installed. The uncontroverted testimony of Mr. and Mrs. Vergato is that the amount collected from all the site residents equaled the consumption portion of the PSNH bill and thus made no profit. The Vergatos paid the customer and demand charges and did not attempt to recover those from the residents.

After becoming aware of the presence of these meters, PSNH sent a letter stating that the meter installation and billing of the camping area residents on the basis of the usage recorded by those meters is in violation of the provisions of the PSNH tariff. The letter also contained a standard PSNH termination notice stating that service to the campground meter would be terminated on December 16, 1985 if the Vergatos did not disconnect and remove their meters prior thereto. Because of the pendency of this proceeding, service was not terminated on that day. The Commission stated on page 3 of the Report accompanying Order No. 18,055 as follows:

We agree with PSNH that the Vergatos above-described actions are in violation of their tariff, specifically Original Page 10, paragraph 8, which provides as follows:

8. Resale of Electricity No customer shall sell, resell, assign or otherwise dispose of all or any part of the electrical energy purchased from the Company without the written consent of the Company.

Contrary to their contentions, the Vergatos are clearly reselling and disposing of their PSNH-purchased electrical energy without having obtained written consent from PSNH. Given this tariff violation, PSNH is clearly justified in seeking to terminate the Vergatos service. Therefore, unless the Vergatos cease reselling electricity and disconnect the 17 meters within 10 days of the date of the order accompanying this Report, PSNH may terminate service to the camping area meter. PSNH shall inspect the premises to ascertain that the disconnection has in fact taken place.

II. POSITION OF THE PARTIES

At the hearing, both parties repeated the arguments presented at the December 16, 1985 hearing. The Vergatos admit that no written consent was obtained from PSNH.[1(44)] However, they argue that their actions do not constitute "reselling" in that they are simply dividing the PSNH bill among their tenants according to the tenants' usage. The Vergatos contend that because they are not receiving any profit they are not reselling electricity in the context of the above-stated PSNH tariff provisions. As alternative relief, the Vergatos request that they be allowed to leave the meters installed in the event the Commission upholds its prior decision. This would allow them to monitor usage to insure that no tenant is using an electric heater contrary to the Campground's rules.

Lastly, the Vergatos argue that under the above-stated tariff provision PSNH has the right to consent to the reselling of electricity. They contend that, despite their requests, PSNH has not

given them any reason for withholding that consent in this instance. Given the circumstances of this case, the Vergatos feel PSNH is unreasonably withholding its consent.

PSNH continues to maintain that the Vergato's actions constituted selling and/or reselling and that the absence of any profit is irrelevant to that determination. Thus, because this alleged reselling was transpiring without PSNH's written consent as required by its tariff, PSNH argues that the Commission's original order was correct and should be upheld. Moreover, they take the position that paragraph 8 of the tariff was intended to apply to PSNH's wholesale sale of electricity to another electric utility for resale, not to an individual retail customers' resale. PSNH contends it is therefore fully justified in refusing to give its consent.

PSNH also argues that the Vergato's actions make them a public utility under RSA 376:2. As such, PSNH contends they are operating as a public utility without this Commission's authority in violation of RSA 374:22.

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III. COMMISSION ANALYSIS

[1-4] We agree with PSNH that the Vergatos failure to derive any profit from their transactions with their tenants regarding PSNH's bill is irrelevant to determining whether they are selling or reselling electricity. "Sell" is defined in Webster's New Collegiate Dictionary as giving up property "to another for money or other valuable consideration;" there is no mention of profit therein. By their actions the Vergatos were giving up the electricity they had purchased from PSNH for money. Thus, we find that they were selling or reselling electricity within the context of paragraph 8 of PSNH's tariff. Because that was being accomplished without PSNH's written consent, the Vergatos were in violation of PSNH's tariff. PSNH was therefore justified in seeking to disconnect the Vergatos service unless they complied with the tariff provisions. The Vergatos have provided no new information or argument in this regard to cause the Commission to abrograte its previous decision.

More importantly, we find that the Vergatos' activities fall under the definition of a public utility as provided in RSA 362:2. That statute defines a public utility as, inter alia, as any company ... .partnership and person ... owning, operating or managing ... any plant or equipment ... for the manufacture or furnishing of light, heat, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public ... (Emphasis added.)

In selling electricity, the Vergatos were acting as a public utility without having obtained permission from the Commission as required by RSA 374:22-I. It provides in pertinent part as follows:

I. No person or other business entity shall commence business as a public utility 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.

Given these statutes, PSNH was clearly justified in withholding its consent from the

Vergatos. We agree that while paragraph 8 of the tariff uses the word "customer", the intent of that provision is to allow wholesale or sales for resale to existing retail electric public utilities, not to retail customers.

In view of the above, the Vergatos' Motion for Rehearing will be denied.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Echo Valley Campground's Motion for Rehearing be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of March, 1986.

FOOTNOTES

[1]As they testified at the hearing, the Vergatos state that they spoke with a man at PSNH's Milford office in June, 1985 who told them they could go ahead and install the meters. PSNH denied any such conversation took place.

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NH.PUC*03/26/86*[60762]*71 NH PUC 215*Industrial Cogenerators Corporation

[Go to End of 60762]

71 NH PUC 215

Re Industrial Cogenerators Corporation

DR 86-62, Order No. 18,194

New Hampshire Public Utilities Commission

March 26, 1986

ORDER rejecting, without prejudice, a petition for approval of long term avoided cost rates for a qualifying cogeneration facility.

Cogeneration, § 36 — Rate design factors — Time-of-day long term rates.

Small power producers and cogenerators with an audited capacity in excess of 1000 KW must provide for time-of-day long term rates; accordingly, a petition for approval of long term avoided cost rates for a qualifying cogeneration facility with an audited capacity of greater than 1000 KW was rejected without prejudice where the petitioner failed to provide for time-of-day long term rates.

By the COMMISSION:

ORDER

WHEREAS, on February 20, 1986, Industrial Cogenerators Corp. (ICC) filed a long term rate petition for approval of long term avoided cost rates for a 49.5 MW gas fired cogeneration facility pursuant to Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, Report and Supplemental Order No. 17,104 (69 NH PUC 352, 61 PUR4th 132 [1984]) and Docket No. DR 85-215, Report and Order No. 17,838 (70 NH PUC 753, 69 PUR4th 365 [1985]); and

WHEREAS, Report and Order No. 17,104, supra, requires Small Power Producers and Cogenerators with an audited capacity in excess of 1000 KW to provide for time-of-day long term rates; and

WHEREAS, ICC has an audited capacity greater than 1000 KW; and

WHEREAS, ICC's petition does not provide for time-of-day long term rates; it is therefore

ORDERED, that ICC's long term rate petition is rejected without prejudice.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of March, 1986.

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NH.PUC*03/26/86*[60763]*71 NH PUC 216*Goodrich Falls Hydroelectric Corporation

[Go to End of 60763]

71 NH PUC 216

Re Goodrich Falls Hydroelectric Corporation

DR 86-14, Supplemental Order No. 18,195

Re Franklin Falls Hydroelectric Corporation (Salmon Brook)

DR 86-15

Re Franklin Falls Hydroelectric Corporation (Franklin Falls)

DR 86-16

Respondent: Public Service Company of New Hampshire

New Hampshire Public Utilities Commission

March 26, 1986

ORDER granting an electric utility an extension of time to respond to long term small power production rate petitions.

Cogeneration, § 24 — Rate petitions — Extension of time to respond.

An electric utility was granted an extension of time to respond to long term small power

production rate petitions where the commission found that the requested extension was reasonable and would not unduly prejudice the petitioners.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on January 17, 1986 Goodrich Falls Hydroelectric Corp. (Goodrich) filed a long term rate petition for the Goodrich Falls Hydroelectric Project, and Franklin Falls Hydroelectric Corp. (Franklin) filed long term rate petitions for the Salmon Brook and Franklin Falls Hydroelectric Projects; and

WHEREAS, on January 30, 1986, by Order Nisi No.'s 18,096 (71 NH PUC 110), 18,097 (71 NH PUC 112), and 18,098 (71 NH PUC 114), respectively, the Commission approved the long term rate petitions; and

WHEREAS, said Order Nisi allowed Public Service Company of New Hampshire (PSNH) 20 days to file comments, exceptions or such other response to Goodrich and Franklin's petitions as it deemed necessary; and

WHEREAS, by letter dated March 10, 1986, PSNH requested a 20 day extension of time in which to file a response to Goodrich and Franklin's long term rate petitions; and

WHEREAS, the Commission finds that PSNH's request for a 20 day extension of time to file a response to Goodrich and Franklin's long term rate petitions is reasonable; and

WHEREAS, the Commission finds that such an extension of time does not unduly prejudice Goodrich or Franklin; it is therefore

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ORDERED, that PSNH is allowed an extension of 20 days from the date of their request, or until March 31, 1986, to file comments, exceptions or such other response to Goodrich and Franklin's long term rate petitions as it deems necessary.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of March, 1986.

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NH.PUC*03/26/86*[60764]*71 NH PUC 217*Thermo-Electron Corporation

[Go to End of 60764]

71 NH PUC 217

Re Thermo-Electron Corporation

Respondent: Public Service Company of New Hampshire

DR 86-52, Order No. 18,196

New Hampshire Public Utilities Commission

March 26, 1986

ORDER nisi approving a long term rate petition for a small power production facility.

Cogeneration, § 19 — Small power producer — Long term rate order — Commission approval.

A long term rate petition and utility interconnection agreement for a small power production facility was approved where the petition and agreement appeared to be consistent with prior commission orders governing cogeneration and small power production.

By the COMMISSION:

ORDER

WHEREAS, on February 12, 1986, Thermo-Electron Corporation (Thermo) filed a long term rate petition for the wood-fired electrical generation facility located in Troy, New Hampshire; and

WHEREAS, Thermo filed amendments to its filing on March 10, and March 17, 1986 for the Project; and

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

WHEREAS, The Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Thermo's Petition for a 20-Year Rate Order; and

WHEREAS, The filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, Report and Eighth Supplemental Order No. 17,104 (69 NH PUC 352, 61 PUR4th 132 [1984]) and Docket No. DR 85-215, Report and Order No. 17,838 (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore

ORDERED NISI, that Thermo's petition for a 20-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

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FURTHER ORDERED, That PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 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 twentysixth day of March, 1986.

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NH.PUC*03/26/86*[60765]*71 NH PUC 218*Thermo-Electron Corporation

[Go to End of 60765]

71 NH PUC 218

Re Thermo-Electron Corporation

Respondent: Public Service Company of New Hampshire

DR 86-53, Order No. 18,197

New Hampshire Public Utilities Commission

March 26, 1986

ORDER nisi approving a long term rate petition for a small power production facility.

Cogeneration, § 19 — Small power producer — Long term rate order — Commission approval.

A long term rate petition and utility interconnection agreement for a small power production facility was approved where the petition and agreement appeared to be consistent with prior commission orders governing cogeneration and small power production.

By the COMMISSION:

ORDER

WHEREAS, on February 12, 1986, Thermo-Electron Corporation (Thermo) filed a long term rate petition for the wood-fired electrical generation facility located in Conway, New Hampshire; and

WHEREAS, Thermo filed amendments to its filing on March 10, and March 17, 1986 for the Project; and

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

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Thermo's Petition for a 20-year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132 [1984]) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore

ORDERED NISI, that Thermo's Petition for a 20-year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such

other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

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

By order of the Public Utilities Commission of New Hampshire this twentysixth day of March, 1986.

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NH.PUC*03/26/86*[60766]*71 NH PUC 219*Thermo-Electron Corporation

[Go to End of 60766]

71 NH PUC 219

Re Thermo-Electron Corporation

Respondent: Public Service Company of New Hampshire

DR 86-54, Order No. 18,198

New Hampshire Public Utilities Commission

March 26, 1986

ORDER nisi approving a long term rate petition for a small power production facility.

Cogeneration, § 19 — Small power producer — Long term rate order — Commission approval.

A long term rate petition and utility interconnection agreement for a small power production facility was approved where the petition and agreement appeared to be consistent with prior commission orders governing cogeneration and small power production.

By the COMMISSION:

ORDER

WHEREAS, on February 12, 1986, Thermo-Electron Corporation (Thermo) filed a long term rate petition for the wood-fired electrical generation facility located in Antrim, New Hampshire; and

WHEREAS, Thermo filed amendments to its filing on March 10, and March 17, 1986 for the Project; and

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

WHEREAS, the commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Thermo's Petition for a 20-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132 [1984]) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore

ORDERED NISI, that Thermo's Petition for a 20-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such

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other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHERED 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 twentysixth day of March, 1986.

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NH.PUC*03/26/86*[60767]*71 NH PUC 220*Thermo-Electron Corporation

[Go to End of 60767]

71 NH PUC 220

Re Thermo-Electron Corporation

Respondent: Public Service Company of New Hampshire

DR 86-55, Order No. 18,199

New Hampshire Public Utilities Commission

March 26, 1986

ORDER nisi approving a long term rate petition for a small power production facility.

Cogeneration, § 19 — Small power producer — Long term rate order — Commission approval.

A long term rate petition and utility interconnection agreement for a small power production facility was approved where the petition and agreement appeared to be consistent with prior commission orders governing cogeneration and small power production.

By the COMMISSION:

ORDER

WHEREAS, on February 12, 1986, Thermo-Electron Corporation (Thermo) filed a long term rate petition for the wood-fired electrical generation facility located in Campton, New Hampshire; and

WHEREAS, Thermo filed amendments to its filing on March 10, and March 17, 1986 for the Project; and

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

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Thermo's Petition for a 20-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132 [1984]) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore

ORDERED NISI, that Thermo's Petition for a 20-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such

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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 twentysixth day of March, 1986.

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NH.PUC*03/26/86*[60768]*71 NH PUC 221*Thermo-Electron Corporation

[Go to End of 60768]

71 NH PUC 221

Re Thermo-Electron Corporation

Respondent: Public Service Company of New Hampshire

DR 86-56, Order No. 18,200

New Hampshire Public Utilities Commission

March 26, 1986

ORDER nisi approving a long term rate petition for a small power production facility.

Cogeneration, § 19 — Small power producer — Long term rate order — Commission approval.

A long term rate petition and utility interconnection agreement for a small power production facility was approved where the petition and agreement appeared to be consistent with prior commission orders governing cogeneration and small power production.

By the COMMISSION:

ORDER

WHEREAS, on February 12, 1986, Thermo-Electron Corporation (Thermo) filed a long term rate petition for the wood-fired electrical generation facility located in Fitzwilliam, New Hampshire; and

WHEREAS, Thermo filed amendments to its filing on March 10, and March 17, 1986 for the Project; and

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

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Thermo's Petition for a 20-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132 [1984]) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore

ORDERED NISI, that Thermo's Petition for a 20-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH

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

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

By order of the Public Utilities Commission of New Hampshire this twentysixth day of March, 1986.

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[Go to End of 60769]

71 NH PUC 222

Re Resource Electric Corporation

Respondent: Public Service Company of New Hampshire

DR 86-77, Supplemental Order No. 18,201

New Hampshire Public Utilities Commission

March 27, 1986

ORDER suspending a long term small power production rate filing and establishing a procedural schedule.

Cogeneration, § 19 — Small power production — Long term rates — Project feasibility.

An electric utility's motion for hearing on the long term levelized rate petition of a small power producer was granted where the electric utility had expressed concerns regarding the financial, technical, and economic feasibility of the proposed generating facility; the commission requires that small power producers requesting long term levelized rates provide assurances that the level of annual output will be adequately maintained throughout the life of the rate so that ratepayers may recoup the full net present value of payments.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on February 24, 1986, Resource Electric Corporation (REC) filed a long term rate petition pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), (Order 17,104); and

WHEREAS, REC's petition requested, inter alia, a levelized front-end loaded twenty year rate order for a proposed twenty megawatt (20 MW) tire burning steam generation small power production facility to be located in the town of Rochester, New Hampshire and known as the Mini Power Plant; and

WHEREAS, the Commission issued Order No. 18,166 (71 NH PUC 161) in this docket which approved nisi the long term rate petition by REC effective April 1, 1986 unless the Commission provides otherwise in a Supplemental Order issued on or before the effective date; and

WHEREAS, Order No. 18,166 allowed Public Service Company of New

Hampshire (PSNH) ten days to file comments, exceptions or such other response to REC's petition as it deemed necessary; and

WHEREAS, by letter dated March 21, 1986, PSNH filed a Motion for Hearing and Scheduling of a Prehearing Conference (Motion) in this docket; and

WHEREAS, in support of its Motion, PSNH expressed concerns regarding the financial, technical, and economic feasibility of REC's proposed Mini Power Plant; and

WHEREAS, PSNH respectfully requested the Commission allow time for reasonable discovery and schedule a hearing to present its concerns regarding REC's long term rate petition; and

WHEREAS, on March 25, 1986 REC filed a response to the PSNH Motion; and

WHEREAS, under Order No. 17,104, supra, small power producers requesting levelized rates must provide assurances that the level of annual output will be adequately maintained throughout the life of the rate so that ratepayers may recoup the full net present value of payments; and

WHEREAS, the Commission finds that the issues raised by PSNH warrant further consideration and that the opportunity for proper discovery and a hearing to address these issues is necessary; it is therefore

ORDERED, that Order No. 18,166, be, and hereby is, suspended; and it is

FURTHER ORDERED, that a procedural hearing and pre-hearing conference be held before the Public Utilities Commission at its office in Concord, 8 Old Suncook Road, Building]1, in said State at 10 A.M. on April 16, 1986 to establish a procedural schedule for reasonable discovery and a hearing in this docket; and it is

FURTHER ORDERED, that pursuant to Puc 201.05, the Commission waives 5 days of the notice requirements of Puc 203.01(a); and it is

FURTHER ORDERED, that REC notify all persons desiring to be heard to appear at said hearing and prehearing conference, when and where they may be heard upon the question whether the prayer of said petition may be granted consistently with the public good, by causing an attested copy of this Order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than April 4, 1986 said publication to be designated in an affidavit to be made on a copy of this Order and filed with this office on or before April 16, 1986.

By Order of the Public Utilities Commission of New Hampshire this twentyseventh day of March, 1986.

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NH.PUC*03/31/86*[60770]*71 NH PUC 224*Public Service Company of New Hampshire

[Go to End of 60770]

Re Public Service Company of New Hampshire

DR 86-41, Order No. 18,202

New Hampshire Public Utilities Commission

March 31, 1986

ORDER denying, without prejudice, a motion for rehearing of an order setting the procedural schedule for an investigation of utility purchases of power from qualifying facilities.

Cogeneration, § 25 — Rates — Avoided costs — Basis for determination.

The commission denied a motion by an electric utility for rehearing of its decision to consider terms, conditions and avoided cost methodologies for electricity sales by qualifying facilities to electric utilities on an individual utility basis rather than on a collective basis; the commission found that the movant remained free to intervene in each docket to protect its rights. [1] p. 225.

Cogeneration, § 25 — Rates — Avoided costs — Basis for determination — Updated rates.

The commission denied a motion by an electric utility for rehearing of its refusal to update long term avoided cost rates for cogeneration and small power production facilities in the context of a proceeding established to investigate previously set terms, conditions and avoided cost rates; the commission held that in the interests of providing a reliable and predictable update mechanism, long term avoided cost rates are to be updated according to a previously established annual schedule. [2] p. 225.

By the COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH) having filed on February 7, 1986, a petition for comprehensive avoided cost rate proceedings which requested, among other things, that the Commission: 1) open a proceeding to review the terms, conditions and rates established in Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); 2) establish consistent terms, conditions and avoided cost methodologies for sales by small power producers and cogenerators (jointly referred to as qualifying facilities or QF's) to all New Hampshire electric utilities; 3) update the rates determined in Re Small Energy Producers and Cogenerators, 70 NH PUC 753, 69 PUR4th 365 (1985); and 4) decline to accept long term rate filings submitted after February 7, 1986 until the issues raised in the Petition are adjudicated; and

WHEREAS, the Commission issued an Order of Notice (Order) dated February 26, 1986, for the purpose of investigating the terms, conditions and avoided cost methodology established in Re Small Energy Producers and

Cogenerators, DE 83-62, 69 PUR4th 365 (1985) [sic]; and

WHEREAS, in said Order the Commission set a procedural schedule, including a prehearing conference, to address, inter alia, specifically enumerated issues regarding the QF long term rate for PSNH; and

[1] WHEREAS, in said Order the Commission denied, for reasons cited in the Order, the following PSNH requests:

1) that the Commission consider terms, conditions and avoided cost methodologies for electricity sales by QF's to all New Hampshire electric utilities in the context of this docket

2) that the long-term rates determined in Re Small Energy Producers and Cogenerators, supra, be updated in the context of this docket rather than following the previously determined annual update time frame

3) that the Commission decline to accept long-term rate filings submitted after February 7, 1986 pending resolution of the waiver to be adjudicated in this proceeding;

and

WHEREAS, on March 18, 1986, PSNH filed a motion for rehearing (Motion) requesting that the Commission reconsider said denials and to schedule a hearing on the motion; and

WHEREAS, the Motion for Rehearing did not assert any evidence or argument that was not previously fully considered by the Commission; and

WHEREAS, PSNH can renew its motion for a moratorium in the context of a specific procedural schedule subsequently in this docket; and

WHEREAS, after review the Commission finds no mistake of fact or of law in the Order; and

WHEREAS, in accordance with the requirements of Re Granite State Electric Co., 121 N.H. 787, — A.2d — (1981), the Commission opened, by Orders of Notice dated February 26, 1986, dockets to examine the terms, conditions and avoided cost methodology for each individual New Hampshire electric utility (DR 86-69, Concord Electric Company and Exeter & Hampton Electric Company (UNITIL); DR 86-70, New Hampshire Electric Cooperative, Inc.; DR 86-71, Granite State Electric Company; and DR 86-72, Connecticut Valley Electric Company, Inc.); and

WHEREAS, PSNH is free to seek intervention in each of said dockets to protect related rights and interests asserted in its Motion; and

[2] WHEREAS, in Re Small Energy Producers and Cogenerators, supra, the Commission determined that long term avoided cost rates are to be updated annually so that a predictable update mechanism can be fairly relied upon by all parties; and

WHEREAS, as indicated in the Order, the Commission finds it would be more appropriate to update the long term rates established in Re Small Energy Producers and Cogenerators, supra, during the next scheduled annual update due for effect in June, 1986 rather than doing it prematurely in this docket; and

WHEREAS, the Commission anticipates that PSNH will file its proposed rates in said proceeding in a timely fashion to allow adequate consideration

by the Commission prior to the proposed effective date; it is

ORDERED, that PSNH's Motion for Rehearing is hereby denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this thirtyfirst day of March, 1986.

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NH.PUC*04/04/86*[60771]*71 NH PUC 226*KTI Energy, Inc.

[Go to End of 60771]

71 NH PUC 226

Re KTI Energy, Inc.

Additional petitioner: New England Coastal Generation Company

DR 86-92, Order No. 18,204

New Hampshire Public Utilities Commission

April 4, 1986

ORDER rejecting, without prejudice, a long term rate petition for a small power production facility.

Cogeneration, § 19 — Small power production — Long term rates — Certification requirement.

State statute RSA 162-F requires that all electric generating facilities capable of operation at a capacity of 50 megawatts or more be certified by the New Hampshire Bulk Power Supply Facility Site Evaluation Committee; accordingly, a long term rate petition for a facility capable of operating at a capacity greater than 50 megawatts was denied, without prejudice, where the facility had not yet received such certification.

By the COMMISSION:

ORDER

WHEREAS, on March 19, 1986, KTI Energy, Inc. (KTI) and New England Coastal Generation Company (NeCoGen) filed a long term rate petition pursuant to Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132 [1984]) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]); and

WHEREAS, KTI and NeCoGen filed amendments to their filing on March 17, 1986; and

WHEREAS, the Petition requested inter alia a thirty-year rate order for a proposed 55 MW municipal solid waste facility to be constructed near Portsmouth, New Hampshire; and

WHEREAS, pursuant to RSA 162-F, the legislature has established the New Hampshire Bulk Power Supply Facility Site Evaluation Committee which developed a procedure for the selection and utilization of sites for generating facilities and the identification of a state position with respect to each proposed site having a significant impact upon the welfare of the population, the location and growth of industry, and the

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use of the natural resources of the state; and

WHEREAS, RSA 162-F:2 defines Bulk Power Supply Facilities as electric generating station equipment and associated facilities designed for or capable of operation at a capacity of 50 megawatts or more; and

WHEREAS, KTI and NeCoGen's Portsmouth Municipal Waste-Energy Project has a proposed capacity of more than 50 MW; it is therefore

ORDERED, that KTI and NeCoGen's long term rate petition is rejected without prejudice pending certification from the New Hampshire Bulk Supply Facility Site Evaluation Committee.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1986.

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NH.PUC*04/04/86*[60772]*71 NH PUC 228*New England Alternate Fuels, Inc.

[Go to End of 60772]

71 NH PUC 228

Re New England Alternate Fuels, Inc.

DR 86-87, Order No. 18,205

New Hampshire Public Utilities Commission

April 4, 1986

ORDER scheduling a hearing on, and requiring amendments to, the long term rate petitions of two small power producers.

Cogeneration, § 20 — Small power production — Levelized rates — Eligibility requirements.

Small power producers requesting frontend loaded levelized rates must provide assurances that the level of annual output will be adequately maintained throughout the life of the rate so

that the ratepayers may recoup the full net present value of payments; accordingly, a hearing was required to determine whether a projected wide variability in the production of a landfill gas small power production facility would render it ineligible for front-end loaded levelized rates.

By the COMMISSION:

ORDER

WHEREAS, on March 10, 1986, New England Alternate Fuels, Inc. (NEAF) and Energy Tactics, Inc. (ET) filed a long term rate petition pursuant to Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132 [1984]) (Order No. 17,104) and Docket No. DR 85-215 (70 NH PUC 753, 69 PUR4th 365 [1985]); and

WHEREAS, NEAF's and ET's petition requested, inter alia a levelized front-end loaded twenty year rate order for the combined output of two landfill gas small power producers located at the Manchester and Nashua landfills; and

WHEREAS, by letter dated March 28, 1986, Commission staff informed NEAF and ET that amendments to said petition would be necessary to comply with certain provisions under Order No. 17,104, supra; and

WHEREAS, pursuant to Order 17,104, supra, small power producers requesting front-end loaded levelized rates must provide assurances that the level of annual output will be adequately maintained throughout the life of the rate so that ratepayers may recoup the full net present value of payments; and

WHEREAS, certain unique characteristics of the proposed facility, such as the projected wide variability in the absolute production of the plant, among other things, require additional investigation to ascertain whether the

applicants are eligible for front-end loaded levelized rates; it is therefore

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 10:00 a.m. on May 7, 1986, to determine the eligibility of NEAF and ET's proposed landfill gas small power producers for front-end loaded levelized long term rates; and it is

FURTHER ORDERED, that NEAF and ET file amendments as outlined in Staff's letter on March 28, 1986 and its prefiled testimony at least one week before said hearing date; and it is

FURTHER ORDERED, that NEAF and ET notify all persons desiring to be heard to appear at said hearing, when and where they may be heard upon the question whether the prayer of said petition may be granted consistently with the public good, by causing an attested copy of this Order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than April 21, 1986, said publication to be designated in an affidavit to be made on a copy of this Order and filed with this office on or before [sic]

By Order of the Public Utilities Commission of New Hampshire this fourth day of April, 1986.

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NH.PUC*04/04/86*[60773]*71 NH PUC 230*Pennichuck Water Works, Inc.

[Go to End of 60773]

71 NH PUC 230

Re Pennichuck Water Works, Inc.

DR 85-2, Sixth Supplemental Order No. 18,208

New Hampshire Public Utilities Commission

April 4, 1986

ORDER deleting language from a prior order scheduling a hearing to consider water rate design issues.

Rates, § 597 — Water — Special contract rates — Effect of modification to twotiered rate design.

Based on a finding that a modification of a water utility's two-tier rate design would not result in a modification to the actual rate charged to a special contract customer, language indicating that the actual rate would have to be modified was deleted from a prior order; the commission found that a modification to the percentage figure of the utility's tail block that the actual rate represents, rather than a modification to the actual rate itself, would be required.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on March 14, 1986, the Commission issued Report and Fifth Supplemental Order No. 18,174 (71 NH PUC 173) which, inter alia, scheduled a further hearing in this docket on April 17, 1986 to consider certain rate design issues; and

WHEREAS, on page 7 of that Report, the Commission stated as follows (71 NH PUC at p. 176):

The Commission will thereafter decide whether the proposed rates are consistent with the settlement agreement. If the Commission finds they are not, Pennichuck will be ordered to file a new tariff design. It is important to note that the filing of a new tariff design could result in the possibility of an additional refund and/or further recoupment and will certainly result in a modification of the AB rate, which, pursuant to Report and Order No. 18,060 issued on January 16, 1986 (71 NH PUC 88), establishes that rate as a certain percentage of the second block of the

proposed rate structure.

and

WHEREAS, on March 24, 1986, AB filed a letter requesting that the underlined portion of the above-stated quote be eliminated from the Report on the grounds that it is incorrect; and

WHEREAS, after a full review, the Commission finds that, contrary to the

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above-stated finding on page 7 of the Report (71 NH PUC at p. 173), any subsequent modification of the Pennichuck's two-tier rate design as approved by the Commission in that Report will not result in any modification to the actual rate AB will pay to Pennichuck under the special contract, but will instead require a modification of the percentage figure of Pennichuck's tail block that the rate represents; it is hereby

ORDERED, that the following language be deleted from page 7 of the Report accompanying Order No. 18,174 (71 NH PUC at p. 173):

and will certainly result in a modification of the AB rate, which, pursuant to Report and Order No. 18,060 issued on January 16, 1986 (71 NH PUC 88), establishes that rate as a certain percentage of the second block of the proposed rate structure.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1986.

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NH.PUC*04/04/86*[60774]*71 NH PUC 232*Lakes Region Water Company, Inc.

[Go to End of 60774]

71 NH PUC 232

Re Lakes Region Water Company, Inc.

DE 86-96, Order No. 18,212

New Hampshire Public Utilities Commission

April 4, 1986

ORDER nisi authorizing a water utility to include in its tariff certain terms and conditions regarding the installation, use, and testing of its meters.

Service, § 310 — Water meters — Installation, use, and testing — Tariff modification.

A water utility that had recently installed meters and had begun billing its customers under a general service meter rate was authorized, subject to modification, to include in its tariff certain terms and conditions regarding the installation, use, and testing of its meters.

By the COMMISSION:

ORDER

WHEREAS, Lakes Region Water Company, Inc. (Lakes Region) has installed meters and billed its customers under a general service meter rate since April 1, 1985; and

WHEREAS, Lakes Region now seeks authority to include in its tariff certain terms and conditions regarding the installation, use, and testing of its meters; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the approval of these terms and conditions will be for the public good; and

WHEREAS the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this filing, it is hereby

ORDERED, that Original Page 7 of Lakes Region Water Company, Inc. tariff NHPUC No. 2 be, and hereby is, suspended; and it is

FURTHER ORDERED, NISI that, subject to the modifications directed herein, Original Page 7 of Lakes Region Water Company, Inc. tariff NHPUC No. 2 be, and hereby is, approved for effect on or after May 2, 1986; and it is

FURTHER ORDERED, that all persons interested in responding to the filing be notified that they may submit their comments to the Commission, or may submit a written request for a hearing, in this matter, no later than May 1, 1986; and it is

FURTHER ORDERED, that Lakes Region effect said notification by publication of an attested copy of this Order once, in a newspaper having

general circulation in that portion of the state in which operations are proposed to be conducted, such publication to be no later than April 21, 1986, and designated in an affidavit to be made on a copy of this order and filed with this office; and it is

FURTHER ORDERED, that such authority shall be effective on May 2, 1986 unless a request for a hearing is filed with the Commission as provided above or unless the Commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1986.

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NH.PUC*04/09/86*[60775]*71 NH PUC 234*New England Telephone and Telegraph Company, Inc.

[Go to End of 60775]

Re New England Telephone and Telegraph Company, Inc.

Intervenor: Office of Consumer Advocate

DR 85-425, Order No. 18,213

New Hampshire Public Utilities Commission

April 9, 1986

ORDER authorizing a local exchange telephone carrier to offer a special contract rate.

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

State statute RSA 378:18 authorizes the commission to set rates under special contract should it find that special circumstances exist that warrant departure from conventional tariffed rates. [1] p. 236.

Rates, § 534 — Telephone — Special contract rates — Effect of competition — "Centrex" service.

The fact that a local exchange telephone utility had lost two large off-premises "Centrex" service customers to unregulated vendors of on-premises private branch exchange (PBX) service, with a resulting loss of revenues and stranded investment, was held to be a special circumstance warranting a departure from conventional tariffed rates and to justify an offering by the utility of a special contract rate to another Centrex customer that might otherwise install a PBX system; approval of the special contract rate was conditioned on the utility bearing the risk of any revenue shortfall that may occur. [2] p. 236.

APPEARANCES: For the New England Telephone and Telegraph Company: Phillip M. Huston, Esquire, and Bruce Beausejour, Esquire; for the Consumer Advocate: Michael W. Holmes, Esquire; for the Commission Staff: Eugene F. Sullivan, Finance Director, and Edgar D. Stubbs, Jr., Assistant Chief Engineer.

By the COMMISSION:

REPORT

On December 20, 1985, the New England Telephone & Telegraph Company, Inc. (New England Telephone, NET or Company) filed with this Commission a petition seeking approval of a Special Contract No. 85-1 by which it proposed to supply Centrex service to Sanders Associates (Sanders). On January 17, 1986, an Order of Notice was issued setting this matter for public hearing on March 13, 1986. That hearing was rescheduled by another Order of Notice issued on February 5, 1986 which specified a hearing at the Commission's Concord offices at 10:00 a.m. on February 27, 1986. The Company filed direct testimony of its witness, Thomas W. Caldwell, Division Manager, on February 20, 1986. An amended Special Contract No. 85-1 was

filed on February 26, 1986. Public notice of the hearing as directed by the Order of Notice was affirmed by affidavit filed on February 19, 1986. The hearing was held as scheduled with one intervenor, Consumer Advocate Michael W. Holmes.

PROPRIETARY INFORMATION:

Because of the information contained in its original filing, the Company asked that such information be considered proprietary and that it not be released for public review without Company consent. Included in this information is the Special Contract No. 85-1, the packet of supporting data and the testimony of NET witness Caldwell. At the hearing, Attorney Huston presented a draft protective order which he suggested the Commission issue. Chairman Iacopino indicated that the Commission's Order of Notice on February 5, 1986 established the necessary protection of the proprietary information pending someone convincing the Commission that those data should be public records. Having heard no objections to that ruling, Chairman Iacopino stated that the Commission would continue to regard the filing " ... proprietary and confidential ... " (T11) with no access except by parties to the proceeding.

With concern regarding the proprietary issue, an omission in the distribution of the filing occurred. Mr. Holmes received only the proposed special contract prior to the hearing date, not realizing that there existed supporting data and prefiled testimony. The error was corrected and a brief recess allowed Mr. Holmes to review these data.

COMPANY POSITION:

In his opening remarks, Attorney Huston referred to an earlier NET rate case (DR 82-70) in which the Commission recognized the potential loss of revenue through divestiture and resulting competition, particularly those customers who might be swayed by unregulated vendors to move from their off-premises Centrex system to an onpremises PBX. Huston indicated those fears expressed by the Commission in 1982 had been realized. Two of NET's large Centrex customers had been lost to the competition. Counsel indicated that the purpose of the instant case was to prevent the loss of a third. Huston stated that both Company and ratepayers would save through retention of Sanders Associates under a special contract.

Attorney Huston presented one witness for New England Telephone, Thomas W. Caldwell, Division Manager. After entering the Special Contract No. 85-1 as Exhibit No. 1, supporting data as Exhibit No. 2 and Mr. Caldwell's prefiled testimony as Exhibit No. 3, Huston presented the Company's witness for cross-examination. Mr. Caldwell described the filing and explained how the Company arrived at the terms presented. He discussed the alternatives which Sanders Associates had and their impact on NET and its ratepayers. The loss of Sanders as a Centrex subscriber would mean substantial loss of revenue and an accompanying stranded investment. By keeping Sanders under Centrex contract, revenues would decrease, but not so significantly as would occur with a jump to a PBX system and the stranded investment would be avoided. These factors benefit both NET and its ratepayers. Retention as a Centrex

customer also continues a portion of the End User Common Line (EUCL) charges which would be lost with a shift to a PBX.

COMMISSION ANALYSIS:

[1, 2] The Commission recognizes its authority under RSA 378:18 to set rates under Special Contract should it find that special circumstances exist to warrant departure from conventional tariffed rates. In the instant case, we acknowledge the fact that two large Centrex customers of NET have made the move to a PBX system. Should Sanders do likewise; a large amount of revenue would be lost as well as the investment in both central office and outside plant being stranded. Such impact eventually will be felt by the general ratepayer through higher rates. While contract revenues may be less than those currently received, they are far better than those remaining if Sanders opted for a PBX system. This, plus the avoidance of stranded investment, appear to be in the public interest.

One concern of this Commission is the 10-year life of this proposed contract. Currently, we have been assured that revenues are compensatory and even provide a contribution. As contract years go by, it is uncertain whether the contractual rates meet costs, let alone provide a contribution. An additional concern is the rate structure docket, DR 85-182, and how its final results will affect tariffed Centrex rates. These concerns preclude unconditional approval of this Centrex contract.

In addition, the Commission takes administrative notice of its records in docket DR 84-51.

Consequently the Commission insists that approval of this contract with Sanders Associates does not automatically allocate to ratepayers revenue shortfalls which may result from the contract in its later years. Management must bear the risk that any adverse consequences resulting from its decision may be allocated all or in part to the investors.

Our order will issue accordingly.

ORDER

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

ORDERED, that Special Contract No. 85-1 between the New England Telephone and Telegraph Company and Sanders Associates be, and hereby is, approved, subject to the condition that future revenue shortfall resulting therefrom if any, may be allocated to investors in the course of future rate making proceedings.

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1986.

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NH.PUC*04/09/86*[60776]*71 NH PUC 237*New England Telephone and Telegraph Company

[Go to End of 60776]

71 NH PUC 237

Re New England Telephone and Telegraph Company

DF 86-61, Order No. 18,214

New Hampshire Public Utilities Commission

April 9, 1986

ORDER authorizing a local exchange telephone carrier to issue and sell debt securities.

Securities Issues, § 44 — Factors affecting authorization — Refinancing of high cost issues — Local exchange carrier.

A local exchange telephone carrier was authorized to issue and sell debt securities at an interest rate not to exceed 9% where the carrier had been previously authorized to issue debt securities under a shelf registration arrangement and the proceeds of the sale would be used to refinance high price securities issues.

By the COMMISSION:

ORDER

WHEREAS, New England Telephone and Telegraph Company ("New England Telephone") filed a petition for authority to issue debt securities under a shelf registration arrangement on February 19, 1986, with the actual issuance or issuances likely to occur during calendar year 1986; and

WHEREAS, New England Telephone proposed that the total amount of securities to be issued pursuant to this request will not exceed $550,000,000; and

WHEREAS, New England Telephone was previously granted authority to issue debt securities in the principal amount or $350,000,000 to refinance high price issues; and

WHEREAS, New England Telephone has issued Forty Year 9% Debentures, due March 1, 2026 to redeem ThirtySeven Year 12.20% Debentures, due May 15, 2017, in the aggregate principal amount of $300,000,000, the outstanding $18,396,000 principal amount of the Thirty-Seven Year 15 1/4% Debentures, due June 15, 2018, and to reduce short-term debt outstanding; and

WHEREAS, New England Telephone has a balance of $200,000,00 of shelf registration allowed in order to have greater flexibility to execute issuance and to be in a position to capitalize on interest rate windows of opportunity; and

WHEREAS, in Order No. 18,130 (71 NH PUC 135), this Commission required that New England Telephone submit terms and conditions for the additional debt securities authorized; and

WHEREAS, New England Telephone has requested that authorization for the issuance of $200,000,000 of debt securities be authorized at an appropriate interest rate not exceeding 9%, the proceeds of which will be used to refinance high price issues; it is

ORDERED, that New England Telephone be, and hereby is, authorized to issue and sell debt securities, not to exceed $200,000,000, at appropriate interest rates not exceeding 9%, and it is

FURTHER ORDERED, that New England Telephone shall provide the Commission with copies of debt obligations if publicly offered or a copy of the proposed agreement if a private offering is to take place.

By Order of the Public Utilities Commission of New Hampshire this ninth day of April, 1986.

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NH.PUC*04/11/86*[60777]*71 NH PUC 239*Wendell Water Power Project

[Go to End of 60777]

71 NH PUC 239

Re Wendell Water Power Project

DR 86-51, Supplemental Order No. 18,215

New Hampshire Public Utilities Commission

April 11, 1986

ORDER suspending a long term rate order for a small power production project.

Cogeneration, § 19 — Small power production — Long term rate order — Conditions on approval — Signed interconnection agreement.

A long term rate order for a small power production project was suspended pending the submission by the small power producer of a signed interconnection agreement with the interconnecting utility; small power producers and cogenerators are required to submit a signed interconnection agreement as part of their long term rate petitions.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on February 4, 1986, Matthew J. Bonaccorsi (Bonaccorsi) filed a long term rate petition for the Wendell Water Power Project pursuant to Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, (69 NH PUC 352, 61 PUR4th 132 [1984]) (Order No. 17,104) and Docket No. DR 85-215, (70 NH PUC 753, 69 PUR4th 365 [1985]); and

WHEREAS, the Commission issued Order No. 18,167 (71 NH PUC 162) in this docket which approved nisi the long term rate petition of Bonaccorsi effective April 11, 1986 unless the Commission provides otherwise in a Supplemental Order issued on or before the effective date; and

WHEREAS, Order No. 18,167 allowed Public Service Company of New Hampshire (PSNH) twenty days to file comments, exceptions or such other response to Bonaccorsi's petition as it

deemed necessary; and

WHEREAS, by letter dated April 1, 1986 PSNH respectfully requested that the final Order approving Bonaccorsi's petition be conditioned upon submission of a signed interconnection agreement with PSNH; and

WHEREAS, under Order 17,104, supra, Small Power Producers and Cogenerators are required to submit a signed interconnection with PSNH as part of their petition; it is therefore

ORDERED, that Order No. 18,167 be suspended until such time as Bonaccorsi has submitted as an amendment to their petition, a signed interconnection agreement with PSNH.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1986.

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NH.PUC*04/14/86*[60778]*71 NH PUC 240*Motorola Cellular Service, Inc.

[Go to End of 60778]

71 NH PUC 240

Re Motorola Cellular Service, Inc.

DE 85-395, Order No. 18,216

New Hampshire Public Utilities Commission

April 14, 1986

ORDER holding that resellers of cellular telecommunications services need not request commission approval to conduct business.

Public Utilities, § 137 — Resale of service — Cellular telecommunications service — State jurisdiction.

Federal Communications Commission regulatory jurisdiction of cellular telecommunications service preempts state certification of cellular service offerings based on the determination of need for such services and number of such service carriers in the market; however, it does not preempt state certification with respect to whether an individual applicant's service is in the public interest. [1] p. 242.

Public Utilities, § 137 — Resale of service — Cellular telecommunications service — Monopoly status.

Resellers of cellular telecommunications service are not, at least in some respects, natural monopolies because the resale market is not a declining cost industry, barriers to entry are low, and there is no duplication of facilities involved. [2] p. 242.

Public Utilities, § 137 — Resale of service — Cellular telecommunications service — Regulatory status.

A decision to refrain from regulating resellers of cellular telecommunications services was based on a commission finding that competition can be expected to evolve in the provision of such services because resellers are not natural monopolies, and on legal authority urging a commission policy of noninterference in truly competitive services; the commission reserved the right to impose traditional regulation on resellers should true competition fail to evolve. [3] p. 242.

APPEARANCES: Ingrid Lehnert-Moller for Motorola Cellular Service, Inc.; Mary Hain, Edgar Stubbs, Michael Burke and Gail Williams for the Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket was initiated by an application pursuant to N.H. R.S.A. §374:22 (1984) filed on November 21, 1985 by Motorola Cellular Service, Inc. for a Certificate of Public Convenience and Necessity to provide cellular service in the Manchester-Nashua Standard Metropolitan Area. An Order of Notice was issued on December 13, 1985 setting a hearing for January 21, 1986. A revised Order of Notice issued on January 16, 1986 rescheduled the hearing

for March 11, 1986. On March 4, 1986, the prefiled testimony of Michael R. Marrs was filed. A hearing on the merits of the petition was held on March 11, 1986.

II. A DESCRIPTION OF THE SERVICE

The company requested certification to be a reseller of cellular mobile radio telecommunications service on a retail basis. In Re Resale and Shared Use of Common Services, 60 F.C.C.2d 261, 263 (1976), the Federal Communications Commission defined resale as "an activity wherein one entity subscribes to the communication services and facilities of another entity and then reoffers communication services and facilities to the public (with or without `adding value') for profit." Carriers owning transmission facilities from whom resale companies obtain communication service are referred to as underlying carriers. The resale companies contract with, or are subject to a regulated tariff from, the underlying carrier.

Each underlying carrier (also known as a system operator) is responsible for constructing a system for interconnection with the landline (also known as the public switched) network. These underlying carriers contract with, or are subject to a regulated tariff from, the local exchange companies for such a service. Customers of cellular service may also buy service directly from an underlying carrier.

The Federal Communications Commission made the 40 MHz frequency block allocated for cellular services available for two competing underlying carriers per market area, with 20 MHz available for each carrier. Re An Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, (Order) CC Docket No. 79-318, 86 F.C.C.2d 469,

482, 46 Fed.Reg. 27,655 (1981). They determined that the public interest would be best served by licensing up to two systems based on technical evidence that cellular systems should be allocated no less than 20 MHz each in order to preserve the spectrum efficiency afforded by the cellular concept.

Re An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, CC Docket No. 79-318, 89 F.C.C.2d 58, 61.

The F.C.C. will allocate these two licenses to one "wireline" and one "nonwireline" carrier. Re Cellular Communications Systems, 86 F.C.C.2d 469, 476. The wireline company is a local exchange company or "landline company". The non-wireline company is a radio common carrier. After a five-year period of this separate allocation, any party will be allowed to apply for either block of frequencies. In other words, two wireline or two non-wireline underlying carriers could be licensed. Id., 86 F.C.C.2d at p. 488. Wireline carriers may apply only in those general areas where they are certified as a wireline carrier. Id., 86 F.C.C.2d at p. 490 Footnote 56.

Motorola Cellular Services, Inc. does not request authority as an Underlying Carrier. It seeks authority as a reseller of cellular service. MCSI seeks authority from the commission to acquire telephone access numbers from

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the underlying carriers and to resell those numbers to the general public together with related services. These access numbers will be distributed together with the customer premises equipment sold and serviced by an affiliate corporation. In addition, this affiliate will provide marketing for MCSI's service. Motorola Cellular Services, Inc. (MCSI) envisions the integrated provision of access numbers, individual transmitting and receiving units for sale or lease, the installation of such equipment and service thereto, and billing service.

The transmitting and receiving units discussed are classified as "terminal equipment" by the F.C.C. Such equipment was deregulated in the Re Second Computer Inquiry, 77 F.C.C.2d 384, 35 PUR4th 143 (1980); Reconsideration, 84 F.C.C.2d 50, 39 PUR4th 319 (1980); Further reconsideration, 88 F.C.C.2d 512 (1981); affd sub nom. Computer and Communications Industry Asso. v. Federal Communications Commission, 224 U.S.App.D.C. 83, 693 F.2d 198 (1982), cert den sub nom. Louisiana Pub. Service Commission v. Federal Communications Commission, 461 U.S. 938, 77 L.Ed.2d 313, 103 S.Ct. 2109 (1983).

III. POSITIONS OF THE PARTIES

The company's central argument is that the Public Utilities Commission does not have jurisdiction to grant certification for the resale of cellular service. They argue that the laws of New Hampshire give the Public Utilities Commission the power to regulate any company owning, operating or managing any plant or equipment for the transmission of telephone messages under N.H. R.S.A. §362:2 (1984); however, MCSI does not own or use any plant, equipment, or other telephone communications facilities for providing cellular service. Rather, MCSI is engaged in the business of marketing the access numbers acquired from the underlying carriers to MCSI's customers.

The company further argues that the F.C.C. has stated in the "cellular dockets" that any restriction on cellular resale would be contrary to the public interest.

The staff questioned whether the service is a monopoly.

IV. COMMISSION ANALYSIS

[1-3] The New Hampshire Public Utilities Commission's jurisdiction over cellular resellers depends on a twoprong analysis. First, has the F.C.C. preempted state jurisdiction over the matter? Second, does the P.U.C. have authority under the state statute and subsequent court interpretations thereof?

The F.C.C. discussed three aspects of Federal-State preemption in Re Cellular Communications Systems, 89 F.C.C.2d at p. 95: technical standards, market structure, and state certification. The F.C.C. preempted state jurisdiction over the technical standards for cellular systems. Id., 89 F.C.C.2d at p. 95. In addition, the F.C.C. preempted state jurisdiction with respect to market structure. The F.C.C. found that cellular systems require 20 MHz to ensure efficient frequency reuse and that the public would best be served by providing for up to two cellular systems per market. Id., 89 F.C.C.2d at p. 95. Third, the F.C.C. preempted the determination of need and has preempted the state from (89 F.C.C.2d at p. 96):

denying state certification based on the number of existing carriers in

the market or the capacity of existing carriers to handle the demand for mobile services.

Where states examine the qualifications of individual applicants to serve as common carriers, this state certification process need not occur prior to an F.C.C. filing. Id., 89 F.C.C.2d at p. 96. The state retains jurisdiction " ... with respect to charges, classifications, practices, services, facilities or regulations for service by licensed carriers." Id., 89 F.C.C.2d at p. 96. Further, states have the authority to require cellular operators to provide this service only through a separate subsidiary. Id., 89 F.C.C.2d at p. 96 Footnote 64.

The language in Re Cellular Communications Systems is not persuasive authority of the company's argument that the New Hampshire Commission's jurisdiction is preempted by the F.C.C. The F.C.C. preempts state certification based on the determination of need and the number of carriers in the market. It does not preempt P.U.C. certification with respect to whether an individual applicant's service (such as MCSI's) is in the public interest.[1(45)] In fact, the F.C.C. has found that

... a dynamic state certification program should provide considerable assistance in achieving the objectives of this cellular proceeding. Specifically, such state action could help assure that the most qualified applicants become cellular licensees if it is made expeditiously so that it can be reflected in the F.C.C.'s radio licensing proceeding. Re Cellular Communications Systems, 86 F.C.C.2d 469, 505.

The standard of fitness in fulfilling the public interest (for certification purposes) includes such criteria as:

(1) financial backing; (2) management and administrative expertise; (3) technical resources;

and (4) the general fitness of the applicant. Re International Generation and Transmission Co., Inc., 67 NH PUC 478, 484 (1982).

Further, under the authority of N.H. R.S.A. §374:22 I. (1984), "No person or business entity shall commence business as a public utility within this state, or engage in such business, ... without first having obtained the permission and approval of the [public utilities] commission. In order for the P.U.C. to exercise the residual jurisdiction reserved by the F.C.C. to the states over charges, classifications, practices, services, facilities, or regulations for service, the business must first have such "permission and approval".

With respect to the regulation of the resale of cellular service, the F.C.C. has a policy that "restriction of cellular resale is contrary to the public interest." Re Cellular Communications Systems, 86 F.C.C.2d 468, 511. This policy is derived from the Resale and Shared Use decision, in which the F.C.C. held unlawful provisions in carrier tariffs which had the effect of precluding resale of private line services. See 47 U.S.C. §§201(b), 202(a), 205(a).

The F.C.C. proposed that a system of wholesale carrier and retailer distribution entities (resellers) may result

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... in the evolution of a highly competitive secondary market for distribution of cellular services, while only two carriers compete in the provision of cellular facilities. Re Cellular Communications Systems, 86 F.C.C.2d 469, 510.

There is legal authority in New Hampshire urging, if not requiring, a commission policy of noninterference in truly competitive services. In Re Omni Communications, Inc., 122 N.H. 860, 862, 451 A.2d 1289 (1982), the Supreme Court found that the New Hampshire Constitution in part II, article 83 expresses a fundamental preference for free enterprise. However, the court found that some monopolies were required because they are "natural" monopolies. These natural monopolies exhibit economies or efficiencies which would not exist where there are many competitors. Thus, it was the legislative intent, in the creation of a regulatory body, to regulate only such natural monopolies. Id., 122 N.H. at p. 862.

Resellers of cellular services are, at least in certain respects, not natural monopolies. A natural monopoly experiences economies due to the declining costs of adding services. The resale cellular market is not a declining cost industry. Barriers to entry are low since little capital investment is required. There is also no duplication of facilities involved.

Whether this service is a monopoly, in practice, has not yet been borne out by experience in New Hampshire. This is after all a new service. If such competition does not evolve, further investigation by this commission and the reinstatement of traditional regulation may be required.

While the commission is aware that other jurisdictions have exercised authority over the resale of cellular service,[2(46)]

this commission will at this time refrain from regulating such a service based on the record before us. The record shows that resale of cellular service may promote competition in the provision of all underlying cellular service.

We find that the regulation of resale cellular service, and therefore certification, is not in the public interest at this time. To the extent that resale will have a competitive effect on the provision of underlying cellular service, New Hampshire public policy would disfavor regulation. Id., 122 N.H. at p. 862. This state policy is reinforced by the F.C.C.'s policy to promote competition of cellular service using resale entities. Re Resale and Shared Use, 60 F.C.C.2d 261 (1976).

Accordingly, our approval of the requested service is not required.

ORDER

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

ORDERED, that request for an order granting approval for the Motorola Cellular Service, Inc. to engage in the public utility business is denied; and it is

FURTHER ORDERED, that, unless and until otherwise ordered, no such approval shall be necessary for Motorola Cellular Service, Inc. to conduct business as a reseller of cellular service.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of April, 1986.

FOOTNOTES

[1]It should be noted that the commission is aware of an F.C.C. proposal to preempt state entry regulation in public land mobile service. See Preemption of State Entry Regulation in the Public Land Mobile Service, (Notice of Proposed Rulemaking) CC Docket No. 85-89, 50 Fed.Reg. 21,904 (1985). This proposal, by its terms, does not apply to state regulation of cellular services. Id., 50 Fed.Reg. 21,904 Footnote 1.

[2]See Re Advanced Mobile Phone Service, Inc., 60 PUR4th 421, 448 (Ariz.C.C.1984).

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[Go to End of 60779]

71 NH PUC 245

Re Kona, Inc.

DE 86-37, Order No. 18,217

New Hampshire Public Utilities Commission

April 17, 1986

PETITION to discontinue water service.

Service, § 277 — Discontinuance — Water utility.

In examining a petition to discontinue service by a small water utility that served only six residences and was unable to meet operation and maintenance expenses at currently authorized rates, the commission balanced the interests of the utility against the utility customers' need for a water supply and held that the customers and the utility should discuss options for the continued availability of water; the options suggested by the commission were (1) mutual ownership of the utility system, (2) continuation of the present system at higher rates, and (3) the digging of individual wells by each homeowner.

By the COMMISSION:

REPORT

Kona, Incorporated, a New Hampshire corporation operating a water public utility in a limited area in the Town of Moultonboro, New Hampshire, filed a petition to discontinue service to its customers.

The source of supply for the Kona water system is a well which provides water to six (6) residences, two of which are on land of, and owned by, Kona. The remaining four are in a subdivision known as Forty Acre Field. Service to these customers was initiated by the previous owner of the well source, and the Kona property. Kona, Inc., now maintains that it has no easement for the water mains serving its customers in Forty Acre Field and thus would be prevented from digging to make repairs, should they be necessary.

Kona is presently charging a temporary rate of $150 per year which was established by Order No. 17,310 in docket DE 83-137 (69 NH PUC 652). An analysis of operation and maintenance expenses, including a return on investment, shows that a rate of $370 would be justified. Because of a lack of control of the system, i.e., easements on private property, and the level to which rates should be increased to meet expenses, Kona seeks to discontinue service.

It has been established that the lots of customers in Forty Acre Field are large enough to support the development of individual well supplies. One

customer, Robert Poehlman, testified that he is leery that a well drilled on his land would be of unsafe quality because of "garbage" and other questionable fill deposited on the land by the developer. Customer Richard Avery testified that he could not afford the estimated $4,000 to develop a well on his property.

It was also established that Kona had made no effort to obtain easements for the mains now serving Forty Acre Field.

This Commission is aware of the difficulties in regulating utilities as small as Kona and that rates necessary to support their operation are generally higher than on larger systems. Understanding this, Kona's desire to discontinue its service, and the need of the present customers for a water supply, it is our judgment that Kona and its customers should once more attempt to find a reasonable solution that would be satisfactory to all. The options are: 1) mutual

ownership of the Kona well and system; 2) mutual ownership of a well established in Forty Acre Field, including the mains now owned by Kona; 3) continuation of the present system with its necessary higher rate, or 4) individual wells by each home owner. It would appear that options 1 and 2 would be least expensive and would eliminate regulation by this office and its attendant expense.

We will allow one month for the necessary discussions and require that Kona notify this Commission by May 16, 1986 of the results, at which time we will issue a Supplemental Order regarding the Petition to Discontinue.

Our Order will issue accordingly.

ORDER

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

ORDERED, that on or before May 16,1986, Kona, Inc., shall report to this Commission the results of further discussion with its customers regarding future water supply to the Forty Acre Field sub-division; and it is

FURTHER ORDERED, that upon receipt of such results, a supplemental Order shall be issued regarding Kona, Inc.'s petition to discontinue service.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1986.

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NH.PUC*04/17/86*[60780]*71 NH PUC 247*Goodrich Falls Hydroelectric Corporation

[Go to End of 60780]

71 NH PUC 247

Re Goodrich Falls Hydroelectric Corporation

DR 86-14, Supplemental Order No. 18,222

Re Franklin Falls Hydroelectric Corporation (Salmon Brook)

DR 86-15

Re Franklin Falls Hydroelectric Corporation (Franklin Falls)

DR 86-16

New Hampshire Public Utilities Commission

April 17, 1986

ORDER modifying long term small power production rate orders.

Cogeneration, § 20 — Small power production — Long term levelized rate — Purpose.

In affirming its approval of long term levelized rates for certain small power production projects that were already in operation, the commission held that although front-end loading and levelizing are intended to stimulate small power producer site development, such stimulation is also relevant to keeping existing small power production projects in operation. [1] p. 247.

Cogeneration, § 20 — Small power production — Long term levelized rate — Risks to ratepayers.

On reconsideration of prior orders approving thirty year rates for certain small power production projects, the commission modified the orders so that rates were approved for only the first 20 years of the operation of the projects; the commission found that the projects did not require the use of the levelized value of the last ten years of the rate order to offset cash flow problems and that the risk to future ratepayers that would result from approving unlevelized rates during the last ten years was not offset by either the intended benefit of providing necessary support for small power producers' cash flow problems or the mitigating effect of a high discount rate. [2] p. 248.

By the COMMISSION:

On January 17, 1986 Goodrich Falls Hydroelectric Corp. (Goodrich) filed a long term rate petition for the Goodrich Falls Hydroelectric Project, and Franklin Falls Hydroelectric Corp. (Franklin) filed long term rate petitions for the Salmon Brook and Franklin Falls Hydroelectric Projects. The Commission approved the long term rate petitions on January 30, 1986 by Order Nisi Nos. 18,096 (71 NH PUC 110), 18,097 (71 NH PUC 112), and 18,098 (71 NH PUC 114). Public Service Company of New Hampshire (PSNH) filed comments on March 31, 1986, expressing its concern over the payment of the front loaded rates and in particular that the facilities may not operate for the full thirty years and that front loaded rates were inappropriate for projects already in operation.

[1] Goodrich and Franklin have represented to the Commission that their need for a front loaded rate is related to the renovations at the three sites and

the impossibility of continuing operation on the short term rate given their newly incurred debt costs. The Commission notes that the unlevelized long term rate would impose the same cash flow problems on the finances of these projects as does the short term rate. It is true that "front-end loading and levelizing are intended to stimulate [small power producer] site development." Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 367, 61 PUR4th 132, 146 (1984). However such stimulation is as relevant to keeping small power producers in operation as it is to encouraging them to begin operation. Therefore we reaffirm our approval of levelized rates for Goodrich and Franklin.

[2] The Commission also notes, however, that the long term rates approved in Order Nos. 18,096, 18,097 and 18,098 are only levelized for the first 20 years (1986-2005) and incorporate the projected avoided cost rate for the last ten years of the rate (2006-2015). The purpose of

allowing 30 year rates was to enable small power producers that must incur heavy capital expenditures to use the levelized value of the 21st through 30th years of the rate to offset the cash flow requirements of the early years of the project. The added risk of the uncertainty of projections 20 to 30 years in the future is mitigated by the high discount rate applied to the rate in general. It is clear that the instant projects do not require and do not intend to make use of the levelized value of the last ten years of their rate to offset near-term cash flow problems. Therefore, approval of a thirty year rate with the last ten years unlevelized exposes future ratepayers (i.e., those in the years 2006-2015) to the risk of paying a small power producer an undiscounted rate based on a projection made in 1985. On reconsideration, the Commission believes that the added risk to future ratepayers, not balanced by either the intended benefit of providing necessary support for a small power producers' cash flow problems or the mitigating effect of a high discount rate, is contrary to the Commission's intent in DR 83-62 when it made 30 year rates available to small power producers.

Therefore, we will modify Order Nos. 18,096, 18,097 and 18,098 by approving rates for only the 20 years of 19862005. Goodrich and Franklin may apply for a rate covering the ten years 2006-2015 at the expiration of the current rate in 2005.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Goodrich Falls Hydroelectric Corp.'s petition for a long term rate for the Goodrich Falls Hydroelectric project and Franklin Falls Hydroelectric Corp.'s petitions for long term rates for the Salmon Brook Hydroelectric project and the Franklin Falls Hydroelectric project be and hereby are, approved for the years 1985-2005 and denied for the years 2006-2015.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1986.

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NH.PUC*04/17/86*[60781]*71 NH PUC 249*Pinetree Power-Tamworth

[Go to End of 60781]

71 NH PUC 249

Re Pinetree Power-Tamworth

DR 86-28

Re Franconia Power and Light

DR 86-35

Re Thermo ElectronTroy

DR 86-52

Re Thermo Electron-Conway

DR 86-53

Re Thermo Electron-Antrim

DR 86-54

Re Thermo Electron-Campton

DR 86-55

Re Thermo Electron-Fitzwilliam

DR 86-56

Re Stewartstown Steam Company

DR 86-98

Re Pinetree Power-North

DR 86-100

Re Pinetree Power-Berlin

DR 86-101

Re Pinetree Power-Campton

DR 86-102

Re Pinetree Power-Winchester

DR 86-103

Re Pinetree Power Energy Corporation

DR 86-104

Re Pinetree Power-Hinsdale

DR 86-105

Re Pinetree Power-Lancaster

DR 86-109

Re Pittsfield Power and Light

DR 86-125

Re Belmont Mill Power Associates

DR 86-128

Re Northeast Cogeneration Systems

DR 86-135

Order No. 18,223

New Hampshire Public Utilities Commission

April 17, 1986

ORDER suspending long term small power production rate orders pending further investigation.

Cogeneration, § 19 — Small power production — Long term rate orders — Operation and financial viability.

Citing concern as to ability of certain wood burning small power production projects to fulfill operational and financial representations made in their long term rate filings, the commission suspended its approval of their long term rate filings pending further investigation.

By the COMMISSION:

ORDER

WHEREAS,between January 28, 1986 and April 11, 1986 long term rates were filed pursuant to Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (69 NH PUC 352, 61 PUR4th 132 [1984]) and Docket No. DR 85-215, (70 NH PUC 753, 69 PUR4th 365 [1985] for 18 wood electric generating projects; and

WHEREAS,the Commission approved long-term rates nisi for Pinetree Power (Tamworth) in Order No. 18,112 (71 NH PUC 123), for Franconia Power & Light in Order No. 18,186, and for Thermo Electron Corporation (Antrim, Campton, Conway, Fitzwilliam and Troy) in Order Nos. 18,198, (71 NH PUC 219), 18,199, (71 NH PUC 220), 18,197, (71 NH PUC 218), 18,200 (71 NH PUC 221), and 18,196 (71 NH PUC 217); and

WHEREAS,the 18 wood burning facilities represent 282.1 MW of installed capacity, and

WHEREAS,the addition of these projects to the 102 MW of installed capacity of wood burning projects already granted raises questions concerning the ability to fulfill the representations in their rate filings, including, but not limited to their operational and financial viability over the period of the rate and their ability to come on-line on the date

specified in their filings, to warrant further investigation; it is hereby,

ORDERED, that Order Nos. 18,112, 18,186, 18,198, 18,199, 18,197, 18,200 and 18,196 be and hereby are suspended; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.05 a pre-hearing conference and procedural hearing be held before the Public Utilities Commission at its office in Concord, New Hampshire, 8 Old Suncook Road, Building #1 at ten o'clock in the forenoon on the thirteenth day of May, 1986 on the issues above as being within the scope of this docket; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.02 persons desiring to intervene as a party file a Motion to Intervene as required by said rule no later than three days before the procedural hearing and prehearing conference.

By Order to the Public Utilities Commission of New Hampshire this seventeenth day of April, 1986.

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NH.PUC*04/18/86*[60782]*71 NH PUC 251*William B. Ruger, Jr. d/b/a Sugar River Hydroelectric Power Company

[Go to End of 60782]

71 NH PUC 251

Re William B. Ruger, Jr. d/b/a Sugar River Hydroelectric Power Company

Respondent: Public Service Company of New Hampshire

DR 86-99, Order No. 18,224

New Hampshire Public Utilities Commission

April 18, 1986

ORDER nisi approving a petition for a thirty year rate order for a small power production project.

Cogeneration, § 19 — Small power producer — Long term rate order — Junior lien.

A small power producer's petition for a thirty-year rate order was approved where the petitioner agreed to grant the interconnecting utility a junior lien covering the buy out value of the project and otherwise conformed to commission requirements.

By the COMMISSION:

ORDER

WHEREAS, on March 31, 1986, William B. Ruger, Jr. dba Sugar River Hydroelectric Power Co. (Sugar River) filed a long term rate petition for the hydroelectric facility located in Newport, New Hampshire; and

WHEREAS, Sugar River filed amendments to its filing on April 4, 1986; and

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

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

WHEREAS, Sugar River 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 of the Project; and

WHEREAS, PSNH has filed a Motion for Interim Rates in Docket No. DR 86-41 based on a limited temporary suspension of approval of long term rate filings for facilities over 5 megawatts; and

WHEREAS, although a decision has not been made regarding PSNH's Motion for Interim Rates, Sugar River's hydroelectric facility is under 5 megawatts and would not be affected by this Motion; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to Sugar River's Petition for a thirtyyear rate order; and

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

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Docket No. DE 83-62, (69 NH PUC 352, 61 PUR4th 132) and Docket No. DR 85-215, (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore,

ORDERED NISI, that Sugar River's Petition for a thirty-year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheets is approved; and it is

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

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

By order of the Public Utilities Commission of New Hampshire this eighteenth day of April, 1986.

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NH.PUC*04/18/86*[60783]*71 NH PUC 253*Hadley Falls Associates

[Go to End of 60783]

71 NH PUC 253

Re Hadley Falls Associates

Respondent: Public Service Company of New Hampshire

DR 86-59, Supplemental Order No. 18,225

New Hampshire Public Utilities Commission

April 18, 1986

ORDER modifying long term small power production rate orders.

Cogeneration, § 20 — Small power production — Long term levelized rate — Purpose.

In affirming its approval of long term levelized rates for a small power production project that was already in operation, the commission held that although frontend loading and levelizing are intended to stimulate small power producer site development, such stimulation is also relevant to keeping existing small power production projects in operation. [1] p. 253.

Cogeneration, § 20 — Small power production — Long term levelized rate — Risks to ratepayers.

On reconsideration of a prior order approving a thirty year rate for a small power production project, which order had provided for levelized rates for the first twenty years and the tracking of avoided costs thereafter, the commission modified the order so that rates were approved for only the first 20 years of the operation of the project; the commission found that the project did not require the use of the levelized value of the last ten years of the rate order to offset cash flow problems and that the risk to future ratepayers during the last ten years that would result from approving unlevelized rates was not offset by either the intended benefit of providing necessary support for small power producers' cash flow problems or the mitigating effect of a high discount rate. [2] p. 253.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on February 18, 1986 Hadley Falls Associates (Hadley Falls) filed a long term rate petition for the Hadley Falls Dam project located in Goffstown, New Hampshire; and

WHEREAS, the Petition requested, inter alia, a thirty year rate order levelized for the first twenty (20) years and tracking the avoided costs thereafter; and

WHEREAS, by Order Nisi No. 18,175 dated March 14, 1986 (71 NH PUC 179), the Commission granted the thirty year rate order; and

WHEREAS, Public Service Company of New Hampshire (PSNH) was allowed twenty (20) days to file comments, exceptions or such other response to the petition as they deemed necessary; and

WHEREAS, PSNH filed comments and exceptions on April 3, 1986; and

[1, 2] WHEREAS, these comments

stated that front-end loading is especially inappropriate in this circumstance inasmuch as the facility in question is currently in operation and providing power under the short-term rate, which indicates that the encouragement provided by levelized rates is not needed and should not be borne by ratepayers; and

WHEREAS, it was found in Supplemental Order No. 18,222 (71 NH PUC 247) that while the intent of DE 83-62, supra, was to approve front-end loading and levelizing in order to stimulate small power producer site development, such stimulation is as relevant to keeping small power producers in operation as it is to encouraging them to begin operation. Therefore we reaffirm our approval of levelized rates for Hadley Falls; and

WHEREAS, pursuant to Re Small Energy Producers and Coqenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), the purpose of allowing thirty year rates was to enable small power producers that must incur heavy capital expenditures to use the levelized value of the 21st through 30th years of the rate to offset the cash flow requirements of the early years of the project, and the added risk of the uncertainty of projections 20 to 30 years in the future is mitigated by the high discount rate applied to the rate in general; and

WHEREAS, Hadley Falls does not require and does not intend to make use of the levelized value of the last ten years of its rate to offset near-term cash flow problems; and

WHEREAS, approval of a thirty year rate with the last ten years unlevelized exposes future ratepayers (i.e, those in the years 2007-2016) to the risk of paying a small power producer an undiscounted rate based on a projection made in 1985; and

WHEREAS, the added risk to future ratepayers, not balanced by either the intended benefit of providing necessary support for a small power producer's cash flow problems or the mitigating effect of a high discount rate, is contrary to the Commission's intent in DR 83-62 when it made 30 year rates available to small power producers; and

WHEREAS, PSNH filed a Motion for Interim Rates in Docket No. DR 86-41 based on a limited temporary suspension of approval of long term rate filings for facilities over 5 megawatts; and

WHEREAS, although a decision has not been made regarding PSNH's Motion for Interim Rates, Hadley Fall's hydroelectric facility is under 5 megawatts and would not be affected by this Motion; it is therefore

ORDERED NISI, that Hadley Fall's Petition for a rate order for approval of its interconnection agreements with PSNH and for approval of rates set forth on the long term rate worksheets for the Hadley Falls Dam project for the years 1987-2006 is approved; and it is

FURTHER ORDERED, that Hadley Fall's petition for a rate order for the years 2007-2016 is denied.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of April, 1986.

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NH.PUC*04/22/86*[60784]*71 NH PUC 255*White Mountain Hydroelectric Corporation

[Go to End of 60784]

Re White Mountain Hydroelectric Corporation

DR 86-85, Order No. 18,228

New Hampshire Public Utilities Commission

April 22, 1986

ORDER modifying long term small power production rate orders.

Cogeneration, § 20 — Small power production — Long term levelized rate — Risks to ratepayers.

On reconsideration of a prior order approving a thirty year rate for a small power production project, which order had provided for levelized rates for the first 20 years and the tracking of avoided costs thereafter, the commission modified the order so that rates were approved for only the first 20 years of the operation of the project; the commission found that the project did not require the use of the levelized value of the last ten years of the rate order to offset cash flow problems and that the risk to future ratepayers during the last ten years that would result from approving unlevelized rates was not offset by either the intended benefit of providing necessary support for small power producers' cash flow problems or the mitigating effect of a high discount rate.

By the COMMISSION:

ORDER

WHEREAS, on March 6, 1986, White Mountain Hydroelectric Corporation (White Mountain) filed a long term rate petition for the Lisbon Hydro Station project located in Lisbon, New Hampshire; and

WHEREAS, the Petition requested inter alia a thirty year rate order levelized for the first twenty (20) years and tracking the avoided costs thereafter; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), the purpose of allowing 30 year rates was to enable small power producers that must incur heavy capital expenditures to use the levelized value of the 21st through 30th years of the rate to offset the cash flow requirements of the early years of the project, and the added risk of the uncertainty of projections 20 to 30 years in the future is mitigated by the high discount rate applied to the rate in general; and

WHEREAS, White Mountain does not require and does not intend to make use of the levelized value of the last ten years of its rate to offset nearterm cash flow problems; and

WHEREAS, approval of a thirty year rate with the last ten years unlevelized

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exposes future ratepayers (i.e., those in the years 2007-2016) to the risk of paying a small power producer an undiscounted rate based on a projection made in 1985; and

WHEREAS, the added risk to future ratepayers, not balanced by either the intended benefit of providing necessary support for a small power producer's cash flow problems or the mitigating effect of a high discount rate, is contrary to the Commission's intent in DR 83-62 when it made 30 year rates available to small power producers; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to White Mountain's Petition for a thirty year rate order; and

WHEREAS, White Mountain's Petition appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra, and Docket No. DR 85-215, (70 NH PUC 753, 69 PUR4th 365 [1985] in all other respects; it is therefore

ORDERED NISI, that White Mountain's Petition for a rate order for approval of its interconnection agreements with PSNH and for approval of rates set forth on the long term rate worksheets for the Lisbon Hydro project for the years 1987-2006 is approved; and it is

FURTHER ORDERED, that White Mountain's petition for a rate order for the years 2007-2016 is denied; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petitions as they deem 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 Hempshire this twentysecond day of April, 1986.

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NH.PUC*04/23/86*[60785]*71 NH PUC 257*Chichester Telephone Company

[Go to End of 60785]

71 NH PUC 257

Re Chichester Telephone Company

DR 84-285, Supplemental Order No. 18,229

Re Continental Telephone Company of New Hampshire

DR 83-290

Re Dunbarton Telephone Company

DR 84-282

Re Granite State Telephone

DR 84-289

Re Kearsarge Telephone Company

DR 84-57

Re Meriden Telephone Company

DR 85-357

Re Merrimack County Telephone Company

DR 84-281

Re Union Telephone Company

DR 84-299

Re Wilton Telephone Company

DR 84-377

New Hampshire Public Utilities Commission

April 23, 1986

ORDER requiring corrections to the commission certification plan for the detariffing of embedded customer premises equipment.

Rates, § 553 — Telephone — Customer premises equipment — Detariffing.

In implementing procedures to comply with the Federal Communications Commission's guidelines for the detariffing of embedded customer premises equipment (CPE) owned by independent telephone companies, the commission ordered that deferred tax reserves and unamortized tax credits associated with all multi-line and single-line embedded CPE be transferred with the associated CPE.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the New Hampshire Public Utilities Commission (NHPUC) has sought to implement procedures to comply with Federal Communications Commission (FCC) guidelines for the detariffing of embedded customer premises equipment (CPE) owned by independent telephone companies (ITC's); and

WHEREAS, public hearings have been held where ITC's have presented plans for detariffing embedded CPE based on FCC guidelines; and

WHEREAS, the NHPUC has investigated ITC plans for detariffing embedded CPE and has issued a certification plan to each ITC and provided a copy to the FCC as this state's certification plan as required by FCC Third Report and Order Docket 81-893; and

WHEREAS, the FCC has required the NHPUC to make certain corrections to the NHPUC certification plan prior to FCC certification of the NHPUC certification plan; it is

ORDERED, that the fourth sentence on page five of the NHPUC certification plan be changed to read "This Commission has the following requirements that will be followed in order to accomplish our plan to detariff CPE."

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In addition, in order to comply with FCC requirements, deferred tax reserves and unamortized tax credits associated with all multi-line and singleline embedded CPE will be required to be transferred with the associated customer premises equipment.

By order of the Public Utilities Commission of New Hampshire this twentythird day of April, 1986.

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NH.PUC*04/23/86*[60786]*71 NH PUC 258*White Rock Water Company, Inc.

[Go to End of 60786]

71 NH PUC 258

Re White Rock Water Company, Inc.

DE 86-97, Order No. 18,230

New Hampshire Public Utilities Commission

April 23, 1986

ORDER nisi authorizing a water utility to extend its service area.

Service, § 210 — Water — New territory.

A water utility was granted authority to extend its mains and service into an area outside its then existing service area; whereas no other water utility had franchise rights in the area sought, the utility agreed to provide service under its regularly filed tariff, and the town to be served was in accord with the service extension.

By the COMMISSION:

ORDER

WHEREAS, White Rock Water Company, Inc. a water public utility operating under the jurisdiction of this Commission, by a petition filed March 28, 1986 seeks authority under RSA 374: 22 and 26 as amended, to further extend its mains and service in the Town of Bow; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Office of the Selectmen, Town of Bow, have stated that it is in accord with the Petition; and

WHEREAS, upon investigation and consideration, this Commission is satisfied that the granting of the authority here sought will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or a written request for a hearing in this matter to the Commission no later than May, 14, 1986; and it is

FURTHER ORDERED, that White Rock Water Company, Inc. effect said notification by publication of an attested copy of this Order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than April 30, 1986 and designated in an affidavit to be made on a copy of this

Order and filed with this office; and it is

FURTHER ORDERED, NISI that the White Rock Water Company, Inc. be authorized, pursuant to RSA 374:22, to further extend its mains and service in the Town of Bow in an area known as "West Gate" and as described and shown on documents on file at this office; and it is

FURTHER ORDERED, that such authority shall be effective on May, 15, 1986 unless a request for hearing is filed with the Commission as provided above or the Commission orders otherwise prior to the effective date.

By Order of the Public Utilities Commission of New Hampshire this twentythird day of April, 1986.

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NH.PUC*04/24/86*[60787]*71 NH PUC 260*Public Service Company of New Hampshire

[Go to End of 60787]

71 NH PUC 260

Re Public Service Company of New Hampshire

Additional petitioner: Exeter and Hampton Electric Company

DE 86-67, Order No. 18,231

New Hampshire Public Utilities Commission

April 24, 1986

ORDER permitting electric utilities to alter their service territories.

Service, § 320 — Electric — Alteration of service territories.

Two electric utilities were permitted to alter their service territories so that a new residential development could be more readily served; the utilities had filed a joint petition requesting the service territory alteration.

APPEARANCES: Thomas Getz, Esquire on behalf of Public Service Company of New Hampshire; Stewart Aither on behalf of Exeter & Hampton Electric Company.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

By a Petition dated February 19, 1986, Public Service Company of New Hampshire (PSNH) and Exeter & Hampton Electric Company (E&H) jointly requested authority to change service territories in a limited area in the Town of Hampstead, New Hampshire. By Order of Notice dated March 10, 1986 the Commission scheduled a hearing for March 31, 1986 at which time representatives from PSNH and E&H appeared and took part in the hearing. The Petitioners advised the Commission that the two companies had undertaken this transfer request as a proper response to the needs of a residential developer. The Petitioners requested pursuant to RSA Chapter 374: 22 that PSNH be granted permission and approval to relinquish that portion of its service territory in the Town of Hampstead which includes "Soldiers Hill Road and Regiment Drive" and that E&H be granted permission and approval to serve said service territory.

The Petition described that the service area in question which requires electric service is partially located in both Companies' service areas. Also that E&H presently is serving Hunt Road which is the main road through said area. Moreover, it was stated that PSNH's closest distribution circuit to the Hunt Road Area is approximately

2,000 feet from the development and an extension of said line would require crossing through densely wooded terrain.

II. COMMISSION ANALYSIS

This Petition involves a joint request to alter the franchise area, pursuant to RSA Chapter ;374:22, in a limited area in the Town of Hampstead, New Hampshire to more readily supply distribution service to a new residential development. The Commission also understands that E&H is capable of and agreeable to providing electrical service to "Soldiers Hill Road and Regiment Drive", and PSNH has no objection to relinquishing that portion of its service territory. Additionally, revised service territory maps reflecting the change in the service territories have been filed with the original petition.

After a complete review of the testimony, exhibits and evidence, we find the Petition to be in the public good and thereby approve the transfer of territory.

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 Public Service Company of New Hampshire and Exeter & Hampton Electric Company to alter service territories in a limited area in the Town of Hampstead, New Hampshire be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of April, 1986.

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NH.PUC*05/01/86*[60788]*71 NH PUC 262*Resource Electric Corporation

[Go to End of 60788]

71 NH PUC 262

Re Resource Electric Corporation

Intervenor: Public Service Company of New Hampshire

DR 86-77, Second Supplemental Order No. 18,234

New Hampshire Public Utilities Commission

May 1, 1986

ORDER setting a procedural schedule for hearings to determine the feasibility of a small power production project.

Cogeneration, § 19 — Small power production — Long term rates — Project feasibility.

In response to a request by the interconnecting utility, hearings were scheduled to establish the financial, technical, and economic feasibility of a small power production project that had received conditional approval of its long term rate petition.

APPEARANCES: Orr & Reno by Howard Moffett, Esquire for Resource Electric Corporation; Thomas B. Getz, Esquire for Public Service Company of New Hampshire; Mark H. Collin, Dr. Sarah P. Voll, and Nadeen Gazaway for the Commission staff.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on February 24, 1986, Resource Electric Corporation (REC) filed a long term rate petition pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), (Order 17,104); and

WHEREAS, REC's petition requested, inter alia, a levelized front-end loaded twenty year rate order for a proposed twenty megawatt (20 MW) tire burning steam generation small power production facility to be located in the town of Rochester, New Hampshire and known as the Mini Power Plant; and

WHEREAS, the Commission issued Order No. 18,166 (71 NH PUC 161) in this docket which approved nisi the long term rate petition by REC effective April 1, 1986 unless the Commission provides otherwise in a Supplemental Order issued on or before the effective date; and

WHEREAS, on March 21, 1986 PSNH filed a Motion for Hearing and Scheduling of a Pre-hearing Conference to establish the financial, technical, and economic feasibility of REC's proposed Mini Power Plant; and

WHEREAS, a procedural hearing and pre-hearing conference was held on April 16, 1986 to establish a

procedural schedule for reasonable discovery and hearing in this docket; and

WHEREAS, the parties proposed the following stipulated procedural schedule:

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

April 23, 1986 Company Testimony
April 30, 1986 Staff/Intervenor Data Requests
May 7, 1986 Company Data Responses
May 21, 1986 Staff/Intervenor Testimony
May 28, 1986 Company Data Requests
June 6, 1986 Staff/Intervenor Responses or

Company Rebuttal Testimony
June 12, 1986 Hearing

WHEREAS, the Commission finds the proposed procedural schedule to be reasonable; it is therefore

ORDERED, that the procedural schedule proposed by the parties is hereby accepted as described above.

By Order of the Public Utilities Commission of New Hampshire this first day of May, 1986.

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NH.PUC*05/01/86*[60789]*71 NH PUC 264*Bethlehem Hydroelectric Company, Inc.

[Go to End of 60789]

Re Bethlehem Hydroelectric Company, Inc.

DR 86-136, Order No. 18,235

New Hampshire Public Utilities Commission

May 1, 1986

ORDER nisi approving a petition for a thirty-year rate order for a small power production project.

Cogeneration, § 19 — Small power production — Long term rate order — Junior lien.

A small power producer's petition for a thirty-year rate order for a hydroelectric project was approved where the petitioner agreed to grant the interconnecting utility a junior lien covering the buy out value of the project and otherwise conformed to commission requirements.

By the COMMISSION:

ORDER

WHEREAS, on April 21, 1986, Bethlehem Hydroelectric Co., Inc. (Bethlehem) filed a long term rate petition for the hydroelectric facility located in Bethlehem, New Hampshire; and

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

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

WHEREAS, Bethlehem 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 of the Project; and

WHEREAS, PSNH has filed a Motion for Interim Rates in Docket No. DR 86-41 based on a limited temporary suspension of approval of long term rate filings for facilities over 5 megawatts; and

WHEREAS, although a decision has not been made regarding PSNH's Motion for Interim Rates, Bethlehem's hydroelectric facility is under 5 megawatts and would not be affected by this Motion; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to Bethlehem's Petition for a thirty-year rate order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, (69 NH PUC 352, 61 PUR4th 132) and Docket No.

DR 85-215, (70 NH PUC 753, 69 PUR4th 365 [1985]); it is therefore,

ORDERED NISI, that Bethlehem's Petition for a thirty-year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheets is approved; and it is

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

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

By order of the Public Utilities Commission of New Hampshire this first day of May, 1986.

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NH.PUC*05/07/86*[60790]*71 NH PUC 266*New Hampshire Electric Cooperative, Inc.

[Go to End of 60790]

71 NH PUC 266

Re New Hampshire Electric Cooperative, Inc.

DF 86-68, Order No. 18,243

New Hampshire Public Utilities Commission

May 7, 1986

ORDER authorizing an electric cooperative to borrow funds.

Securities Issues, § 44 — Factors affecting authorization — Electric cooperative.

An electric cooperative was authorized to borrow funds from the United States government and from the National Rural Utilities Cooperative Finance Corporation where the commission found that (1) the purpose of the borrowing was consistent with the utility's obligation to provide safe and reliable service, (2) the work to be accomplished with the borrowed funds was economically justified when measured against adequate alternatives, and (3) the rates resulting from the financing would provide service to the utility's customers at a reasonable rate while allowing it to earn a just and reasonable rate of return.

APPEARANCES: for the petitioner, Jeffrey J. Zellers; Staff for the New Hampshire Public Utilities Commission

By the COMMISSION:

REPORT

On February 21, 1986, the New Hampshire Electric Cooperative, Inc. (Company, Coop, or NHEC) filed a petition with the Public Utilities Commission of New Hampshire (Commission or PUC) requesting authority to borrow from the United States Government and from the National Rural Utilities Cooperative Finance Corporation, the sum of $13,614,000.00 for the purpose of extending service to new members and maintaining and improving distribution and transmission plant.

As of the 31st day of December, 1985, the ownership of the Cooperative was represented by approximately 49,500 memberships. Its entire longterm indebtedness, including interest thereon, is represented by notes payable to the United States Government acting through the Federal Financing Bank and the Rural Electrification Administration; the National Rural Utilities Cooperative Finance Corporation; and the Plymouth Guaranty Savings Bank, as follows:

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

A. Long Term Debt to REA
(excluding Seabrook)
40 Notes in the Face Amount of $ 70,470,179
Less Unadvanced Funds at 12/31/85 967,000
Net Amount Borrowed $ 69,503,180
Repayment to Date Applicable to
said Notes

Accrued and Deferred lnterest $ 18,034,738
(not due) 46,263
Net Long Term Debt 12/31/85 $ 51,514,705
B. Long Term Debt to REA and FFB
(Seabrook)
2 Notes in Face Amount of $186,750,000
Less Unit 2 Rescission 40,068,000
Less Unadvanced Funds at 12/31/85 37,083.501
Less Funds Under Stop Order 7,061,499
Net Amount Borrowed $102,537,000
Repayment to Date Applicable to
Said Notes 680
Net Long Term Debt 12/31/85 $102,536,320
C. Long Term Debt to National Rural
Utilities Cooperative Finance
Corporation
3 Notes in Face Amount of $ 5,543,000
Less Unadvanced Funds -0
Net Amount Borrowed $ 5,543,000
Repayment to Date Applicable to
Said Notes 54,780
Net Long Term Debt 12/31/85 $ 5,488,220
D. Long Term Debt to Plymouth
Guaranty Savings Bank,
Plymouth, N.H.
1 Note in the Face Amount of $ 300,000
Repayment to Date Applicable to
Said Note 145,685
Net Long Term Debt 2/28/85 $ 154,315

There are no short term notes outstanding.

Of the $13,614,000.00 which the Coop has sought authorization to borrow, 70% - 90% of this amount would be borrowed from the Rural Electrification Administration (REA) to be repaid over a 35-year period at an interest rate of 5% per annum, and the balance of the loan

would be borrowed from the National Rural Utilities Cooperative Financing Corporation (CFC), or other REA approved lending agency. The actual rate applicable to this borrowing would be determined at the time of the borrowing; at the time of the petition, the applicable rate for CFC borrowings was 10-1/2% for a fixed rate and 9% for a variable rate. The anticipated composite cost of financing will be approximately 5.5 6.5% per annum, depending on the amount borrowed from each entity and the applicable rate available.

The Coop seeks the flexibility to apply to the Rural Electrification Administration and the National Rural Utilities Cooperative Finance Corporation to borrow all or a portion of the total $13,614,000.00. Regardless of the amount the Coop is authorized to borrow, it will only draw down funds as and when needed.

The notes issued to support this financing will be secured under the Cooperative's mortgage to the United States of America, dated January 1, 1969 as supplemented and pursuant to the loan contracts and notes issued subsequent thereto, and as necessary would be secured by any future or concurrent mortgage and loan contracts to the National Rural Utilities Cooperative Finance Corporation or other REA approved lending agency.

These monies which the Cooperative seeks authority to borrow will be applied to system distribution and transmission improvements and replacements, as well as extensions of service to new members as more particularly detailed in the Construction Work Plan filed with the Commission in this proceeding as prepared by Dalton Associates at the Cooperative's request.

Upon investigation, consideration and review of the evidence and testimony submitted, the Commission is of the opinion that the purposes for which the monies are to be borrowed are consistent with the utility's obligation to provide safe and reliable service to its existing and future customers, that the work plan is economically justified when measured against adequate alternatives, and that the rates resulting from this financing will provide service to the Coop's customers at a reasonable rate while allowing the Cooperative to earn a just and reasonable

rate of return. The Commission finds that the granting of the authority requested by the Cooperative is 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 the New Hampshire Electric Cooperative, Inc. be and hereby is authorized to issue and sell for cash an aggregate principal amount not to exceed $13,614,000.00 of its mortgage notes to the United States Government, acting through the Rural Electrification Administration (REA), the National Rural Utilities Cooperative Finance Corporation (CFC) or other REA approved lending agency, such notes to become payable not more than 35 years from the date of issue at a rate of 5% per annum for direct borrowings from the Rural Electrification Administration and at such rates, either fixed or variable, as the Coop may determine to be in its best interest and as may be required by the REA, CFC, or other REA approved lending agency; and it is

FURTHER ORDERED, that said note or notes be issued and secured under a New Hampshire Electric Cooperative, Inc. mortgage to the United States of America dated January 1, 1969 and loan contracts and mortgage instruments and notes subsequent and supplemental thereto; and it is

FURTHER ORDERED, that the aggregate borrowing of $13,614,000.00 be applied for and obtained by the New Hampshire Electric Cooperative, Inc, for the entire amount at once or in installments or for any part thereof at various dates and amounts not to exceed the total authorized borrowing of $13,614,000.00, all as said loan funds may become available from the United States Government through the Rural Electrification Administration, the National Rural Utilities Cooperative Finance Corporation, or any REA approved lending agency or subdivision thereof;

FURTHER ORDERED, that the proceeds from the issuance of said note or notes be used by the New Hampshire Electric Cooperative, Inc. for extensions of service to new members, for on going improvements and replacements of distribution and transmission plant, and to reimburse its treasury for monies previously expended for such improvements, additions and extensions under the construction work plan submitted.

By Order of the Public Utilities Commission of New Hampshire, this seventh day of May, 1986.

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NH.PUC*05/09/86*[60791]*71 NH PUC 269*Public Service Company of New Hampshire

[Go to End of 60791]

71 NH PUC 269

Re Public Service Company of New Hampshire

DR 85-398, Supplemental Order No. 18,248

New Hampshire Public Utilities Commission

May 9, 1986

ORDER requiring an electric utility to adjust its energy cost recovery mechanism.

Automatic Adjustment Clauses, § 52 — Energy cost recovery mechanism — Overcollection — Rate stability — Electric utility.

An electric utility was required to adjust its energy cost recovery mechanism to reflect updated estimates of the cost of oil notwithstanding the utility's argument that the mechanism should not be adjusted but rather that, in the interest of rate stability, overcollections that would result from declining to adjust the mechanism should be used to offset a proposed increase in base rates; the commission found that although rate stability is one of the many important considerations in the ratemaking process, it is not of such paramount importance that the

commission should allow a continued overcollection of energy cost recovery mechanism revenues in the interest of offsetting a proposed, but as yet unreviewed, increase in base rates.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

I. Background

This docket was reopened on the Commission's own motion pursuant to the Energy Cost Recovery Mechanism (ECRM) "trigger" provision which was approved by the Commission in Order No. 16,499 (68 NH PUC 437). In accordance with the trigger mechanism of ECRM any party or the Commission may request a review of the present ECRM component when the level of overrecovery or underrecovery exceeds $4,000,000.

In its February 14, 1986 ECRM Report to the Commission, Public Service Company of New Hampshire (PSNH or the Company) estimated that due to sharply falling oil prices ECRM would be overcollected by approximately $9,900,000 as of June 30, 1986. The magnitude of this potential over-collection indicated that a review of the ECRM rate was appropriate and an Order of Notice was issued scheduling a hearing for March 27, 1986.

During the March 27, 1986 hearing PSNH provided testimony that a revision to ECRM to reflect the reduced price of oil would result in a rate of $0.0257/KWH for April, May and June

1986, or a reduction of $0.0834/KWH from the current rate of $0.03408/KWH. The Commission heard testimony and arguments on the merits of the decrease and closed the proceedings taking the matter under advisement.

On April 3, 1986 PSNH filed a Motion to Reopen the hearing. The Motion indicated that PSNH planned to request an increase in base rates effective July 1, 1986 and that overall rate continuity would be served by postponing a reduction in the ECRM rate. On April 8, 1986 the Commission received a response from the Community Action Program (CAP) opposing the PSNH motion. In order to obtain additional information, the Commission determined that a hearing should be held on the PSNH Motion to Reopen, and a hearing was scheduled for April 30, 1986.

II. Position of the Parties

At the April 30, 1986 hearing PSNH stated that the ECRM proceedings offered the Commission an opportunity to maximize rate continuity for PSNH customers. It was the Company's position that, because they have filed a notice of intent to increase base rates by $61,000,000 on July 1, 1986, reducing ECRM for a short period (May and June) and then increasing base rates immediately thereafter would result in sharply fluctuating rate levels over the next three months. PSNH proposed that the Commission not lower the current effective ECRM rate while the Commission considered possible changes to PSNH's base rates. According

to PSNH this would serve the goal of rate stability while equitably reflecting the cost of fuel it uses to meet the customer needs in rates. (DR 85-398, 4/30/86, TR at 4).

PSNH did not contend that the Commission could or should evaluate the merits of the proposed rate increase at this time. Nonetheless, the Company believed that it was important to consider this proposed course of action in order to coordinate the base rate increase with changes in the ECRM component. PSNH argued that the main issue to be considered by the Commission was rate stability, and whether lowering the ECRM rate now would best serve that purpose.

PSNH described the proposed increase in base rates as a two phase procedure. The first proposed step would be a $61,000,000 increase, 14% overall, effective July 1, 1986. The second step, proposed effective as of July 1, 1987, would provide a revenue increase of not more than 7% above the amount of total revenue received under the first step increase.

Currently, the Company has estimated the overcollection of ECRM will be $12,600,000 as of the end of June 1986. This estimate is based on oil prices which have been updated since the February 14, 1986 PSNH correspondence that "triggered" the reopening of this docket. PSNH believes that if the Commission were to postpone reducing ECRM until July 1, 1986 (the date ECRM automatically is revised for the second half of 1986) the combined overcollection and reduced rates due to lower oil prices would provide $64,900,000 reduction in the ECRM component. This reduction would potentially offset the first step in the proposed base rate increase. In fact, it would reduce the overall rate at that time.

PSNH argued that a coordinated rate

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change July 1st would provide ratepayers with rate stability. The alternative of refunding the overcollection in May and June and reducing the rate to reflect the lower cost of oil would create a "roller coaster".

PSNH witness Steven Hall testified that if the ECRM component is reduced by both the overcollection and the lower cost of oil in May and June, it will be approximately $0.01875/KWH. It is estimated that the ECRM component will then become $0.0260/KWH for the months of July through December 1986. The witness also estimated that the proposed temporary rate increase would be approximately $0.0119/KWH as of July 1, 1986. Under this proposed scenario the rates would increase by $0.01915/KWH.

The PSNH witness further stated that if the current ECRM component of $0.03408/KWH were to remain in effect through June, then the subsequent refund of that overpayment would result in an ECRM component for July through December 1986 of $0.021/ KWH. Adding the proposed temporary rate increase (0.0119/KWH) to the July 1, 1986 ECRM component provided an overall rate reduction. PSNH's position was that this latter scenario provided overall rate stability to customers.

CAP argued that a delay in reducing the ECRM rate could result in greater rate increases in January 1987 and less rate continuity. This effect could occur under Mr. Eaton's scenario because of two factors: (1) an increase in ECRM on January 1, 1987 due to the end of the refund of the overcollection; and (2) an increase in base rates in January 1987 because of the six month

bonding date and the possibility or likelihood that all or part of the proposed base rate increase would not be included in temporary rates. Therefore, CAP argued that the objectives of ECRM would be best served by stabilizing the ECRM rate, which would require lowering the rate for May and June. CAP recognized that the Com- mission in considering rate continuity could appropriately set a rate for May and June that would reduce the projected $12.6 million overcollection but not offset the entire amount in only two months.

The Consumer Advocate essentially agreed with CAP that some portion of the projected $12.6 million overrecovery should be reflected in lower rates in May and June. He suggested that at most half of the projected overrecovery should be carried over into the next ECRM period. He also raised concerns about the level of interest paid on overcollections if a refund was delayed. Finally, he questioned the policy of using declines in energy costs to offset and potentially "hide" increases in base rates.

The Staff took the position that consideration of ECRM rates should be separate from consideration of changes in base rates. Staff further pointed out that the Commission did not have sufficient information on which to estimate temporary rates and that from the information that was available it was highly likely that temporary rates would be less than the Company has projected.

III. COMMISSION ANALYSIS

The Commission recognizes that rate stability is one of many important considerations in the ratemaking process. Rate stability was, in fact, one of the building blocks upon which the concept of the fuel adjustment charge —

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and subsequently the ECRM — was developed. The question before us is whether or not the single issue of rate stability is of such paramount importance to the ratemaking process that it should drive our decision making process even if the results include a continued substantial overcollection on the part of the utility.

We find that it does not. While it is essential for us to consider all known and reasonably anticipated factors which will contribute to customers' future bills, we must first put those known and anticipated factors into a proper prospective.

The relevant facts in this issue are as follows:

1. The currently effective ECRM component of 3.408 per kilowatt hour was based on oil price estimates ranging from approximately $23.20 in January 1986 to $20.55 in June 1986.

2. Oil prices have in fact ranged from $22.55 in January 1985 to $14 in March of 1986, with current estimates at $12.75 by June 1986. Current spot purchases have been made at $11.85.

3. As a result of the oil price declines the Company has overcollected approximately 4.4 million dollars as of May 1, 1986.

4. If the current ECRM component remains at 3.408 , and if oil prices continue as anticipated, the Company will overcollect approximately 4.1 million dollars in each of the months of May and June 1986.

While the Company has notified us of their intent to file a rate case requesting an increase of $61 million, proposed to become effective July 1, 1986, it would be inappropriate for the Commission at this time to prejudge whether any or all of the Company's request is justified. If the Company had filed its base rate case in time for the Commission to properly review the filing and to hear arguments on the appropriate level of temporary rates it might have been appropriate to coordinate changes in ECRM and base rates. That is not the case here. The Commission is not convinced that an effort to stabilize rates so that they will have some continuity over a period of time is necessarily dependent on considering a proposed base rate increase versus the rise or fall of fuel prices. The effect of a rise in base rates, if any, should be approved or rejected on its own merits and as a result of a detailed rate setting analysis. The Commission can and will utilize its efforts to manage the ECRM rate so that it will remain stable and continuous over the remainder of the ECRM period and the next ECRM period.

Accordingly, we will limit our efforts in this docket to a consideration of the alternatives which will reduce the present ECRM to a level which will more accurately reflect current fuel prices, and which will return to customers all known overcollections, with interest, which have accrued to date.

In analyzing the ECRM rate solely the Commission has reduced its options to three, based on the evidence provided and its own analysis. These are:

A. Refunding the entire ECRM overcollection and decreasing the ECRM component in the two

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month period of May and June 1986;

B. Decreasing the ECRM component only to reflect the actual cost of generation for the months of May and June, leaving the balance of the overcollection through April of 1986 of an estimated 4.4 million dollars to be recovered in the months of July through December of 1986, the next ECRM period; and

C. Utilizing Public Service's request as filed in the instant proceedings. This option would leave the rate at it's current level of 3.408 per kilowatt hour for the months of May and June. The estimated overcollection of 12.6 million dollars would then be passed on to the next succeeding ECRM period beginning July 1, 1986. This would then reduce the ECRM rate all things being equal in the July through December period of 2.10 per kilowatt hour.

The Commission has reviewed these options and developed a graph which depicts the effect each option has on rates. This graph is attached as Exhibit I to this report.

As this graph portrays Option A[1(47)] would reduce the rates for the months of May and June of 1986 to a level of 1.875 per kilowatt hour. In the next succeeding ECRM period of July 1 through December 31, 1986 the rates would then increase to an estimated 2.6 per kilowatt hour, as per Company witness Steven Hall.

By not reducing the ECRM rate as proposed in option C[2(48)] the ECRM component will remain at the 3.408 per kilowatt hour rate May and June of 1986. It would then drop to 2.10 per

kilowatt hour for the months of July through December of 1986.

To obtain a value for Option B[3(49)] the Commission has estimated a rate which displays actual generation for the months of May and June of 1986 absent any consideration of an overcollection through April of 1986. This rate is 2.42 per kilowatt hour for the months of May and June. Continuing on with this calculation in the next succeeding ECRM period of July 1 through December of 1986 the rate for that period would be approximately 2.45 per kilowatt hour, including the roll-in of the ECRM overcollection through April of 1986 (4.4 million dollars).

Based on the foregoing analysis it is apparent that the option which lends itself most readily to the rate continuity would be Option B. This option provides an approximated consistent level of rates for ECRM from the months of May through December 1986, a full eight month period. In addition, it provides ratepayers with the most accurate reflection of the cost of power for that eight month period. This then provides the optimum matching of the two considerations spoken of earlier i.e., rate continuity or stability and setting rates which most accurately reflect the utility's cost to serve that ratepayer.

In addition, our treatment of this ECRM proceeding does not depart from the method of calculating ECRM as required in our Order No. 18,028 in the instant docket. On Page 10 of the report attached to the order the

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Commission stated (70 NH PUC 1093, 1098):

The Commission finds the current ECRM methodology is addequate. There should be no changes to the methodology prior to the rate case in which PSNH requests recognition of the Seabrook Station in rate base. This is due to the extraordinary effect this one facility will have on PSNH. At that time, the Commission will determine what the appropriate fuel adjustment clause should be and review the ECRM incentive features.

In utilizing Option B as discussed above, the Commission is not faced with the need to provide additional consideration as raised by the Consumer Advocate. The 4.4 million dollar overcollection accrued as of April 1986 will be carried forward at the 10% interest rate consistent with the present ECRM methodology. In addition, Option B responds to Community Action Program's assertion that the customers need to know what actual rates are.

Based on our evaluation of the evidence and in the interest of the public good, we will require that PSNH reduce its ECRM component to reflect the estimated cost to generate electricity (updated as of 4/30/86) for the months of May and June 1986. Accordingly PSNH will file revised calculations of the ECRM component, and applicable tariff pages, for approval.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire adjust it's Energy Cost Recovery Mechanism (ECRM) component to reflect updated estimates of the cost of energy as

of April 30, 1986, described in the foregoing report; and it is

FURTHER ORDERED, that said adjusted ECRM component will be in effect for the months of May and June, 1986; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire file a calculation of the adjusted ECRM component and revised tariff pages applicable thereto.

By order of the New Hampshire Public Utilities Commission this ninth day of May, 1986.

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[Graphic Not Displayed Here]

FOOTNOTES

[1]Symbol: 12.6M Offset

[2]Symbol: PSNH Filing

[3]Symbol: + Actual Gen.

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[Go to End of 60792]

71 NH PUC 276

Re Granite State Electric Company

Intervenors: Glen Hydro, Inc., Public Service Company of New Hampshire, KTI Energy, Inc., New England Coastal Generation Company, Baltic Mills Enterprises, Exeter River Hydro, Granite State Hydropower Association, Inc., and A. Johnson Cogeneration, Inc.

DR 86-71, Order No. 18,253

New Hampshire Public Utilities Commission

May 13, 1986

ORDER concerning intervention in small power production and cogeneration avoided cost proceedings.

Cogeneration, § 25 — Avoided cost rates — Small power production — Procedure — Right to intervene.

Public Service Company of New Hampshire (PSNH) was granted unlimited intervention in a docket opened for the purpose of updating the avoided cost rates paid by Granite State Electric Company for cogeneration and small power production, notwithstanding Granite State's motion to deny the intervention of PSNH, or in the alternative, to limit the intervention of PSNH to

issues where PSNH made an affirmative showing that an existing or planned qualifying facility located or to be located within the service area of Granite State was requesting PSNH to purchase its existing or planned power production on a long-term basis; in support of its grant of unlimited intervention, the commission found that (1) Granite State had made no allegation that unlimited intervention by PSNH would unduly disrupt the prompt and orderly conduct of the proceeding, (2) PSNH is the only New Hampshire utility that purchases substantial portions of electricity generated by small power producers, (3) the relative avoided cost rate between PSNH and other New Hampshire electric utilities affects the desirability of small power producers selling to PSNH as opposed to some other utility, (4) PSNH can effectively present its case only in the context of each individual avoided cost docket, and (5) in a previous order denying PSNH's motion for a generic avoided cost hearing, the commission had said that PSNH was free to intervene in each of the other avoided cost dockets. [1] p. 277.

Cogeneration, § 25 — Avoided cost rates — Small power production — Procedure — Right to intervene.

In order to enhance the orderly conduct of a proceeding to update the avoided cost rates paid by an electric utility for cogeneration and small power production, three qualifying facility intervenors were required to combine their discovery proceedings, presentation of evidence and arguments, cross examination, and other participation. [2] p. 277.

APPEARANCES: Phillip H. R. Cahill, Esquire for Granite State Electric Company; Brown, Olson & Wilson by

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Robert A. Olson, Esquire for Glen Hydro, Inc.; Thomas B. Getz, Esquire for Public Service Company of New Hampshire; Skadden, Arps, Slate, Meagher & Flom by Mark S. Laufman, Esquire, Gary H. Chetkof, Esquire and Glenn Berger, Esquire for KTI Energy, Inc., New England Coastal Generation Company, and A. Johnson Cogeneration, Inc.; Timothy Taylor for Baltic Mills; New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

By Order of Notice dated February 26, 1986 the Commission opened this docket for the purposes of updating the short-term rates, the terms and conditions of short-term purchases, and the terms, conditions, and rates for long-term purchases of energy and capacity from Small Power Producers and Cogenerators (jointly referred to as QFs) by Granite State Electric Company (Granite State).

Motions for Intervention in this docket were filed by: Public Service Company of New Hampshire (PSNH), A. Johnson Cogeneration (A. Johnson), and jointly by KTI Energy, Inc. and New England Coastal Generation Company (KTI-NECoastal) on March 31, 1986; Granite State Hydropower Association, Inc. (GSHA) and Baltic Mills Enterprises (Baltic Mills) on March 31, 1986. A Motion for Limited Intervention was filed by Paul T. Phillips of Exeter River Hydro on

March 24, 1986.

In accordance with the Order of Notice a prehearing conference was held on April 3, 1986. There being no objections, the Commission granted the limited intervention of Paul T. Phillips and the full intervention of the other motions except for GSHA. GSHA did not appear at the procedural hearing and, accordingly, the Commission deferred ruling on their motion to intervene.

INTERVENTION

[1, 2] On April 17, 1986, Granite State filed a motion to limit interventions of KTI-NECoastal, A. Johnson and PSNH. The interventions of these parties was already granted by the Commission at the hearing on April 3, 1986. Granite State did not object to the intervention of PSNH at that hearing and, in fact, the attorney representing Granite State stated, "Obviously Public Service Company of New Hampshire is in a position where they are interconnecting facilities and the like, and I would not question their position here." TR 6. Accordingly, Granite State's motion insofar as it relates to PSNH is untimely. Even if Granite State's motion were timely made, it would be denied. Granite State seeks to limit the participation of PSNH "to issues where (i) PSNH makes an affirmative showing that an existing or planned QF located or to be located within the service area of Granite State is requesting PSNH to purchase its existing or planned power production on a long term basis." There is no allegation that unlimited intervention by PSNH would unduly disrupt the prompt and orderly conduct of the proceedings. Also, PSNH's interest in the proceeding is broader than is suggested by Granite State's pleadings.

PSNH is the only New Hampshire utility that is purchasing any substantial portion of electricity generated by small power producers. The relative

avoided cost rate between PSNH and the other New Hampshire electric utilities would affect the desirability of the small power producers selling to PSNH as opposed to some other utility. PSNH can effectively present its case only in the context of each individual avoided cost docket. For this and other reasons, the Commission, in Order No. 18,202 (71 NH PUC 224) in DR 86-41 after denying PSNH's motion for a generic avoided costs hearing covering all New Hampshire electric utilities, and said that PSNH was free to seek intervention in each of the other avoided costs dockets, including this one. Accordingly, the Commission will grant PSNH full intervention.

Granite State did object in a timely fashion to the intervention of KTINECoastal and A. Johnson. Tr.6. A majority of the Commission granted the interventions over Granite State's objections. Although Granite State did not move to limit these interventions at the April 3 hearing, it does so now in its motion to limit intervention dated April 16, 1986. In said motion Granite State requests that the Commission condition the interventions of KTI-NECoastal and A. Johnson by requiring them to combine their discovery, presentations of evidence and arguments, cross examination and other participation in the proceedings. In support thereof, Granite State states:

All three intervenors are represented by the same law firm and the same three attorneys.

None of them presently has existing or planned facilities in Granite State's franchise area. Therefore, the condition would not place an undue burden on any of these intervenors and should contribute to the prompt and orderly conduct of the proceedings. In the event any of these intervenors believes the condition hinders the protection of the specific interest that formed the basis of its intervention, it could so represent to the Commission and be relieved of the condition in that respect.[1(50)]

None of the three QF intervenors in question responded to the Granite State motion to limit their intervention. The Granite State motion appears reasonable, would enhance the prompt and orderly conduct of the proceedings and would not appear to unduly restrict the effectiveness of the intervention. Accordingly, Granite State's motion to limit the intervention of KTI-NECoastal and A. Johnson is granted.

After the intervention matters were addressed at the April 3, 1986 prehearing conference, the parties met off the record to negotiate a mutually acceptable procedural schedule. Upon reconvening, the parties proposed a stipulated schedule to the Commission.

The Commission finds that the schedule is reasonable with the exception of the stipulated filing date for rebuttal testimony. The filing date for rebuttal testimony will be August 29, 1986, the day before scheduled hearings, as opposed to the September 1, 1986 hearing date. The following is the procedural schedule for this docket:

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

May 02, 1986 Company pre-filed testimony
May 16, 1986 Data requests on Company testimony
June 13, 1986 Company response to data requests
July 11, 1986 Intervenor/Staff pre-filed
 testimony
July 25, 1986 Data requests on Intervenor/Staff
 testimony
August 22, 1986 Intervenor/Staff response to data
 requests
September 1, 1986 Hearings
to Sept. 12, 1986
August 29, 1986 Rebuttal testimony
October 3, 1986 Briefs
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INTERIM LONG-TERM RATES

At the close of the procedural hearing the Commission took under advisement an oral request by PSNH for the Commission to establish interim longterm rates for Granite State. Subsequent to the procedural hearing, PSNH filed a Memorandum of Law dated April 4, 1986 on the establishment of interim long-term rates for Granite State. On April 17, 1986 Granite State filed an objection to the establishment of interim long-term rates.

Discussion of PSNH's motion for the establishment of interim long-term rates will be deferred until the matter is addressed in the PSNH avoided cost proceeding in Docket No. DR 86-41. The parties in that docket, including PSNH and UNITIL, are essentially the same as in DR 86-71. There are numerous avoided cost dockets before the Commission in which the interim rate issue is being considered[2(51)] . The parties in DR 86-41 have been given until April 29, 1986

to submit their positions on the issue of interim long-term rates. Once the Commission has had an opportunity to review said filings, in addition to the filings in this docket, it will issue a ruling on the issue of interim rates in the context of each avoided cost docket, including DR 86-71.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the motions for unlimited intervention filed by Public Service Company of New Hampshire and Pinetree Development Corporation, and the motion for limited intervention of Paul T. Phillips are granted; and it is

FURTHER ORDERED, that Granite State Electric Company's motion to limit the intervention of A. Johnson Cogeneration Corporation, KTI Energy, Inc and New England Coastal Generation Company is hereby granted; and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties is accepted, with the exception of the filing date for rebuttal testimony, as described in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1986.

FOOTNOTES

[1]GSEC motion of April 16, 1986 1-2.

[2]DR 86-69 Concord Electric Company and Exeter and Hampton Electric Company; DR 86-70 New Hampshire Electric Cooperative, Inc.; DR 86-72 Connecticut Valley Electric Company.

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NH.PUC*05/13/86*[60793]*71 NH PUC 280*Concord Electric Company

[Go to End of 60793]

71 NH PUC 280

Re Concord Electric Company

Additional petitioner: Exeter and Hampton Electric Company Intervenors: American Cogenics, Inc., Pinetree Power Development Corporation, Public Service Company of New Hampshire, KTI Energy, Inc., New England Coastal Generation Company, Granite State Hydropower Association, Exeter River Hydro, and A. Johnson Cogeneration, Inc.

DR 86-69, Supplemental Order No. 18,254

New Hampshire Public Utilities Commission

May 13, 1986

ORDER concerning intervention in small power production and cogeneration avoided cost

proceedings.

Cogeneration, § 25 — Avoided cost rates — Small power production — Procedure — Right to intervene.

Public Service Company of New Hampshire (PSNH) was permitted to intervene in a docket opened for the purpose of updating the avoided cost rates paid by another electric utility for cogeneration and small power production, notwithstanding the latter utility's argument that PSNH had not demonstrated that it had any substantial interest in the proceeding; in support of its grant of unlimited intervention, the commission found that intervention by PSNH was consistent with statutory requirements regarding intervention and would not unduly disrupt the prompt and orderly conduct of the proceeding; PSNH was held to have a substantial interest in the proceeding because it (1) is the only New Hampshire utility that purchases substantial portions of electricity generated by small power producers, (2) the relative avoided cost rate between it and other New Hampshire electric utilities affects the desirability of small power producers selling to it as opposed to some other utility, (3) it can effectively present its case only in the context of each individual avoided cost docket, (4) the outcome of the proceeding could subject it and its ratepayers to substantial risks, and (5) in a previous order the commission had said that PSNH was free to intervene in each of the other avoided cost dockets.

APPEARANCES: LeBoeuf, Lamb, Leiby and MacRae by Elias G. Farrah, Esquire for Concord Electric Company and Exeter & Hampton Electric Company; Brown, Olson & Wilson by Robert A. Olson, Esquire for American Cogenics and Pinetree Power Development Corporation; Thomas B. Getz, Esquire for Public Service Company of New Hampshire; Ahlgren, Perrault, and Mitchell by John L. Algren, Esquire and Skadden, Arps, Slate, Meagher & Flom by Mark S. Laufman, Esquire, Gary H. Chetkof, Esquire and Glenn Berger, Esquire for KTI Energy, Inc., New England Coastal Generation Company, and A. Johnson

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Cogeneration, Inc.; and New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

By Order of Notice dated February 26, 1986 the New Hampshire Public Utilities Commission (Commission) opened this docket for the purpose of updating the terms, conditions and rates of short-term purchases, and the terms, conditions, and rates for longterm purchases of energy and capacity from Qualifying Small Power Producers and Qualifying Cogenerators (jointly referred to as QFs) by the Concord Electric Company and the Exeter & Hampton Electric Company (jointly referred to as UNITIL).

Timely motions for intervention in this docket were filed by Pinetree Power Development Corporation (Pinetree) and American Cogenics, Inc. (American) on March 27, 1986; Public

Service Company of New Hampshire (PSNH), A. Johnson Cogeneration, Inc. (A. Johnson), KTI Energy, Inc. (KTI) and New England Coastal Generation Company (NewCoGen) on March 28, 1986; and Granite State Hydropower Association (GSHA) on March 31, 1986. A Motion for Limited Intervention was filed by Paul T. Phillips of Exeter River Hydro on March 24, 1986.

In accordance with the above referenced Order of Notice, a pre-hearing conference was held on April 2, 1986. At the prehearing conference the presiding officer considered the motions for intervention filed in this docket and heard arguments thereon.

UNITIL represented that they did not have the opportunity to review PSNH's motion for intervention and requested that they be allowed a day or two to respond in writing either concurring or objecting to PSNH's motion. PSNH requested that it be allowed to respond subsequently to any objection made by UNITIL to their motion. The presiding officer granted UNITIL's request for an extension of time to respond to PSNH's motion for intervention in this docket and granted PSNH the opportunity to respond to any objection UNITIL may file to the motion.

Regarding the other prospective intervenors, the presiding officer, hearing no objections, granted the full intervention of Pinetree, American, A. Johnson, KTI, NewCoGen and the limited intervention of Mr. Paul T. Phillips. GSHA did not appear at the procedural hearing and the presiding officer accordingly deferred ruling on their motion to intervene.

Pending ruling on the PSNH motion to intervene, PSNH was allowed to participate in the scheduled prehearing conference for the purpose of establishing a procedural schedule. After conferring, the parties proposed a stipulated procedural schedule for the Commission's consideration.

The Commission finds that the schedule is reasonable with the exception of the stipulated filing date for rebuttal testimony. The filing date for rebuttal testimony will be August 18, 1986, the day before scheduled hearings, as opposed to the August 19, 1986 hearing date. The following is the procedural schedule for this docket:

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

April 11, 1986 Intervenor initial data requests
April 25, 1986 Company response to initial data
  requests
May 23, 1986 Company pre-filed testimony
May 30, 1986 Data requests on Company testimony
June 13, 1986 Company response to data requests
July 18, 1986 Intervenor/Staff pre-filed testimony
July 25, 1986 Data requests on Intervenor/Staff
  testimony


August 8, 1986 Intervenor/Staff response to data
  requests
August 19, 1986
 to August 29, 1986 Hearings
August 18, 1986 Rebuttal testimony
September 19, 1986 Briefs
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At the close of the procedural hearing PSNH made an oral request for the Commission to establish interim long-term rates for UNITIL. On April 4, 1986, PSNH filed a Memorandom of Law on the establishment of Interim long-term rates in this proceeding for UNITIL and in

Docket No. DR 86-70 for the New Hampshire Electric Cooperative, Docket No. DR 86-71 for Granite State Electric Company, and Docket DR 86-72 for Connecticut Valley Electric Company.

On April 4, 1986, UNITIL filed an opposition to the motion of PSNH to intervene and an opposition to PSNH's oral motion for the establishment of interim rates.

INTERIM LONG-TERM RATES

Discussion of PSNH's motion for the establishment of interim long-term rates will be deferred until the matter is addressed in the PSNH avoided cost proceeding in Docket No. DR 86-41. The parties in that docket, including PSNH and UNITIL, are essentially the same as in DR 86-69. There are numerous avoided cost dockets before the Commission in which the interim rate issue is being considered[1(52)] . The parties in DR 86-41 have been given until April 29, 1986 to submit their positions on the issue of interim long-term rates. Once the Commission has had an opportunity to review said filings, in addition to the filings in this docket, it will issue a ruling on the issue of interim longterm rates in the context of each avoided cost docket, including DR 8669.

INTERVENTION

Regarding the various motions to intervene in this proceeding, UNITIL objected only to the motion filed by PSNH. Accordingly, the PSNH motion to intervene will be discussed in more detail below. The motions to intervene filed by all other parties are hereby granted subject to the condition that they coordinate their cases among themselves to the extent possible.

PSNH asserted in its motion to intervene that it should be allowed intervention pursuant to RSA 541-A:17 in that its "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding" and that the "interest of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention." PSNH, which currently buys the vast majority of available small power production in New Hampshire, is the only New Hampshire utility that has a long term purchase rate established by this Commission. PSNH avers that the interest of its ratepayers as well as the interests of economic efficiency would be better served if other utilities were to have an appropriate long term rate set for them so that they would henceforth purchase a more substantial share of power from QFs.

PSNH argues that the interest of justice will be served by granting its intervention because of the substantial ratepayer interests involved. PSNH seeks to ensure that its ratepayers will not

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subsidize the developers of small power facilities by absorbing risks properly born by the QF developers and by ensuring that PSNH is not the only utility buying from small power production.

In its objection to PSNH's motion to intervene, UNITIL asserts that PSNH does not demonstrate that any of its "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding." This is not the case. PSNH is the only New Hampshire utility that is required to purchase electricity generated by small power producers, including generation that is wheeled from the service territories of other New Hampshire utilities. The

relative avoided cost rate between PSNH and the other New Hampshire electric utilities would affect the desirability of the small power producers selling to PSNH as opposed to some other utility. PSNH can effectively present its case only in the context of each individual avoided cost docket. For these and other reasons, the Commission, in Order No. 18,202 in DR 86-41 (71 NH PUC 216) after denying PSNH's motion for a generic avoided costs hearing covering all New Hampshire electric utilities, and indicated that PSNH was free to seek intervention in each of the other avoided costs dockets, including this one. The issue of the relative levels of avoided cost rates for different utilities can affect PSNH ratepayers and can influence the number of small power producers that seek to sell their output to PSNH rather than to other New Hampshire utilities. It is clear that PSNH has an interest in the outcome of this proceeding.

UNITIL's second point is that PSNH intervention would impair the orderly and prompt conduct of the proceedings. There is no evidence that this is the case. In fact, PSNH intervention could contribute to the record without causing undue delay. The Commission has found in prior proceedings that PSNH has the staff, resources and experience to address small power production issues in an expeditious and useful manner. Such participation could enhance the proceedings rather than hinder them.

UNITIL further alleges that the interests PSNH seeks to protect are already adequately represented by the several small power producers who have been allowed to intervene in this proceeding. There is no merit to this assertion. PSNH has ratepayers to consider; QFs do not. PSNH has expressed concerns about purchasing small power production beyond certain limits; small power producers want to sell to the most profitable buyer whether it be to UNITIL, PSNH or some other entity. PSNH and QFs frequently disagree on the appropriate avoided cost price, reliability of QF technology and on levelized rates. Clearly, PSNH's interests are not adequately represented by the other parties to this docket.

UNITIL finally argues that PSNH's ratepayers can not be adversely affected by this proceeding by the very definition of avoided cost which should, theoretically, ensure that pricing is economically neutral. However, the nature of front-end loaded rates, while giving additional cash flow to small power producers at the beginning of the project when it is most needed, also exposes ratepayers to various risks, including possible loss of the long term repayment of the front-end loaded amount. Also, avoided cost pricing for a particular utility is "economically neutral" only if perfectly applied. This process is not always as simple as UNITIL

seems to suggest. Therefore, to the extent that QFs sell power to PSNH rather than UNITIL, PSNH's ratepayers may incur a disproportionate level of risk.

In conclusion, the Commission finds that PSNH has met the requirements of RSA 541-A:17 and is hereby granted full intervenor status in this docket. As indicated above, the issues relating to interim rates will be addressed subsequently after a comprehensive review of the filings in DR 86-41 as well as in this docket.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the motions for intervention filed by Public Service Company of New Hampshire, Pinetree Development Corporation; A. Johnson Cogeneration Corporation; KTI Energy, Inc. and New England Coastal Generation Company; and the limited intervention of Mr. Paul T. Phillips are granted; and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties is accepted, with the exception of the filing date for rebuttal testimony, as described in the foregoing report.

By Order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1986.

FOOTNOTE

[1]DR 86-70 New Hampshire Electric Cooperative, Inc.; DR 86-71 Granite State Electric Company; DR 86-72 Connecticut Valley Electric Company.

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NH.PUC*05/14/86*[60794]*71 NH PUC 285*New England Telephone and Telegraph Company

[Go to End of 60794]

71 NH PUC 285

Re New England Telephone and Telegraph Company

Intervenors: Department of Defense and Office of Consumer Advocate et al.

DR 85-181, Order No. 18,257

New Hampshire Public Utilities Commission

May 14, 1986

ORDER setting the procedural schedule for an investigation of the capital structure of a local exchange telephone carrier.

Return, § 26.1 — Capital structure — Telephone carriers — Need for reexamination.

Statement, in an order setting the procedural schedule for an investigation of the capital structure of a local exchange telephone carrier, that the capital structure of telephone companies must be reexamined in light of the breakup of AT&T and changes in the way bond ratings are determined. p. 287.

Return, § 26.1 — Capital structure — Telephone carriers — Balancing of interests.

Statement, in an order setting the procedural schedule for an investigation of the capital structure of a local exchange telephone carrier, that the "best" capital structure is not an issue of fact, but rather a policy decision that rests on the weighing and balancing of the best interest of

the ratepayer versus the best interest of the stockholder. p. 287.

APPEARANCES: Phillip M. Huston, Jr., Esquire for New England Telephone and Telegraph; Terry J.R. Kolp, Esquire for the Department of Defense and other Federal Executive Agencies; Mary C. Hain for the Commission Staff.

By the COMMISSION:

REPORT

I. Procedural History

The New Hampshire Public Utilities Commission opened this docket pursuant to Re New England Teleph. & Teleg. Co., 70 NH PUC 496 (1985), to investigate the capital structure of New England Telephone and Telegraph Co. (hereinafter "NET" or the "Company").

The capital structure issue to be addressed arose in Re New England Teleph. & Teleg. Co., 70 NH PUC 496 (1985). In this proceeding NET was allowed an annual increase in intrastate revenue based, in part, on an actual capital structure as of January 31, 1985 of 58.45% common equity, 39.03% long term debt and 2.52% short term debt. The Department of Defense urged the Commission to examine NET's capital structure and recommended a 50/50 debt/equity ratio which would result in a lower cost of capital for the company without affecting NET's ability to

maintain its credit and raise additional capital.

The Commission staff and all the parties who participated in DR 84-95 recommended that a separate docket be opened to examine NET's capital structure which recommendation was accepted by the Commission in Order No. 17,639 (70 NH PUC 496).

An order of notice was issued on March 10, 1986 setting a prehearing conference on April 30, 1986 for the purpose cited in N.H. R.S.A. §541-A:16 V(c)(1984) and to establish a procedural schedule for this investigation.

A prehearing conference was held on April 30, 1986. The parties agreed to the following procedural schedule.

(1) A preliminary outline and intended perspective of N.E.T.'s prefiled testimony shall be filed on June 16, 1986.

(2) All parties shall file data requests concerning NET's outline and intended perspective of testimony by June 30, 1986.

(3) NET's responses to these data requests shall be due July 18, 1986.

(4) On July 18, 1986 the D.O.D. shall file a preliminary outline and intended perspective of their prefiled testimony.

(5) NET and D.O.D. shall submit prefiled testimony on September 19, 1986.

(6) Data requests to address D.O.D.'s preliminary testimony and D.O.D.'s and NET's prefiled

testimony will be accepted on and before October 6, 1986.

(7) D.O.D.'s and NET's responses to these data requests shall be filed on October 20, 1986.

(8) The staff's testimony and the Consumer Advocate's testimony shall be filed on November 17, 1986.

(9) All data requests of the Staff's and Consumer Advocate's testimony are due November 24, 1986.

(10) Responses to these data requests shall be filed on December 12, 1986.

(11) Any rebuttal or updating testimony of the parties shall be filed no later than December 19, 1986.

(12) A hearing on the merits shall be held on January 6-9, 1987.

II. Positions of the Parties

The above schedule was presented on the record on April 30, 1986. New England Telephone argued for the schedule due to its need to conduct a capital structure study. NET averred that, in the interest of making the most complete analysis of the capital structure issue, it needed to hire outside consultants. These experts are constrained by academic schedules and, therefore, need five months to complete their studies.

In an attempt to speed up the procedural schedule, D.O.D. recommended that NET file an outline and intended perspective of testimony. This would give the parties notice of NET's sources of information e.g. textbooks and

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supporting studies, along with other information.

Staff argued in support of the protracted schedule to insure a decision based on a complete record. In addition, this schedule will give staff adequate time with which to prepare its case.

III. Commission Analysis

The telephone industry has changed significantly since the "break-up" of AT&T. Due to the influence of competition and diversification in this industry, the study of the telephone company's capital structure must be re-examined to reflect these dramatic changes. In addition, changes in the way bond ratings are determined has further demonstrated the need to re-examine this subject. We expect the analysis derived in this docket may have an important effect on the telephone industry in New Hampshire.

The best capital structure is not an issue of fact. It is a policy decision which rests on the weighing and balancing of the best interest of the ratepayer versus the best interest of the stockholder. It is based on empirical and theoretical considerations of the effect of a given structure on rates, the company's cost of capital and the ability to borrow money.

In light of the nature of this investigation, this Commission would like to promote as complete a record as possible. The proposed schedule seems to be aimed at accomplishing this very goal. The Commission approves the parties proposed schedule.

ORDER

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

ORDERED, that the parties' proposed procedural schedule is approved; and it is

FURTHER ORDERED, that a hearing on the merits will be held at 10:00 a.m. on January 6-9, 1987.

By Order of the New Hampshire Public Utilities Commission this fourteenth day of May, 1986.

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NH.PUC*05/19/86*[60795]*71 NH PUC 288*Public Service Company of New Hampshire

[Go to End of 60795]

71 NH PUC 288

Re Public Service Company of New Hampshire

Intervenors: Swift River/Hafslund Company, SES Concord Company, A. Johnson Cogeneration, Inc., KTI Energy, Inc., New England Coastal Generation Company, Concord Regional Waste Energy/Resource Recovery Cooperative, Vicon Recovery Systems Inc., Thermo-Electron Energy Systems, Pinetree Power Development Corporation, Wormser Engineering, Inc., ENESCO, Martin Energy Inc., and Granite State Hydropower Association

DR 86-41, Supplemental Order No. 18,260

New Hampshire Public Utilities Commission

May 19, 1986

ORDER denying a motion for a temporary suspension of long term rate filings for cogeneration and small power production projects.

Cogeneration, § 20 — Long term rates — Levelization of prices — Moratorium.

The commission denied a motion by an electric utility for a limited temporary suspension of approval of long term rate filings whereby cogeneration and small power production projects that did not possess nisi rate orders as of a date more than two months prior to the instant motion would be ineligible for levelization of long term rates; the commission found that motion was, in effect, a renewal of a previously denied motion for a moratorium on alternate energy development and that it did not assert any evidence or arguments that had not been previously considered and rejected. [1] p. 292.

Cogeneration, § 20 — Long term rates — Levelization of prices — Moratorium.

The commission rejected an electric utility argument that the amount of front end loading of rates permitted under existing long term small power production rate orders required a limited

temporary suspension of approval of long term rate filings; the commission found that utility concerns about the large number of filings for long term rates did not outweigh the benefits of maintaining the existing practice of updating avoided cost rates in an orderly and predictable manner. [2] p. 292.

Cogeneration, § 19 — Long term rates — Qualifying facilities — Right to a specific rate.

Statement, by commission, in an order denying an electric utility motion for a suspension of long term rate approvals, that while a qualifying facility developer may have a right to 090some090 purchased power rate prior to commission approval of a long term rate filing, he does not have a vested right to a specific rate. p. 292.

Cogeneration, § 19 — Long term rates — Qualifying facilities — Eligibility requirements.

Statement, by commission, that developers of cogeneration and small power production projects that petition the commission for long term rate orders must provide assurances that their proposed projects meet eligibility criteria for long term rates and that they can fulfill the representation made as to the technical and financial feasibility of their projects. p. 292.

APPEARANCES: As noted previously.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On February 7, 1986 Public Service Company of New Hampshire (PSNH) filed a Petition for Comprehensive Avoided Cost Proceeding. Said petition requested, inter alia, that the Commission decline to accept long term rate filings submitted after February 7, 1986 until all other issues raised in the Petition were adjudicated. By Order of Notice dated February 26, 1986 this Commission set a hearing for the purpose of investigating the terms, conditions and avoided cost methodology established in Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order 17,104) and denied PSNH's request for a moratorium on long term rate filings. PSNH filed a Motion for Rehearing on March 18, 1986 on, inter alia, the issue of the moratorium. The Commission denied the Motion for Rehearing on March 31, 1986, but stated that PSNH could renew its motion for a moratorium in the context of a specific procedural schedule. At the April 15, 1986 hearing, PSNH filed a Motion for Interim Rates Based on a Limited Temporary Suspension of Approval of Long Term Rate Filings. (April 15th motion) Said motion requested that projects larger than 5 MW that did not have nisi rate orders in effect prior to February 7, 1986 be ineligible for levelization on the long term rate. The Commission allowed intervenors until April 29, 1986 to file memoranda in response to the PSNH Motion for Interim Rates. Memoranda were filed by Swift River/ Hafslund Company (Swift River Memorandum); Debevoise & Plimpton on behalf of SES Concord Company (SES Memorandum); Skadden, Arps, Slate, Meagher and Flom and Attorney Glenn Berger (Skadden Memorandum) on behalf of A. Johnson Cogeneration Inc., KTI Energy, Inc. and New England

Coastal Generation Company; and Brown, Olson and Wilson and Attorney Robert Olson (Olson Memorandum) on behalf of Concord Regional Waste Energy/Resource Recovery Cooperative, Vicon Recovery Systems Inc., Thermo-Electron Energy Systems, Pinetree Power Development Corporation, Wormser Engineering, Inc. and Martin Energy Inc., Granite State Hydropower Association and ENESCO.[1](53) On May 5, 1986, Energy Law Institute submitted a late filed response to the PSNH April 15, 1986 motion consisting of a letter from Ronald Ford, Chairman of the Concord Regional Solid Waste/Resource Recovery Cooperative. (Intervenors). PSNH filed a reply Memorandum on May 9, 1986.

POSITION OF PARTIES

PSNH argued in its April 15th motion that the approval of long term rate filings "subjects PSNH customers to an unwarranted degree of risk, requires PSNH customers to pay rates in excess of PSNH's avoided costs and impedes the efficient development of alternate

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energy sources in New Hampshire" (at 2-3) because of the front end loading of the rates permitted under the existing orders. PSNH substantiates this assertion by referring to its March 18th Motion for Rehearing in which it noted the potentiality of 567 MW of long term rate filings in February, March and April based on its receipt of site data sheets. PSNH calculated that if only 200 MW of this potential were added to the current level of small power producers and cogenerators (Qualified facilities or QFs) that are either on-line or have existing contracts or rate orders with a completed or in progress interconnection study, the total amount of front loading would increase from $58 million to $112 million by 1990. This sum represents 12% of PSNH's total operating revenues in 1990.

The intervenors did not contest PSNH's calculation of the significance of the revenue impact of front end loaded rates. They do argue, however, that the motion is in effect a request for a moratorium and that a moratorium as of February 7, 1986 raises legal questions of notice, retroactivity, and vested rights, and they contest the statistical relationship between the number of projects for which a site data sheet is filed and the number of projects that are built. Further, they argue that front end loaded rates do not impose an unwarranted degree of risk on PSNH ratepayers.

The intervenors assert that the PSNH request for an interim rate in effect is a moratorium on the development of all the larger QFs until the conclusion of the docket as QFs generally must have some level of front end loading in order to secure project financing. Swift River Memorandum at 1, Olson Memorandum at, 2-3. They claim that such a moratorium penalizes those entities that have demonstrated the greatest initiative in responding to the framework as established Order 17,104. Swift River Memorandum at 2.

The intervenors claim that Commission approval of the PSNH request for interim rates would not provide developers adequate notice of the pending moratorium. Past Commission practice has applied changes in long term rates prospectively to developers who file after the Commission Order of Notice. Olson Memorandum at 16-17. In particular, applicants who filed before February 7, 1986 but whose filing had not been approved by February 7th had no notice of the possibility of a rate change or moratorium as of the PSNH filing. SES Memorandum at 7.

The intervenors argue that establishing a moratorium on rate filings in an order issued in May effective the previous February embodies a degree of retroactivity that is contrary to state and federal requirements of due process. SES Memorandum at 16-21; Olson Memorandum at 20-25. They represent that between February and May 1986 developers "have expended considerable resources and made significant contractual commitments in reasonable reliance" (Olson Memorandum at 22) on the continued availability of the front loaded rate established in Order 17,104 and Re Small Energy Producers and Cogenerators, 70 NH PUC 753 (1985) (hereinafter "Order 17,838"). They suggest that this commitment of resources has given some developers a vested interest to approval of a rate filing under the terms of Order 17,104 and Order 17,838. SES Memorandum at 23.

The intervenors also maintain that a moratorium is unnecessary because the

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request is based on speculation concerning the potential for QF capacity that is unlikely to be realized. They claim that included in PSNH's estimate of potential projects are plants for which no site data has been filed and assert that even the submission of site data sheets is a poor indication of completed projects. Berger Memorandum at 10, Olson Memorandum at 11-13. They allege that the increase in the number of filings is attributable to "PSNH's repeated threats of declaring a moratorium on long-term rate arrangements, plus its recent invocation of a policy of limiting long-term contracts to non-levelized rates equal to 75% of avoided costs", as evidenced by the fact that developers filed with the Commission for long term rates for most of the capacity after the February 7, 1986 PSNH filing. Berger Memorandum at 11. Further, they argue that whatever validity is attached to PSNH's concern over post-February 7th rate filings, that concern is inapplicable to QFs for which rate filings were made prior to February 7th. SES Memorandum at 15.

Finally, the intervenors contest PSNH's assertion that front end loaded rates impose an unacceptable risk to PSNH's ratepayers. They cite approval of the policy of levelized rates by the Federal Energy Regulatory Commission and this Commission (Berger Memorandum at 3-4) and argue that levelized rates for QFs are no riskier than normal ratemaking for utility owned central generating stations (Berger Memorandum at 6,9). They state that PSNH's argument ignores the long term benefit of levelization that balances payments at less than avoided cost in the latter years against the payments in excess of avoided cost in the early years. Lastly, they argue that ratepayers are already protected against the risks of the project life of the QF being too short to repay the front end loading in the eligibility criteria embodied in the rate filing (Berger Memorandum at 7-8), and that if the Commission believes that additional security is required, such measures can be established within the current docket to revise the framework of the long term rate.

COMMISSION ANALYSIS

The Commission recognizes the significance of the PSNH motion for interim rates as in effect a request for a moratorium on most alternate energy development between February 7, 1986 and the completion of full consideration of the issues of this docket in the fall of 1986. The only QFs not affected by the motion are those under 5 MW, and most QFs of that magnitude are

small hydroelectric facilities. Wood electric, municipal solid waste and cogeneration facilities are generally larger than 5 MW. As it is difficult, if not impossible, for any project to be developed without some degree of levelization in its power purchase contract or rate, the motion in effect is a moratorium on all alternative energy projects with the exception of small hydroelectric and a handful of atypical projects of other technologies.

The Commission notes the dispute between the parties on the issue of the capacity likely to be developed and the relationship between the site data sheets and developed projects. The Commission's own records indicate the following amounts of capacity for which long term rate petitions have been filed.

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

January 41.60
February 124.96 (plus a 49.5
rejected filing)
March 186.50 (plus a 55 MW
rejected filing)
April 240.418
593.478

It is unlikely that all of this capacity will be developed, and the near term effect on PSNH's operating revenues depends not only on the amounts of capacity actually developed but also on the degree of front loading embodied in the purchased power arrangements. The Commission has found that frontend loaded rates per se, when granted to projects that meet the eligibility criteria of Order No. 17,104 (61 PUR4th at p. 146) represent an acceptable level of risk to the ratepayer. The financial benefits to the ratepayers in the later years who will receive QF power at less than avoided costs balances the costs to ratepayers in the earlier years of purchasing QF power at above avoided cost. Ratepayers throughout the period benefit from the increased diversity of generating sources and the avoidance of utility capacity additions with the front end loading of rates intrinsic to the normal rate basing of utility plant additions. Thus far, we find nothing in the instant docket to disturb that earlier finding.

[1, 2] As noted, supra, PSNH's request for an interim rate is fundamentally a renewal of its earlier motions for a moratorium on alternate energy development from February through October, 1986. The request for interim rates does not assert any evidence or argument that was not previously fully considered by the Commission, and upon review the Commission finds no mistake of fact or of law in either its Order of Notice (February 26, 1986) or its denial of PSNH's Motion for Rehearing (March 31, 1986). The Commission found in those Orders that the benefits of an orderly procedure to review the structure of long term avoided cost rates and to update annually the data in those rates with a predictable mechanism that can be fairly relied upon by all parties outweighs the concern over the large numbers of rate filings in the first four months of this year. We find nothing thus far in the instant docket to disturb those previous findings. Therefore, we will deny PSNH's Motion for Interim Rates Based on a Limited Temporary Suspension of Approval of Long Term Rate Filings.

Since we are denying PSNH's motion, it is not necessary for us to determine the degree of retroactivity in Commission orders that is appropriate under Federal and State Constitutional

law. However we do note that the Commission has found previously that while a developer may have a right to some purchased power rate under the Commission orders at least prior to Commission approval of a long term rate filing, he does not have a vested right to a specific rate. Re Concord Regional Waste/Energy Co., 70 NH PUC 736 (1985). This interpretation is in keeping with the case law summarized by SES that "funds spent solely in acquisition of the property and in preparation of the site plan applications do not, however, constitute substantial liabilities for the purposes" of establishing a vested right. SES Memorandum, 22-23.

Although we are denying PSNH's April 15th motion, the Commission will also note here our grave concern regarding many of the individual rate filings before us. Our concern is both whether the projects meet the

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eligibility criteria required for the long term rate and whether developers can fulfill the representations in the long term rate filing. The former consideration is particularly relevant to fossil fuel based cogeneration projects. The Commission expects a consistency in the assumptions of the escalation of fossil fuel prices as reflected both in the rate and in the economics of the cogeneration projects. To the degree that these two escalation rates are inconsistent, there is a strong indication that either the long term rate numbers are too high or that the costs of the fossil fuel based project will exceed the levelized rate in the later years. In the latter case, it appears unlikely that the project will continue to be economically viable, a situation that poses the risk that the project life will not be equal to or greater than the rate term. (Eligibility criteria #1, 61 PUR4th at p. 146).

The second concern, the ability of developers to fulfill the representations, focuses in particular on the ability of the developer to provide the Commission with proof that there is a reasonable expectation that the project will be on-line on the date specified in the rate filing. The Commission is aware that the drop in fossil fuel prices has caused the long term avoided cost numbers to fall. As a result, the value of a long term rate under Order 17,838 is less than the rate under Order 17,104, and a possible finding in the 1986 update may be less than the rate in Order 17,838. Therefore, developers have a strong incentive to file as early as possible. The Commission then reads with concern the statement by one of the intervenors that

It should also be noted that obtaining a long term rate for a project does not, by itself, guarantee that project will be built. While the correlation of rate filings to operating projects is undoubtedly greater than the correlation of site data sheet filings to operating projects, it should be noted that many projects will fail even after obtaining a long term rate for many of the same reasons described above. Generally, a project's success can not be relatively assured until it has received its financing. Olson Memorandum at 13.

The previously mentioned reasons for failure to construct include problems with the technical design, firm cost proposals, property rights acquisition, project financing and interconnection constraints. Olson Memorandum at 12.

It is the Commission's view that a long term rate filing is, in essence, a contract between the project developer and the ratepayer, a contract to which the developer should not commit himself unless he is reasonably certain that he can fulfill his obligations. The Commission therefore

expects that a developer will have resolved most of the development problems mentioned above before filing for a rate, not after. It ought to be possible for the Commission and PSNH to rely on the timing of the capacity additions as specified in an approved long term rate filing and incorporate those additions into the PSNH long term system supply model. Such reliance is not possible as long as developers file for rates for all projects they might want to or be able to develop rather than for projects they can assure the Commission that they will develop.

Therefore, the Commission hereby puts developers on notice that if these two concerns are not satisfied in the

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filings currently and prospectively before us, the Commission will require that those petitions be modified to ensure that the level of front end loading does not impose undue risks to the ratepayer, or will reject them without prejudice as untimely.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the PSNH Motion for Interim Rates Based on a Limited Temporary Suspension of Approval of Long Term rate Filings be, and hereby is, denied.

By Order of the New Hampshire Public Utilities Commission this nineteenth day of May, 1986.

FOOTNOTE

[1]The Memoranda submitted on behalf of SES and Swift River are referred to subsequently herein by reference to the company submitting each memorandum. Each of the remaining two Memoranda were submitted on behalf of several companies and will for convenience be referred to hereafter by the name of the attorney submitting the Memoranda on behalf of his several clients.

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NH.PUC*05/20/86*[60796]*71 NH PUC 295*Sugar River Hydroelectric Power Company

[Go to End of 60796]

71 NH PUC 295

Re Sugar River Hydroelectric Power Company

Respondent: Public Service Company of New Hampshire

DR 86-99, Supplemental Order No. 18,261

New Hampshire Public Utilities Commission

May 20, 1986

ORDER suspending the long term rate order of a small power production facility.

Cogeneration, § 23 — Liability and insurance — Small power production project.

The long term rate order of a small power production facility was suspended for failure to maintain the minimum required level of comprehensive general liability insurance; the commission ordered that the suspension be lifted if the facility submits an affidavit indicating that it has obtained the required amount of insurance.

By the COMMISSION:

SUPPLEMENTAL 0RDER

WHEREAS, on March 31, 1986 William B. Ruger, Jr. d/b/a Sugar River Hydroelectric Power Co., (Sugar River) filed a long term rate petition for the Sugar River Hydroelectric Power Project pursuant to Re Small Energy Producers and Coqenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) and Docket No. DR 85-215, Report and Order No. 17,838 (70 NH PUC 753, 69 PUR4th 365 [1985]); and

WHEREAS, the Commission issued Order No. 18,224 (71 NH PUC 251) in this docket which approved nisi the long term rate petition of Sugar River effective May 18, 1986 unless the Commission provides otherwise in a Supplemental Order issued on or before the effective date; and

WHEREAS, Order No. 18,224 allowed Public Service Company of New Hampshire (PSNH) twenty days to file comments, exceptions or such other response to Sugar River's petition as it deemed necessary; and

WHEREAS, by letter date May 8, 1986 PSNH respectfully noted that Sugar River's insurance coverage is only for one million dollars ($1,000,000); and

WHEREAS, the Commission routinely requires Petitioners to maintain Comprehensive General Liability Insurance for bodily injury and property damage at minimum limits of three million dollars ($3,000,000) for hydroelectric facilities of the size proposed; it is therefore

ORDERED, that Order No. 18,224 be, and hereby is, suspended until such time as Sugar River has submitted as an amendment to their petition, an

affidavit that it has obtained the required amount of insurance.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1986.

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NH.PUC*05/20/86*[60797]*71 NH PUC 296*New England Power Company

[Go to End of 60797]

71 NH PUC 296

Re New England Power Company

DF 86-106, Order No. 18,262

New Hampshire Public Utilities Commission

May 20, 1986

ORDER authorizing an electric utility to issue securities and execute loan agreements.

Securities Issues, § 44 — Factors affecting authorization — Utility refinancing plan — Capital structure — Public benefit.

An electric utility was authorized to issue and sell securities and execute loan agreements as part of a refinancing plan designed to take advantage of current trends in capital markets; the refinancing plan, which included dividend and interest rate ceilings, was found to be consistent with a balanced capital structure and the public good.

APPEARANCES: Robert King Wulff, Esquire and Lawrence J. Reilly, Esquire, for New England Power Company.

By the COMMISSION:

REPORT

New England Power Company (the Company) is a utility subject to our jurisdiction. On March 31, 1986, the Company filed a petition requesting authorization and approval of the Commission for the issue and sale of $550,000,000 aggregate principal amount of securities. Of these securities, it is proposed that as much as $45,000,000 may be accounted for through the issuance of one or more additional series of the Company's preferred stock (the New Preferred Stock). 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, in its petition, also requested 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 entities such as the Company. The Company's petition also requests authority to issue and pledge First Mortgage Bonds (the New Pledged Bonds) in aggregate principal amount equal to the aggregate principal amount of the New G&R Bonds issued.

A public hearing was held on the Company's petition on April 29, 1986.

The Company presented one witness, Michael E. Jesanis, Manager of

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Financial Planning for New England Power Service Company, an affiliate of the Company, who testified as to the terms and conditions of the proposed financings. The Company also presented four exhibits: NEP-1, the prefiled testimony of Michael E. Jesanis; NEP-2, a chart summarizing the Company's refinancing plan; NEP-3, the Company's prefiled financial statements; NEP-4, which contained an analysis of the financial impact of the proposed transactions on the Company's financial statements; and NEP-5, which summarized the present value of the savings from the proposed transactions.

The Company's financial statements, Exhibit NEP-3, were the basis of testimony relating to the Company's capitalization. They show that on the date of the statements, December 31, 1985, 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 $87,129,900. Other paidin capital was $288,000,000. Retained earnings were $221,063,964 and unappropriated undistributed subsidiary earnings were $10,978,872. The 1,810,280 shares of preferred stock outstanding were composed of three classes: 6% Cumulative Preferred Stock having a 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 was $128,528,000. Long-term debt outstanding, net of unamortized premium or discount, amounted to $709,693,460, consisting of 14 issues of First Mortgage Bonds and 10 issues of General and Refunding Mortgage Bonds with interest rates ranging from 4% to 165/8% and with maturity dates from 1985 to 2013. Not shown in the capitalization is $212,000,000 of pledged First Mortgage Bonds held by the Trustee for the General and Refunding Mortgage Bonds.

The Company reported that, as of December 31, 1985, its utility plant was $1,317,615,115. Construction work in Progress was shown to be $854,530,625. The accumulated depreciation reserve against such property amounted to $455,645,416. The Company's net utility plant was $1,761,841,669. Other property and investments, of which a major part of the amount authorized was investments in securities of nuclear generating companies, was shown as $46,145,788.

The Company's witness, Mr. Jesanis, explained that the financings which are the subject of this proceeding are proposed to enable the Company to take advantage of currently favorable conditions in the capital markets. Mr. Jesanis stated that long term interest rates were at or near their lowest point in nine years. Mr. Jesanis also stated that refinancing a portion of the Company's outstanding securities at reduced interest and dividend costs would result in significant benefits for the Company's customers.

Mr. Jesanis stated that the amount of refinancing which would be economic is expected to increase as current interest and dividend rates decrease. Mr. Jesanis stated that, under current market conditions, it would be possible for the Company to economically refinance $168 million of its

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outstanding securities and that a further 1 1/2% decline in current interest rates would make it possible for the Company to economically refinance an additional $364 million of its outstanding securities. The Company's petition requested that it be authorized to issue the securities which are the subject of this proceeding through 1987. This flexibility, Mr. Jesanis stated, will enable the Company to act quickly to take advantage of opportunities in the capital markets.

The Company proposed that all proceeds from the issue of the securities which are the subject of this proceeding would be held in one or more special accounts and applied solely to either (i) the acquisition (through either open market purchases or the operation of redemption provisions (including sinking funds), or both) of all or a portion of one or more series of the Company's outstanding General and Refunding Mortgage Bonds, First Mortgage Bonds, or Preferred Stock or (ii) reimbursement of the Treasury of the Company for expenditures incurred after April 1, 1986 for the foregoing purposes. The Company also proposed that all proceeds would be so applied within 18 months of receipt. Pending application, all proceeds would be held in the one or more special accounts and temporarily invested. The Company proposes that, as with the proceeds from the issuance of securities, any investment income will only be applied to acquire outstanding securities or to reimburse the Treasury of the Company for so doing.

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 terms and conditions for the bids will provide, in part, that the New Preferred Stock will be sold at a price not less than 100% of par nor more than 102.75% of par. The dividend rate in the case of New Preferred Stock with a fixed dividend rate is not to exceed 11% per annum for the 13.48% dividend series and not to exceed 9% per annum for the 11.04% dividend series. 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 of 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 Stock. 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

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from the Commission authorizing either private placements with institutional investors or

negotiations with underwriters.

Massachusetts statutes 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 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. A Portion of the New G&R Bonds may be issued in connection with the issue 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 issue, 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.

Mr. Jesanis stated that it may be possible for the Company to refinance approximately $170 million aggregate principal amount of its outstanding G&R Bonds which were issued in connection with pollution control revenue bond financings. These bonds are the Company's $79.25 million Series J, 10-5/8%, G&R Bonds which were issued to support pollution control revenue bonds issued by the Industrial Development Finance Authority of the City of Salem, Massachusetts and the $90 million Series D, 9-7/8%, G&R Bonds issued by the Massachusetts Industrial Finance Agency. Mr. Jesanis stated that the publicly held pollution control revenue bonds are not callable, except in certain extraordinary circumstances, until 1993. He explained that all proceeds from any new pollution control revenue bond financing would be used to acquire pollution control revenue bonds on the open market. After acquisition, the pollution control revenue bonds, together with the Company's G&R Bonds supporting them, would be cancelled. 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 would bear interest at a

fixed rate. 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, premium, if any, and interest on the pollution control revenue bonds sold to the public. To secure its obligation, the Company would issue an equal principal amount of New G&R Bonds to the Agency bearing the same date, maturity, and interest rate 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. 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. The interest rate of New G&R Bonds issued to support pollution control revenue bonds is not to exceed 7.5% per annum unless a higher rate is subsequently approved by the Commission.

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 an invitation for bids, at a price not less than 95% nor more than 105% of their principal amount. The interest rate is not to exceed the maximum new interest rate at which it would be economic to refinance 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 that submits a price and an 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.

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.

The last issue of securities by the Company was $38,500,000 of G&R Bonds, Series K, which were issued to the Connecticut Development Authority in connection with the financing of certain pollution control facilities, principally radioactive waste storage facilities, for Millstone 3. These bonds, which were approved in DF 84-188, were issued in October 1985, bear interest at a variable rate, and mature in 2015. Mr. Jesanis also stated that the Company expected to issue $29.85 million aggregate principal amount of additional General and Refunding Mortgage Bonds in connection with a

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pollution control revenue bond financing, through the New Hampshire Industrial Development Authority, in May 1986. These securities were also approved by the Commission in DF 84-188.

The Commission is of the opinion that the refinancing plan proposed by the Company is

consistent with a balanced capital structure.

The maximum dividend rate requested by the Company on the fixed rate preferred stock (11%), the dividend rate ceiling on adjustable rate preferred stock (12%), the maximum interest rate on G&R Bonds issued to support pollution control revenue bonds (7.5%), and the maximum interest rate on G&R Bonds not issued to support pollution control revenue bonds (14%) appear reasonable in view of current trends in capital markets and the purpose of the Company's refinancing plan. In no event will the Company refinance any particular series of bonds at interest rates higher than the appropriate maximum rate shown on Exhibit NEP-2. 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 refinancing 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 one or more additional series of Preferred Stock with an aggregate par value not exceeding $45,000,000, consisting of either Dividend Series Preferred (Par value $100), Preferred Stock - Cumulative (par value $25), or both, at a fixed dividend rate not in excess of 11% or with an adjustable dividend rate with a potential maximum rate not in excess of 12%, and the Commission consents to the issue, disposition, and sale of said additional Preferred Stock of the Company at competitive bidding provided, however, the preferred stock authorized by this paragraph is to be sold at a price not less than 100% nor more than 102.75% of the aggregate par value thereof; and it is

FURTHER ORDERED, that New England Power Company be, and hereby is, authorized to issue and sell one or more series, in aggregate not exceeding $550,000,000 principal amount, of General and Refunding Mortgage Bonds, to mature in not more than 30 years from the date 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; 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 14% per annum 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 an 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 that are issued and sold in connection with the issuance of pollution control revenue bonds shall

bear interest at a rate not in excess of 7.5% per annum and are to be sold with such interest rate and at such price as to conform with the interest rate and price of pollution control revenue bonds to be issued simultaneously therewith by an agency of The Commonwealth of Massachusetts or the City of Salem, Massachusetts; and it is

FURTHER ORDERED, that, in connection with the refinancing of expenditures relating to pollution control facilities, New England Power Company be, and hereby is, authorized to execute and deliver one or more loan agreements or supplemental loan agreements, with an aggregate principal amount not exceeding $170 million, between the Company and public agencies empowered to issue pollution control revenue bonds under which loan agreement or supplemental loan agreements the Company will agree to make payments to such 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 7.5% per annum; and it is

FURTHER ORDERED, that New England Power Company be, and hereby is, authorized to issue and pledge one or more additional series of First Mortgage Bonds, in aggregate principal amount not exceeding the aggregate principal amount of General and Refunding Mortgage Bonds authorized and approved by the Commission herein, said additional First Mortgage Bonds to bear the same interest rate and to have the same maturity as the 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 and First Mortgage Bonds, the General and Refunding Mortgage Bonds authorized herein, and bonds hereafter issued under the provisions 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, and any income from the investment thereof, shall be applied, within eighteen months of receipt, to either (i) the acquisition (through either open market purchases or the operation of redemption Provisions (including sinking funds), or both) of all or a portion of one or more series of the Company's outstanding General and Refunding Mortgage Bonds, First Mortgage Bonds, or Preferred Stock or (ii) reimbursement of the Treasury of the Company for expenditures incurred after April 1, 1986 for the foregoing purposes; and it is

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FURTHER ORDERED, that the authorization to issue securities contained herein shall be exercised on or before December 31, 1987, and not thereaf- ter, unless such period is extended by order of this Commission; and it is

FURTHER ORDERED, that the refinancing of any particular series of bonds or preferred

stock shall not exceed the maximum economic new interest rate, as shown on Exhibit NEP-2; and it is

FURTHER ORDERED, that on or about January first and July first of each year, said New England Power Company will file with this Commission a detailed statement, duly sworn by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of the securities authorized herein, 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 twentieth day of May, 1986.

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NH.PUC*05/21/86*[60798]*71 NH PUC 304*New England Telephone and Telegraph Company, Inc.

[Go to End of 60798]

71 NH PUC 304

Re New England Telephone and Telegraph Company, Inc.

Intervenors: Belknap-Merrimack Community Action Program, Office of Consumer Advocate, Department of Defense, DartmouthHitchcock Medical Center, New Hampshire Hospital Association, and New Hampshire Association of Commerce and Industry

DR 86-36, Supplemental Order No. 18,264

New Hampshire Public Utilities Commission

May 21, 1986

ORDER directing a local exchange telephone carrier to begin a six month dual-billing experiment for business service.

Rates, § 539 — Telephone — Measured business service — Dual-billing experiment.

A local exchange telephone carrier was directed to begin a six month dual-billing experiment whereby flat rate business subscribers would be informed as to what their charges would be if they took service under a measured business service tariff; the commission found that dual billing would aid in its investigation of the proper rate structure for measured business service.

APPEARANCES: For New England Telephone & Telegraph Company, Phillip M. Huston, Jr., Esquire, Robert A. Wells, Esquire, and James T. McCracken, Jr.; for the Belknap-Merrimack Community Action Program, Gerald M. Eaton, Esquire; for the Consumer Advocate, Michael W. Holmes, Esquire; for the Department of Defense, Paul E. Van Maldeghem, Esquire; for the Dartmouth-Hitchcock Medical Center, Hale Irwin; for the New Hampshire Hospital Association, Michael Hill; for the New Hampshire Association of Commerce and Industry, Gregory Howard;

for the Commission Staff, Mary Hain, Sarah Voll, Edgar Stubbs, Eugene Sullivan and W. Michael Burke.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

In Re New England Teleph. & Teleg. Co., 70 NH PUC 496 (1985), the Commission authorized an annual increase in intrastate revenue for New England Telephone and Telegraph Company, Inc. of New Hampshire (hereinafter "NET" or "the company") of $21,460,000 effective on or after June 15, 1985. The Commission reopened Docket DR 84-95 by Supplemental Order No.

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17,837 (70 NH PUC 752), for the purpose of investigating measured business service. On November 12, 1985 the Commission issued Supplemental Order No. 17,945 (70 NH PUC 926) which required NET to file a plan with the Commission by February 1, 1986 providing for the implementation of measured business service by July 1, 1986 and further assuring zero revenue impact resulting from the implementation thereof. NET filed a plan in compliance with Order No. 17,945 on January 31, 1986. The Commission closed Docket DR 84-95 by the Fourth Supplemental Order No. 18,118 (February 13, 1986). In that order the Commission found that NET's plan should be investigated in a different docket to be specifically opened for that purpose.

The Commission accordingly opened Re New England Teleph. & Teleg. Co., 71 NH PUC 124 (1986) to provide for additional investigation of how to structure NET's tariff for measured business service "so as to best serve the public good." Id., 71 NH PUC at p. 125.

The order specified that the investigation will include, but not necessarily be limited to, the following issues:

1. Whether the measured business service rate should be adjusted for potential revenue impacts.

2. The flat portion of the measured business service rate.

3. The appropriate message unit time intervals.

4. The number of message units to be included in the basic charge.

5. The appropriate charge per message unit.

6. Whether measured service charges should be capped and, if so, at what level.

7. Whether the measured business service tariff should include tapered rates.

8. Whether the Commission should require a period of dual billing to assist NET's customers in assessing the impact of measured business service on their businesses.

9. Whether the Commission should delay the implementation of mandatory measured business service beyond the date established in Order No. 17,945, which provided, in pertinent

part, that all eligible business customers who are served by unlimited business service rates shall be transferred to measured business service rates on all bills rendered on or after July 1, 1986.

The order directed that a procedural hearing be held at the Commission's Concord offices on March 21, 1986 at 10:00 a.m. pursuant to RSA 541a:16 V (b) and (c) and Puc 203.05.

The procedural hearing was held as scheduled. At the hearing, Chairman Vincent J. Iacopino acknowledged receipt of many letters from customers of the company related to the docket and offered copies to interested parties. He also allowed the following persons an opportunity to make limited appearances for the purpose of making oral statements:

1) Hale Irwin, representing the Dartmouth-Hitchcock Medical Center,

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stated that the Center had filed prehearing letter comments regarding the impact of measured service on the cost of health care. In addition, Mr. Irwin commented on the impact of measured business service on patients' cost of local calling.

2) Michael Hill, representing the New Hampshire Hospital Association, presented a letter from the Association expressing the concerns of its 37 member hospitals.

3) Gregory Howard of the New Hampshire Association of Commerce & Industry, read into the record a letter to the Commission from Joseph Allwarden, Chairman of the Board, outlining concerns of that organization's members.

The Community Action Program and the Department of Defense were granted intervenor status, there being no objection thereto.

II. PROPOSED PROCEDURAL SCHEDULE

The parties went off the record to negotiate a procedural schedule. They subsequently proposed on the record the following stipulated schedule, subject to individual preferences discussed below under "POSITIONS OF THE PARTIES".

A. The company should commence dual billing on July 1, 1986 at their existing measured service rate.

B. The company will provide the Commission and the parties with an intermediate report by November 14, 1986, reflecting three months of data.

C. On receipt of the interim report, the Commission will determine whether the three months of data forming the basis of the report are sufficient or whether further study is necessary. If the Commission finds that additional study is required, it may require analysis of an additional one to three months of dual billing.

Following the study, the Company would be allowed a period of time to prepare pre-filed testimony. A hearing would subsequently be scheduled by the Commission. This schedule would require a delay in the implementation of measured business service until about April 1987.

The parties argued that NET's dual billing study would allow a more complete investigation of the balance of the issues which were to have been addressed in this procedural hearing. The parties further proposed that the following issues be addressed in the hearing to be held after the

dual billing study is complete:

1) Whether the flat portion of the measured business service rate should be changed,

2) The appropriate message unit time intervals,

3) The number of message units to be included in the basic charge,

4) The appropriate charge per message unit,

5) Whether or not measured service charges should be capped,

6) Whether or not measured

business service tariffs should include a tapered rate, and

7) The degree to which the measured business service rate should be adjusted for potential revenue impacts.

III. POSITIONS OF THE PARTIES

A. New England Telephone and Telegraph Co.

In light of the Commission's order to investigate measured business service, NET proposed to defer the July 1, 1986 measured business service implementation date. The company offered to begin dual billing on July 1, 1986 to enable business customers to assess their usage and plan for the implementation of measured business service. NET argued that it would prefer to dual bill based on rates proposed in their January 31, 1986 implementation plan rather than to dual bill at present rates. This January 31, 1986 plan rate includes a $4.00 adder to current basic rates. The company averred that these rates were designed to insure that the implementation of measured business service has a zero revenue effect. NET recommended a six month dual billing period to provide the Commission with sufficient data to assess the impact of measured service, taking into account seasonal usage. This six month period would begin on July 1, 1986 and end December 31, 1986. The company offered to provide an intermediate report after three months of billing. A six month report would not be available to the Commission until March due to billing lag and the compilation of data.

The company projects that implementation of mandatory measured business service will result in a revenue shortfall of approximately $3.468 million, or four dollars per line.[1(54)]

The company accordingly requested that a four dollar adder be applied to the basic rate in the dual billing. The dual bill would thereby give NET's business customers a better idea of what the rate impact on them would be if the Commission should ultimately accept NET's projections and grant NET's request as filed.

B. Community Action Program

The Community Action Program (CAP) argued in favor of a JulyDecember 1986 dual billing program indicating that a six month dual billing period would enable CAP to identify and adopt usage patterns and budget for projected changes. CAP favors these months for dual billing since many of the grants administered by CAP operate under a calendar year budget or are tied to the federal fiscal year beginning October 1, 1986.

CAP contended that the Commission should order a rate design and rate for dual billing that would be a decision on a final rate. In other words, if the existing rate is adequate, that rate should be dual billed. If NET's new proposed rate is accepted, it should be the rate that is dual billed.

CAP recommended that a "true-up" mechanism be considered in this docket. This mechanism would address undercollection and overcollection as a result of the measured business service design. The true-up mechanism should begin on the implementation date, January 7, 1987 and run through December 31, 1987. If at the end of that period, there was an over or undercollection, rates would be adjusted to

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reimburse the customer or make the company whole.

The Community Action Program asserted that January 7, 1987 should be the date of implementation.

C. Staff

Staff notes that although the order of notice for this proceeding was properly published in the Manchester Union Leader, additional notice to NET's business customers may be advisable. Additional notice, perhaps in the form of bill inserts, would enhance public knowledge of the issues involved as well as of the opportunities to be heard in this docket.

IV. COMMISSION ANALYSIS

The Commission opened this docket to conduct an investigation of the many issues surrounding the implementation of measured business service. We believe that this investigation would be much enhanced by a dual billing experiment. Dual billing is used to inform flat rate customers what their charges would be under the current measured service tariff. It is not an opportunity for customers to select between the flat rate and the measured rate. Dual billing can provide useful data for the analysis of the issues posed by the Commission for this proceeding. This approach has been used in Vermont (Re New England Teleph. & Teleg. Co., 58 PUR4th 148 [Vt.P.S.B.1984]) and in Ohio (Re General Teleph. Co. of Ohio, 68 PUR4th 212 [Ohio P.U.C.1985]) to help investigate the issues surrounding the implementation of measured service. We will allow NET to use a dual billing experiment.

The dual billing period will be six months in length beginning July 1, 1986 and ending December 31, 1986. This time period will reflect seasonal differences in usage better then would a three month period. This six month period should also allow business customers a sufficient period to assess and change usage patterns. The Ohio and Vermont dual billing programs were required to be six months in duration. We find that the experiences of these other jurisdictions demonstrate a need for a six month dual billing period.

We find that the Company shall include a comment at the bottom of the bill which indicates that measured service rates are subject to change, pending the outcome of this docket. However, we find that it is not appropriate for the Company to speculate on the bill as to how much any change might be.

The Commission will expect a three month report from NET on November 14, 1986. At that time, the Commission may investigate the state of the record.

NET shall file a report on the six month dual billing period on February 13, 1987. Late interventions will be entertained up until this date to address the staff's concern with adequate notice to interested persons. The Commission will allow parties until February 27, 1987 to request waivers from measured business service rates and to recommend criteria for obtaining a waiver.

NET shall, by bill insert with the first dual bill, notify all its business customers of the proceedings in this docket. The notice must describe the dual billing process. It must notify customers that dual billing is part of a study which will provide the Commission with information to facilitate the determination of a final rate structure and tariff.

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The notice shall indicate that the rate upon implementation may be different from the presently charged rate. NET shall consult with staff as to the wording of the notice. NET should submit a draft proposal in a timely manner for Commission approval.

The use of a true-up mechanism will be considered in the hearing preceding implementation. The remaining issues in this docket (as outlined in the "Proposed Procedural Schedule" section of this order) will be deferred to the hearing following the dual billing study.

SUPPLEMENTAL ORDER

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

ORDERED, that the portion of Commission Order No. 17,945 (70 NH PUC 926) relating to an implementation date of July 1, 1986 for mandatory measured business service be, and hereby is, vacated; and it is

FURTHER ORDERED, that New England Telephone be, and hereby is, directed to commence dual billing of its business subscribers effective on July 1, 1986 and continuing through December 31, 1986; and it is

FURTHER ORDERED, that the Commission grants an exception to the dual-billing requirement for the following exchanges because of technical and/or economic reasons: Alstead, Claremont, Dublin, Franklin, Goffstown, Greenfield, Greenville, Groveton, Marlow, New Boston, Sunapee, and Wolfeboro; and it is

FURTHER ORDERED, that dual billing for these excepted exchanges commence with the first billing following availability dates shown in Attachment C of the NET implementation plan of January 31, 1986; and it is

FURTHER ORDERED, that all business subscribers must be sent a notice of the proceedings in this docket, and that this notice shall:

1. describe the dual billing process,

2. inform the customers that, among other things the purposes of dual billing are:

a) to provide the Commission with information to facilitate the determination of a final rate

structure and tariff for measured business service;

b) to assist them in analyzing their calling patterns, in determining required changes thereto, and in planning for telecommunications budgets;

3. advise flat rate business subscribers that they are not liable to pay the measured service amount

4. advise all business subscribers that they are responsible for payment of the bill issued covering the class of service in which they are currently enrolled; and

5. advise all business subscribers that they may have an opportunity to intervene, recommend waivers or otherwise be heard in this docket;

and it is

FURTHER ORDERED, that all business subscribers be advised by annotation on dual billings that existing measured rates are subject to possible change

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pending the final order of the Commission in this docket; and it is

FURTHER ORDERED, that NET file an interim report based upon collection and analysis of three months of dual billing data on November 14, 1986; and it is

FURTHER ORDERED, that NET file a final report based upon collection and analysis of six months of dual billing data on March 20, 1987; and it is

FURTHER ORDERED, that the Commission will schedule additional hearing(s) as necessary following receipt of the above mentioned report(s); and it is

FURTHER ORDERED, that a notice explaining the dual billing procedure be given to all business subscribers in the form of a Commission approved NET bill insert.

By Order of the Public Utilities Commission of New Hampshire this twentyfirst day of May, 1986.

FOOTNOTES

[1]NET compliance filing dated January 31, 1986, ATTB, p. 2 of 6, in docket DR 84-95.

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NH.PUC*05/21/86*[60799]*71 NH PUC 311*Sunapee Power and Light Associates

[Go to End of 60799]

71 NH PUC 311

Re Sunapee Power and Light Associates

DR 84-97, Supplemental Order No. 18,266

New Hampshire Public Utilities Commission

May 21, 1986

ORDER nisi rescinding approval of a long term rate order for a small power production project.

Cogeneration, § 19 — Small power production — Long term rate order — Project abandonment.

Approval of the long term rate filing of a small power production project was rescinded where the commission had been informed that development of the project had been abandoned.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission approved certain long term rates for Sunapee Power & Light Associates (Sunapee) by Order Nos.17,022 (69 NH PUC 234) and 17,217 (69 NH PUC 520) pursuant to Re Small Energy Producers and Cogenerators, 68 NH PUC 531 (1983) (Order No. 16,619), 68 NH PUC 575 (1983) (Order No. 16,664) and 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104); and

WHEREAS, the Commission has since been informed that development of the Sunapee project has been abandoned; and

WHEREAS, the Commission wishes to allow Sunapee the opportunity to file comments and exceptions; it is therefore

ORDERED NISI, that approval of the long term rate filing of Sunapee, including the interconnection agreement and the rates set forth on the long-term worksheet, is rescinded; and it is

FURTHER ORDERED, that Sunapee 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 New Hampshire Public Utilities Commission this twentyfirst day of May, 1986.

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NH.PUC*05/21/86*[60800]*71 NH PUC 312*Wiswall Hydroelectric Associates

[Go to End of 60800]

Re Wiswall Hydroelectric Associates

DR 86-137, Order No. 18,267

New Hampshire Public Utilities Commission

May 21, 1986

ORDER denying, without prejudice, a petition for a long term rate order for a hydroelectric small power production project.

Cogeneration, § 5 — Qualifying status — Licensing requirements — Small power production.

A petition for a long term rate order for a hydroelectric small power production project was denied, without prejudice, as premature where the petitioner had not yet obtained a license to develop the project from the Federal Energy Regulatory Commission.

By the COMMISSION:

ORDER

WHEREAS, on April 23, 1986, Wiswall Hydroelectric Associates (Wiswall) filed a long term rate petition for the hydroelectric facility located in Durham, New Hampshire pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) and 70 NH PUC 753, 69 PUR4th 365 (1985) (Order No. 17,838); and

WHEREAS, Wiswall filed amendments to its filing on May 15, 1986; and

WHEREAS, Wiswall does not yet have a license to develop this site and the Town of Durham is contesting Wiswall's license application; and

WHEREAS, until Wiswall obtains a license from the Federal Energy Regulatory Commission in an order resolving all conflicting interests, Wiswall cannot represent that it will have output to sell from this project and the long term rate filing for Wiswall is therefore premature; and it is therefore

ORDERED, that the long-term rate filing for Wiswall be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. 86-137 be, and hereby is closed.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of May, 1986.

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NH.PUC*05/22/86*[60801]*71 NH PUC 313*SES Concord Company, L.P.

[Go to End of 60801]

71 NH PUC 313

Re SES Concord Company, L.P.

Respondent: Public Service Company of New Hampshire

DR 86-39, Supplemental Order No. 18,269

New Hampshire Public Utilities Commission

May 22, 1986

ORDER granting conditional approval to the long term rate filing of a small power producer.

Cogeneration, § 19 — Small power production — Long term rate filing — Grounds for approval.

Conditional approval was granted to a petition for a thirty year rate order for a regional municipal solid waste small power production project notwithstanding the interconnecting utility's argument that additional hearings were required to protect the interests of its ratepayers; the commission was satisfied that the project was economically feasible over the thirty years requested in the rate filing and that the project could meet its specified on-line date; final approval was conditioned on the execution of a satisfactory interconnection agreement, either by mutual consent of the parties, or by adjudication.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, SES Concord Company, L.P. (SES) filed a petition for a 30 year long term rate for Concord Regional Waste Energy Project on February 5, 1986 and amendments to its filing of February 13, 1986 and March 7, 1986; and

WHEREAS, the Commission approved the petition nisi on March 12, 1986 and allowed Public Service Company of New Hampshire (PSNH) 20 days to file comments and exceptions to the petition; and

WHEREAS, PSNH filed comments and exceptions on April 1, April 14, and April 25, 1986 that inter alia, contended that a pre-hearing conference, a period of discovery and a hearing on the merits are required to protect the interests of the ratepayers; and

WHEREAS, SES filed responses to PSNH's comments and exceptions on April 10, April 18 and May 2, 1986 in which it asserted that PSNH had had ample time to raise technical questions regarding the SES municipal solid waste project in the period between the filing of the site data sheet with PSNH on June 13, 1985 and PSNH's April 1, 1986 motion and that the April 1, 1986 request for hearing is an "attempt to delay construction of the Facility without regard to whether there is a good faith basis for challenging project feasibility" (SES response of May 2, 1986 at 2); and

WHEREAS, the Commission is satisfied that the regional municipal solid waste project as developed by the 27 participating municipalities and Signal Environmental Systems, Inc. is economically feasible over the 30 years of the requested rate petition; and

WHEREAS, the Commission is satisfied that SES has achieved sufficient significant milestones in the project development sequence to enable it to reasonably assure the Commission that it will be on-line no later than August 30, 1989 as specified in its rate filing; and

WHEREAS, there remains a dispute over the terms of the interconnection agreement as filed by SES; it is therefore

ORDERED, that SES's petition for approval of the rates as set forth in the long term worksheets of its Petition for a thirty-year rate order is approved; and it is

FURTHER ORDERED, that said approval is conditional on the execution of a satisfactory interconnection agreement, either mutually agreed upon by the parties or, in the absence of such agreement, following adjudication by the Commission pursuant to RSA 362A:5.

By Order of the Public Utilities Commission of New Hampshire this twentysecond day of May, 1986.

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NH.PUC*05/23/86*[60802]*71 NH PUC 315*UNITIL Corporation

[Go to End of 60802]

71 NH PUC 315

Re UNITIL Corporation

DR 85-362, Supplemental Order No. 18,273

New Hampshire Public Utilities Commission

May 23, 1986

ORDER amending a commission report on a tax sharing agreement among a utility holding company and its affiliated utility subsidiaries.

Expenses, § 117 — Consolidated tax returns — Tax sharing agreement — Availability of accelerated depreciation.

A commission report and order concerning a tax sharing agreement among a utility holding company and its affiliated utility subsidiaries was amended to correct an erroneous assertion regarding the availability of accelerated depreciation to companies which file consolidated tax returns.

By the COMMISSION:

Motion for Clarification

On May 14, 1986, Unitil Corporation (UNITIL) filed a motion for clarification of Commission Order 18,192 dated March 25, 1986 in Docket No. DR 85-362 (71 NH PUC 216). Unitil has requested several changes which they claim will make our order conform with certain provisions of the law.

UNITIL requests the insertion of the phrase "selected by UNITIL" after the word "method" in the second and third sentence of the second paragraph on page 4 of the Commission Report. They claim that the phrase will clarify the fact that there is more than one basic method under the Internal Revenue Code (IRC), and that UNITIL has selected one of these.

The Commission finds that the phrase is not required in either sentence. The first paragraph on page 4 identifies the method that was included in the agreement which was the subject matter for the hearing. The explanation in the paragraph which the Company has asked to be changed conforms with the method which was included in the basic agreement. However, to make perfectly clear the methods approved in our report and order the following rules apply:

Treasury Regulations §1.1552-1(a)(2) (ii)

Treasury Regulations §1.1502-33(d) (2)(ii)

Finally, UNITIL requests that the following statement in the Commission Report on page 11 be corrected (71 NH PUC at p. 208):

... there has been no change in the Code or regulations since FPC v. United and no subsequent court reversal; and that there have been no court interpretations or IRS regulations of IRC §§167 and 168 with respect to the issue of the availability of accelerated depreciation to companies which file consolidated tax returns ... .

After reviewing the record the Commission will delete the entire paragraph. Witness Burger testified that the changes in the tax law enacted in the Economic Recovery Tax Act of 1981 indirectly change the Code because they require a normalization method of accounting to take advantage of the Accelerated Cost Recovery System (ACRS). The Commission in its original report expressed its concern regarding the applicability of Private Letter Rulings of other companies and expected UNITIL to obtain its own private letter ruling.

SUPPLEMENTAL ORDER

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

ORDERED, that the Report and Order No. 18,192 are hereby amended in accordance with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twentythird day of May, 1986.

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NH.PUC*05/23/86*[60803]*71 NH PUC 317*Concord Electric Company

[Go to End of 60803]

71 NH PUC 317

Re Concord Electric Company

Additional party: Exeter and Hampton Electric Company

Intervenors: A. Johnson Cogeneration, Inc., KTI Energy, Inc., and New England Coastal Generation Company

DR 86-69, Supplemental Order No. 18,274

New Hampshire Public Utilities Commission

May 23, 1986

ORDER denying an intervenor electric utility's motion for the establishment of interim rates for the purchase of small power production by another electric utility.

Cogeneration, § 25 — Rates — Qualifying facilities — Interim long term avoided cost rates.

In the context of a docket established for the purpose of determining final avoided cost rates for an electric utility, the commission, notwithstanding its recognition of the fact that an intervenor electric utility had alone established long term avoided cost rates and that this had led to a preference among many qualifying facilities to sell power to it over other utilities, denied the intervenor's motion for the establishment of interim rates for purchases of small power production by the former electric utility; in support of its denial of the motion, the commission found that the effort involved in establishing both interim and final avoided cost rates would be counterproductive and that the precedent relied upon by the intervenor for the establishment of interim rates was meant to apply only to situations where qualifying facilities had been unable to negotiate satisfactory arrangements with the interconnecting utility. [1] p. 319.

Cogeneration, § 25 — Rates — Qualifying facilities — Interim long term rates.

The denial of an intervenor electric utility's motion for the establishment of interim rates for the purchase of small power production by another electric utility that was currently involved in negotiations with qualifying facilities was made subject to reconsideration if the latter utility were to request a delay in the procedural schedule for the establishment of final avoided cost rates, or if qualifying facilities currently involved in negotiating long term power arrangements were to represent that their projects were threatened by the absence of interim rates. [2] p. 320.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

By Order of Notice dated February 26, 1986 the New Hampshire Public Utilities Commission (Commission) opened this docket for the purpose of

updating the terms, conditions and rates of short term purchases and establishing the terms, conditions and rates of long term purchases of energy and capacity from Qualifying Small Power Producers and Qualifying Cogenerators (jointly referred to as QFs) by the Concord Electric Company and the Exeter and Hampton Electric Company (jointly referred to as UNITIL.) In Report and Order 18,254 (71 NH PUC 280), the Commission adopted a procedural schedule that commenced with intervenor data requests on April 11, 1986 and concluded with briefs to be filed on September 19, 1986 and granted intervenor status to Public Service Company of New Hampshire (PSNH) and the QFs which were represented at the hearing. The Commission deferred consideration of the issue of interim long term rates.

At the Procedural Hearing on April 2, 1986, PSNH moved that the Commission establish interim rates for UNITIL to take effect June 1, 1986 (Tr. 25-26) and filed a subsequent "Memorandum of Law of Public Service Company of New Hampshire on the Establishment of Interim Long Term Rates" on April 4, 1986 (PSNH Memorandum on Interim Rates, April 4, 1986). UNITIL responded on April 4, 1986 with a memorandum entitled "Opposition of the UNITIL Companies to Motion of Public Service Company of New Hampshire for Interim rates Effective June 1, 1986." (UNITIL Memorandum, April 4, 1986). On April 4, 1986 Mark S. Laufman filed a memorandum on behalf of A. Johnson Cogeneration, Inc., KTI Energy Inc. and New England Coastal Generation Company (Intervenors) in Re New Hampshire Electric Co-op., Inc., Docket No. DR 86-70 copies of which were served on all parties in the instant docket (Laufman Memorandum, April 4, 1986). UNITIL responded on April 11, 1986 with a memorandum entitled "Supplemental Comments of the UNITIL Companies in Opposition to Public Service Company of New Hampshire's Motion for Interim rates" (UNITIL Supplemental Memorandum, April 11, 1986). On May 13, 1986 UNITIL filed "Supplemental Comments of the UNITIL Companies on Proposed Procedural Schedule" (UNITIL Memorandum on Schedule, May 13, 1986). On May 19, 1986 PSNH filed a "Reply to UNITIL's Motion to Amend the Procedural Schedule" (PSNH Memorandum on Schedule, May 19, 1986).

INTERIM RATES

The basis of the PSNH motion for Interim Rates is that in the absence of a moratorium on PSNH's own long term rates, PSNH ratepayers will continue to bear the burden of purchasing from QFs during the UNITIL proceeding. PSNH averred that in the case of UNITIL in particular, UNITIL will be "setting their plans in motion for long term power supply" concurrent with the proceeding and it would "coincide with the intent of PURPA [Public Utilities Regulatory Policies Act, 16 U.S.C. § 824a-3 et seq.] and LEEPA [Limited Electrical Energy Producers Act, RSA Chapter 362-A as amended] that ... small power production would be better encouraged and not displaced by whatever their long term power supply plans are." Tr 26. Further they argue that there is ample precedent for the establishment of interim long term rates

as the Commission established such rates for PSNH in Re Small Energy Producers and Cogenerators, 68 NH

PUC 531 (1983). PSNH, Memorandum on Interim Rates, April 4, 1986 at 1-2.

Laufman argued on behalf of the intervenors that the establishment of interim rates in the instant docket be given precedence over the establishment of interim rates for the New Hampshire Electric Cooperative. He notes that UNITIL is actively negotiating purchase power agreements with QFs and alleges that the "lack of any basis to ascertain or approximate the UNITIL Companies' avoided costs" puts QFs at a disadvantage in negotiating purchase agreements. Laufman Memorandum, April 4, 1986 at 3.

UNITIL responded that PSNH was legitimately concerned only with its own purchases of QF power. If its rates were properly set, PSNH should be willing to purchase QF power at those prices "to the extent that power is needed, available and reliable." UNITIL Memorandum, April 4, 1986 at 2. They argue that there is no need to set interim rates for UNITIL as UNITIL both has an existing short term rate, established in Re Purchases for Nongenerating Utilities, 67 NH PUC 825 (1982), and is actively negotiating long term agreements with interested QFs. They note that interim rates in Re Small Energy Producers and Cogenerators, (1983) supra, were established based on testimony that individual QFs had negotiated unsuccessfully with PSNH for a long term contract. UNITIL Memorandum at 5.

In its reply to Laufman, UNITIL represents that none of the intervenors have approached UNITIL with regard to selling power (UNITIL Supplemental Memorandum, April 11, 1986 at 2) and that those QFS with whom UNITIL is actively negotiating have not found it necessary to ascertain UNITIL's avoided cost in order to negotiate. Id. at 3. They argue that economic efficiency is best served by good faith negotiation between QFs who know their long term costs and the utility knowledgeable about prices being offered in the bulk power market. Id. at 3. Finally they argue that UNITIL does not have the staff to simultaneously negotiate their bulk power supply, and participate in a proceeding to establish both interim and final long term purchase power rates.

PROCEDURAL SCHEDULE

In its Memorandum on Schedule, May 13, 1986, UNITIL represents that a more thorough review of the demands on the UNITIL staff due to the need to finalize contracts for power supply and prepare filing materials to seek regulatory approvals by approximately July 1, 1986 had led to the conclusion that they will be unable to comply with the procedural schedule. Therefore, they request a delay in the due date for UNITIL testimony until on or about August 15, 1986.

PSNH objects to any delay beyond one week from May 23, 1986 for the due date of UNITIL testimony absent a more general moratorium on long term rate filings. They cite the need to move forward expeditiously in order to protect its own and its ratepayers rights, and the desirability of aiding UNITIL "in establishing a power supply that incorporates home grown small power." PSNH Memorandum, May 17, 1986.

COMMISSION ANALYSIS

[1] The Commission recognizes that UNITIL's staff resources are limited

and that the first priority for that limited staff must be to finalize their power supply purchases for October 1, 1986. We also recognize that UNITIL is actively negotiating with QFs as part of their long term power supply, and further that any QFs who would approach UNITIL during the period of this proceeding are unlikely to be able to provide UNITIL with power as of October 1986. Rather, negotiations between QFs and UNITIL in the coming months are almost certain to address contributions to UNITIL's power supply commencing no earlier than 1988. We also appreciate that the effort of establishing both interim and final rates for a company that is currently negotiating with QFs and that has an established short term rate at a time that UNITIL is finalizing near term power contracts and Commission staff is engaged in four other avoided cost proceedings as well as numerous other dockets involving QFs, is counterproductive. Finally, we have reviewed the precedent set by the establishment of interim rates in Re Small Energy Producers and Cogenerators, supra. In that case, interim rates were desirable in the context of an extended avoided cost proceeding and in response to the financing requirements of individual QFs that needed a long term purchase power arrangement in order to proceed with their projects and that had been unable to negotiate satisfactory arrangements with PSNH. Therefore we will deny PSNH's motion for interim rates.

Given the coincidence of the timing of this proceeding with the power purchase negotiations and UNITIL regulatory filings, and the involvement of the particular UNITIL staff members in both undertakings, we will partially grant UNITIL's request for a delay in filing their testimony in the instant docket. As UNITIL has represented that they intend to file for their regulatory approvals as of July 1, 1986, we will establish the following procedural schedule.

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

July 28, 1986 Company pre-filed testimony
August 4, 1986 Data requests on Company
  testimony
August 18, 1986 Company response to data
  requests
September 22, 1986 Intervenor/Staff prefiled
  testimony
September 29, 1986 Data requests on
  Intervenor/Staff testimony
October 13, 1986 Intervenor/Staff Response to
  data requests
October 24, 1986 Rebuttal
October 27-31, 1986 Hearings
November 14, 1986 Briefs
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[2] However, the Commission will note that its decision to deny the PSNH motion for interim rates and the adoption of the above procedural schedule are inter-related. Any further requests by UNITIL to delay the procedural schedule will cause us to reconsider the issue of interim rates. Similarly, substantiated representations by QFs actively involved in negotiating long term power arrangements that their projects are being threatened by the absence of interim rates during the course of this proceeding, will cause us to reconsider the desirability of interim rates.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the PSNH Motion for Interim Rates for UNITIL be, and hereby is, denied; and it is

FURTHER ORDERED, that the revised procedural schedule as described in the foregoing report be, and hereby is, adopted.

By Order of the Public Utilities Commission of New Hampshire this twentythird day of May, 1986.

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NH.PUC*05/23/86*[60804]*71 NH PUC 321*EUA Power Corporation

[Go to End of 60804]

71 NH PUC 321

Re EUA Power Corporation

DF 85-338

Re Maine Public Service Company
Re Central Maine Power Company
Re Bangor Hydro-Electric Company and
Re Central Vermont Public Service Company

DF 85-351

Re Fitchburg Gas and Electric Light Company

DF 86-150

Order No. 18,275

New Hampshire Public Utilities Commission

May 23, 1986

ORDER nisi authorizing a transfer of ownership interest in the Seabrook nuclear generating station.

Consolidation, Merger, and Sale, § 42 — Sale of ownership interest in nuclear plant — Terms and conditions — Purchase price — Financing.

The commission granted an electric utility's request to modify the terms and conditions of a prior order that had authorized the utility both to purchase ownership interests in the Seabrook nuclear generating station and to issue securities to finance said purchase; all parties to the

transaction had stipulated that the prior order should be modified to reflect increases in the purchase price of the ownership interests, the acquisition of the ownership interest of an additional utility, and an increase in the aggregate principal amount of debt securities to be issued by the purchasing utility.

By the COMMISSION:

ORDER

WHEREAS, on January 15, 1986, this Commission issued its Order No. 18,058 (71 NH PUC 73), which authorized the transfers of ownership interests in Seabrook Station from Bangor Hydro-Electric Company, Central Maine Power Company, Central Vermont Public Service Company and Maine Public Service Company to EUA Power Corporation for the financing and operation of such ownership interests; and

WHEREAS, on April 30, 1986, EUA Power Corporation filed with the Commission a request for a modification of said Order No. 18,058 to reflect certain changes in the terms of sale, including, inter alia, increases in the purchases prices to be paid by EUA Power Corporation; the proposed acquisition of EUA Power Corporation of the ownership share of Fitchburg Gas and Electric Light Company; and an increase of $30,000,000 in the aggregate principal amount of debt securities proposed

Page 321

to be issued by EUA Power Corporation.

WHEREAS, on May 9, 1986, FItchburg Gas and Electric Light Company filed a petition requesting authorization to transfer its ownership interest to EUA Power Corporation; and

WHEREAS all parties have stipulated to the consolidation of the Fitchburg request with the requests of EUA Power Corporation and the Maine and Vermont utilities; and

WHEREAS, the foregoing parties have stipulated to the issuance by this Commission of an order granting the requested authorization; and

WHEREAS, the Commission has reviewed the record in these proceedings together with the pleadings and additional testimony filed; and

WHEREAS, it appears that the issuance of and Order as requested in the Stipulation will be consistent with the public good; it is therefore

ORDERED NISI, that the request by EUA Power Corporation for modification of Order No. 18,058 and the petition of Fitchburg Gas and Electric Company for permission to transfer its ownership interests in Seabrook Station are approved; and it is

FURTHER ORDERED, that said petitioners give notification by publication of this Order once in a newspaper having general circulation in that portion of the State in which operations are conducted, such publication to be no later than May 28, 1986, and said publication is 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, that any person proposing to intervene as a party to this proceeding pursuant to RSA 541-A:17 and N.H. Admin. Rules, Puc 203.02, and to object to this order becoming final must do so, with a copy of the Petition to Intervene to all parties, no later than June 16, 1986; and it is

FURTHER ORDERED, that this Order Nisi shall become effective on June 20, 1986 unless the Commission provides otherwise in a supplemental Order issued prior to such effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of May, 1986.

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NH.PUC*05/23/86*[60805]*71 NH PUC 323*Connecticut Valley Electric Company, Inc.

[Go to End of 60805]

71 NH PUC 323

Re Connecticut Valley Electric Company, Inc.

Intervenors: Public Service Company of New Hampshire et al.

DR 86-72, Supplemental Order No. 18,276

New Hampshire Public Utilities Commission

May 23, 1986

ORDER denying an intervenor electric utility's motion for the establishment of interim rates for the purchase of small power production by another electric utility.

Cogeneration, § 25 — Rates — Qualifying facilities — Interim long term avoided cost rates.

The commission denied an intervenor electric utility's motion for the establishment of interim rates for the purchase of small power production by another electric utility; in support of its denial of the motion, which was made in the context of a docket established for the purpose of determining final avoided cost rates for the latter utility, the commission found that the effort involved in establishing both interim and final avoided cost rates would be counterproductive, that the precedent relied upon by the intervenor for the establishment of interim rates was meant to apply only to situations where qualifying facilities had been unable to negotiate satisfactory arrangements with the interconnecting utility, and that because the transmission systems of the two utilities were not interconnected the intervenor utility's argument that the fact that it alone had established long term avoided cost rates would cause qualifying utilities to prefer to purchase power from it over other utilities was without merit. [1] p. 324.

Cogeneration, § 25 — Rates — Qualifying facilities — Interim long term rates.

The denial of an intervenor electric utility's motion for the establishment of interim rates for the purchase of small power production by another electric utility that was currently involved in

negotiations with qualifying facilities was made subject to reconsideration if the latter utility were to request a delay in the procedural schedule for the establishment of final avoided cost rates, or if qualifying facilities currently involved in negotiating long term power arrangements were to represent that their projects were threatened by the absence of interim rates. [2] p. 325.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

By Order of Notice, dated February 26, 1986, the N.H. Public Utilities Commission (Commission) opened this docket for the purposes of updating the terms, conditions and rates of shortterm purchases and establishing terms, conditions and rates for long term purchases of energy and capacity for Qualifying Small Power Producers and Qualifying Cogenerators (jointly referred to as QFs) by Connecticut Valley Electric Company, Inc. (CVEC). By

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its Supplemental Order No. 18,245, the Commission granted intervenor status to Public Service Company of New Hampshire (PSNH) and those QFs represented at the April 3, 1986 procedural hearing and adopted a procedural schedule that commenced with Company Testimony to be filed May 21, 1986 and concluded with briefs to be filed on September 5, 1986. The Commission deferred the issue of interim rates.

At the procedural hearing and in a subsequent Memorandum of Law of Public Service Company of New Hampshire on the Establishment of Interim Long Term Rates filed April 4, 1986 (PSNH Memorandum on Interim rates, April 4, 1986), PSNH requested that the Commission establish interim rates for CVEC to take effect no later than June 1, 1986. CVEC responded on April 23, 1986 with a Memorandum in Response to [PSNH's] Motion for Interim Long Term rates, (CVEC, Memorandum on Interim Rates, April 23, 1986). On April 29, 1986 CVEC informed the Commission by letter that it would be unable to proceed according to the procedural schedule and requested a one month delay. On May 20, 1986 CVEC filed a Motion for Continuance and Brief (CVEC Motion for Continuance, May 20, 1986), renewing its request for delay.

INTERIM RATES

The basis of the PSNH motion for Interim Rates is that in the absence of a moratorium on PSNH's own long term rates, PSNH ratepayers will continue to bear the burden of purchasing from QFs during the CVEC proceeding. Further PSNH argues that there is ample precedent for the establishment of interim long term rates as the Commission established such rates for PSNH in Re Small Energy Producers and Cogenerators, 68 NH PUC 531 (1983). PSNH Memorandum on Interim Rates, April 4, 1986 at 1-2.

CVEC responded that PSNH's primary objective is that long term rates be established for CVEC as expeditiously as possible and that the expedited schedule established for the instant docket achieves that end. An effort to establish interim rates as well would be "unnecessary and

duplicative" and impair CVEC's ability to comply with the schedule as established. CVEC Memorandum on Interim Rates, April 23, 1986

PROCEDURAL SCHEDULE

Both by letter and motion CVEC has requested an approximately one month deferral of the procedural schedule due to the turnover in the CVEC staff responsible for the proceeding. CVEC represents that it has received the consent of all parties to the extension, with the exception of BioEnergies that has not responded to its inquiry. CVEC Motion for Continuance, May 20, 1986. The Commission has received no objections to the CVEC request.

COMMISSION ANALYSIS

[1] The Commission recognizes that CVEC's staff resources are limited and, hearing no objection to the CVEC request for an extension, will grant the request and establish the following procedural schedule:

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

June 25, 1986 Company prefiled testimony
July 2, 1986 Data requests on Company
 testimony
July 16, 1986 Company response to data
 requests


August 13, 1986 Intervenor/Staff prefiled
 testimony
August 20, 1986 Data requests on
 Intervenor/Staff testimony
September 3, 1986 Intervenor/Staff response to
 data requests
September 16, 1986 Rebuttal Testimony
September
17-19 Hearings
October 3, 1986 Briefs
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On the issue of interim rates, it is true that only PSNH has long term avoided cost rates established and this has led to a preference among QFs to sell to PSNH rather than other franchised utilities, where the QFs have a choice. However, the PSNH and CVEC transmission systems are not interconnected and therefore it is unlikely that QFs located in the CVEC franchise territory will attempt to sell to PSNH instead of CVEC. Given the expedited schedule of this docket, even under the revised procedural schedule, it is also unlikely that QFs that have yet to select their sites, and therefore the purchasing utility, will be in a position to file for long term rates before the conclusion of the instant docket. We also appreciate that it would be counterproductive in the above circumstances for either the parties or the Commission staff to attempt to set interim rates at a time when they are engaged in four other avoided cost proceedings in addition to the instant docket, as well as numerous other dockets involving QFs.

Finally, we have reviewed the precedent set by the establishment of interim rates in Re Small Energy Producers and Cogenerators, supra. In that case, interim rates were desirable in the context of an extended avoided cost proceeding and in response to the financing requirements of individual QFs that needed a long term purchase power arrangement in order to proceed with their projects and that had been unable to negotiate satisfactory arrangements with PSNH. Such conditions do not obtain in the instant case. Therefore we will deny PSNH's motion for interim

rates.

[2] However, the Commission will note that its decision to deny the PSNH motion for interim rates and the adoption of the above expedited procedural schedule are inter-related. Any further requests by CVEC to delay the procedural schedule will cause us to reconsider the issue of interim rates. Likewise, substantiated representations by QFs that their projects are being threatened by the absence of interim rates during the course of this proceeding, similar to those in Re Small Energy Producers, supra, will cause us to reconsider the desirability of interim rates.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the revised procedural schedule as described in the foregoing report be, and hereby is, adopted; and it is

FURTHER ORDERED, that the PSNH Motion for Interim Rates be, and hereby is, denied.

By Order of the the Public Utilities Commission of New Hampshire this twenty-third day of May, 1986.

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NH.PUC*05/26/86*[60806]*71 NH PUC 326*Northeast Power Associates

[Go to End of 60806]

71 NH PUC 326

Re Northeast Power Associates

Intervenors: Public Service Company of New Hampshire et al.

DR 85-366, Order No. 18,277

New Hampshire Public Utilities Commission

May 26, 1986

ORDER denying the long term rate petition of an out-of-state small power producer.

Cogeneration, § 4 — State jurisdiction — Purchases from out-of-state small power producers — Rate determinations.

The long term rate petition of an out-ofstate small power producer was denied on the ground that the commission does not possess jurisdiction to set rates for the purchase of power from out-of-state small power producers.

Cogeneration, § 4 — State jurisdiction — Purchases from out-of-state small power producers — Rate determinations.

Statement, in dissenting opinion, that the commission possesses jurisdiction to set rates for

in-state utility purchases of out-of-state small power production and that, accordingly, the majority erred in denying the long term rate petition of an out-of-state small power producer on jurisdictional grounds. p. 327.

(AESCHLIMAN, commissioner, dissents, p. 327.)

By the COMMISSION:

ORDER

WHEREAS, on October 16, 1986, NorthEast Power Associates (NEPA) filed a long term rate petition for its Greenville, Maine wood burning power plant pursuant to Re Small Energy Producers and Cogenerators, 70 NH PUC 753, 69 PUR4th 365 (1985) and Re TDEnergy, Docket No. DR 85-13; and

WHEREAS, NEPA's rate petition was not consistent with the filing requirements in DR 85-215, the Commission rejected the filing by Order No. 17,953 (70 NH PUC 947); and

WHEREAS, on December 2, 1985, NEPA resubmitted a corrected rate petition; and

WHEREAS, this Commission's decision in DR 85-13 was that it does not possess jurisdiction to set rates for the purchase of power by PSNH from out of state SPPs; it is

ORDERED, that NEPA's long term rate petition for its Greenville, Maine wood burning power plant is denied.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of May, 1986.

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DISSENTING OPINION OF COMMISSIONER LEA H. AESCHLIMAN

Since I dissented from the Commission finding in DR 85-13 that the Commission did not possess jurisdiction to set rates for the purchase of power by PSNH from out of state SPPs'[1(55)] , I would not deny the NEPA long term rate petition. Having found jurisdiction, I would have scheduled a hearing to hear evidence relative to the purchase rate appropriate to this case.[2(56)]

FOOTNOTES

[1]Re TDEnergy, Inc., 71 NH PUC 5, 15(1986), Dissenting Opinion of Commissioner Aeschliman.

[2]Id. at 7. (71 NH PUC at p. 18).

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71 NH PUC 327

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Public Service Company of New Hampshire, A. Johnson Cogeneration, Inc., KTI Energy, Inc., and New England Coastal Generation Company

DR 86-70, Second Supplemental Order No. 18,278

New Hampshire Public Utilities Commission

May 26, 1986

ORDER denying an intervenor electric utility's motion for the establishment of interim rates for the purchase of small power production by another electric utility.

Cogeneration, § 25 — Rates — Qualifying facilities — Interim long term avoided cost rates.

In the context of a docket established for the purpose of determining final avoided cost rates for an electric utility, the commission, notwithstanding its recognition of the fact that an intervenor electric utility had alone established long term avoided cost rates and that this had led to a preference among many qualifying facilities to sell power to it over other utilities, denied the intervenor's motion for the establishment of interim rates for purchases of small power production by the former electric utility; in support of its denial of the motion, the commission found that the effort involved in establishing both interim and final avoided cost rates would be counterproductive and that the precedent relied upon by the intervenor for the establishment of interim rates was meant to apply only to situations where qualifying facilities had been unable to negotiate satisfactory arrangements with the interconnecting utility. [1] p. 328.

Cogeneration, § 25 — Rates — Qualifying facilities — Interim long term rates.

The denial of an intervenor electric utility's motion for the establishment of interim rates for the purchase of small power production by another electric utility that was currently involved in negotiations with qualifying facilities was made subject to reconsideration if the latter utility were to request a delay in the procedural schedule for the establishment of final avoided cost rates, or if qualifying facilities currently involved in negotiating long term power arrangements were to represent that their projects were threatened by the absence of interim rates. [2] p. 329.

APPEARANCES: As previously noted

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By the COMMISSION:

REPORT

By Order of Notice dated February 26, 1986 the Commission opened this docket for the purpose of updating the terms, conditions and rates of shortterm purchases, and establishing the

terms, conditions and rates for longterm purchases of energy and capacity from Qualifying Small Power Producers and Qualifying Cogenerators (jointly referred to as QFs) by the New Hampshire Electric Cooperative, Inc. (NHEC) By its Supplemental Order No. 18,244 the Commission granted intervenor status to Public Service Company of New Hampshire (PSNH) and those QFs who were represented at the April 2, 1986 procedural hearing, and adopted a procedural schedule that commenced with Intervenor initial data requests on May 19, 1986 and concluded with Briefs on November 10, 1986. The Commission deferred the issue of Interim Rates.

At the procedural hearing and in a subsequent Memorandum of Law of Public Service Company of New Hampshire on the Establishment of Interim Long Term Rates filed April 4, 1986 (PSNH Memorandum on Interim Rates, April 4, 1986), PSNH requested that the Commission establish interim rates for NHEC to take effect no later than June 1, 1986. Mark S. Laufman filed Comments by Intervenors A. Johnson Cogeneration Inc., KTI Energy, Inc. and New England Coastal Generation Company Regarding Proposed Procedural schedule on April 4, 1986 (Laufman Comments, April 4, 1986).

[1] The basis of the PSNH motion for interim rates is that in the absence of a moratorium on PSNH's own long term rates, PSNH ratepayers will continue to bear the burden of purchasing from QFs during the NHEC proceeding. Further, PSNH argues that there is ample precedent for the establishment of interim long term rates as the Commission established such rates for PSNH in Re Small Energy Producers and Cogenerators, 68 NH PUC 531 (1983). PSNH Memorandum on Interim Rates, April 4, 1986 at 1-2.

Laufman did not oppose the establishment of interim rates for NHEC but argued that the highest priority should be given to the establishment of interim rates in Re Concord Electric Co., (UNITIL) Docket No. 86-69, because only UNITIL is actively negotiating with QFs for the purchase of power. Laufman Comments, April 4, 1986 at 2-3. NHEC did not respond to the PSNH motion or memorandum.

The Commission recognizes that the fact that only PSNH currently has established long term avoided cost rates has led to a preference among QFs to sell to PSNH rather than other franchised utilities, where those QFs have a choice. However, NHEC is a partial requirements customer of PSNH, and in effect a full requirements customer for those NHEC areas that can be served by PSNH. The decision by a QF located in the NHEC service territory to sell its power to PSNH has the effect of increasing PSNH's wholesale sales to NHEC; similarly, QFs selling directly to NHEC merely reduce PSNH's wholesale sales to NHEC. PSNH has not produced any analysis to indicate whether its ratepayers are harmed more by increased purchases from QFs or reduced wholesale sales. However, if the avoided cost rates are accurately established, ratepayers are neutral in the former case, while in the latter case a reduction in sales also

reduces the number of kilowatt hours over which PSNH's fixed costs can be spread.

The Commission also acknowledges that it would be counterproductive in the above circumstances for either the parties or the Commission staff to attempt to set interim rates at a time when they are engaged in four avoided cost proceedings in addition to the instant docket, as

well as numerous other dockets involving QFs.

Finally, we have reviewed the precedent set by the establishment of interim rates in Re Small Energy Producers and Cogenerators, supra. In that case, interim rates were desirable in the context of an extended avoided cost proceeding and in response to individual developers who had been unable to negotiate satisfactory arrangements with PSNH and who represented that they needed a long term purchase power arrangement in order to proceed with their projects. Such conditions do not obtain in the instant case. Therefore we will deny PSNH's motion for interim rates.

[2] However, the Commission will note that its decision to deny the PSNH motion for interim rates and the adoption of the above expedited procedural schedule are inter-related. Any delays in the procedural schedule will cause us to reconsider the issue of interim rates. Likewise, substantiated representations by QFs that their projects are being threatened by the absence of interim rates during the course of this proceeding, similar to those in Re Small Energy Producers, supra, will cause us to reconsider the desirability of interim rates.

Our Order will issue accordingly.

SUPPLEMEMENTAL ORDER

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

ORDERED, that the PSNH Motion for Interim Rates be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of May, 1986.

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NH.PUC*05/26/86*[60808]*71 NH PUC 330*Granite State Electric Company

[Go to End of 60808]

71 NH PUC 330

Re Granite State Electric Company

Intervenors: Public Service Company of New Hampshire et al.

DR 86-71, Second Supplemental Order No. 18,279

New Hampshire Public Utilities Commission

May 26, 1986

ORDER denying an intervenor electric utility's motion for the establishment of interim rates for the purchase of small power production by another electric utility.

Cogeneration, § 25 — Rates — Qualifying facilities — Interim long term avoided cost rates.

The commission denied an intervenor electric utility's motion for the establishment of interim

rates for the purchase of small power production by another electric utility; in support of its denial of the motion, which was made in the context of a docket established for the purpose of determining final avoided cost rates for the latter utility, the commission found that the effort involved in establishing both interim and final avoided cost rates would be counterproductive, that the precedent relied upon by the intervenor for the establishment of interim rates was meant to apply only to situations where qualifying facilities had been unable to negotiate satisfactory arrangements with the interconnecting utility, and that because the transmission systems of the two utilities were not interconnected the intervenor utility's argument that the fact that it alone had established long term avoided cost rates would cause qualifying utilities to prefer to purchase power from it over other utilities was without merit. [1] p. 331.

Cogeneration, § 25 — Rates — Qualifying facilities — Interim long term rates.

The denial of an intervenor electric utility's motion for the establishment of interim rates for the purchase of small power production by another electric utility that was currently involved in negotiations with qualifying facilities was made subject to reconsideration if the latter utility were to request a delay in the procedural schedule for the establishment of final avoided cost rates, or if qualifying facilities currently involved in negotiating long term power arrangements were to represent that their projects were threatened by the absence of interim rates. [2] p. 332.

APPEARANCES: As previously noted

By the COMMISSION:

REPORT

By Order of Notice dated February 26, 1986 the Commission opened this docket for the purposes of updating the terms, conditions and rates of shortterm purchases, and establishing the terms, conditions, and rates for longterm purchases of energy and capacity from Small Power Producers and Cogenerators (jointly referred to as QFs) by Granite State Electric Company (Granite State). By its Order No. 18,253 (71 NH PUC 276), the Commission

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granted intervenor status to Public Service Company of New Hampshire (PSNH) and those QFs represented at the April 3, 1986 procedural hearing, and adopted a procedural schedule that commenced with Company Testimony on May 2, 1986 and concluded with Briefs on October 3, 1986. The Commission deferred the issue of Interim Rates.

At the procedural hearing and in a subsequent Memorandum of Law of Public Service Company of New Hampshire on the Establishment of Interim Long Term Rates filed April 4, 1986 (PSNH Memorandum on Interim Rates, April 4, 1986), PSNH requested that the Commission establish interim rates for Granite State to take effect no later than June 1, 1986. Granite State responded on April 17, 1986 with its Objections of [Granite State] to [PSNH's] request for Establishment of Interim Long Term Purchased Power Rates (Granite State Objection, April 17, 1986). Granite State submitted testimony on May 2, 1986 and Motions for Prior Determinations Concerning Long Term Power Purchases Rates. The Commission denied

said motions in Supplemental Order No. 18,259 and established a new expedited procedural schedule that commenced with the filing of the remainder of Granite State's testimony on May 30, 1986 but still concluded with Briefs filed on October 3, 1986.

[1] The basis of the PSNH motion for interim rates is that in the absence of a moratorium on PSNH's own long term rates, PSNH ratepayers will continue to bear the burden of purchasing from QFs during the Granite State proceeding. Further, PSNH argues that there is ample precedent for the establishment of interim long term rates as the Commission established such rates for PSNH in Re Small Energy Producers and Cogenerators, 68 NH PUC 531 (1983). PSNH Memorandum on Interim Rates, April 4, 1986 at 1-2.

Granite State responded that the issues surrounding QF purchases by a utility of its size and obligations to its supplier are too important and the calculation of avoided cost in the current volatile period is too complex for rates to be hastily established. It asserts that the request is untimely in the context of the current procedural schedule, the lack of notice given to Granite State of such a motion prior to PSNH's intervention and PSNH's own representation that its intervention would not impair the orderly and prompt conduct of the proceedings. Granite State argues that an effort to establish Interim Rates "would inevitably interfere with the orderly and prompt conduct of DR 86-71, add to the time consumed and significantly postpone the day of final decision." Granite State Objection, April 17, 1986.

The Commission recognizes that the fact that only PSNH currently has established long term avoided cost rates has led to a preference among QFs to sell to PSNH rather than other franchised utilities, where those QFs have a choice. However, the PSNH and Granite State transmission systems are not interconnected and therefore it is unlikely that QFs located in the Granite State franchise territory will attempt to sell to PSNH instead of Granite State. Given the expedited schedule of this docket, it is also unlikely that QFs that have yet to select their sites, and therefore their purchasing utility, will be in a position to file for long term rates before the conclusion of the instant docket. We also appreciate that it

would be counterproductive in the above circumstances for either the parties or the Commission staff to attempt to set interim rates at a time when they are engaged in four avoided cost proceedings in addition to the instant docket, as well as numerous other dockets involving QFs.

Finally, we have reviewed the precedent set by the establishment of interim rates in Re Small Energy Producers and Cogenerators, supra. In that case, interim rates were desirable in the context of an extended avoided cost proceeding and in response to individual developers who had been unable to negotiate satisfactory arrangements with PSNH and who represented that they needed a long term purchase power arrangement in order to proceed with their projects. Such conditions do not obtain in the instant case. Therefore we will deny PSNH's motion for interim rates.

[2] However, the Commission will note that its decision to deny the PSNH motion for interim rates and the adoption of the above expedited procedural schedule are inter-related. Any further delays in the procedural schedule will cause us to reconsider the issue of interim rates.

Likewise, substantiated representations by QFs that their projects are being threatened by the absence of interim rates during the course of this proceeding, similar to those in Re Small Energy Producers, supra will cause use to reconsider the desirability of interim rates.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the PSNH Motion for Interim Rates be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of May, 1986.

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NH.PUC*05/29/86*[60809]*71 NH PUC 333*Mt. Cabot Hydro

[Go to End of 60809]

71 NH PUC 333

Re Mt. Cabot Hydro

DR 86-160, DR 86-161, Order No. 18,282

New Hampshire Public Utilities Commission

May 29, 1986

ORDER rejecting, without prejudice, the long term rate filing of a small power producer.

Cogeneration, § 19 — Small power production — Long term rate filings.

The long term rate filing of a small power producer was rejected without prejudice pending the completion of a commission investigation of the long term avoided cost rates of the interconnecting utility.

By the COMMISSION:

ORDER

WHEREAS, on May 23, 1986, Mt. Cabot Hydro filed petitions for long term rates for its sites #133 and #168 pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) and 70 NH PUC 753, 69 PUR4th 365 (1985) (Order No. 17,838); and

WHEREAS, Public Service Company of New Hampshire filed a Petition for Avoided Cost Rate Update on April 15, 1986; and

WHEREAS, on May 21, 1986 the Commission opened Re: Small Energy Producers and

Cogenerators, Docket No. 86-134, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that

pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in Re Small Energy Producers and Cogenerators [supra], will be accepted or approved by the Commission;

and

WHEREAS, Mt. Cabot Hydro filed its petitions after May 21, 1986; it is therefore

ORDERED, that the long term rate filings for Mt. Cabot sites #133 and #168 be, and hereby are, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 86-160 and Docket No. DR 86-161 be, and hereby are, closed.

By Order of the Public Utilities Commission of New Hampshire this twentyninth day of May, 1986.

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NH.PUC*05/29/86*[60810]*71 NH PUC 334*New England Alternate Fuels, Inc.

[Go to End of 60810]

71 NH PUC 334

Re New England Alternate Fuels, Inc.

DR 86-152, Order No. 18,284

New Hampshire Public Utilities Commission

May 29, 1986

ORDER rescinding a long term small power production rate order.

Cogeneration, § 19 — Small power production — Long term rate order — Effect of failure to meet commercial operation deadline.

In response to a small power producer's request for clarification as to the continued effectiveness of a long term rate order in the event that his project failed to achieve its commercial operation deadline, the commission held that the rate order would be rescinded if the commercial operation deadline were not met.

By the COMMISSION:

ORDER

WHEREAS, on March 20, 1984 New England Alternate Fuels, Inc. (NEAF) filed a petition

for a 20 year long term rate commencing in 1986 pursuant to Re Small Energy Producers and Cogenerators, 68 NH PUC 531 (1983) (Order No. 16,619) and 68 NH PUC 575 (1983) (Order No. 16,664) (jointly hereinafter referred to as Re Small Energy Producers and Cogenerators [1983]) for its 10 megawatt biomass project located near Keene; and

WHEREAS, the New Hampshire Public Utilities Commission (Commission) approved NEAF's petition for long term rates in Re New England Alternate Fuels, Inc., 69 NH PUC 197 (1984) and 69 NH PUC 220 (1984) (referred to hereinafter respectively as Order 16,955 and Order 16,986); and

WHEREAS, on May 14, 1986 NEAF petitioned the Commission for a clarification of said orders requesting that the Commission confirm the continuing effectiveness of said orders except that delivery of electricity shall commence at a date not later than September 1, 1988 and the term of the rate be the 18 years 1988 through 2005; and

WHEREAS, rates commencing in 1988 were not available pursuant to Re Small Energy Producers and Cogenerators [1983] supra; and

WHEREAS, although NEAF states that Orders 16,955 and 16,986 did not specifically identify a period in which it would be necessary for the facility to be on line, the rate filing itself identifies the entire period 1986-2005 as the

period for which NEAF would be supplying electricity; it is therefore

ORDERED, that the approval of long term rates under Orders 16,955 and 16,986 be and hereby is, rescinded absent NEAF's commercial operation prior to September 1, 1986; and it is

FURTHER ORDERED, that NEAF may amend its petition for a long term rate pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) and Docket No. 85-215 Report and Order No. 17,838 (70 NH PUC 753, 69 PUR4th 365) at any time prior to June 21, 1986.

By order of the Public Utilities Commission of New Hampshire this twentyninth day of May, 1986.

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NH.PUC*06/02/86*[60811]*71 NH PUC 335*Wormser Engineering

[Go to End of 60811]

71 NH PUC 335

Re Wormser Engineering

DR 86-1, Supplemental Order No. 18,285

New Hampshire Public Utilities Commission

June 2, 1986

ORDER granting a request for a protective order regarding coal contract proposals.

Procedure, § 19 — Confidential information — Protective order — Coal contract proposal.

State statute RSA 91-A:5 IV exempts from public disclosure confidential commercial or financial information; accordingly, the commission granted a request for a protective order covering confidential commercial information contained in a coal contract proposal for a cogeneration project.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on May 1, 1986, Wormser Engineering (Wormser), the petitioner in the above-referenced docket, filed a request for a protective order regarding the following coal contract proposals for the Spaulding Fibre Cogeneration Project:

1. Coastal Coal International Inc., of April 8, 1986;

2. United Coal Company of April 15, 1986;

3. C.H. Sprague of April 1, 1986;

4. New England Agencies, Inc. cover letter of April 11, 1986;

5. American Coal and Transport, Inc. of January 3, 1986; and

6. New England Agencies, Inc., (cover letter of April 29, 1986).

and

WHEREAS, on May 27, 1986, Wormser requested a protective order for Coal Supply and Related Services Agreement between New England Agencies, Inc. ("NEA") and Wormser,

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consisting of twenty-nine pages and executed by Damon W. Lawrence as president of NEA; and

WHEREAS, also on May 27, 1986, Wormser requested a protective order for:

1. Financial Statement of Martin Energy as of May 31, 1985 and 1984;

2. Financial Statement of Wormser Engineering for years ended October 31, 1981 and 1980;

3. Financial Statement of Wormser Engineering for years ended October 31, 1982 and 1981;

4. Financial Statement of Wormser Engineering for years ended October 31, 1983 and 1982;

5. Financial Statement of Wormser Engineering for years ended October 31, 1984 and 1983;

6. Financial Statement of Wormser Engineering for years ended October 31, 1985 and 1984;

WHEREAS, Wormser Engineering asserts in its Motion that said documents contain

confidential commercial information whose disclosure would prejudice Wormser in its coal negotiations on the project which is the subject matter of this docket. Wormser has submitted copies of said documents for Commission review along with its Motion on May 1, 1986; and

WHEREAS, the Right to Know Law, RSA 91-A:5 IV exempts from public disclosure, "... confidential, commercial, or financial information ..."; it is hereby

ORDERED, that the request by Wormser Engineering for a protective order regarding the above cited documents is hereby granted pursuant to RSA 91-A:5 IV, unless and until otherwise ordered.

By order of the Public Utilities Commission of New Hampshire this second day of June, 1986.

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NH.PUC*06/03/86*[60812]*71 NH PUC 337*Resource Electric Corporation

[Go to End of 60812]

71 NH PUC 337

Re Resource Electric Corporation

DR 86-77, Third Supplemental Order No. 18,286

New Hampshire Public Utilities Commission

June 3, 1986

ORDER granting a request for a protective order regarding trade secrets.

Procedure, § 19 — Confidential information — Protective order — Trade secrets.

State statute RSA 91-A:5 IV exempts from public disclosure confidential commercial or financial information; accordingly, the commission granted a request for a protective order covering trade secrets contained in prefiled testimony in a long term small power production rate petition.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on February 24, 1986, Resource Electric Corporation (REC) filed a long term rate petition pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, by Second Supplemental Order No. 18,234 dated May 1, 1986 (71 NH PUC 262), the Commission set forth a procedural schedule for this docket including a requirement that REC prefile testimony in this docket on April 23, 1986; and

WHEREAS, on May 7, 1986, REC filed Petition for Confidential Treatment of Trade Secrets in which REC alleged that certain information that it would like to submit in addition to its prefiled testimony is proprietary trade secret information; and

WHEREAS, said allegedly confidential information consisting of three documents, one of which is prefiled testimony by Douglas Ormsdon, of Ergon Fluidized Bed, Inc., and the second and third of which are confidential letters from C.H. Sprague and Son Company all of which were referenced in the April 23 prefiled testimony; and

WHEREAS, confidentiality of documents filed with public agencies is governed by RSA Chapter 91-A; and

WHEREAS, 91-A:5 IV exempts from public disclosure, inter alia, "... confidential, commercial, or financial information ..."; and

WHEREAS, the confidentiality of this information may be reviewed by the Commission at any time in the future if a request is made for disclosure; it is

ORDERED, that Resource Electric

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Corporation shall, upon receipt hereof, provide to the Commission Staff and counsel appearing for the parties who have intervened in the three documents addressed in the Company's Petition for Confidential Treatment of Trade Secrets consisting of prefiled testimony by Douglas Ormsdon, of Ergon Fluidized Bed, Inc.; and two which are confidential letters from C.H. Sprague and Son Company all of which were referenced in the April 23 prefiled testimony; and it is

FURTHER ORDERED, that the proprietary documents are to be submitted only for the purpose of evaluating Resource Electric Corporation's 20MW tire-burning power project in Rochester, New Hampshire in connection with this docket; and it is

FURTHER ORDERED, that the proprietary documents will not be copied except by the Company and, unless otherwise ordered, all copies submitted to the Commission or Staff will be returned to Resource Electric Corporation upon completion of this docket or upon further order of this Commission whichever shall first occur; and it is

FURTHER ORDERED, that the Commission, on review of the documents, or on motion by an interested party, may review the appropriateness of continued confidentiality in this matter and may issue appropriate amendments to this order after hearing.

By order of the Public Utilities Commission of New Hampshire this third day of June, 1986.

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NH.PUC*06/03/86*[60814]*71 NH PUC 342*Connecticut River Power Company, Inc.

[Go to End of 60814]

Re Connecticut River Power Company, Inc.

Intervenor: Public Service Company of New Hampshire

DR 86-166, Order No. 18,290

New Hampshire Public Utilities Commission

June 3, 1986

ORDER rejecting, without prejudice, the long-term rate filing of a small power producer.

Cogeneration, § 19 — Small power production — Long-term rate filing.

The long-term rate filing of a small power producer was rejected without prejudice pending the completion of a commission investigation of the long-term avoided cost rates of the interconnecting utility.

By the COMMISSION:

ORDER

WHEREAS, on May 26, 1986, Connecticut River Power Company, Inc. (Connecticut) filed a petition for long term rate for its North Stratford, New Hampshire 30 MW wood-burning small power project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) and 70 NH PUC 753, 69 PUR4th 365 (1985); and

WHEREAS, Public Service Company of New Hampshire filed a Petition for Avoided Cost Rate Update on April 15, 1986; and

WHEREAS, on May 21, 1986 the Commission opened Re Small Energy Producers and Cogenerators, Docket No. 86-134, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in Re Small Energy Producers and Cogenerators, [supra], will be accepted or approved by the Commission;

and

WHEREAS, Connecticut filed its petitions after May 21, 1986; it is therefore

ORDERED, that the long term rate filing for Connecticut be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 86-166 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this third day of June, 1986.

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NH.PUC*06/04/86*[60813]*71 NH PUC 339*Pinetree Power-Tamworth

[Go to End of 60813]

71 NH PUC 339

Re Pinetree Power-Tamworth

Re Franconia Power and Light

DR 86-35

Re Thermo ElectronTroy

DR 86-52

Re Thermo Electron-Conway

DR 86-53

Re Thermo Electron-Antrim

DR 86-54

Re Thermo Electron-Campton

DR 86-55

Re Thermo Electron-Fitzwilliam

DR 86-56

Re Stewartstown Steam Company

DR 86-98

Re Pinetree Power-North

DR 86-100

Re Pinetree Power-Berlin

DR 86-101

Re Pinetree Power-Winchester

DR 86-103

Re Pinetree Power Energy Corporation

DR 86-104

Re Pinetree Power-Hinsdale

DR 86-105

Re Pinetree PowerLancaster

DR 86-109

Re Pittsfield Power and Light

DR 86-125

Re Belmont Mill Power Associates

DR 86-128

Re Northeast Cogeneration Systems

DR 86-135

Intervenors: Public Service Company of New Hampshire, Belmont Mill Power Association, Coos Power Company, Connecticut River Power Company, Groveton Cogeneration Power Corporation, and Riverside Steam and Power Company

Supplemental Order No. 18,287

New Hampshire Public Utilities Commission

June 4, 1986

ORDER granting intervention in, and setting procedural schedule for, hearings regarding the long term rate filings of wood burning qualified small power production facilities.

Cogeneration, § 19 — Small power production — Long term rates — Procedure — Right to intervene — Wood burning facilities.

Four prospective woodburning facilities that had not yet filed for long term rates were granted limited intervention in a proceeding established for the purpose of examining the long term rate filings of wood burning qualified facilities. [1] p. 340.

Cogeneration, § 19 — Small power production — Long term rates — Procedural schedule — Wood burning facilities.

A proposed procedural schedule for an examination of the long term rate filings of wood burning qualified facilities was approved as reasonable notwithstanding the interconnecting utility's reservations in regard to the shortness of the schedule and its concern that the performance of preliminary interconnection studies would postpone scheduled studies for other small power production projects. [2] p. 340.

Cogeneration, § 19 — Small power production — Long term rates — Procedure — Right to file separately — Wood burning facility.

A request by a wood burning qualified facility to have its long term rate filing treated separately — i.e., outside of a consolidated docket established for the purpose of examining the long term rate filings of wood burning facilities — was granted where the facility was already in operation under a short term rate and the issues surrounding its eligibility for a long term rate were different from those raised by other

projects in the consolidated docket. [3] p. 340.

APPEARANCES: Brown, Olson and Wilson by Robert A. Olson, Esq. for Pinetree Power et al, Thermo Electron Corporation, Franconia Power & Light, Pittsfield Power and Light, and Northeastern Cogeneration Systems; Orr and Reno by David Marshall, Esq. for Coos Power Company, Connecticut River Power Company, Groveton Cogeneration Power Corporation and Riverside Steam and Power Company; Angus King, Esq. for Stewartstown Steam Company; Paul Weiss for Belmont Mill Power Associates; Thomas Getz, Esq. for Public Service Company of New Hampshire; Dr. Sarah P. Voll, Mark Collin and Nadeen Gazaway for the Staff of the Public Utilities Commission

By the COMMISSION:

REPORT

[1-3] On April 17, 1986, the Commission issued its Order of Notice No. 18,223 (71 NH PUC 249) in which it scheduled a pre-hearing conference and procedural hearing for May 13, 1986 and set out the scope of its concerns in regard to the long term rate filings of wood burning qualified facilities. At said hearing for prospective woodburning qualified facilities that had not yet filed for long term rates[1(57)] by and through their attorney David Marshall Esq. requested intervenor sta- tus. The Chairman, on the record, allowed them to intervene on a limited basis and to renew their request for full intervention should the proceeding address an issue that is generic in nature or of sufficient particular interest to them. The Commission affirms said approval in this Order. Public Service Company of New Hampshire (PSNH) and the wood-burning developers (developers) are full parties in this proceeding by virtue of their standing in the individual dockets in which the long term rate filings are being reviewed.

Belmont Mill Power Associates (Belmont) represented that its plant was already in operation under a short term rate and that the issues surrounding its eligibility for a long term rate were different from those raised by projects still in the planning stages of development. It, therefore, requested that its rate filing be treated separately. The Commission granted Belmont's motion on the record and so affirms in this Order.

The parties requested that the dockets be consolidated by ownership of the projects for the purposes of hearing and proposed the following procedural schedule:

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

June 10, 1986 PSNH will submit preliminary
 interconnection information on
 each project and subsequently
 provide an opportunity for de.Pp
 velopers to review that informa.Pp
 tion with the PSNH engineers.
June 17, 1986 Testimony to be filed by the
 developers.
July 1, 1986 Testimony to be filed by PSNH
July 7, 1986 Hearing for Stewartstown
 Steam Company
July 8, 1986 Hearing for Pinetree Power
 and its associated corporations
July 9, 1986 Hearing for Franconia Power
 and Light and Pittsfield Power
 and Light
July 10, 1986 Hearing for ThermoElectron
 projects
July 11, 1986 Hearing for Northeast Cogeneration Systems
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The Commission notes PSNH's reservations in regard to the shortness of the procedural schedule and its concern that the performance of preliminary interconnection studies will postpone scheduled studies for other projects. However, we find the proposed consolidation of dockets and stipulated schedule reasonable and accordingly, will approve them.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Coos Power Company, Connecticut Power Company, Groveton Cogeneration Power Corporation and Riverside Steam and Power Company are granted limited intervention status; and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties is accepted as described in the foregoing report, and it is

FURTHER ORDERED, that Belmont Mills Power Associates, in order to continue to be eligible for a long term rate pursuant to Re Small Energy Producers and Cogenerators, 70 NH PUC 753, 69 PUR4th 365 (1985), amend its long term rate petition prior to June 21, 1986 to incorporate in "Section I Brief Description of facility", those characteristics of its facility that distinguish it from the other woodburning facilities in this proceeding.

By Order of the Public Utilities Commission of New Hampshire this fourth day of June, 1986.

FOOTNOTE

[1]Coos Power Company, Connecticut River Power Company, Groveton Cogeneration Power Corporation and Riverside Steam and Power Company.

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NH.PUC*06/04/86*[60815]*71 NH PUC 343*Manchester Water Works

[Go to End of 60815]

71 NH PUC 343

Re Manchester Water Works

DR 86-80, Order No. 18,291

New Hampshire Public Utilities Commission

June 4, 1986

ORDER denying a request by a water utility to have its temporary rate tariff become effective as of the filing date of the tariff.

Rates, § 630 — Temporary rates — Effective date — Water utility.

In denying a request by a water utility to have its temporary rate tariff become effective as of the 090filing date090 of the tariff, the commission reiterated its view that, absent extraordinary circumstances warranting an earlier effective date, temporary rates are effective as of the 090issuance date090 of the temporary rate order.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

Manchester Water Works (Manchester), on April 2, 1986, filed certain revisions to its tariff NHPUC No. 3, proposing to establish a Merrimack River Source Development charge, and sought an effective date for such filing at the filing date of April 2, 1986. The filing was suspended by Order No. 18,218 and the effective date of April 2, 1986 was denied.

On April 25, 1986, Manchester filed an objection to that portion of Order No. 18,218 that denied the effective date sought.

II. MANCHESTER'S POSITION

Manchester argues that the Commission's language in Order No. 18,218, i.e.: that an effective date at the filing date is "in violation of Rule 1601.05 (NHCAR)" is in error as Rule 1601.05(a) provides that the Commission may make a tariff change effective at any time upon its own Order. Manchester further argues that Rule 1601.05(i) provides for the utility to request an effective date on less than thirty (30) days' notice in its letter of transmittal. Such a request was made in Manchester's letter of transmittal of April 2, 1986.

III. COMMISSION ANALYSIS

Manchester is correct in its position that the language of Order No. 18,218 is in error as the Order should have read "as no extenuating circumstances

are given". It is this opinion that is controlling in our denial of the requested effective date.

In Re Concord Steam Corp., 71 NH PUC 104, 108 (1986), we held:

... Consequently, a critical factor governing the exercise of our discretion in the establishment of an effective date for temporary rates is notice to a utility's customers of their exposure to higher rate levels.

... absent extraordinary circumstances warranting an earlier effective date, the Commission will generally exercise its discretion by establishing the issuance date of the Commission's order as an effective date for temporary rates.

We believe that the impact of the Merrimack River Source Development charge, if approved after investigation and hearing is of a magnitude that requires a minimum public notice of thirty (30) days as specified by NHCAR PUC 1601.05 (a)(1).

We do not find Manchester's argument of extenuating circumstances persuasive in its position that it seeks to avoid a flood of applicants for service that will precede the proposed charge. By its own admission Manchester has placed a moratorium on franchise extensions.

Our denial of April 2, 1986, as the effective date is reaffirmed.

ORDER

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

ORDERED, that the requested effective date of April 2, 1986, for the tariff charges proposed in this filing is denied.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1986.

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NH.PUC*06/04/86*[60816]*71 NH PUC 345*Pinetree Power-Tamworth

[Go to End of 60816]

71 NH PUC 345

Re Pinetree Power-Tamworth

DR 86-28

Re Franconia Power and Light

DR 86-35

Re Thermo ElectronTroy

DR 86-52

Re Thermo Electron-Conway

DR 86-53

Re Thermo Electron-Antrim

DR 86-54

Re Thermo Electron-Campton

DR 86-55

Re Thermo Electron-Fitzwilliam

DR 86-56

Respondent: Public Service Company of New Hampshire

Order No. 18,293

New Hampshire Public Utilities Commission

June 4, 1986

ORDER denying, with one exception, motions by small power producers for rehearing of a prior order that suspended the long term rates for their projects.

Cogeneration, § 19 — Small power production — Long term rate orders — Suspension.

Motions for rehearing of the suspension, pending further investigation, of long term rate orders for certain small power production projects were denied based on a finding that the project developers could not have reasonably relied on the finality of the rates since the rates were suspended prior to the expiration of the twenty day statutory rehearing period. [1] p. 349.

Cogeneration, § 19 — Small power production — Long term rate orders — Suspension.

A motion for rehearing of a decision to suspend, pending further investigation, a long term rate order for a small power production project was approved where the project developer could have reasonably relied on the finality of the rate order because the twenty day statutory rehearing period had expired prior to the suspension; the commission reinstated the long term rates approved by the commission in the original rate order. [2] p. 349.

By the COMMISSION:

REPORT

This Report and Order is in response to the Motion for Rehearing of Order No. 18,223 filed on May 7, 1986 (71 NH PUC 249), Attorney Robert Olson on behalf of Pinetree Power-Tamworth, Inc. (Pinetree/Tamworth) in docket DR 86-28, Franconia Power and Light, Inc. (Franconia) in DR 86-35, Thermo Electron Energy Systems-Troy Project (Thermo Electron-Troy) in DR 86-52, Thermo Electron Energy Systems-Conway Project (Thermo Electro-Conway) in DR 86-53, Thermo Electron Energy Systems-Antrim Project (Thermo Electron-Antrim) in DR 86-54, Thermo Electron Energy Systems-Campton Project (Thermo Electron-Campton) in DR 86-55, Thermo Electron-Fitzwilliam

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Project (Thermo Electron-Fitzwilliam) in DR 86-56. The applicants in each of the subject dockets, who will hereinafter be referred to collectively as "applicants", are small power producers who, in their respective dockets, are requesting long term avoided cost rates pursuant to RSA 362-A for sale of power to Public Service Company of New Hampshire (PSNH).

1(58)

Order No. 18,223 suspended the requested long term rates applicable to the applicants by suspending prior Commission Orders which were issued in each respective docket and which approved the requested rates by Orders NISI. The applicants allege in their motion for rehearing

(motion) that said suspensions are unlawful and request a rehearing and reinstatement of the suspended Orders NISI. In the alternative, the applicants request reinstatement of the suspended Orders NISI and a hearing on whether grounds exist to suspend the Orders NISI.

FACTS

The relevant chronologies for the respective dockets are summarized in the chart on p. 347.

The earliest filing was in Docket DR 86-28 by Pinetree/Tamworth, on January 28, 1986, amended on February 3, 1986. There was no indication at that time that Pinetree would be engaging in additional projects similar to the Pinetree/Tamworth Project. Neither was the Commission aware that, soon after the Pinetree/Tamworth filing, other small power producers would be filing for rates for wood-burning projects. As indicated in the above chart, within two weeks of the Pinetree/Tamworth filing, six additional wood-burning small power producer filings were made. None of these additional filings were by Pinetree. However, on March 31, 1986, Pinetree filed seven additional rate petitions for wood-burning plants.[2](59)

After preliminary review of all the above mentioned filings, the Commission determined that the wood-burner filings, when considered together, could reflect on the viability of each individual filing as well as the ratepayer risk relating thereto. Accordingly, the Commission reconsidered its prior approvals of the subject rate filings in light of the new information received and issued Order No. 18,223 on April 17, 1986 suspending the Orders NISI.[3](60)

Pursuant to N.H Admin. Rules Puc 203.05, a prehearing conference was held at the Commission on May 13, 1986.[4](61) The parties proposed a procedural schedule for the various dockets which has been accepted by the Commission.[5](62) The applicants noted that their scheduling recommendations should not be construed as a waiver of any rights asserted in their motion for rehearing.

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

(1) DOCKET DATE	(2) FILING APPROVING RATES (Issue Date)	(3) NISI ORDER COMMENTS	(4) PSNH EFFECTIVE DATE (END OF PERIOD)	(5) NISI ORDER LINE	(6) APPEAL DEAD- UNDER RSA 541:3	(7) DATE RATES WERE SUSPENDED IN ORDER NO. 18,223
DR 86-28 PINETREE/ TAMWORTH	1/28/86 (compl. (2/11/86) 2/3/86)	Order 18,112	2/21/86	3/3/86	3/24/86	4/17/86
DR 86-35 FRANCONIA POWER & LIGHT	2/4/86 3/12/86	Order 18,168	4/1/86	4/1/86	4/21/86	4/17/86
DR 86-52 THERMO ELECTRON- TROY	2/13/86 3/26/86	Order 18,196	4/8/86	4/15/86	5/5/86	4/17/86
DR 86-53 THERMO ELECTRON- CONWAY	2/13/86 3/26/86	Order 18,197	4/8/86	4/15/86	5/5/86	4/17/86
DR 86-54 THERMO ELECTRON- ANTRIM	2/13/86 3/26/86	Order 18,198	4/8/86	4/15/86	5/5/86	4/17/86
DR 86-55 THERMO ELECTRON- CAMPTON	2/13/86 3/26/86	Order 18,199	4/8/86	4/15/86	5/5/86	4/17/86

DR 86-56 2/13/86 Order 18,200 4/8/86 4/15/86 5/5/86 4/17/86
THERMO ELECTRON- 3/26/86
FITZWILLIAM

PSNH POSITION

PSNH did not respond specifically to the applicants' motion for rehearing, but did file timely objections to each application for long term rates within the NISI period allowed in each of the subject dockets.[6(63)]

The PSNH comments in each of the subject dockets objected to the filings citing essentially the same three concerns in each docket. First, PSNH noted its concerns about front end loaded rates given such variables as changes in State and Federal environmental regulation and adequate fuel supply. The second concern was that there is no assurance of adequate wood fuel supplies over the entire 20 year terms of the proposed rates. Finally, PSNH cited concerns about the technical and financial viability of the projects. PSNH asserts that the technology proposed by the various applicants is of uncertain reliability and that the financial ability of the applicants to complete and maintain their respective facilities. PSNH accordingly requested that the applicants' rate filings be denied.

APPLICANTS' POSITION

In support of their motion for rehearing, the applicants allege that Order No. 18,223, in its suspension of the NISI orders in the subject dockets, is unlawful, unreasonable and unjust. Their arguments are set forth in detail in their 20 page motion and need only be briefly described here as follows:

1. The suspensions constitute retroactive application of new obligations on a final order of the Commission contrary to Federal and State Law and due process requirements. Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 79 L.Ed. 1593, 55 S.Ct. 547 (1935); Billings v. United States, 232 U.S. 261, 58 L.Ed. 596, 34 S.Ct. 421 (1914); Geldhof v. Renwood Associates, 119 N.H. 754, — A.2d — (1979).[7(64)]

2. Final Rate Orders are binding obligations and may not be suspended absent breach.[8(65)] The applicants argue that a final rate order is similar to a contract and like a contract, is binding on the Commission unless the applicants breach. Re Pennichuck Water Works, 120 NH. 562, — A.2d —.

3. The Commission failed to support its determination in a record of evidence. New Hampshire-Vermont Hospital Service v. Whaland, 114 N.H. 92, — A.2d— (1974). Since there was no prior hearing, there was no record of evidence to support the suspension.

4. Order No. 18,223 is unlawful because it violates RSA 365:28 which provide that the Commission may suspend orders only after notice and hearing.

5. The Commission abused its discretion in reconsidering the issued orders based on information which was known to the Commission and existing at the time of issuance, Wilson v. State Personnel Commission, 118 N.H. 424, 236, — A.2d — (1978).

6. The suspension order No. 18,223 is invalid under the doctrine of Res Judicata which is a bar to reexamining the issuance of the Orders NISI Re Global Moving & Storage of New Hampshire, Inc.

7. The Commission violated the applicants' due process rights by failing to follow its rules and longstanding practice is [sic] an abuse of discretion. Cities Service Gas Co. v. Kansas State Corp. Commission, 201 Kan. 223, 440 P.2d 600 (1968). The applicants assert that the suspension of the NISI orders after the NISI periods expired, violates established Commission rules and practice.

COMMISSION ANALYSIS

[1, 2] RSA 541:3 provides:

Motion for Rehearing. Within twenty days after any order or decision has been made by the commission, any party to the action or proceeding before the commission or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor, and the commission may grant such rehearing if in its opinion good reason therefore is stated in said motion.

The clear intent of this statute is to allow Commission reconsideration of its orders within twenty days following the effective date of the order. The suspension order, No. 18,223, was issued on April 17, 1986, within the twenty day period allowed by RSA 541:3, except for the case of Pinetree/Tamworth in docket DR 86-28 as shown in the above chart. To the extent that the applicants' arguments apply to the facts now before us, the rights asserted would not vest until the statutory period for reconsideration expires. The applicants cannot, in our opinion, reasonably construe the prior Commission orders or court decisions cited in the motion for rehearing as overriding the statutory period of reconsideration provided in RSA 541:3. Nor can we accept the applicants' assertion that the suspension should not be imposed until the full course of hearings has run. This would send the wrong signals to interested parties, including the entities financing the projects, regarding the validity of the rates. A more constructive approach would seem to be to suspend the rates, without prejudice, until the investigation into their reasonableness is complete.[9(66)]

The Order NISI approach to small power production rate proceedings was instituted by the Commission several years ago to promote administrative efficiency and to accommodate small power producers. Many small power producers, as small businesses in tight financial circumstances, sought to avoid the expense and inconvenience of unnecessary hearings by requesting Orders NISI rather than the Commission's standard order of notice setting a hearing on each petition.[10(67)] The Commission is now considering reverting to its prior

practice of scheduling a hearing on each small power producer filing to avoid a recurrence of the issues now before us. When an order NISI is issued, the Commission, when possible,

suspends the proposed rates, when necessary to properly investigate the rate proposed, during the NISI period. In the subject dockets, the Commission did not suspend the proposed rates within the NISI period because of the chronology of related events outlined in the FACTS section above and because of other pressing demands on the Commission's time. Nonetheless, in all cases except for Pinetree/Tamworth, the suspensions were within the statutory appeal period allowed under RSA 541:3. A prehearing conference was held on May 13, 1986 for all dockets and a procedural schedule which generally conforms to the recommendations of the parties, has been set by the Commission for each docket.[11](68)

The Commission finds that the hearings now scheduled provide ample opportunity for the applicants to be heard on the merits of their proposed long term rates. With the possible exception of Pinetree/Tamworth, the applicants could not have reasonably relied on the finality of the proposed long-term rates since the rates were suspended during the twenty day statutory rehearing period. Accordingly, we will grant the Motion for Rehearing for Pinetree PowerTamworth, Inc. and deny the Motion for Rehearing in the other cases.

Our concerns relating to the ability of Pinetree to develop and operate multiple projects reflect not so much on the Pinetree/Tamworth project as on Pinetree's subsequent filings. We will address the aggregate effect of all of the Pinetree filings, including Pinetree/ Tamworth, in the consolidated proceeding scheduled for Pinetree Power and its associated corporations on July 8, 1986.

Our order will issue accordingly.

ORDER

Based on the foregoing Report, which is hereby incorporated by reference, it is

ORDERED, that the Motion for Rehearing of Order No. 18,223 (71 NH PUC 249), filed on behalf of Pinetree Power - Tamworth, Inc. in Docket DR 86-28, is granted; it is

FURTHER ORDERED, that Order No. 18,112 in DR 86-28 (71 NH PUC 123), which accepted NISI the long term rates proposed in said docket is hereby reinstated; and it is

FURTHER ORDERED, that the motion for rehearing is denied regarding:

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

DR 86-35 Franconia Power & Light
DR 86-52 Thermo Electron-Troy
DR 86-53 Thermo Electron-Conway
DR 86-54 Thermo Electron-Antrim
DR 86-55 Thermo Electron-Campton
DR 86-56 Thermo Electron-Fitzwilliam

By Order of the Public Utilities Commission of New Hampshire this fourth day of June, 1986.

FOOTNOTES

[1]These filings were made pursuant to Order No. 17,104 (July 5, 1984) in DR 83-62 (69 NH PUC 352, 61 PUR4th 132), which set the terms and conditions of the avoided cost rates for PSNH.

[2]DR 86-100 Pinetree Power - North, Inc.
DR 86-101 Pinetree Power - Berlin, Inc.
DR 86-102 Pinetree Power - Campton, Inc.
DR 86-103 Pinetree Power - Winchester, Inc.
DR 86-104 Pinetree Power Energy Corporation
DR 86-105 Pinetree Power - Hinsdale, Inc.
DR 86-109 Pinetree Power - Lancaster, Inc.

[3]The Orders NISI thereby suspended were order nos. 18,112 in DR 86-28 (71 NH PUC 123); 18,168 in DR 86-35 (71 NH PUC 164); 18,196 in DR 86-52 (71 NH PUC 217); 18,197 in DR 86-53 (71 NH PUC 218); 18,198 in DR 86-54 (71 NH PUC 219); 18,199 in DR 86-55 (71 NH PUC 220); 18,200 in DR 86-56 (71 NH PUC 221).

[4]The prehearing conference and procedural hearing was scheduled by Order 18,223 issued on April 17, 1986.

[5]Order No. 18,287 issued June 3, 1986 (71 NH PUC 339).

[6]See chart, supra, column 4.

[7]Applicants' Motion for Rehearing at 4-8.

[8]Id. at 8-12.

[9]See RSA 365:5, 365:19 and 378:6 I.

[10]It is ironic that now the applicants contend that the Commission's use of NISI orders creates in them certain vested rights which precludes further inquiry into the proposed rates unless the rates are suspended within the NISI period. This interpretation of the law endows the Commission with legislative powers to amend, inter alia, the provisions of RSA 362:A by simply allowing, through design or neglect, the NISI period to pass on rates that would otherwise be held to the illegal, unreasonable or otherwise contrary to the public good.

[11]See Footnote 5, supra.

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NH.PUC*06/04/86*[60817]*71 NH PUC 351*Pennichuck Water Works, Inc.

[Go to End of 60817]

71 NH PUC 351

Re Pennichuck Water Works, Inc.

DR 85-2, Supplemental Order No. 18,294

New Hampshire Public Utilities Commission

June 4, 1986

ORDER requiring a revision to the rate structure of a water utility and authorizing the recovery of rate case expenses.

Rates, § 596 — Water — Two step design — General metered service.

A water utility was required to adopt a two step rate design, with a 28% differential between the two steps, for its general metered service; the 28% differential was found to be consistent with the terms of a commission adopted rate settlement agreement that contemplated the use of a two step design that would be a compromise between a three step design originally proposed by the utility and a flat rate design preferred by the commission staff. [1] p. 353.

Expenses, § 89 — Rate case expense — Disallowances — Water utility.

The rate case expense of a water utility was reduced to reflect the disallowance of (1) charges for services performed for the exclusive benefit of stockholders, (2) costs associated with an easement needed for plant expansion, and (3) legal fees for services that were not adequately described; the utility was permitted to recover the allowed expense through a surcharge over a one year period. [2] p. 353.

Rates, § 595 — Water — Unmetered general service.

A water utility was directed to increase its unmetered general service rate by the same percentage as its metered general service rate and to pursue efforts to meter the remaining unmetered customers. [3] p. 356.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On March 14, 1986 the Commission issued Report and Fifth Supplemental Order No. 18,174 (71 NH PUC 173) which approved Fifteenth Revised Tariff pages 22, 22-A, 23 and 24 filed by Pennichuck Water Works, Inc. (Pennichuck or the Company) subject to the conditions delineated in the Report. The rates were allowed to become effective for all bills rendered on or after the date of the Report and Order pending further Commission review of the two-step rate structure and of the reasonableness of rate case expenses.

A hearing was scheduled for April 17, 1986 for the purpose of allowing the parties to this docket an opportunity to address the following issues:

(1) whether the two-step rate design contained in the aforementioned tariff pages is consistent with the provisions of the settlement agreement approved by the Commission in Report and Second Supplemental Order No. 17,911 (70 NH PUC 850); and

(2) the reasonableness of the rate case expense surcharge contained in Original Tariff Page 25.

In Report and Order 18,174 the Commission also required Pennichuck to address the manner in which any remaining unmetered customers would be treated.

II. Position of the Parties

A. Rate Design

The Company takes the position that the two step rate design filed on January 29, 1986 is consistent with the terms of the settlement agreement. The Company indicates that it left the settlement negotiations with the understanding that it was to redesign its rates in a two-step approach which would be consistent with the Alternate F Tariff Design from the Cost of Service Study. It was not Pennichuck's understanding that any particular step of the old rate design would be eliminated. Pennichuck requests that the Commission find that its two step design is consistent with the settlement agreement and allow it to remain in effect.

Staff takes the position that the Settlement Agreement required the Company to remove the third block of the general service rate. While the language of the Settlement Agreement does not specify how the two steps are to be structured, Mr. Lessels testified to his understanding that the third block would be removed when the settlement was presented to the Commission. The Company did not contest that characterization of the Settlement at the time. It is also Mr. Lessels' position that it was clearly understood that the two step design was to be a compromise between the Company's proposed three-step design and the Staff's position favoring a flat consumption charge, and that a compromise would only be achieved by dropping the third step. Staff requests that the Company be required to adopt a two-step design using a 28% differential between the two steps.

B. Rate Case Expense

The Company has requested rate case expenses in the amount of $77,299 as of March 1986. The Staff of the Commission questions the amount of the rate case expenses and whether the total rate case expenses exceed a reasonable cost for a rate case of the size and nature presented in this proceeding.

C. Unmetered Rate

In the original filing, no increase was applied to unmetered customers. Pennichuck has now indicated that only three customers have refused to be metered. At the hearing on April 17 Pennichuck offered to submit a written proposal to be incorporated in the tariff, allowing the remaining unmetered customers to be billed at the same rate as the average bill of similar customers. No proposal has been received to date.

Staff has suggested that the same percentage increase allowed in the metered general service be applied to the unmetered general service. Staff also

takes the position that the problem of the remaining unmetered accounts should be resolved.

III. Commission Analysis

A. Rate Design

[1] The Commission previously found in its Report of March 14, 1986 that

it appears that the two-block rate design contained therein is not consistent with the provisions of the settlement agreement approved by the Commission in the original rate case decision, Report and Order No. 17,911, or in the least does not comport with the Commission's understanding of the settlement agreement. (71 NH PUC at p. 174.)

After reviewing the testimony and evidence presented at the April 17th hearing, we find no reason to change that finding.

It is clear from the evidence that the settlement agreement contemplated that the two step design should be consistent with the Cost of Service Study alternate F tariff design, and that it should be a compromise between the 3 step design proposed by the Company and the flat rate design preferred by Staff.[1](69) We may conclude that both the Company two step design and the two step 28% differential are equally consistent with the Alternate F tariff design. However, the Company two step proposal is clearly not a compromise between the three step design and the flat rate design.

Table 1 (Appendix) shows the percent changes for different customer accounts under the 3-step rates, the Company 2-step rates, the 28% differential rates and the flat rates. By comparing each of the two-step proposals with the 3 step rates and the flat rates, it is apparent that the 28% differential structure is a compromise and the Company plan is not. In fact, the Company plan actually results in higher residential volumetric rates and bills than the three step proposal which was rejected. While commercial rates are lower in both of the 2 step designs, the commercial rates are also closer to both the 3 step design and the flat rate design under the 28% differential. Based on this analysis the Commission will accept the 28% differential two block design as being consistent with the Settlement Agreement and will direct Pennichuck to revise its tariff pages accordingly.

B. Rate Case Expenses

[2] The Company has requested rate case expenses in the amount of $77,299 as of March 1986 as follows:

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

Legal Expenses $55,223
Miscellaneous Mailing Charges $  25
Court Reporter $ 2,581
Consultant $19,470
 $77,299
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The Staff of the Commission questions the amount of the rate expenses and whether the total rate case expenses exceed a reasonable cost for a rate case of this size and nature. It must be noted that the original estimate presented in this matter was for $79,500 and was presumably calculated to cover a fully litigated proceeding on all issues. All issues in this proceeding were settled between the parties. The settlement process is intended to reduce rate

case expenses and regulatory lag. Of the many issues presented in this proceeding, only the

rate structure and rate case expenses required the hearing process. The rate structure issue developed from a misinterpretation of the settlement agreement. The issue was resolved in favor of the Staff and now it must be determined whether the position taken by the Company was a position that benefited ratepayers or just stockholders. The Commission has the difficult duty to determine what rate case expenses are just and reasonable and to disallow those expenses that are not just and reasonable.

In 1939, the Supreme Court addressed the issue of whether expenses incurred by a regulatory firm in attempting to obtain a rate increase could be disallowed without rendering the resulting rates unconstitutionally confiscatory. The Court held that reasonable costs incurred of a firm in a rate case must be allowed:

Even where the rates in effect are excessive, on a proceeding by a Commission to determine reasonableness, we are of the view that the utility should be allowed its fair and proper expenses for presenting its side to the Commission. We do not refer to expense of litigation in the courts. "A different case would be here if the Company's complaint had been unfounded, or if the cost of the proceeding had been swollen by untenable objections. Driscoll v. Edison Light & P. Co., 307 U.S. 104, 120, 121, 28 PUR NS 65, 75, 83 L.Ed. 1134, 1145, 59 S.Ct. 715 (1939), rehearing denied 307 U.S. 650 (1939).

Rate case expenses have been recognized by the New Hampshire Supreme Court, New Hampshire v. Hampton Water Works Co., 91 N.H. 278, 38 PUR NS 72, 18 A.2d 765 (1941), as well as the "difficulty in performing the duty to determine what is just and reasonable. Excessive and improper charges may be found in amount as well as a fact. If unreasonably incurred, if undue in amount, if chargeable to other accounts, they may be to that extent reduced."

The Commission has disallowed or reduced rate case expenses in the following cases. Re Union Teleph. Co., 65 NH PUC 35 (1980)—Commission required hourly breakdown to be filed; Re Gas Service, Inc., 65 NH PUC 76 (1980)—Commission removed expenses for legal fees related to a stock dividend because the expense was nonrecurring; Re Hillsboro Water Co., Inc., 67 NH PUC 785 (1982) — legal expenses for consultation were disallowed; Re Lakes Region Water Co., Inc., 68 NH PUC 154 (1983) — Commission disallowed some of the accounting costs where it found the costs were inaccurate or incomplete.

The Commission is not presented with any criteria to judge whether an expense is just and reasonable but must rely on its discretion based on its experience with expenses associated in other proceedings and its own expertise. Although the Commission in Re Hudson Water Co., 66 NH PUC 303 (1981) referred to RSA 365:38 as a guide to what may or may not be reasonable, the Commission did not fix any limits on allowable rate case expenses. In fact to adopt such a procedure would substitute a mechanical formula in place of the Commission duty to analyze each expense submitted.

The Commission reviewed the rate case expense submitted and the testimony presented on April 17, 1986. The

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

APPENDIX

TABLE 1

Analysis of the Effect of Different Rate Designs
on Customer Classes Using Sample Customer Accounts

% Increase (Decrease) from Old Rates

Customer Account	Rate Design 3 Step[1]	Company 2[2]	2 Step Design[3]	28% Flat[4] Design Differential
1) Minimum Residential				
1000 cu. ft./quarter	(49.4)	(49.4)	(49.4)	(49.4)
Minimum Chg.				
Volumetric[5]				
Total	(15.5)	(14.2)	(17.4)	(21.2)
2) Average Residential				
3200 cu. ft./quarter				
Minimum Chg.	(49.4)	(49.4)	(49.4)	(49.4)
Volumetric	79.0	86.0	69.0	48.6
Total	(1.0)	1.7	(4.7)	(12.4)
3) Multi-Family Residential				
169,800 cu. ft./Month				
Minimum Charge	2,150.0	2,150.0	2,150.0	2,150.0
Volumetric Chgs.	20.3	19.6	32.4	48.1
Total	42.0	41.1	54.1	69.6
4) Commercial				
31,300 cu. ft./Month				
Minimum Chg.	275.2	275.2	275.2	275.2
Volumetric Chgs.	16.3	(1.0)	7.2	17.2
Total	27.3	10.7	18.6	28.1
5) Industrial				
1,433,600 cu. ft./Month				
Minimum Chg.	2,150.0	2,150.0	2,150.0	2,150.0
Volumetric	21.5	25.6	39.7	57.1
Total	24.2	28.0	42.5	59.8

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[1]Exhibit 19

[2]Exhibit 14, Attachment ii

[3]Exhibit 14, Attachment i

[4]Exhibit 19

[5]Percentage figures can not be calculated for this category because the base number is zero. quarter

Commission finds the expenses for the court reporter of $2,581.00 and the consultant of $19,470.00 to be reasonable and just. The Commission is concerned with the amount of expenses for legal representation.

A review of the list of services performed reveals that some services were performed exclusively for stockholders. The charges of $180.00 for those services will be disallowed because they are not proper expenses incurred as a result of the rate case.

The Commission has reviewed $622.50 of the expenses associated with the Boston & Maine easement and find that those expenses were as a result of the plant expansion and should be capitalized.

The remaining charges for legal fees in the sum of $54,420.50 were reviewed and the Commission is concerned with the brevity of some of the descriptions for services, especially in those instances where services were charged for attorneys consulting with one another. Under the circumstances, the Commission will reduce those charges by $5,000.00 and will expect clearer, concise descriptions of service in the future.

C. Unmetered Rate

[3] The Commission will accept Staff's proposal to increase the unmetered general service rate by the same percentage as the metered general service rate. We also agree with Staff that it is not appropriate to continue with the unmetered accounts indefinitely. Consequently, we will direct Pennichuck to pursue its efforts to meter these remaining customers and to report to the Commission its actions 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 Pennichuck Water Works, Inc. file revised tariff pages reflecting a twenty-eight percent differential two block design, in accordance with the foregoing report; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. be and hereby is, allowed to recover $71,496.50 in rate case expense through a surcharge over a one year period; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. be, and hereby is, permitted to recoup the difference between the allowed permanent rates and temporary rates as filed on April 2, 1986, through a surcharge over a one year period.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1986.

FOOTNOTES

[1]The Company specifically acknowledges that the two step design was agreed to as a compromise with the Commission staff. (Exhibit 14 at 3).

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NH.PUC*06/05/86*[60818]*71 NH PUC 357*Kona, Inc.

[Go to End of 60818]

71 NH PUC 357

Re Kona, Inc.

DE 86-37, Order No. 18,295

New Hampshire Public Utilities Commission

June 5, 1986

ORDER granting a petition to discontinue water service.

Service, § 277 — Discontinuance — Water utility.

A water utility was authorized to discontinue operation as a public utility; the utility had been directed to discuss with its customers the possibility of continuing service, however, the discussion failed to produce a reasonable plan for continuing service.

By the COMMISSION:

REPORT

In our Report and Order No. 18,217, dated April 17, 1986 (71 NH PUC 245), Kona, Inc. was directed to once more discuss with its water customers of record, possible solutions for a continuing water supply. Kona, Inc., was directed to report the results of this meeting and/or discussion on or before May 16, 1986.

A meeting was held on May 9, 1986, at which only one customer attended i.e., Philip Holland. A report of this meeting indicates that no response was made to Kona by the other customers.

CONCLUSION

Based on our findings in the original Report and Order in this docket, and the results of the meeting between the water company and its customers, it is our decision that Kona, Inc., shall be allowed to terminate the water service now being supplied to its customers.

In the most recent Commission docket regarding a Petition to Discontinue Water Service (68 NH PUC 72), it was determined to be in the public good to allow discontinuance one year from the date of the Report and Order. In this docket and petition, we believe it to be in the public

good also and will order that service may be discontinued one year from the date of this Report and Order.

We will also order that an annual charge of $370 shall be collected during this twelve month period.

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. is authorized to discontinue operation as a public utility one year from the data of this Report and Order; and it is

FURTHER ORDERED, that the annual charge for water service during this twelve month period shall be $370.

By order of the Public Utilities of New Hampshire this fifth day of June, 1986.

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NH.PUC*06/06/86*[60819]*71 NH PUC 358*Public Service Company of New Hampshire

[Go to End of 60819]

71 NH PUC 358

Re Public Service Company of New Hampshire

DE 86-144, Order No. 18,296

New Hampshire Public Utilities Commission

June 6, 1986

ORDER authorizing an electric utility to construct, operate, and maintain an electric line across public waters.

Certificates, § 102 — Electric plant — Line over public waters.

An electric utility was authorized to construct, operate, and maintain an electric line across public waters to provide electric service to an industrial customer.

By the COMMISSION:

REPORT

On May 7, 1986, Public Service Company of New Hampshire filed with this Commission a Petition seeking authorization for the construction, operation and maintenance of a 34.5 KV electric line over and across the Cocheco River in Farmington, New Hampshire. On May 9, 1986, the Commission issued an Order of Notice setting the matter for public hearing on June 2, 1986 at 10 a.m. at the Commission's Concord offices. Said Order of Notice was sent to:

Pierre O. Caron, Esq., Public Service Company of New Hampshire (for publication);

Christopher Kersting, New Hampshire Aeronautics Commission;

James Carter, Chief of Land Management, Department of Resources and Economic Development;

Robert Danos, Director of Safety Services, Department of Safety;

Wallace Stickney, Commissioner, Department of Transportation;

Office of the Attorney General.

An Affidavit attesting to the Public Notice was filed by Public Service Company on May 23, 1986. The duly-noticed hearing was convened as scheduled, with no intervenors present.

Attorney Pierre O. Caron described the reason for the proposed water crossing, the type of construction to be used and the location over which the

line will be built. The only exhibit offered was PSNH's Petition (with attachments) for license for electric lines across public waters. This license was requested pursuant to RSA 371:17.

Attorney Caron indicated that the 34.5 KV line was necessary to serve an industrial customer, TILCON, Inc., who was presently constructing a new building across the river which required the new service. He further explained that Tilcon, Inc., owned both sides of the River at the crossing location; therefore, obtaining an easement or R-O-W would not be an issue.

When questioned about possible boating activity, it was explained that due to the 60 foot width of the river and an overhead culvert obstruction immediately upriver, the use of a masted boat was unlikely, however, the river was suited for small boats and canoes.

The length of the crossing was shown to be 190 feet, of which 60 feet would be over the water. The indicated vertical clearance above the water was stated to be a minimum of 34 feet. All construction would be in accordance with appropriate codes.

Based upon the evidence presented and the absence of intervention, the Commission finds this crossing in the public interest.

Our order will issue accordingly.

ORDER

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

ORDERED, that Public Service Company of New Hampshire be, and hereby is, granted authorization for the construction, operation and maintenance of a 34.5 KV electric line over and

across the Cocheco River in Farmington, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1986.

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NH.PUC*06/09/86*[60820]*71 NH PUC 360*New England Telephone and Telegraph Company

[Go to End of 60820]

71 NH PUC 360

Re New England Telephone and Telegraph Company

DR 86-163, Order No. 18,298

New Hampshire Public Utilities Commission

June 9, 1986

ORDER authorizing a local exchange telephone carrier to revise its tariffs governing competitive promotions of its services.

Rates, § 534 — Telephone — Special marketing programs — Competitive promotions — Trial period or discount rates.

A local exchange telephone carrier was authorized to revise its tariffs governing competitive promotions of its services; competitive promotions were found to be useful in making the customer aware of opportunities for varied telecommunications services at special trial period rates, charges, or discounts; no trial program or other competitive promotion may be implemented until the commission has reviewed the program and issued a decision thereon.

By the COMMISSION:

ORDER

WHEREAS, on May 22, 1986, New England Telephone and Telegraph Company (NET) filed with this Commission certain revisions to its Tariff No. 75 by which it proposes competitive promotions of its services upon approval of the Public Utilities Commission; and

WHEREAS, the Commission finds that such promotions are useful in making the customer aware of his opportunities for varied telecommunications services at special trial period rates, charges, or discounts; and

WHEREAS, such education of the consumer is found in the public good; it is

ORDERED, that Supplement No. 25 (Title Page and Original Page 1) and Part A, Section 1, Original Page 17.1 be, and hereby are, approved for effect on June 22, 1986; and it is

FURTHER ORDERED, that any such trial program be filed with this Commission no less

than 30 days prior to the proposed implementation for review and decision thereon; and it is

FURTHER ORDERED, that NET advise this Commission of the manner in which public notice is to be given for each trial program.

By order of the Public Utilities Commission of New Hampshire this ninth day of June, 1986.

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NH.PUC*06/09/86*[60821]*71 NH PUC 361*Power House Systems

[Go to End of 60821]

71 NH PUC 361

Re Power House Systems

DR 86-170, DR 86-171, Order No. 18,299

New Hampshire Public Utilities Commission

June 9, 1986

ORDER rejecting, without prejudice, the long term rate filings of a small power producer.

Cogeneration, § 19 — Small power production — Long term rate filings.

The long term rate filings of a small power producer were rejected without prejudice pending the completion of a commission investigation of the long-term avoided cost rates of the interconnecting utility.

By the COMMISSION:

ORDER

WHEREAS, on June 2, 1986, Power House Systems filed petitions for long term rates for its Brooklyn Hydroelectric Project and Upper Isreal River Hydro-electric project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) and 70 NH PUC 753, 69 PUR4th 365 (1985) (Order No. 17,838); and

WHEREAS, Public Service Company of New Hampshire filed a Petition for Avoided Cost Rate Update on April 15, 1986; and

WHEREAS, on May 21, 1986 the Commission opened Re Small Energy Producers and Cogenerators, Docket No. 86-134, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that

pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in Re Small Energy Producers and Cogenerators, [supra], will be accepted or approved by the Commission;

and

WHEREAS, Power House Systems filed its petitions after May 21, 1986; it is therefore

ORDERED, that the long term rate filings for Power House Systems be, and hereby are, rejected without prejudice; and it is

FURTHER ORDERED, that Docket Nos. DR 86-170 and DR 86-171 be, and hereby are, closed.

By Order of the Public Utilities Commission of New Hampshire this ninth day of June, 1986.

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NH.PUC*06/13/86*[60822]*71 NH PUC 362*Locke Lake Water Company, Inc.

[Go to End of 60822]

71 NH PUC 362

Re Locke Lake Water Company, Inc.

Intervenor: Locke Lake Colony Association

DR 85-287, Order No. 18,300

New Hampshire Public Utilities Commission

June 13, 1986

ORDER authorizing an increase in rates for water service.

Rates, § 595 — Water — Settlement agreement.

A water utility was authorized to increase its rates in accordance with a commission adopted settlement agreement. [1] p. 363.

Rates, § 247 — Recoupment — Surcharge — Water utility.

A water utility was permitted to recoup, through a rate surcharge over a one and one half year period, the difference between the permanent rates finally allowed by the commission and the temporary rates approved by a prior order. [2] p. 363.

Expenses, § 92 — Rate case expense — Amortization period — Water utility.

A water utility was permitted to recover its rate case expense through a rate surcharge over a three year period. [3] p. 363.

Expenses, § 89 — Rate case expense — Small water utilities.

Expressing concern over the magnitude of rate case expenses incurred by small water utilities, the commission directed its staff to investigate procedures for rate increases that would minimize the cost and effort for all parties while still providing the utility and its ratepayers with due process. [4] p. 363.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire, for Locke Lake Water Company, Inc.; Murphy, McLaughlin & Hemeon by Philip T. McLaughlin and Brown, Olson & Wilson by Robert A. Olson, Esquire for Locke Lake Colony Association; Daniel J. Kalinski, Esquire on behalf of Staff.

By the COMMISSION:

REPORT

I. History and Stipulation

On September 30, 1985, Locke Lake Water Company, Inc. (Company or Locke Lake), a public utility engaged in gathering and distributing water to the public in Barnstead, New Hampshire, filed revised tariff pages

reflecting an increase in gross annual revenues of $30,021 (49.7%) to be effective for all service rendered on of [sic] after November 1, 1985. In addition, the Company also filed a Petition for Temporary Rates pursuant to RSA 378:27 requesting that its permanent rates be set as temporary rates as of October 1, 1985. By Order No. 17,900 issued on October 11, 1985, the Commission sus- pended the effective date of the tariff revisions.

In Commission Order No. 17,985 (70 NH PUC 1031), Locke Lake's permanent rates were designated as temporary rates effective on all billings on or after October 1, 1985. In that same order the Commission also approved a procedural schedule which, inter alia, scheduled a meeting of the parties to limit issues. Pursuant to this order the parties met to discuss the issues in the filing. Following three days of conferences the parties stipulated on an increase in rates for Locke Lake in the amount of $19,477.00. An agreement to this effect was submitted to the Commission during a hearing on May 20, 1985.

[1] The Settlement Agreement (Exhibits 1 and 4) provide a detailed calculation of the stipulated increase. These exhibits display a value for rate base of $132,554 based on a test year ending June 30, 1985, and an overall rate of return of 11.25% based on a capital structure which is totally equity. This return is applied to rate base to derive a return requirement of $14,912.

A proforma operating loss of $3,224 for the test year is added to the return requirement to produce a deficiency of $18,136. Tax effected the revenue deficiency becomes $19,477.

All parties have agreed to this proposed increase. Upon consideration of the Settlement Agreement and the schedules attached thereto, the Commission will approve said agreement.

II. Recoupment

[2] Exhibit 5 in this docket provides a calculation of the recoupment of the difference between the permanent rates, allowed herein, and the temporary rates approved in Commission Order No. 17,985. This was accepted by all parties as was the period in which to surcharge the recoupment.

The Commission will accept this method of calculating the recoupment. The Company is to file tariff pages recalculating the recoupment up to the effective date of the increase in permanent rates, surcharged over a one and a half year period.

III. Rate Case Expense

[3, 4] During the hearing on May 20, 1986 the Company presented documentation for rate case expense which totaled $16,240.60. Through the settlement process all parties agreed to eliminate $207.00 which reflects expenses relative to the PUC audit of the Company's records. In addition, the parties agreed to surcharge the rate case expense over a period of three years. The Commission will accept this and require that the Company file a tariff page reflecting such.

Although the issue of rate case expense for these proceedings are settled, the Commission remains concerned over the magnitude of the total expenses. Total rate case expenses would increase the approved revenue required by 82% if allowed to be recouped within a one year period. Although surcharging the expenses over

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a three year period mitigates the effect this expense has on the overall increase in rates, the rate case expense still increases the revenue requirement by 27% in each of the three years.

The Commission is disturbed with the growing impact rate case expense is having on the Cost of Service for small water utilities. This is not an issue isolated to this docket. Albeit a significant cost in the instant proceedings it is more a generic issue for all small water utilities in the state.

As the cost to operate a utility increase in areas such as electricity expense the small utility which does not have the benefits derived from the economics of scale will need to increase its rates. This will require a filing at the Commission which implicitly incurs rate case expense.

The Commission wishes to avoid the costly and sometimes lengthy rate proceedings for small water utilities. Yet, we also remain cognizant of the statutory requirements to provide all parties affected by a rate increase an opportunity to participate in the regulatory process (RSA 541-A:17). To this end the Commission will encourage this utility and other small water utilities to utilize our staff for guidance when completing the Commission filing requirements for all future rate filings, prior to incurring rate case expense. After consultation with staff the utility should then obtain professional help if it desires. This will reduce the cost of the rate case expense for both the rate payer and the utility while not interrupting the present Commission rate making procedures.

In the interim the Commission will direct Staff to investigate into procedures for rate increases which will minimize the rate making process, thereby reducing the cost and effort for all parties involved in a small water utility's rate filing. These procedures should work to reduce the overall cost of rate proceedings and still provide a utility and it's rate payers due process.

Meters

In this docket, the installation of meters was discussed with no resolution reached. Customers wrote to the Commission on both sides of this issue. Those opposed were generally so on the

basis of the additional capital and operation and maintenance expense required which would translate into higher overall rates.

This Commission policy has for some time been that all general service should be metered so that each customer pays only for the measured amount used. Conservation of natural resources has also been a motivating factor in our decisions. In this docket we are advising Locke Lake Water Company and its customers that in the next rate proceeding metering will be addressed.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Locke Lake Water Company, Inc. tariff NHPUC No. 3 Water, First Revised Pages 17 and 18 and Original Page 15A, effective November 1, 1985 be and hereby is rejected; and it is

FURTHER ORDERED, that Locke Lake Water Company, Inc. file revised

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tariff pages reflecting an increase in permanent rates of $19,477; and it is

FURTHER ORDERED, that Locke Lake Water Company, Inc. file a tariff page providing for a surcharge rate of the recoupment of temporary rates in accordance with the foregoing report; and it is

FURTHER ORDERED, that Locke Lake Water Company, Inc. file a tariff page providing for the surcharge of rate case expense in accordance with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of June, 1986.

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NH.PUC*06/16/86*[60823]*71 NH PUC 365*Southern New Hampshire Water Company, Inc.

[Go to End of 60823]

71 NH PUC 365

Re Southern New Hampshire Water Company, Inc.

DR 86-131, Order No. 18,301

New Hampshire Public Utilities Commission

June 16, 1986

ORDER suspending water rate tariff revisions pending investigation and decision.

Rates, § 248 — Formalities and procedure — Tariff filings — Suspension — Water utility.

Tariff revisions designed to increase the annual revenues of a water utility were suspended pending investigation and decision thereon.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc., on May 16, 1986, filed with this Commission certain revisions to its tariff proposing to increase annual revenues in the amount of $279,168; and

WHEREAS, the Commission finds that this filing requires investigation before rendering a decision; it is

ORDERED, that

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

22nd Revised Page 17,
9th Revised Page 18A,
21st Revised Page 19
21st Revised Page 21
1st Revised Page 21C
1st Revised Page 21D

of NHPUC Tariff No. 7-Water, be and are, suspended pending investigation and decision thereon, and it is

FURTHER ORDERED, that the filing requirements of Section 1603.03(b) Item No. 23 as requested, be waived until such time that the Commission may require that the Petitioner provide the information prior to rendering a decision in this matter, and it is

FURTHER ORDERED, that publication of the proposed tariff changes in accordance with Section 1601.05(j) as requested be waived provided that the Company, as indicated in the Petition, will notify each affected customer, in

writing, of the proposed changes and the effective date thereof.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of June, 1986.

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NH.PUC*06/16/86*[60824]*71 NH PUC 366*Coos Power Corporation

[Go to End of 60824]

DR 86-176, Order No. 18,302

New Hampshire Public Utilities Commission

June 16, 1986

ORDER rejecting, without prejudice, the long term rate filings of a small power producer.

Cogeneration, § 19 — Small power production — Long term rate filing.

The long term rate filing of a small power producer was rejected without prejudice pending the completion of a commission investigation of the long term avoided cost rates of the interconnecting utility.

By the COMMISSION:

ORDER

WHEREAS, on June 5, 1986 Coos Power Corporation (CPC) filed a petition for a long term rate for its Stark, New Hampshire 25 MW wood-burning small power project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) and 70 NH PUC 753, 69 PUR4th 365 (1985) (Order No. 17,838); and

WHEREAS, Public Service Company of New Hampshire filed a Petition for Avoided Cost Rate Update on April 15, 1986; and

WHEREAS, on May 21, 1986 the Commission opened Re Small Energy Producers and Cogenerators, Docket No. 86-134, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that

pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in Re Small Energy Producers and Cogenerators, (supra), will be accepted or approved by the Commission;

and

WHEREAS, CPC filed its petition after May 21, 1986; it is therefore

ORDERED, that the long term rate filing for CPC be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 86-176 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this sixteenth day of June, 1986.

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NH.PUC*06/23/86*[60825]*71 NH PUC 367*New England Electric Transmission Corporation

[Go to End of 60825]

71 NH PUC 367

Re New England Electric Transmission Corporation

DF 86-149, Order No. 18,308

New Hampshire Public Utilities Commission

June 23, 1986

ORDER authorizing an electric transmission utility to enter a long-term construction financing arrangement.

Security Issues, § 58 — Purpose — Interconnection facilities — Long-term financing — Electric transmission utility.

Based on a finding that such financing was in the public good, an electric utility was authorized to enter a long-term financing arrangement for the repayment of a construction debt incurred for the purpose of interconnecting with Canadian hydroelectric facilities; specifically, the utility was authorized (i) to issue and sell up to $79.2 million of its 8.8% secured notes due in 2006, (ii) to mortgage its property in connection with the issue of notes, (iii) to issue to its parent such aggregate amount of common stock as, together with any capital contribution by its parent, shall not exceed $20 million, and (iv) from time to time to issue and renew short-term indebtedness aggregating a maximum of $10 million.

APPEARANCES: Kirk L. Ramsauer, Esquire, and Gregory A. Hale, Esquire, for New England Electric Transmission Corporation; Eugene F. Sullivan and Sarah P. Voll for the Staff.

By the COMMISSION:

REPORT

New England Electric Transmission Corporation (NEET) is a utility subject to the jurisdiction of the Commission. On May 9, 1986, NEET filed a petition requesting authorization and approval of the Commission for NEET (i) to issue and sell up to $79.2 million of its 8.80% Secured Notes due 2006 (the Notes), (ii) to mortgage its property in connection with the issue of Notes, (iii) to issue to its parent such aggregate amount of common stock as, together with any capital contributions by its parent, shall not exceed $20 million, and (iv) from time to time to issue and renew short-term indebtedness aggregating a maximum of $10 million.

A public hearing was held on the petition on June 6, 1986. The Company presented its case through a single witness, Robert H. McLaren. The Company described the interconnection between Hydro-Quebec and the New England Power Pool (NEPOOL). The portion of the interconnection being built by NEET (the NEET Project) includes: (i) the 450 kV dc to 230 kV ac terminal facility (rated for 690 MW) with associated switchgear,

transformers and other equipment at or near New England Power Company's (NEP) Comerford Station in Monroe; and (ii) approximately 6 miles of 450 kV direct current transmission line in New Hampshire on an existing New England Power Company (NEP) right-ofway between Littleton and Monroe. The site for the terminal facility and rightof-way will be leased by NEET from its affiliate NEP pursuant to a lease agreement previously approved by the Commission on December 17, 1982 (67 NH PUC 910).

In addition to the New Hampshire transmission line and the Comerford terminal facility, the NEET Project includes certain improvements required to be made to NEP's Comerford Station as a result of the interconnection, and reinforcement to the NEPOOL high voltage transmission system at various locations in New Hampshire and Massachusetts required to permit proper operation of the interconnected systems, and certain required communication and other facilities. Mr. McLaren testified that the NEET Project should be ready for commercial operation this summer.

The proposed financing arrangements would replace the construction financing arrangements with a group of banks, headed by The First National Bank of Boston, previously approved by the Commission on June 1, 1983 (68 NH PUC 358), and repay the total construction debt incurred by NEET in constructing the NEET Project.

The Notes are to be sold to the Prudential Insurance Company, the Connecticut General Insurance Company, and CONGEN FIVE (the Purchasers). The Notes will be issued in an amount up to $79,200,000 and will mature on April 17, 2006. The Notes will carry an interest rate of 8.80% and pay interest monthly in arrears. The Notes will be subject to mandatory redemption (i) through a monthly sinking fund beginning January 17, 1988, or (ii) upon the occurrence of a condemnation or casualty loss to the terminal facility and line. The Notes will be noncallable until July 17, 1996, except (i) for special optional prepayments up to an additional $50,000 per month and (ii) in the event the Project is terminated.

Beginning July 17, 1996, the Notes will be callable at a Price of 104.4% of the principal amount. This price will decline in equal annual decrements to par in the final year.

The Notes will be secured by security interests in, and assignments of, all of NEET's rights to receive payments under its key contracts and by a first mortgage and security interest in the AC/DC converter terminal and the portion of the HVDC line owned by NEET. The primary security is supplied by the payment obligations of participants under the Phase I Terminal Facility Support Agreement (the Support Agreement, a copy of which was filed as an exhibit to this proceeding). Other key contracts include NEET's Lease with NEP, NEET's HVDC Terminal Contract with General Electric Company, NEET's Service Contract with New England Power Service Company (an affiliate that has agreed to maintain the transmission line), and NEET's assigned rights under Participation Agreements between Massachusetts Municipal Wholesale Electric Company and its municipal participants and between Vermont Electric Power Company and its members. The first mortgage and security interest will cover the AC/DC converter terminal that includes the terminal building, converter valve equipment,

valve cooling system, smoothing reactors, switches, disconnects, insulators, breakers, AC and DC harmonic filters, surge arresters, and control and protective systems, and six miles of HVDC transmission line and structures. Since both the line and the terminal are located on land or right-of-way leased from NEP, the leases upon which the line, structures and terminal are located will be subject to the prior liens of NEP's first mortgage as well as its general and refunding mortgage.

New England Electric System (NEES), the parent of NEET, will provide to NEET equity funds of up to 20% of NEET's capital requirements for the NEET Project, but not exceeding $20,000,000. NEET intends to maintain a minimum percentage of 10% equity to total capitalization.

NEET proposes to execute with NEES an Equity Funding Agreement (in the form filed as an exhibit in this proceeding). The Equity Funding Agreement sets forth the terms on which NEET may call for, and NEES agrees to provide, the equity funding contemplated by the Support Agreement. This equity funding may take the form of the purchase by NEES of additional NEET common stock or capital contributions by NEES to NEET. It is provided further that the maximum aggregate amount of equity funding provided by NEES shall not exceed $20,000,000 outstanding at any one time. The parties agree also that NEES' equity interest may be reduced from time to time through the repurchase by NEET of its common stock or the reduction of equity contributed by NEES, all in accordance with provisions of the Equity Funding Agreement. The term of the Equity Funding Agreement is coterminous with that of the Support Agreement.

NEET is also requesting $10,000,000 of short-term borrowing authority to provide for short-term fluctuations in NEET's capital requirements. NEET would issue and renew notes, bonds, and other evidences of indebtedness payable in not less than twelve months from the date issued.

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.

Our Order will issue accordingly.

ORDER

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

ORDERED, that New England Electric Transmission Corporation, be and hereby is, authorized to issue and sell up to $79.2 million of its 8.80% Secured Notes due 2006 (the Notes) to the Prudential Insurance Company, the Connecticut General Insurance Company, and CONGEN FIVE; and it is

FURTHER ORDERED, that NEET be and hereby is authorized to mortgage its present and future property, tangible and intangible, including franchises, to secure the payment of the Notes; and it is

FURTHER ORDERED, that NEET be and hereby is authorized, pursuant to the terms of an Equity Funding Agreement (described in the foregoing report), to issue and sell to its parent,

New England Electric System (NEES), such aggregate amount of NEET's common stock as, together with any capital

contributions by NEES to NEET, shall not exceed $20 million; and it is

FURTHER ORDERED, that NEET be and hereby is authorized, from time to time, to issue and renew notes, bonds, and other evidences of indebtedness payable in less than twelve months after the date thereof, in an aggregate amount thereof outstanding at any one time (not including any such indebtedness that it is to be retired with the proceeds of any new borrowings) not in excess of $10 million; and it is

FURTHER ORDERED, that the proceeds from the borrowings and issues of stock be used by NEET to repay the construction debt incurred by NEET, as approved by the Commission in DF 83-147, Order No. 16,442 (68 NH PUC 358), or for additional capitalizable expenditures on the NEET Project, or for other corporate purposes.

By order of the Public Utilities Commission of New Hampshire this twentythird day of June, 1986.

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NH.PUC*06/23/86*[60826]*71 NH PUC 371*Public Service Company of New Hampshire

[Go to End of 60826]

71 NH PUC 371

Re Public Service Company of New Hampshire

Intervenors: Office of Consumer Advocate, Conservation Law Foundation of New England, Inc., Community Action Program, Seacoast Anti-Pollution League, and Campaign for Ratepayers' Rights et al.

DR 83-398, Third Supplemental Order No. 18,309

New Hampshire Public Utilities Commission

June 23, 1986

ORDER denying a petition for a commission investigation to determine a methodology for the rate recovery of abandoned nuclear plant costs.

Valuation, § 202 — Rate base treatment of abandoned plant — Nuclear plant construction — Electric utility.

State statute RSA 378:30-a prohibits the commission from allowing a utility to recover, through rates, investment in abandoned plant construction; accordingly, an electric utility's petition for a commission investigation to determine an appropriate ratemaking methodology for

the recovery of costs associated with the abandoned Pilgrim Unit 2 nuclear plant was denied.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On December 30, 1983 Public Service Company of New Hampshire (PSNH or Company) filed a Petition requesting that the Commission investigate, determine and fix an appropriate ratemaking methodology to enable PSNH to recover costs associated with the Company's investment in Pilgrim Unit 2. As a result, the Commission opened this docket and, on March 9, 1984, reserved, certified and transferred to the 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?

Re Public Service Co. of New Hampshire, 69 NH PUC 174, 179 (1984). The Supreme Court accepted the transfer and in Re Public Service Co. of New Hampshire, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984), held that RSA 378:30-a does prohibit the Commission from

allowing a utility to recover through rates investment in abandoned plant construction. The Court limited its ruling to the issue of statutory construction; it declined to rule on any issue bearing on the constitutionality of the statute. The Court provided that it could not consider the constitutional issues in the absence of a more fully developed record.

On August 3, 1984, PSNH filed a Motion to proceed with this docket in accordance with RSA 365:5. After several postponements, a duly noticed procedural hearing was scheduled for July 17, 1985. At that procedural hearing the Commission heard argument on issues of intervention, scope and schedule.[1(70)] Report and Second Supplemental Order No. 18,131 was issued on February 27, 1986 (71 NH PUC 137) addressing these matters and setting a hearing to resolve the remaining issues in this docket. The hearing was held on June 5, 1986.

I. SCOPE OF HEARING

The Commission in its report issued on February 27, 1986 fixed the scope of the remaining issues in this proceeding so as to develop a record that would support findings and conclusions that the investment in Pilgrim II does or does not fall within the terms of RSA 378:30-a. The following issues were listed to be determined:

1. The level of investment.

2. The timing of the investment.

3. The purpose of the investment.

4. The result of the investment (i.e., whether construction was completed or cancelled.

It was also noted that the Commission would not examine the prudency of the investment. It should be noted that the above issues do not involve the prudency of the investment at issue. RSA 378:30-a, as construed in Re Public Service Co. of New Hampshire, supra, provides that if the investment falls within the terms of the statute, it may not be recovered through rates even if it was prudent. Since any prudency findings can have no effect on any of the remaining issues before us, evidence of prudency or imprudency is irrelevant and outside the scope of this proceeding. See RSA 541-A:18 II; N.H. Admin. Rules PUC 203.09(b); N. H. Rules of Evidence, 401 and 402.

II. POSITION OF THE PARTIES

PSNH relies on its petition filed on December 30, 1983 to recover costs associated with the Company's investment in Pilgrim Unit II and its motion filed on August 3, 1984 for the Commission to proceed with this docket in accordance with RSA 365:5.

PSNH produced testimony and exhibits to confirm that the Company has made a total investment in Pilgrim II in the total sum of $15,008,217.23. See Exhibit 3 which sets forth PSNH annual investment by cash, AFDUC in electric plant and cash, AFDUC in Nuclear Fuel. $10,402,395.17 of the $15,008,217.23 was made prior to April 30, 1979, the date that the amendment to RSA 378:30-a was enacted. The

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witness testified that the purpose of PSNH's investment in Pilgrim II was to provide capacity in order to meet PSNH's obligation to serve anticipated new customers and customer load and that the additional capacity and investment in Pilgrim II had significant advantages over other capacity alternatives.

PSNH became a participant in Pilgrim II as of October 13, 1972 for a 3.47% share by executing a Joint Ownership Agreement. The project was cancelled by Boston Edison, the lead owner, on September 23, 1981, and cancellation was finalized on October 26, 1981.

PSNH has taken the position that the Commission should entertain its petition so as to allow it to develop a record or it will be deprived of a forum to contest the constitutionality of RSA 378:30-a.

III. INTERVENORS

The intervenors did not present any witnesses or testimony, and they rely on their cross-examination and closing arguments to set forth their respective positions.

Campaign for Ratepayers' Rights (CRR) acknowledges that the proceeding began in late 1983 and requests that the Commission render whatever decision it is going to render as expeditiously as possible as the outcome will dramatically affect the Company's balance sheet and financing ability. CRR requests that the Commission deny the relief requested by PSNH.

Community Action Program (CAP) suggests that the Commission recognize this proceeding as a request for rate relief and deny the petition as the Commission may not fix an appropriate ratemaking methodology because the underlying expenses are related to cancelled plant, and therefore, fall under the purview of RSA 378:30-a.

The Consumer Advocate requests the petition be denied because the Commission does not have subject matter jurisdiction.

IV. ANALYSIS

In October of 1982, PSNH executed a Joint Owners Agreement with other utilities to construct, maintain and operate the Pilgrim II nuclear plant. PSNH's ownership interest was 3.47%. PSNH invested $10,402,395.17 between October 1972 and April 30, 1979. May 7, 1979 was the effective date of the anti-CWIP statute, RSA 378:30-a. An additional sum of $4,605,922.06 was invested prior to October 26, 1981, the date the lead owner, Boston Edision, finalized the cancellation of the plant. A breakdown of the investment between cash and AFUDC is set forth in Exhibit 3.

The Commission has determined that it would not examine the prudency of the investment since our interpretation of the Re Public Service Co. of New Hampshire, supra, held that if the investment falls within the time of the statute (RSA 378:30-a), it may not be recovered through rates. Having reviewed the testimony and exhibits filed in this proceeding the Commission finds, for the purposes of this proceeding, the purpose of PSNH's investment in Pilgrim II was to provide capacity in order to meet PSNH's obligation to serve anticipated new customers and customer load and that in their opinion the additional capacity and investment in Pilgrim II had significant advantages over other capacity alternatives. This finding does not determine whether

the investment is prudent or imprudent, but merely acknowledges what PSNH's purposes were at the time.

The Commission further finds that the investment in its total sum of $15,008,217.23[2(71)] was made in the manner set forth in Exhibit 3 and that the investment of $10,402,395.17[3(72)] set forth in Exhibit 4 was made prior to April 30, 1979.

The Commission also finds that the project was cancelled by its lead owner on October 26, 1981.

Applying the above findings to the pertinent controlling statute, RSA 378:30-a, as interpreted by the Supreme Court of New Hampshire in Re Public Service Co. of New Hampshire, supra, the Commission must deny the relief requested by PSNH in its petition. As to PSNH's claims of constitutionality, the Commission has no jurisdiction to judge such matters; therefore, any relief for same is also denied. The petition is denied.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the aforementioned petition is denied.

By Order of the Public Utilities Commission of New Hampshire this twentythird day of June, 1986.

FOOTNOTES

[1]At the procedural hearing, the Campaign for Ratepayers' Rights submitted an oral Motion to Recuse Commissioner McQuade. A follow-up written Motion was filed on July 31, 1985 and, on August 2, 1985, the Seacoast Anti-Pollution League filed a written joinder in the Motion. Inasmuch as Mr. McQuade is no longer a member of the Commission, the issue is moot and there is no need for a further ruling on the matter in this proceeding.

[2]These figures are based upon evidence establishing the timing of expenditures and receipts. The Commission has made no findings about the appropriate treatment of salvage or tax losses in this proceeding.

[3]See Footnote 2.

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NH.PUC*06/23/86*[60827]*71 NH PUC 375*Concord Electric Company

[Go to End of 60827]

71 NH PUC 375

Re Concord Electric Company

DR 86-153, Order No. 18,311

New Hampshire Public Utilities Commission

June 23, 1986

ORDER approving a special contract rate for standby electric service.

Rates, § 342 — Electric — Standby service — Special contract rate.

A special contract rate for the provision of standby electric service was approved, subject to future review, where the utility claimed that the tariffed rate for such service did not provide adequate revenue to warrant the investment in such service.

By the COMMISSION:

ORDER

WHEREAS, on May 28, 1986, Concord Electric Company filed with this Commission its Special Contract No. 1 by which it proposes electric service to Blue Seal Feeds, 520 Hall Street, Concord, New Hampshire, such service specifically dedicated to a 100 h.p. pump used in conjunction with Blue Seal's sprinkler system only during a fire emergency, and

WHEREAS, Concord Electric claims such use under currently tariffed rates does not provide adequate revenue to warrant the investment in such service and

WHEREAS, Concord Electric has proposed to use the demand charge for 7.6KW for such standby service; and

WHEREAS, the Commission finds this standby charge reasonable at this time, subject to future review; it is

ORDERED, that Special Contract No. 1 of Concord Electric Company be and hereby is, approved for effect on the date of this order.

By order of the Public Utilities Commission of New Hampshire this twentythird day of June, 1986.

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NH.PUC*06/23/86*[60828]*71 NH PUC 376*Northeast Cogeneration Systems, Inc.

[Go to End of 60828]

71 NH PUC 376

Re Northeast Cogeneration Systems, Inc.

Intervenors: Public Service Company of New Hampshire et al.

DR 86-135, Supplemental Order No. 18,314

New Hampshire Public Utilities Commission

June 23, 1986

ORDER requiring a small power producer and its interconnecting utility to appear and give evidence in a commission investigation of wood burning small power production projects.

Cogeneration, § 17 — Contract rates — Small power production — Commission investigation — Wood burning facilities.

The developer of a wood burning small power project and the utility it intended to interconnect with were required to appear and give evidence in a commission investigation of wood burning small power production projects notwithstanding the fact that the developer and the interconnecting utility intended to negotiate a voluntary contract for the purchase and sale of electric power from the project; the commission found that evidence concerning the project would be relevant to its investigation regardless of whether the power from the project was sold under a voluntary contract or a commission set rate.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on April 16, 1986 Northeast Cogeneration Systems, Inc. (Northeast) filed a

petition for a twenty year rate pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) and 70 NH PUC 753, 69 PUR4th 365 (1985) (Order No. 17,838); and

WHEREAS, on April 17, 1986 the N.H. Public Utilities Commission (Commission) issued Order No. 18,223 (71 NH PUC 249) in which it initiated an investigation of woodburning small power producer projects, including Northeast, in regard to their ability to fulfill the representations in their rate filings, including but not limited to their operational and financial viability over the period of the rate and their ability to come on-line on the date specified in their filings; and

WHEREAS, on June 4, 1986 by Order No. 18,287 (71 NH PUC 339), the Commission adopted a procedural

schedule that, inter alia, specified testimony to be filed by the developers on June 17, 1986 and by Public Service Company of New Hampshire (PSNH) on July l, 1986, and a hearing to be held for Northeast on July 11, 1986; and

WHEREAS, on June 16, 1986 Northeast and PSNH filed a joint Motion to Postpone Consideration of the issues raised by Order No. 18,223 in connection with the Northeast project and rate application in order to allow Northeast and PSNH to negotiate a voluntary contract for the purchase and sale of electric power from the facility; and

WHEREAS, the issues raised in Order No. 18,223 continue to be relevant regardless of whether Northeast sells the power from its facility under a Commission rate or a voluntary contract and the Commission wishes to hear the testimony as it relates to the Northeast project in the context of the testimony as presented by the other woodburning projects; it is therefore

ORDERED, that the procedural schedule wherein it relates to the filing of testimony be, and hereby is, waived; and it is

FURTHER ORDERED, that PSNH and Northeast appear before the Commission on July 11, 1986 to present evidence regarding the issues noted above and in particular the characteristics of the Northeast project that distinguish it from the other woodburning projects that are currently being considered in the instant investigation.

By Order of the Public Utilities Commission of New Hampshire this twentythird of June, 1986.

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NH.PUC*06/27/86*[60829]*71 NH PUC 378*New Lyman Falls Power Company, Inc.

[Go to End of 60829]

71 NH PUC 378

Re New Lyman Falls Power Company, Inc.

DR 86-192, Order No. 18,318

New Hampshire Public Utilities Commission

June 27, 1986

ORDER rejecting, without prejudice, the long term rate filing of a small power producer.

Cogeneration, § 19 — Small power production — Long term rate filing.

The long term rate filing of a small power producer was rejected without prejudice pending the outcome of a commission investigation into the long-term avoided cost rates of the interconnecting utility.

By the COMMISSION:

ORDER

WHEREAS, on June 20, 1986, New Lyman Falls Power Co., Inc. (New Lyman) filed a petition for long term rate for its North Stratford, New Hampshire 4.9 MW hydroelectric project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) and 70 NH PUC 753, 69 PUR4th 365 (1985) (Order No. 17,838); and

WHEREAS, Public Service Company of New Hampshire filed a Petition for Avoided Cost Rate Update on April 15, 1986; and

WHEREAS, on May 21, 1986 the Commission opened Re Small Energy Producers and Cogenerators, Docket No. 86-134, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that

pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in Re Small Energy Producers and Cogenerators, [supra], will be accepted or approved by the Commission;

and

WHEREAS, New Lyman filed its petitions after May 21, 1986; it is therefore

ORDERED, that the long term rate filing for New Lyman be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 86-192 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this twentyseventh day of June, 1986.

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NH.PUC*06/27/86*[60830]*71 NH PUC 379*Riverside Steam and Power Company, Inc.

[Go to End of 60830]

71 NH PUC 379

Re Riverside Steam and Power Company, Inc.

DR 86-193, Order No. 18,319

New Hampshire Public Utilities Commission

June 27, 1986

ORDER rejecting, without prejudice, the long term rate filing of a small power producer.

Cogeneration, § 19 — Small power production — Long term rate filing.

The long term rate filing of a small power producer was rejected without prejudice pending the outcome of a commission investigation into the long-term avoided cost rates of the interconnecting utility.

By the COMMISSION:

ORDER

WHEREAS, on June 20, 1986, Riverside Steam & Power Co., Inc. (Riverside) filed a petition for long term rate for its Penacook, New Hampshire 4.9 MW gas-fired cogeneration project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) and 70 NH PUC 753, 69 PUR4th 365 (1985) (Order No. 17,838); and

WHEREAS, Public Service Company of New Hampshire filed a Petition for Avoided Cost Rate Update on April 15, 1986; and

WHEREAS, on May 21, 1986, the Commission opened Re Small Energy Producers and Cogenerators, Docket No. 86-134, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that

pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in Re Small Energy Producers and Cogenerators, [supra], will be accepted or approved by the Commission;

and

WHEREAS, Riverside filed its petitions after May 21, 1986; it is therefore

ORDERED, that the long term rate filing for Riverside be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 86-193 be, and hereby is, closed.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of June, 1986.

71 NH PUC 380

Re Belmont Mill Power Associates

DR 86-128, Order No. 18,321

New Hampshire Public Utilities Commission

July 1, 1986

ORDER closing a docket on a long term small power production rate filing.

Cogeneration, § 19 — Small power production — Long term rate filing — Docket closing.

A docket opened for the purpose of investigating the long term rate filing of a small power production facility was closed where the project was already in operation under a short term rate, the issues surrounding the eligibility of the facility for a long term rate were different from those raised by other projects still in the developmental stage, and the producer requested that its long term rate filing be withdrawn.

By the COMMISSION:

ORDER

WHEREAS, on April 11, 1986 Belmont Mill Power Associates (Belmont) filed a petition for long term rates for its .6 MW wood chip fuel facility located in Belmont, New Hampshire pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) and 70 NH PUC 753, 69 PUR4th 365 (1985) (Order No. 17,838); and

WHEREAS, on April 17, 1986, the Commission issued its Order of Notice No. 18,223 (71 NH PUC 249) in which it scheduled a pre-hearing conference on May 13, 1986 and set out the scope of its concerns in regard to the long term rate filings of wood burning qualified facilities; and

WHEREAS, Belmont represented that its plant was already in operation under a short term rate and the issues surrounding the eligibility for a long term rate were different from those raised by projects still in the planning stages of development and therefore, requested that its rate filing be treated separately; and

WHEREAS, the Commission granted Belmont's request in Supplemental Order No. 18,287 (71 NH PUC 339) on the condition that Belmont amend its long term rate petition prior to June 21, 1986 to incorporate in "Section I Brief Description of facility", those characteristics of its

facility that distinguish it from the other woodburning facilities in this proceeding; and

WHEREAS, Belmont submitted a letter dated June 17, 1986 in which it requested that its long term rate filing

Page 380

for the facility be withdrawn; it is therefore

ORDERED, that Docket No. DR 86-128 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this first day of July, 1986.

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NH.PUC*07/01/86*[60832]*71 NH PUC 381*Kearsarge Telephone Company

[Go to End of 60832]

71 NH PUC 381

Re Kearsarge Telephone Company

DR 86-179, Order No. 18,322

New Hampshire Public Utilities Commission

July 1, 1986

ORDER authorizing a telephone carrier to delete the offering of fourparty service and to reduce touch calling rates.

Service, § 276 — Telephone — Discontinuance — Substitution of other service — Multiparty lines.

A telephone carrier was authorized to delete the offering of four-party service in certain exchanges; the commission found that the company could offer improved service to four-party subscribers at lower investment, operation, and maintenance costs. [1] p. 381.

Rates, § 536 — Telephone — Rate reduction — Cost of service — Touchcalling.

A telephone carrier was authorized to reduce its touch-calling rate to reflect the lower cost of providing service using newly acquired digital equipment. [2] p. 381.

By the COMMISSION:

ORDER

[1] WHEREAS, on June 5, 1986, Kearsarge Telephone Company filed with this Commission certain revisions to its Tariff No. 5 proposing to delete the offering of four-party service in its Andover, Boscawen, and Salisbury exchanges; and

WHEREAS, the Commission finds such upgrade of those exchanges' 107 four-party subscribers is in the best interest of all parties because of improved service as well as lower investment, operation and maintenance costs; and

[2] WHEREAS, the Company also has proposed a reduction in the touchcalling rate in these same exchanges, reflecting lower costs in providing the service by its newly acquired digital equipment, such reduction being in the best interest of the consumer; it is

ORDERED, that Section 2, 7th Revised Sheets 1 and 1A and Section 3, 1st Revised Sheets 71 and 72 be, and hereby are, approved for effect on July 16, 1986; and it is

FURTHER ORDERED, that affected subscribers be given one-time notice of the changes approved herein.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1986.

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NH.PUC*07/03/86*[60833]*71 NH PUC 382*Northern Utilities, Inc.

[Go to End of 60833]

71 NH PUC 382

Re Northern Utilities, Inc.

DF 86-197, Order No. 18,325

New Hampshire Public Utilities Commission

July 3, 1986

ORDER permitting a gas utility to extend its short-term borrowing authorization.

Security Issues, § 98 — Short-term notes — Borrowing authorization — Gas utility.

A gas utility was permitted to extend its short-term borrowing authorization for an additional six months; the utility was negotiating to change its restrictive indentures and loan agreements with the holders of its long-term debt and desired the extension to allow it to complete the changes before proceeding with its long-term financing.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a New Hampshire corporation having its principal place of business in Portsmouth, New Hampshire, and operating as a gas utility, under the jurisdiction of this Commission, on June 24, 1986, filed with this Commission a petition to extend its short-term borrowing authorization of $6,000,000 from June 30, 1986 to December 31, 1986;

and,

WHEREAS, as of March 31, 1986 the net fixed capital of the Company had $4,275,000 of short-term notes payable; and,

WHEREAS, the Company is negotiating to change its restrictive indentures and loan agreements with the holders of its long-term debt and would complete these changes before proceeding with a long-term financing; it is

ORDERED, that Northern Utilities, Inc., be, and hereby is, authorized to issue and sell, and from time to time renew, for cash its notes or notes payable due less than 12 months after the date thereof in an aggregate principal amount not exceeding $6,000,000; and it is

FURTHER ORDERED, the notes shall bear interest at the most economical rates the Company can obtain; and it is

FURTHER ORDERED, that the authority to renew these notes up to an aggregate amount of $6,000,000 shall expire December 31, 1986, at which time the aggregate level will be redetermined; and it is

FURTHER ORDERED, that on or before January 1 and July 1 of each year, the Company shall file with this

Commission a detailed statement, duly sworn to 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; and it is

FURTHER ORDERED, that the Company file its petitions on a more timely basis.

By order of the Public Utilities Commission of New Hampshire this third day of July, 1986.

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NH.PUC*07/03/86*[60834]*71 NH PUC 383*Fuel Adjustment Clause

[Go to End of 60834]

71 NH PUC 383

Re Fuel Adjustment Clause

Intervenors: Concord Electric Company, Exeter and Hampton Electric Company, Granite State Electric Company, and Connecticut Valley Electric Company

DR 86-173, Order No. 18,326

New Hampshire Public Utilities Commission

July 3, 1986

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

Automatic Adjustment Clauses, § 52 — Estimates and forecasts — Fuel costs — Rate stability — Electric utilities.

Two electric utilities were permitted to increase their fuel adjustment clause (FAC) rates to reflect an estimated increase in fuel costs despite the fact that the increase was not expected to occur until three months after the start of the six month FAC period; a proposal to use a three month FAC period was rejected as inconsistent with rate stability. [1] p. 384.

Automatic Adjustment Clauses, § 53 — Overcollections — Fuel adjustment clause — Oil conservation adjustment — Rate reductions.

The fuel adjustment clause and oil conservation adjustment rates of an electric utility were reduced to reflect forecasted overcollections due to the decrease in oil prices. [2] p. 385.

APPEARANCES: For Concord Electric and Exeter & Hampton Electric Company, Elias G. Farrah, Esquire; for Granite State Electric Company, Philip Cahill, Esquire; for Connecticut Valley Electric Company, Joseph Kraus, Esquire.

By the COMMISSION:

REPORT

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The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 27, 1986 to review the Fuel Adjustment Clause (FAC) filings of Concord Electric Company, Exeter & Hampton Electric Company, and Granite State Electric Company, and Connecticut Valley Electric Company for the first half of 1986.

I. Concord Electric Company and Exeter & Hampton Electric Company

Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") presented three witnesses, Heidi C. Blais, George R. Gantz and David K. Foote.

Concord's FAC in effect during the period April 1, 1986 through June 30, 1986[1(73)] was a credit of ($1.363) per 100 KWH and Exeter & Hampton's FAC was a credit of ($1.393) per 100 KWH during the same period. These two companies filed revised FAC surcharge credits of ($0.823) and ($0.793) per 100 KWH for Concord and Exeter & Hampton respectively (exclusive of franchise tax effects). Updated on June 27, 1986 to ($0.843) and ($0.813)/100 KWH respectively.

On June 17, 1986 the companies filed testimony and exhibits which supported the proposed revision to their respective FAC surcharge credits.

Concord proposed an FAC increase of $0.532 per 100 KWH and Exeter & Hampton of $0.592 per 100 KWH (including franchise tax effects). Both companies attribute the increase to an increase in estimated fuel costs from the companies' new electricity supplier. In the past, the

companies have had an All Requirements Contract with Public Service Company of New Hampshire (PSNH). In December 1984 the Commission approved a stock exchange among the Companies and Unitil Corporation (Unitil), the latter being a holding company.[2(74)] The formation of the holding company included the development of another corporation called Unitil Power Corp. The Unitil Power Corp. was established to provide the companies with their power needs. Concurrently the companies gave notice to PSNH that they intended to terminate the All Requirements Contract as of October 1, 1986.

The instant filing covers the six month period from July through December, 1986. Three months of this forecast includes purchases from PSNH under the All Requirements contract and three months of the forecast assumes purchases from Unitil Power Corp.

The increase in the FAC surcharge credit for both companies is due to the change in energy supplier. The forecasted cost of power for the first three months of the period averaged approximately $0.021 per KWH. In comparison, the cost of power purchased from Unitil Power is forecasted at $0.02919 per KWH.

[1] The Commission raised many concerns regarding this issue during the hearing on June 27, 1986. The principle items of concern are: 1) as of the date of this order Unitil Power Corp. did not have firm contracts signed for all the energy needs forecasted during the months of October through

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December, 1986; and 2) the power contracts have not been reviewed by the Commission as required by the Supreme Court, in Re Sinclair Machine Products, Inc., 126 N.H. 822, 498 A.2d 696 (1985).

The first of these two concerns was addressed by the Companies' witnesses. It is their opinion that the contracts which are not ratified are near completion and will be firm prior to October 1, 1986. These contracts will be subject to review in the docket opened to review the purchase power agreement between Unitil Power Corp. and the Companies (DR 86-196).

During the hearing, staff indicated that the Commission should review the option put forth in the Companies testimony concerning the division of the FAC period. This option would approve a rate for the period July through September and then revise the FAC rate for the period October through December. This would provide the Commission with the opportunity to review the FAC costs applicable to Unitil Power Corp. purchases after the docket opened to review such has been completed, i.e. separate the FAC between the purchases from PSNH and Unitil Power Corp.

The companies feel that retaining the six month period would provide continuity of rates to its customers.

The Commission agrees with the companies that the six month rate will provide continuity in rates. Additionally, changing to a three month method is inconsistent with the established FAC mechanism.

In Re Public Service Co. of New Hampshire, 71 NH PUC 269 (1986), this Commission provided its opinion concerning continuity of rates for a fuel adjustment clause. As put forth in the report, the Commission believes that a stable fuel adjustment charge is in the best interest of

a utility's customers. We believe the six month rate conforms with this opinion, therefore, we will accept the FAC rates filed by the companies.

We note that approval of these rates are subject to adjustment following our investigation process in DR 86-196. In this docket, the Commission will review the benefits of the purchase power agreement between Unitil Power Corp. and the companies, pursuant to the Supreme Court decision in Re Sinclair Machine Products, Inc., 126 N.H. 822, 498 A.2d 696 (1985).

II. Granite State Electric Company

[2] Granite State Electric Company (Granite State) made its July-December 1986 filing for a FAC and an Oil Conservation Adjustment rate ("OCA") on June 12, 1986. Granite State had an FAC rate of $0.593 per 100 KWH in effect for January 1, 1986, through March 1, 1986 and an OCA rate of $0.157 per 100 KWH in effect for the same period. In April 1986, Granite State revised its FAC to reflect a substantial overcollection forecasted through June 1986 because of the significant decrease in oil prices. The FAC rate for April through June, 1986 was a surcharge of $0.181 per 100 KWH and the OCA rate for the same period was $0.072 per 100 KWH.

The rates requested on June 12, 1986 were $0.013 per 100 KWH for FAC, and a surcharge credit of ($.006) per 100 KWH for OCA. In addition, Granite State filed revised Qualified Facilities tariff rates.

Issues raised during the June 27, 1986 hearing included:

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1. the estimated oil and coal prices for the upcoming period;

2. projections of generating station capacity factors;

3. the sales projection for the period January - June, 1986;

4. the calculations of the Qualified Facilities rate (QF).

One of these items merit special consideration. This is the issue of small power producers (QF's) in New Hampshire which contract sales to New England Power Company (NEP), a sister corporation of Granite State. During the hearings a Granite State witness testified that private contracts entered into between New Hampshire state QF's and NEP were not subject to review by any regulatory authority.

Unlike contracts made by NEP with Massachusetts QF's, where the agreements are sent to the Department of Public Utilities the New Hampshire QF's do not file the contracts with this Commission. This is not proper. Public Service Company of New Hampshire (PSNH) files its private QF contracts with this Commission for review. With no other regulatory body reviewing the contracts we believe NEP should provide the same courtesy as PSNH. We, therefore, will request that all present and future contracts between NEP and QF's within New Hampshire be filed with this Commission.

Based on the evidence provided, the Commission will accept the filed FAC rate of $0.013 per 100 KWH, the OCA surcharge credit of ($0.006) per 100 KWH, and the revised QF rates as filed.

III. Connecticut Valley Electric Company, Inc. (Conn. Val.)

On June 15, 1986, filed a revised FAC rate for the period July-December, 1986. The filed rate of $0.18/100 KWH is a revision from the current period rate of $1.39/100 KWH.

The Company provided two witnesses to support their filing. Mr. Clifford E. Giffin testified on the Central Vermont System Energy Rates which Conn Val pays, and Mr. C.J. Frankiewkz testified to the calculation of the FAC, the reconciliation of the prior period FAC and the sales forecast used in calculating the FAC.

Through testimony and cross examination by Staff and Commission of these witnesses, the following issues were discussed:

1. sales forecast;

2. lost and unaccounted for and company use;

3. the Vermont Yankee Nuclear Power Station outage;

4. Hydro Quebec Highgate purchases;

5. Merrimack II outage

6. the purchase of electric power from small power producers; and

7. the sale of energy to Unitil Power Corp.

The Company recognizes that the projected fuel costs from Central Vermont Public Service Corporation (CVPSC), Conn. Val.'s sole supplier of energy, is underestimated, due to the fact that CVPSC did not adjust certain factors of its power cost estimates to reflect updated information. Specifically, CVPSC's system forecast included a rough estimate of the revenues from the sale to Unitil Power Corp. and did not revise the length of time for the Merrimack II extended outage.

In a letter to the Commission, dated

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June 30, 1986, the company presented a revised FAC rate of $0.23 per 100 KWH which accounted for the revenues from sales to Unitil Power Corp. based on the actual contract and extending the Merrimack outage until August 24, 1986. In this letter, Conn. Val. states that because of the uncertainty of the Vermont Yankee Nuclear Power Plant operations it would be preferable to leave the rate as originally filed ($0.18 per 100 KWH). If problems develop with Vermont Yankee operations, Conn. Val. feels it will require interim relief. If Vermont Yankee is more efficient than anticipated Conn. Val. will not need to seek relief. Either way a change in Vermont Yankee output will significantly overshadow any undercollection anticipated from the difference in the originally filed rate and the update.

Based on the evidence provided, the Commission finds the FAC rate of $0.18/100 KWH to be just and reasonable and will approve the rate for the six month period beginning July 1986, and ending December, 1986.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 4th Revised Page 20A of Concord Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge credit of ($0.843) per 100 KWH for the months of July through December 1986, be, and hereby is, permitted to go into effect for the month of July, 1986; and it is

FURTHER ORDERED, that 30th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of ($0.813) per 100 KWH for the months of July through December, 1986, be, and hereby is, per- mitted to go into effect for the month of July, 1986; and it is

FURTHER ORDERED, that 17th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment surcharge credit of ($0.006) per 100 KWH for the months of July through December, 1986, be, and hereby is, permitted to go into effect for July, 1986; and it is

FURTHER ORDERED, that 21st Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of July through December, 1986 of $0.0130 per 100 KWH, be, and hereby is, permitted to go into effect for July, 1986; and it is

FURTHER ORDERED, that 6th Revised Page 11C of Granite State Electric Company tariff, NHPUC No. 10 Electricity, providing for a Qualifying Facility Power Purchase Rate be, and

hereby is, accepted for effect during July through December, 1986; and it is

FURTHER ORDERED, that 67th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 -Electricity, providing for a fuel surcharge of $1.20 per 100 KWH for the month of July, 1986, be, and hereby is, permitted to become effective July 1, 1986; and it is

FURTHER ORDERED, that 118th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 -Electricity, providing for a fuel surcharge of $.39 per 100 KWH for the month of July, 1986, be, and hereby is, permitted to become effective July 1, 1986; and it is

FURTHER ORDERED, that 107th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 -Electricity, providing for an energy surcharge of $0.18 per 100 KWH for the months of July through December, 1986, be, and hereby is, permitted to go into effect July 1, 1986.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this third day of July, 1986.

FOOTNOTES

[1]The Commission revised the companies' FAC via the trigger mechanism in April 1986 in Order No. 18,203. This revision decreases the FAC rate of ($0.297) per 100 KWH to ($1.363) per 100 KWH, for Concord and ($0.289) per 100 KWH to ($1.393) per 100 KWH for Exeter & Hampton.

[2]See DR 84-263, Report and Order No. 17,373 (69 NH PUC 701).

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NH.PUC*07/07/86*[60835]*71 NH PUC 388*New England Telephone and Telegraph Company

[Go to End of 60835]

71 NH PUC 388

Re New England Telephone and Telegraph Company

Intervenor: Office of Consumer Advocate

DR 85-419, Supplemental Order No. 18,327

New Hampshire Public Utilities Commission

July 7, 1986

ORDER authorizing a local exchange telephone carrier to offer certain private branch exchange services under a flexible rate pricing plan.

Rates, § 257 — Flexible rates — Commission authorization — Local exchange telephone carrier.

In approving the flexible rate pricing plan of a local exchange telephone carrier the commission found that there is no statutory barrier to the authorization of flexible pricing and that case law is not inconsistent with the concept of flexible pricing. [1] p. 392.

Monopoly and Competition, § 83 — Telephone — Local exchange carrier — Flexible rates — Private branch exchange services.

Despite reservations as to the advisability of allowing the provision of competitive services by public utilities, the commission approved a local exchange telephone carrier's flexible rate pricing plan whereby the carrier could adjust its rates for certain private branch exchange service offerings in response to competition; the commission found that the flexible pricing plan would enable it to evaluate the effect of competitive services on the provision of universal service with only a minimal effect on revenues. [2] p. 394.

Rates, § 566 — Telephone — Private branch exchange services — Flexible rates — Local exchange carrier.

A local exchange telephone carrier was permitted to price its digital private branch exchange (PBX) service and analog to digital conversion PBX service using a flexible rate pricing plan;

the minimum rate available under the plan was found to be 0not confiscatory because it would cover the utility's costs including a rate of return and

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contribution to the rest of the system, and the maximum rate was held to be neither excessive or extortionate because it would be limited by the rate charged by the utility's highest priced competitor. [3] p. 394.

Rates, § 124 — Reasonableness — Flexible rates — Local exchange telephone carrier.

The flexible rate pricing plan of a local exchange telephone carrier was found to be just and reasonable where the minimum rate available under the plan would enable the carrier to cover its costs including a rate of return and the maximum rate would be limited by the rates charged by its competitors. [4] p. 394.

Service, § 463 — Telephone — Private branch exchange conversion — Risk — Local exchange carrier.

Statement, in dissenting opinion, that the majority erred in allowing a local exchange telephone carrier to offer analog to digital conversion private branch exchange service; the dissenting commissioner argued that such service should not be approved because of the risk of stranded investment and inflated rate base. p. 395.

(AESCHLIMAN, commissioner, dissents in part, p. 395.)

APPEARANCES: Phillip M. Huston, Jr., Esquire, on behalf of New England Telephone; Michael W. Holmes, Esquire, Consumer Advocate; Mary C. Hain, Edgar D. Stubbs, Jr., Eugene F. Sullivan, Daniel D. Lanning and W. Michael Burke for the Commission staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket was initiated by a proposed revision of Tariff No. 75 filed by the New England Telephone & Telegraph Company on December 16, 1985. The tariff proposed terms and conditions for the offering of "Flexpath" service (digital PBX service), analog to digital conversion PBX service, and a flexible rate pricing plan. On January 15, 1986, Order No. 18,065 issued suspending the New England Telephone tariff pending an investigation and decision thereon. An Order of Notice was issued on January 22, 1986, setting a hearing for February 27, 1986. This Order of Notice was never published and was therefore void. A revised Order of Notice was issued on February 5, 1986, setting a hearing for March 13, 1986. A hearing was held on the merits on March 13, 1986. Emile A. LeBlanc gave direct testimony for New England Telephone Company. The hearing on the merits was continued on March 26, 1986, pursuant to an Order of Notice issued on March 18, 1986.

II. THE PROPOSED SERVICES AND PRICING PLANS

A. Flexpath Digital PBX Service and Analog-to-Digital Conversion PBX Service

The New England Telephone & Telegraph Company (hereinafter "NET" or "the company") is seeking Commission approval of a "Flexpath" digital PBX service and an analog-to-digital (A/D) conversion PBX service. Flexpath digital PBX service is a combined direct inward dialing and direct outward dialing (DID/DOD) digital service provided on a 1.5 Megabits per second (Mbps) facility between the customer's digital PBX and the company's digital central office. In addition, it provides

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access to the switched network. Flexpath service consists of a digital port, which provides and identifies up to twenty-four trunk circuits, and a digital transport facility, which is a 1.5 Mbps facility with a capacity of up to twenty-four trunks. The A/D conversion service provides a digital connection to customers with digital PBX's who are served by an analog central office. The A/D conversion equipment located in the central office converts analog transmission signals to digital transmission signals for transport over a digital transport facility connected to a customer's digital PBX. When the communication originates at the customer's digital PBX, the A/D conversion equipment at the central office converts incoming digital signals to analog signals to interface with the company's analog central office for access to the switched network. These services are targeted primarily at large business customers, particularly to electronics, financial, and insurance firms, and the U.S. Government. Under the existing service arrangements, customers who have digital PBX's must provide their own multiplexing equipment to convert these analog signals to digital signals at the 1.5 megabits per second level.

B. The Flexible Rate Pricing Plan

The company proposed to offer flexpath digital PBX service and A/D conversion service under a flexible rate pricing plan. The tariff would show both a minimum and a maximum monthly rate. Service and equipment charges would not be flexibly priced. The current rates and charges would be filed with the New Hampshire Public Utilities Commission on a current price list. Individual rates would be reduced or increased in varying amounts, but could not fall below the minimum rate or exceed the maximum rates filed for these services. New England Telephone would reserve the right to change the rates within the minimum/ maximum price range at any time upon thirty days notice to the PUC, by providing a revised current price list. A rate would not be changed unless it had been in effect for at least thirty days. The flexible rate is intended to allow New England Telephone to change the rates between the minimum and maximum rates to meet current market conditions while still providing the New Hampshire PUC with a review of the appropriateness of these rates.

III. POSITIONS OF THE PARTIES

A. Flexpath Digital PBX Service and Analog-to-Digital Conversion PBX Service

The staff advocated no position with respect to the issues. However, staff clarified certain issues through crossexamination.

The staff questioned whether the "flexpath" service cost study included a consideration of all of the benefits which the service would derive from the existing network. In other words,

whether all joint costs were considered. The company testified in response that costs included allocations for joint costs such as central office power, land, buildings, poles, conduit and administration through the third level of management. These costs were included in the cost study at present, instead of historic cost, to actually overstate the cost.

Customer Premises Equipment (CPE) is the only existing competition for

these services. The staff asked the company witness what the Federal Communications Commission's (F.C.C.) intent was in deregulating CPE. The company testified that one of the F.C.C.'s goals of deregulation was to promote competition to spur technological innovation.

The other major concern of both the staff and the consumer advocate was the issue of stranded investment. The Consumer Advocate questioned whether the change from the present service to "flexpath" might result in stranded investment.

The company testified that when customers have "flexpath" service installed, the plant used to provide the traditional service is "freed up" for the normal growth caused by new customers. The company is trying to manage the introduction of the new services so there is not a wholesale removal of the existing service. This introduction is managed by pricing at the chosen level: in the midrange of the competitors' prices.

The staff was concerned that, with increasing competition, customers with "flexpath" would subsequently buy their own multiplexers, cancel "flexpath" service, and thereby cause stranded investment. The company answered that there would be no stranded investment. Flexpath equipment is very common equipment that could be moved and reused to serve the inter-office facilities market.

B. The Flexible Rate Pricing Plan

The staff questioned whether the commission had the authority to set flexible prices. The company agreed to write a memorandum of law on the issue.

New England Telephone argues that a flexible rate pricing plan is supported by the language of the New Hampshire Statutes. The first statute New England Telephone uses to support its argument is N.H. R.S.A. §378:7 (1984). The language states, in pertinent part:

Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint ... that the maximum rates, fares or charges chargeable by any ... public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed. ...

The company argues that this gives the commission authority to determine the maximum rates for service, not just a rate for service. Therefore, the company argues, the commission may approve a range of rates up to a maximum. Memorandum for New England Telephone at 1-2.

The second section of the statute which the company relies upon is N.H. R.S.A. §378:1 (1984) which states:

Every public utility shall file with the public utilities commission, and shall print and keep

open to public inspection, schedules showing the rates, fares, charges and prices for any service rendered or to be rendered. ...

The company argues that the use of plural "rates" together with the singular "any service" shows the commission's authority to approve more than one rate for each service. Memorandum at 2.

The third section of the statute upon

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which the company relies is N.H. R.S.A. §378:3 (1984). It states:

Unless the commission otherwise orders, no change shall be made in any rate, fare, charge or price, which shall have been filed or published by a public utility in compliance with the requirements hereof, except after 30 days' notice to the commission and such notice to the public as the commission shall direct.

The company uses this section of the statute to support their proposal that price changes under the flexible pricing plan will be put into effect only after 30 days' notice is given to the commission. The company argues that, although any proposed price will already be within the approved minimum or maximum to be established by the commission, the commission may review that specific price change if it so desires.

IV. COMMISSION ANALYSIS

A. Flexpath Digital PBX Service and Analog-to-Digital Conversion PBX Service

Based on the information submitted by the company with respect to the prices of competitive services, New England Telephone's Flexpath Digital PBX Service and Analog-to-Digital Conversion PBX Service are reasonably priced. Company studies show that at the low end the minimum price would not price the services under cost merely to be competitive. At the maximum level, the price would not be as competitive but would make a contribution to NET's revenue requirement.

The Commission finds that the company has proven that all relevant costs have been considered. The company has considered the joint costs and the embedded costs involved at present costs. New England Telephone Company is presently conducting a cost of service study in New Hampshire. See Re New England Teleph. & Teleg. Co., Docket No. 85-182 (N.H. P.U.C. opened September 20, 1985). The results of this study may show more clearly the relevant costs involved in providing this service. The pricing approved in this case may be reviewed at the time that the study has been completed. This may be necessary to true up the costs presently thought to be involved with the company's actual costs in providing this service.

This case does not decide the issue of integrated services digital network (ISDN) in New Hampshire. If the company is intending to implement an integrated services digital network, they should bring that proposal before the commission so that a timely decision may be rendered. To the extent that equipment used to provide the "flexpath" service will be used in an ISDN service this commission requires the company to make prudent business decisions regarding the state-of-the-art and interface technology questions. These business decisions may be reviewed at

such time as an ISDN implementation is requested.

B. The Flexible Rate Pricing Plan

[1] This commission has the authority to set flexible prices. As stated in the company's argument, this commission has no statutory barrier to the authorization of a flexible pricing plan. New Hampshire case law also supports this finding.

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New Hampshire case law establishes the concept of the "zone of reasonableness." In New England Teleph. & Teleg. Co. v. New Hampshire, 104 N.H. 209, 44 PUR3d 498, 183 A.2d 237 (1962), the New Hampshire Supreme Court states that the commission may not set confiscatory rates or in other words, rates that are below the lowest level of the zone of reasonableness. The Supreme Court sets as an upper limit the highest rate in this zone of reasonableness, beyond which the rate becomes excessive or extortionate. Id., 104 N.H. at p. 233. Within this zone of reasonableness, the commission may determine any rate that is "just and reasonable." Id., 104 N.H. at p. 234. This finding is not inconsistent with the concept of flexible rates.

The commission has traditionally determined rates as a function of a proper rate base, a reasonable rate of return and the revenue requirement. At a minimum, case law has established that rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation. N.H. R.S.A. §378:27 (1984).

The rate base and the rate of return given thereon must also be just and reasonable. N.H. R.S.A. /s/378:28 (1984). See Public Service Co. of New Hampshire v. New Hampshire, 113 N.H. 497, 508, 2 PUR4th 59, 311 A.2d 513, 520 (1973).

The idea of flexible rates is further supported by the language in Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire, 119 N.H. 332, 31 PUR4th 333, 402 A.2d 626 (1979). In that case the New Hampshire Supreme Court cited the United States Supreme Court's decision in Smyth v. Ames, 169 U.S. 466, 42 L.Ed. 819, 18 S.Ct. 418 (1898). In Smyth v. Ames, 169 U.S. at p. 546, 42 L.Ed. at p. 849, the U.S. Supreme Court stated that a public utility is entitled to a return upon "the fair value of the property being used by it for the convenience of the public." In discussing this standard the New Hampshire Supreme Court states both the company and the LUCC agree with this broadly stated standard. Their fundamental dispute is on the proper application of this standard to the facts of the present case. There is a wide area between the lowest return allowable so as not to be confiscatory, see Federal Power Commission v. Hope Nat. Gas Co., 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944), and the highest return allowable so as not to be excessive and extortionate. New England Teleph. & Teleg. Co. v. New Hampshire, 104 N.H. 229, 232, 233, 44 PUR3d 498, 183 A.2d 237, 241 (1962). If we deem, upon review, that the return ordered by the commission falls within this "zone of reasonableness," Id., we will not substitute our own judgment for that of the commission. Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire, 119 N.H. at p. 342, 31 PUR4th at p. 339.

Since rates are a function of the rate of return, it may be concluded that a rate does not have to be one set number, as long as it is based on a rate of return that is within the zone of

reasonableness.

[2] The provision of "competitive" services by public utilities is an issue that has, to date, been unresolved by this commission. However, we are aware of the current federal policy of promoting competition. See United States v. American Teleph. & Teleg. Co., 48 PUR4th 227, 552 F.Supp. 131 (D.D.C.1982) aff'd sub nom Maryland v. United States, 460 U.S. 1001, 75 L.Ed.2d 472, 103 S.Ct. 1240 (1983). We are not convinced that the promotion of competitive services is in the best interest of the local exchange customer. We do find that the maintenance of universal service is in the best interest of the New Hampshire telephone ratepayer. See Re Northern Utilities, Inc., 67 NH PUC 645, 648 (1982). The provision of universal service may or may not be promoted by competition for local services. The commission is willing to allow the company to experiment with this particular service to help them evaluate the effect of "competitive" services on the provision of universal service because the revenue effect is minimal.

[3, 4] The commission will allow the company to price "flexpath" and the analog-to-digital conversion services using its flexible rate pricing plan. This provides a competitive rate for the Flexpath service and the analog-todigital conversion PBX service. The minimum and maximum prices are competitive because they are the prices of the company's highest and lowest priced competitors.

The range of rates requested are within the zone of reasonableness. The minimum rates are not confiscatory and the maximum rates are not excessive or extortionate. The Company argues that the service is priced above cost and will even provide a contribution to the rest of the system. (Tr. 66) Case law establishes that, at the lower end of the zone of reasonableness, rates may not be confiscatory. See New England Teleph. & Teleg. Co. v. New Hampshire, 104 N.H. 209, 44 PUR3d 498, 183 A.2d 237 (1962). For a rate not to be confiscatory, a rate must meet the "end result" test of Federal Power Commission v. Hope Nat. Gas Co., 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944). This test was defined by the Supreme Court as follows:

Rates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so-called "fair value" rate base. Id., 320 U.S. at p. 605, 51 PUR NS at p. 202, 88 L.Ed. at p. 346.

The minimum rate is not confiscatory since it covers the company's costs including a rate of return (Tr. 118) and adds a contribution to the rest of the system. Because it has these attributes it is a rate which complies with the intent if not the letter of the Hope "end result" standard. A precise mathematical calculation of the rate-of-return is not necessary to fix a rate for a service with such a minimal revenue effect. See Chicago Board of Trade v. United States, 96 U.S.App.D.C. 56, 9 PUR3d 475, 223 F.2d 348, 352 (1955).

These rates are not excessive or extortionate. Excessive or extortionate rates are usually those prices which only monopolies are capable of charging. Since the Company has proven that competition exists for these services, and since the proposed maximum price

is based on the price of NET's highest priced competitor (Tr. 105), the maximum price is not an excessive or extortionate rate. Indeed, our Supreme Court and our State Constitution have expressed a preference for free enterprise over Public Utility Commission pricing. See N.H. CONST. part II, art 83 and Re Omni Communications, Inc., 122 N.H. 860, 862, 451 A.2d 1289 (1982) respectively. Based on the above considerations, the Commission finds this range of rates to be just and reasonable.

The Commission is concerned about the Company's allocation of the so called "contribution to the rest of the system" which may be in excess of their revenue requirement for these services. For example, if NET raises its prices for these services, there will be more of a contribution. The Company has stated that "everybody [will] benefit from the contribution" (Tr. 132) created by these rates.

Should there be any amount collected in excess of the revenue requirement, NET shall keep exact records of this amount (the so-called "contribution"). The Commission may decide in future rate cases to allocate this contribution across rates in other customer classes, in accordance with policies to be established by this Commission.

This experiment is approved based on the fact that the revenue effect of the services is small. The Commission will monitor this revenue effect. Should the revenue effect become significant, the Commission may reexamine the offering of this service at the allowed rates.

The flexible rate pricing plan will provide this commission with a vehicle to study competitive local services. To further facilitate the competitive nature of this service, we will not require the company to file price list changes. So long as prices stay within the minimum and maximum rates allowed, the company need not file any prices with the commission. However, NET will be expected to keep complete records of this service. These records may be necessary to evaluate, among other things, the efficacy of competitive services revenue allocation, and the ability of competitive service to promote universal service.

SUPPLEMENTAL ORDER

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

ORDERED, that the "Flexpath" service (digital PBX service) and the analog-to-digital conversion PBX service be, and hereby are, approved; and it is

FURTHER ORDERED, that the flexible pricing plan be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this seventh day of July, 1986.

Commissioner Aeschliman Dissenting in Part

I concur with the majority decision with respect to the allowance of Flexpath digital PBX service based on a flexible price. Experience with this service will provide insight into the provision of competitive services by NET at a low risk to NET's ratepayers because of the small investment involved. The risk of stranded investment or inflated rate base is also low for this service particularly if the equipment used to provide flexpath service is compatible with the

provision of ISDN. Although this decision does not decide the issue

of ISDN, it is important to recognize the trend of technology in evaluating the risks of particular investments.

In my view the risks of stranded investment and inflated rate base are significantly higher for the analog to digital conversion service because of the larger investment required and because of the greater likelihood that the equipment will be outmoded before its costs are recovered either by customer replacement or by conversion of the central office itself. There is no dispute that A/D conversion equipment is a central office service which directly competes with customer premises equipment which can provide the same service. (Transcript, March 26, 1986, at 80, 81.) Furthermore, reuse of A/D conversion equipment is significantly more limited than flexpath equipment because A/D equipment can not be reused for applications between digital offices as can flexpath equipment or when multiplexers are no longer necessary due to digitization. Consequently, I would not approve the analog to digital conversion service at this time.

The introduction of competition into the telephone equipment market has drastically changed the economic environment in which the telephone utilities operate and has increased the complexity of Commission analysis and evaluation of proposed utility investments and services. The Commission is confronted with two potentially conflicting public policy objectives. First, the Commission wishes to ensure that the public switched network will continue to be technologically rich and will continue to provide the communications infrastructure necessary for a growing and vital economy. Second, the Commission wishes to protect ratepayers from carrying excess costs resulting from stranded investment and an inflated rate base. In an environment where telephone equipment costs are on a declining cost curve, and where technology is changing very rapidly, the Commission must make judgments about the viability of services as part of the switched network over time. Services which may be quickly outmoded or displaced by customer owned equipment should be rejected as regulated offerings in favor of investments which will have longer lasting value in upgrading the network, i.e., expansion of the network to meet customer growth and upgrading of central offices to digital capability. Of course, it is easier to articulate these policy goals than to apply them to individual service offering decisions.

The Commission recognized the problem of stranded investment and the need to assure that the interests of the general ratepayer were protected in the Centrex decision. Re New England Teleph. & Teleg. Co., 69 NH PUC 268, 272 (1984). In that case as in this case the Company assumed that equipment would be reusable. However, economic loss is caused when customers replace centrex service with customer-owned PBXs. This replacement of service causes excess capacity until the central office equipment can be reused. Economic loss is also created because the central office equipment was purchased at a higher cost than the cost of replacement equipment and it is carried in rate base at an inflated value.

In the Centrex case the Commission initially limited the offset to the end user charge to existing customers to encourage retention of existing Centrex customers. At the same time the Commission wished to discourage the expansion of Centrex in order to limit

the potential for stranded investment. Id., 69 NH PUC at pp. 272, 273. On rehearing the Commission modified this limitation subject to conditions protecting ratepayers from stranded investment. These conditions limited new system offerings to Custom Centrex and required contractual payment plans where the period of the contract approximated the payback period on the investment. The Company was required to withdraw the Month-to-Month Optional payment plan. Re New England Teleph. & Teleg. Co., 69 NH PUC 583, 585, 586 (1984).

The A/D conversion portion of this filing does not provide protection from stranded investment. Customer subscription is only for one year. The company has been able to forecast revenues only for three years because of the high uncertainty about future demand and prices. However, recovery of costs will take longer than three years and may take as long as 10 years. (Transcript, March 26, 1986 at 129-131.)

Finally, I do not think that the Company has done an adequate job of proving the demand for the service. The Company presented the Commission with summary data indicating the amount of the forecasted demand for Flexpath and A/D service for digital PBX's by analog and digital offices. (Exhibit 2, p. A-3.) The market analysis was based upon a consultant's estimate of the market penetration of digital PBX's and a New England wide survey of NET PBX customers. (March 13, 1984 Transcript at 45-49.) The Company has not provided any distribution of customers by location to support the estimated demand for A/D service. One would intuitively assume that large customers who might desire digital PBX service would be located in the more developed parts of the State which are already served by digital central offices. In fact, in discussing the question of stranded plant, the company witness, Mr. LeBlanc, supported this thesis. (March 13, 1984, Transcript at 44.)

Based upon this analysis I would deny the petition for A/D conversion service at this time.

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NH.PUC*07/07/86*[60836]*71 NH PUC 398*Public Service Company of New Hampshire

[Go to End of 60836]

71 NH PUC 398

Re Public Service Company of New Hampshire

DR 86-172, Order No. 18,329

New Hampshire Public Utilities Commission

July 7, 1986

ORDER authorizing revisions to the energy cost recovery mechanism rate of an electric utility.

Automatic Adjustment Clauses, § 52 — Energy cost recovery mechanism — Forecasts — Oil

prices — Electric utility.

An electric utility was required to revise the oil price forecasts that it used in support of its proposed energy cost recovery mechanism rate; the utility was directed to estimate its oil costs based on the actual price paid for oil in the last month as adjusted to reflect the Department of Energy's oil price projections, rather than on its own forecasting formula, which it was found would likely overstate the price of oil and result in overcollections. [1] p. 399.

Automatic Adjustment Clauses, § 52 — Energy cost recovery mechanism — Estimates and forecasts — Purchased power costs — Electric utility.

The energy cost recovery mechanism rate of an electric utility was adjusted to account for estimated savings associated with projected reductions in the cost of power purchased from the New England Power Pool and the New England Power Exchange. [2] p. 401.

Automatic Adjustment Clauses, § 48 — Energy cost recovery mechanism — Unscheduled outage penalty — Electric utility.

A three week period used to overhaul the turbines of an electric generating station was treated as a "planned" outage for purposes of determining the energy cost recovery mechanism rate of an electric utility even though the outage was not scheduled; treating the outage as "unplanned" would have subjected the utility to a penalty for poor performance and it was found that such a result would be unjust because the decision to overhaul the turbines was an act of prudent management. [3] p. 402.

Automatic Adjustment Clauses, § 9 — Energy cost recovery mechanism — Cost elements — Schiller coal conversion project — Electric utility.

An electric utility was permitted to recover, through its energy cost recovery mechanism, the entire amount of a deferred cost recovery account associated with the Schiller coal conversion project. [4] p. 403.

APPEARANCES: For Sulloway Hollis & Soden, Eaton W. Tarbell, Jr., Esquire representing Public Service of New Hampshire; Joseph Rodgers, Esquire, Assistant Consumer Advocate; for the Community Action Program (CAP), Gerald Eaton, Esquire.

By the COMMISSION:

REPORT

This docket was initiated by a

petition filed on May 23, 1986, by Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire. The petition requested a change in the ECRM rate from the May through June, 1986[1(75)] , rate of $2.424/100 KWH to a rate of $2.298/100 KWH for July through December 1986. Duly noticed hearings were held at the Commission's offices in Concord on June 23 and 24, 1986, at which time PSNH presented nine (9) witnesses and twenty-five (25) exhibits.

Prior to the hearings, the Commission staff submitted twenty-six (26) data requests and the Community Action Program (CAP) submitted sixteen (16). The Company's responses to these requests were submitted and marked as exhibits 24 and 25. During the course of the hearings several aspects of the filing were explored, some of which were:

1. Oil price estimates, and contracts with oil suppliers;

2. Coal price estimates and contracts with coal suppliers;

3. A sales growth estimate for the second half of 1986;

4. The Schiller conversion fixed adder and individual cost components;

5. The outage at Merrimack II and its effect on the Net Unscheduled Outage Adjustment in ECRM;

6. Generation "swap" between PS NH and Connecticut Power and Light;

7. The unit availability incentive feature in ECRM;

8. The effect Seabrook test power has on ECRM;

9. The method of forecasting qualified facilities and the effect it has on ECRM;

10. NEPEX purchases and sales and applicable savings; and

11. Hydro Quebec Phase I.

Several of these items merit discussion:

I. OIL PRICE ESTIMATES AND TRENDS

[1] PSNH's projected residual oil prices for the ECRM period ending December, 1986, show a gradual rise in price from $11.40/bbl. in June to $15.00/bbl. in December. In calculating its oil prices, the Company used a first-in first-out inventory accounting method, and then estimated the monthly quantities of oil to be burned during the period. Future delivered oil costs were established by taking into account the following:

1. Current outlook for crude oil prices.

2. Historical price movements.

3. Current market situation for residual oil

4. Data Resources, Inc. - Monthly Energy Outlook: April, 1986.

5. A telephone survey of utility fuel buyers and suppliers.

The company combined all the above information in developing its monthly estimated cost of oil burned.

The company testified that the cost estimates provided in this filing are

overstated for the month of June when compared to actual. PSNH witnesses indicated that an actual spot market purchase in the month of June was $9.84/bbl. compared with the forecasted price of $11.40/bbl. (Exhibit 20, Att. 3, Pg. 1 of 4).

Although this forecast has been overstated for the month of June, the Company continues to believe the estimates are appropriate when looking at the cost of fuel in general. Offsetting factors such as possibility of an unfavorable coal pile adjustment during the upcoming ECRM period would tend to diminish the effects of overstated oil prices in the ECRM component. Therefore, the Company believes the forecasted oil prices are appropriate.

CAP indicated that changes in PSNH's estimated price of oil which could lead to an under recovery would be inappropriate. Customers would be better off without an undercollection going into the next ECRM period; the period which has traditionally included the peak of the heating season.

In the past PSNH has used forecasted prices of oil released by the Department of Energy (DOE) as well as the other price indicators mentioned above. In the present docket PSNH did not use the forecast because it was not available when the price of oil was estimated (Ex. 24, Data Response #17).

Staff indicated that upon review of the estimated increase in the price of oil forecasted by PSNH compared to DOE's forecast it appears there is a significant disparity. The company has forecasted a $3.60/bbl. increase in the cost of oil compared to DOE's forecasted $2.52/bbl. In addition, the actual price per bbl. of oil estimated by PSNH is overstated by approximately $1.50/bbl. for at least one delivery during June; as stated earlier.

In Report and Order No. 17,388 (70 NH PUC 14), the Commission adjusted PSNH's estimate of oil prices for the January through June, 1985 ECRM period. At that time, the Commission utilized an estimated decrease in oil prices, projected by DOE, in lieu of PSNH's estimate. The reason for this was that DOE had an approach which "satisfies the goals of the Commission in estimating oil prices over a longer period of time ..." (70 NH PUC at p. 16).

The Commission again has concerns with the projected oil prices developed by PSNH, albeit, not for identical reasons. We believe that the current estimate has been overstated, in part because of the actual cost of oil received in June compared to the estimate. In addition, DOE's oil price projections were not available at the time PSNH made its estimate. This input should have an affect on their estimating process, as it has in all ECRM oil price estimates made by PSNH in the past.

Finally, as was brought out during the hearing, it has been PSNH's policy that during periods of increasing prices the company would have greater opportunities for spot market purchases. This is due to the fact that the prices in the spot market tend to lag and would be lower. This policy is prudent and we expect it will continue. However, in developing the forecasted price of oil PSNH did not take these spot market purchases into consideration.

These factors indicate a need to adjust PSNH's estimates to offset a probable overcollection. The Commission believes the appropriate manner in which to do this is to revise the estimated price of oil to reflect the actual price of contract oil during June.

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Using this as a beginning inventory cost the price of oil should be escalated in July through December, 1986 utilizing DOE's projected increase in oil price ($2.52 through December - $.84

the third quarter of 1986 and $1.68 the fourth quarter).

This should provide a better estimated price of oil for the upcoming ECRM period. Additionally, because we have not considered the probable spot market purchases this will provide a buffer to mitigate the factors which may increase the cost of fuel, e.g. coal inventory adjustment. This also will provide CAP with some assurance that the Commission is not creating a built in undercollection for the next ECRM period.2(76)

II. NEPEX Savings/Hydro Quebec Phase I

[2] The Company submitted testimony that the savings from NEPOOL projected in the upcoming ECRM period was two percent of the total energy cost produced by the ECRM PROSIM run (Ex. 15) and is based on a five year average (Ex. 24, data response]11).

In evaluating the methodology used to determine the projected NEPEX savings the Company also presented the most recent twelve month average of savings. This was one and two tenths percent.

During the hearing, staff inquired about Phase I of the power agreement with Hydro Quebec. Specifically, staff questioned the savings to PSNH in relation to Phase I as presented in Exhibit 24, Data Response]9. The company stated that these savings were not directly taken into consideration when computing the ECRM component in the instant proceedings. However, as previously mentioned the current savings from NEPEX has been about 1.2 percent of PSNH's total energy cost on a twelve month average and the company used a conservative two percent average when calculating the ECRM component. It is their belief that the difference between the two figures would adequately cover the savings from Phase I. The company did not propose to change the ECRM component either to reflect the savings at 1.2 percent of total energy costs or to incorporate the savings from Hydro Quebec.

In its closing argument CAP recommends that the Commission revise the ECRM component to reflect the lower, more contemporary level of projected savings from NEPEX (1.2%). As with the oil prices, CAP believes this will mitigate any potential undercollection of the ECRM component which could increase the next ECRM period rate.

Staff contends that if the NEPEX savings is to be lowered to 1.2 percent of energy costs the estimated savings applicable to Hydro Quebec should then be included in the forecasted ECRM component.

The Commission's analysis of the issue is that if the estimate for NEPEX savings is reduced to 1.2 percent level it should also be increased by the savings from Phase I of the Hydro Quebec power agreement. The net effect of these two offsetting factors would approach the two percent of energy savings estimated by PSNH in this filing. Based on this, and PSNH's testimony that the savings should not be revised, we will accept the calculation of the NEPEX savings as filed.

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III. Merrimack Unit II Outage

[3] During the hearings PSNH testified that in May 1986 Merrimack Unit II experienced an unscheduled outage. The cause of the outage is uncertain at this time, but the effect was

substantial damage to the twelfth row of stationary blades, and adjacent rotating blades, in the turbine.

The repair to this turbine will be costly, both in terms of replacement power and down time. Originally, the company had planned a thirty day outage in June 1986, however, this unplanned outage substantially lengthened the outage period. To save time and money the company has decided to incorporate an overhaul of the turbine budgeted for 1987 into the current outage. This will offset future costs and outages.

PSNH believes that the unscheduled outage should not be considered as unplanned for ECRM's unit availability incentive feature. Since this outage is an [sic] unique occurrence it should be eliminated in calculating the Net Unscheduled Outage Adjustment.[3](77) In addition, if this outage is considered it will distort the calculation of future availability targets (used to determine the Net Unscheduled Outage Adjustment), and thereby making the incentive less stringent for PSNH. Finally, PSNH avers, that the three weeks which will be used to overhaul the turbine should not be considered unplanned, not only because of the savings it creates from the efficient use of the extended outage, but because it is what would otherwise be considered a planned maintenance outage.

CAP does not believe the unscheduled portion of the outage at Merrimack II should be called planned. Other than the rescheduled overhaul and the originally planned thirty day maintenance period, the CAP believes the outage should be recognized as unplanned.

In Commission Report and Order No. 18,028 (70 NH PUC 1093) (DR 85-398) addressed a similar issue where PSNH had requested a change in the factors used to determine the Net Unscheduled Outage Adjustment. In that order the Commission found "that the current ECRM methodology is adequate. There should be no changes to the methodology prior to the rate case in which PSNH requests recognition of the Seabrook Station in rate base." The company has not presented evidence in this docket which would compel us to reverse ourselves on this decision. Therefore, the ECRM methodology for determining the Net Unscheduled Outage Adjustment will remain the same, as will the factors used to determine the availability factors.

The Merrimack II outage will be unplanned in the next ECRM period (July through December, 1986) with the exception of three weeks used to overhaul the turbine. The three weeks is in fact a scheduled maintenance outage which is moved up to provide optimum benefit for the Company and its ratepayers. There should not be a penalty from the outage adjustment for an act of prudent management. If the

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period for the maintenance were to be considered unplanned it would invoke an improper penalty.

The Commission notes that in allowing this rescheduled maintenance outage we have eliminated an outage in 1987. If the Company plans any outages in 1987 for this Unit it will require extensive documentation to assure us that this outage was indeed cost effective.[4](78) Based on the foregoing, the Merrimack II outage will be treated as unplanned with the exception of the three week period used to overhaul the turbines. The Commission will require a full report

on the cause of the outage once the investigation into such is complete (Ex. 21, Pg. 3).

IV. Termination of the Schiller Agreement

[4] PSNH filed testimony requesting the termination of the agreement entitled Recommendations of the Parties Concerning the Schiller Coal Conversion (the agreement), approved by this Commission in DE 79-141. This agreement proposed a method of recovering the costs to convert Schiller Station 4, 5 and 6 from oil to coal fired units. These costs were to be amortized through ECRM upon completion of each unit. The costs applicable to the Agreement were adjusted in Report and Order No. 17,726 (70 NH PUC 617) (DR 85-174), subject to reconciliation.

PSNH proposes to change the ratemaking treatment in which they recover the Schiller conversion costs. The filing in the instant docket anticipates incorporating the unamortized Schiller conversion costs in rate base through a rate adjustment filing made with this Commission in early June, 1986 (DR 86122). The unrecovered portion of the Deferred Cost Recovery Account[5(79)] as of June 30, 1986 will be $1,850,787 (Ex. 22, Page 4). PSNH proposes to recover this entire amount in this ECRM period (July through December 1986).

CAP points out that in this filing PSNH has estimated the loss of their wholesale customers, Concord Electric and Exeter & Hampton Electric (Unitil). This is effective as of October 1, 1986 and has substantial impact on retail customers of PSNH. Put simply, the loss of Unitil sales will in turn increase the percentage of energy related costs allocated to retail customers. This increases the portion of the Deferred Cost Recovery Account allocated to retail customers in the ECRM period.

CAP believes that, to be equitable the allocation of the Deferred Cost Recovery Amount (DCR) should be recalculated based on one of two methods. The first would be to allocate the DCR among wholesale and retail customers based on the sales during the first six months of 1986. The second would be to allocate the costs based on the projected sales in the first three months of the upcoming ECRM period. Both methods consider sales to Unitil in the allocation formula.

PSNH has verbally agreed to allocating the DCR based on sales during the first three months of the ECRM period.

Staff questions whether it is mandated that the DCR be recovered and if so, whether it must be through ECRM.

The Commission believes it is clearly in the interests of all parties to the

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agreement that the DCR be recovered. However, the manner in which to recover the DCR once the Agreement is to be terminated, is not clearly put forth.

The need to terminate the Agreement is apparent. The current cost of oil has decreased to a level that has diminished the savings anticipated by all parties when the agreement was initiated. Continuation of the agreement will simply compound the deferred costs making future recovery of costs all the more difficult. The filing of a rate adjustment concurrent with the instant docket

provides an ideal opportunity to change the rate making treatment for the recovery of the conversion costs. Thus, we will accept the termination of the Agreement and allow the recovery of the DCR through ECRM.

The Commission finds that the method tentatively stipulated to by CAP and PSNH is a reasonable manner to allocate the DCR. Therefore, we will require that the ECRM filing be revised to reflect this methodology. When the Company adjusts the ECRM component to reflect the lower estimated cost of oil (see Section I, herein) it will also recalculate the allocation of the DCR based on sales projected for the first three months of the upcoming ECRM period (July-September, 1986).

V. Test Power from Seabrook Station

PSNH has requested approval of a specific method for handling Seabrook test power through ECRM. This method is similar to that approved by the Commission in treating the test power from Schiller units 4, 5, and 6 after they were converted. PSNH proposes to use the replacement cost of the energy being produced as the fair value of the energy and to record it as a credit to the Seabrook Work Order. The Company asserts that the replacement cost of energy is used to assure that the level of the ECRM component will not be affected as a result of test energy. PSNH requests that the replacement Cost of Energy be priced at an amount equal to PSNH's marginal cost at the times during which the energy is being produced.

Although PSNH is unsure that the Seabrook Station will be testing during the upcoming ECRM period they believe that requesting approval of this methodology in advance creates no harm. In addition, if the Station does generate test power during the upcoming ECRM period, a decision in the instant docket regarding its treatment will avoid a retroactive decision on the issue.

The Commission will approve the methodology of accounting established by the FERC. We will not, however, approve the method of pricing the energy prior to a review of the methodology. The Commission wishes to obtain more evidence regarding this issue prior to developing a decision.

The Company is to provide a technical statement of the proposed accounting entries displaying the effect the transactions will have on 1) the Seabrook work order; 2) PSNH books and records; and 3) the ECRM calculation. Also, the Company is to submit an example worksheet calculating the proposed replacement cost which is proposed to be credited to the Seabrook Work Order. Our approval of the methodology will be separated from ECRM and the proposed treatment and technical statement shall be filed as soon as possible.

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VII. Conclusion

The Commission will require a refiling of the ECRM component for the period of July through December, 1986, reflecting a reduced estimated oil cost and revised method of allocating the DCR between wholesale and retail customers.

To address the overall concern of CAP that adjustments to the ECRM calculation which reduce the component could lead to a substantial undercollection (to be passed on to the next

succeeding ECRM period) the Commission notes that: A) the estimated oil prices do not take into consideration spot market purchases which, as evidenced during the hearing process, reduce the cost of oil; B) Millstone III has an estimated capacity factor of 59%, yet the principle owner of the project Northeast Utilities estimates a 60% capacity factor (as does New England Power Company in DR 86-174 Granite State Electric FAC); and C) upon completion of the amortization of the DCR the ECRM component will decrease.

These factors along with the trigger mechanism provide a buffer against a substantial increase in the ECRM component going into the January through June 1987 ECRM period, as a result of an undercollection.

Our Order will issue accordingly.

ORDER

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

ORDERED, that PSNH shall file revised tariff pages setting an ECRM rate in accordance with the foregoing report for July through December 1986.

By Order of the Public Utilities Commission of New Hampshire this seventh day of July, 1986.

FOOTNOTES

[1]The Commission reopened DR 85-398 in April 1986 for the purpose of reviewing the then effective ECRM rate. Subsequently the Commission issued Order No. 18,248 (71 NH PUC 269) decreasing the ECRM component from $0.03408/KWH to $0.02424/KWH for the months of May and June 1986.

[2]We also note that ECRM has a trigger mechanism specifically designed to correct potentially substantial over or under collections during an ECRM period.

[3]The Estimated Net Unscheduled Outage Adjustment shall be ten (10) percent of the difference between estimated and actual increased energy costs for the Effective Period resulting from unscheduled outages at generating stations wholly-owned by the Company, jointly-owned by the Company with others, or from which the Company purchases unit power and has an ownership interest in the corporate entity which is the owner and operator. Such difference shall be based, in part, on actual data for the Effective Period To Date and revised estimated data for the Remainder of the Effective Period.

[4]Note: PSNH's testimony, by Mr. Dennis R. Brown indicated that the outage length would be the same with or without the rescheduled overhaul. Permitting the three weeks as planned simply eliminating a penalty against PSNH which otherwise would be necessary in accordance with the ECRM Net Unscheduled Outage Adjustment.

[5]See Recommendations of the Parties Concerning the Schiller Coal Conversion, Page 15.

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71 NH PUC 406

Re Southern New Hampshire Water Company, Inc.

DE 85-39, Supplemental Order No. 18,331

New Hampshire Public Utilities Commission

July 7, 1986

ORDER authorizing a water utility to serve a housing development within its newly extended franchise area.

Service, § 210 — Water — Service extension.

A water utility was authorized to provide service to a housing development where the developer failed to follow through with a plan to provide water service to the development and the development was located within the newly extended franchise area of the utility.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Commission Report and Order No. 17,597 (70 NH PUC 361), granted Southern N.H. Water Co., Inc., the franchise to operate as a public water utility in that area of the Town of Windham not presently being served by another water system; and

WHEREAS, prior to the hearing in this docket, the builder of a development known as Hardwood had approached the Commission staff regarding the formation of a water utility to serve the development; and

WHEREAS, no petition to serve the area was ever filed; and

WHEREAS, Southern has now informed the Commission that it has purchased the assets of Hardwood and intends to supply water service to this area; it is hereby

ORDERED, that the franchise granted to Southern New Hampshire Water Co., Inc. in the Town of Windham in this docket, shall include that area designated as Hardwood.

By order of the Public Utilities Commission of New Hampshire this seventh day of July, 1986.

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NH.PUC*07/08/86*[60838]*71 NH PUC 407*Manchester Gas Company

[Go to End of 60838]

71 NH PUC 407

Re Manchester Gas Company

DR 86-202, Order No. 18,332

New Hampshire Public Utilities Commission

July 8, 1986

ORDER approving a special contract rate for gas service.

Rates, § 380 — Gas — Special contract rates — Commission approval.

A natural gas distribution utility was permitted to provide service to a laundry and dry cleaning establishment under a special contract rate.

By the COMMISSION:

ORDER

WHEREAS, on June 26, 1986, Manchester Gas Company filed with this Commission its Special Contract No. 31, said contract outlining the terms and conditions under which that company would sell natural gas to Crystal Laundry & Dry Cleaners, Inc.; and

WHEREAS, the Commission finds that issue of Special Contract No. 31 is in the public good; it is

ORDERED, that Special Contract No. 31 be, and hereby is, approved for effect on the date of this order.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1986.

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NH.PUC*07/10/86*[60839]*71 NH PUC 408*Small Energy Producers and Cogenerators

[Go to End of 60839]

71 NH PUC 408

Re Small Energy Producers and Cogenerators

Intervenors: Public Service Company of New Hampshire, Marmac, Connecticut River Power Company, Coos Power Corporation, New Lyman Falls Power Company, and Riverside Steam and Power Company

DR 86-134, Order No. 18,334

New Hampshire Public Utilities Commission

July 10, 1986

ORDER establishing rates for utility purchases of energy and capacity from cogenerators and small power producers.

Cogeneration, § 25 — Rates — Avoided costs — Update.

The updated avoided cost data provided by an electric utility in support of revisions to the rates established for utility purchases of energy and capacity from qualifying facilities was accepted as filed notwithstanding the fact that the updated data contained minor inconsistencies and factual errors; the commission found that correcting the errors would have an insignificant effect on the rate calculation, and that, in any event, the rate findings made in the instant docket were subject to the findings of a more comprehensive docket that would include a detailed examination of the assumptions underlying long term rates for qualifying facilities. [1] p. 410.

Cogeneration, § 25 — Rates — Avoided costs — Update.

The updated avoided cost data provided by an electric utility in support of revisions to the rates established for utility purchases of energy and capacity from qualifying facilities was accepted as filed notwithstanding the fact that the updated data was limited to changes related to fuel price forecasts and load forecasts; however, the utility was put on notice that future updates should include all known revisions to the relevant data, including assumptions in capacity additions. [2] p. 410.

Cogeneration, § 19 — Small power production — Long term rate filings — Procedure.

In denying a motion for rehearing of orders that rejected, without prejudice, the long term rate filings of certain small power producers pending the outcome of a commission investigation into the avoided costs

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of the interconnecting utility, the commission found that the rulemaking provisions of state statute RSA 541-A, which prevents the suspension of rules without adherence to certain procedural requirements, do not apply to the establishment or modification of purchased power rates; such establishment or modification is, rather, made pursuant to broad ratemaking authority. [3] p. 413.

Cogeneration, § 19 — Small power production — Long term rate filings — Procedure.

In denying a motion for rehearing of orders that rejected, without prejudice, the long term rate filings of certain small power producers pending the outcome of a commission investigation into the avoided costs of the interconnecting utility, the commission found that the small power producers had unreasonably relied on their interpretation that annual update procedures adopted in prior avoided cost rate proceedings meant that they could file for long term rates at any time within 12 months following the issuance of an avoided cost rate order. [4] p. 413.

Cogeneration, § 19 — Small power production — Long term rate filings — Procedure.

In denying a motion for rehearing of orders that rejected, without prejudice, the long term rate filings of certain small power producers pending the outcome of a commission investigation

into the avoided costs of the interconnecting utility, the commission reiterated its view that while a small power producer has a right to file for long term purchased power rates, he does not have a right to a particular long term rate or a right to any long term rate without fulfilling the required conditions. [5] p. 413.

APPEARANCES: Sulloway, Hollis & Soden by Margaret H. Nelson, Esq., and Thomas B. Getz, Esq, for Public Service Company of New Hampshire; Orr and Reno by Howard M. Moffett, Esq. for Marmac and its New Hampshire subsidiaries and affiliates; Michael Holmes, Esq., Consumer Advocate; Dr. Sarah P. Voll, and Mark Collin for the Commission Staff.

By the COMMISSION:

REPORT

I. Procedural History

In Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order 17,104), the Commission established rates for the purchase of energy and capacity by Public Service Company of New Hampshire (PSNH or Company) from small power producers and cogenerators (Qualified Facilities or QFs). In that order, the Commission provided that:

... [long term] avoided cost data will be updated annually ... by the Commission to determine the extent, if any, to which the rates should be revised. Id., 69 NH PUC at p. 367, 61 PUR4th at p. 147.

In Re Small Energy Producers and Cogenerators, 70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85-215 or Order 17,838), the Commission reviewed updated avoided cost data and established revised rates for energy and capacity to be paid to QFs.

The instant docket was initiated by a Petition filed with the Commission on April 15, 1986 by PSNH, requesting a rate update in accordance with Order 17,104.

On May 21, 1986, an Order of Notice was issued setting a hearing date for June 17, 1986. The Order of Notice also provided that, pending Commission investigation into the Petition, no long term rate filings submitted after the date of the Order of Notice and based on the long term avoided cost rates established in Order 17,838 would be accepted or approved.

At the June 17, 1986 hearing, the Commission granted late intervention status to Marmac and its New Hampshire subsidiaries and affiliates (Marmac) to challenge that portion of the Commission's Order of Notice that precluded acceptance or approval of long term rate filings pursuant to Order 17,838 following May 21, 1986. PSNH objected and the Commission afforded both parties an opportunity to present memoranda on the legal issues. Said memoranda were filed on June 27,

1986 by both PSNH and Marmac. (Memorandum of Law)

II. Merits of the Petition

[1, 2] PSNH's petition of April 15, 1986 and subsequent technical statements and testimony of Wyatt W. Brown and Mark K. Coulsen provided updated data for the rates initially established in Order 17,104 and revised in Order 17,838. In order to minimize controversy and facilitate the rate setting process, PSNH generally utilized the data and assumptions either explicitly or implicitly found reasonable by the Commission in DR 85-215. The major changes between the data filed in the instant case and the data filed in DR 85-215 are in the fuel forecast, for which PSNH used the PSNH April 1986 Update based on the Spring 1986 DRI Energy Review, and the load forecast, for which PSNH used the PSNH 1986 Edition. These changes incorporate in the 1986 update of QF rates the significant decline in fuel costs, the loss of UNITIL load and a slight increase in the non-UNITIL forecasted demand.

Staff noted that PSNH's retention of all assumptions but fuel and load assumptions from the DR 85-215 findings has led to minor inconsistencies and factual errors in the data update. For example, while the load forecast recognizes the loss of the UNITIL load, the assumed capacity reduction requirement for Hydro-Quebec Phase II still incorporates a PSNH level of entitlement as if UNITIL were part of the PSNH load (176.7 MW vs. 159.9 MW of capacity). Similarly, the Company's updated calculation of the value of the MMWEC buyback for Seabrook I is now 353 MW-years rather than the 256 MW-years as calculated at the time the DR 85-215 rates were formulated.

However, the instant docket is only one of two dockets currently before the Commission addressing changes in the long term rate. The Commission is investigating the terms, conditions and rates of the long term rate in Re Public Service Co. of New Hampshire, Docket No. DR 86-41, an inquiry that will include a comprehensive examination of the assumptions underlying the long term rate. Correcting the inconsistencies and errors of fact in the proposed rate would have an insignificant impact on the calculation of the rate. Therefore, we will not require PSNH to adjust the rate as filed in the instant case, but will consider the factors noted by staff in the more comprehensive docket. However, future annual updates should include all known revisions to the relevant data, including assumptions in capacity additions, whether forecasted contributions from small power producers and Hydro-Quebec, life extensions of existing capacity, or the on-line dates of the Seabrook units. The annual update should not be limited merely to changes in the fuel price forecast and the load forecast.

In the context of this discussion of the changes to the rate that will occur as a result of the investigation in DR 86-41, parties are hereby put on notice that our findings in the instant docket are subject to our findings in the more comprehensive docket. To the degree that the findings in that docket change not only the terms and conditions of the long term rate but also the underlying assumptions of the calculation of that rate, the estimate of avoided cost will undoubtedly differ from the estimate being made in the instant docket. It would be inconsistent for the

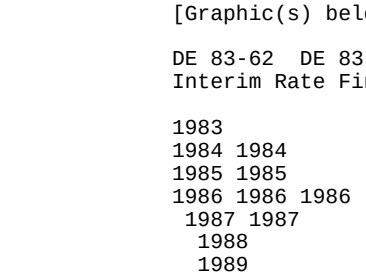
Commission to adopt changes in the methodology of the calculation and not adopt the consequent changes in the rate. Therefore, the rates set in the instant docket will remain in effect only until superceded by the findings in the final order in DR 86-41.

The Commission has considered the long term capacity and energy avoided cost calculations as filed (Exhibit 1, Att. 8 & 10 and Exhibit 2, Data Request]3, Att. 2) and hereby adopts them as being reasonable and in keeping with the previously established methodology. We note that the short term avoided capacity cost remains the same as calculated in DR 85-215 as the underlying costs remain unchanged. (Table 1.) The long term avoided capacity cost calculation is also unchanged as the assumptions underlying its valuation will not be examined until our investigation in DR 86-41.

The capacity payment to hydroelectric qualified facilities also depends on the peak reduction factor that relates the audited capacity to actual production on-peak of the hydroelectric facilities as a class. When individual hydroelectric facilities operate below their audited value they reduce the peak reduction factor for the entire class and therefore lower the capacity payment to other hydroelectric facilities. To the extent that individual hydroelectric electric facilities systematically perform substantially below their audited capacity value, PSNH is directed to inform the Commission Electric Engineer so that the site's audited capacity value can be reviewed and adjusted if appropriate.

In adopting long term rates, in keeping with our Order 17,104 that "the initial year of the long-term rate may not be more than four years from the time of filing" (69 NH PUC at p. 365, 61 PUR4th at p. 145), we are hereby authorizing rates effective June 21, 1986 for start years 1986, 1987, 1988, 1989. We note that the timing of the issuance of the final order in DR 85215 (September 5, 1985) advanced the available start year by two years in comparison with the start years under DE 83-62. This is because for purposes of the rate, the start year changes on September 1st so that Order 17,838 was issued in power year 1986, although retroactively effective in 1985. Therefore, the start years available under our various orders were as follows:

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



In this order we will retain our practice of authorizing four years of start dates, commencing with the current power year, even though we recognize that implementation of this practice does not advance the available start year beyond the 1989 start year available in DR 85-215.

Further, pursuant to our Order 17,104 that "should a [QF] be connected at greater than primary voltage the calculations and factors will be adjusted to reflect a lower loss adjustment factor," (69 NH PUC at p. 357, 61 PUR4th at p. 137) we will explicitly adopt the avoided cost calculations for interconnections at both primary and transmission voltage levels. (Tables 1, 2 and 2a). Avoided costs were calculated for facilities interconnecting at transmission voltage in DR 85-215 but not explicitly adopted by the Commission. As

directed under Order 17,104 Qualified Facilities connected at greater than primary voltage were to have their rates adjusted on a case by case basis to reflect the lower loss adjustment factor. Our explicit adoption of the transmission interconnection rates will clarify any confusion concerning the appropriate rates for facilities interconnecting at differing voltage levels and therefore eligible for rates incorporating differing marginal loss factors.

For informational purposes, the Commission has calculated the updated levelized value of obligations of 10, 15, 20, and 30 years, commencing in 1986, 1987, 1988, and 1989. (Table 3) The calculation includes in the capacity value the 5 percent discount per year when the rate is less than 20 years. Pursuant to Order 17,104, long term front-endloaded rates are subject to a "ceiling" provision, which must be factored into the rate calculation by developers filing under these rates.

III. Effective Date of the Rate Update

Marmac filed petitions for long term rates pursuant to Order 17,104 and Order 17,838 for its subsidiary and affiliate companies: Connecticut River Power Co. (May 26, 1986), Coos Power Corporation (June 5, 1986), New Lyman Falls Power Company (June 20, 1986) and Riverside Steam and Power Company (June 20, 1986). The Commission rejected the filings without prejudice pursuant to the moratorium established by its Order of Notice in Re Small Energy Producers and Cogenerators Docket No. DR 86-134:

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

Re Connecticut River Power Co., 71 NH
PUC 342 (1986)

Re Coos Power Corporation, 71 NH
PUC 366 (1986)

Re New Lyman Falls Power Co., 71 NH
PUC 378 (1986)

Re Riverside Steam Power Co., 71 NH
PUC 379 (1986)

Marmac filed Motions for Rehearing and Resubmitted Long Term Rate Filings for Connecticut River Power Company and Coos Power Corporation on June 20, 1986 and Pre-filed Testimony of Richard Johnson; on June 23, 1986 it filed amendments to its June 20th submission, including a complete copy of the Connecticut River Power Co. interconnection agreement and the confidential portion of Richard Johnson's testimony. On June 20, 1986, Marmac also filed a Motion to Consolidate for Purpose of Rehearing the four Marmac dockets relating to their rate petitions. Richard Johnson's testimony was also filed in the instant docket (Exhibit 3).

In its Memorandum of Law Marmac argues that the effective date of the moratorium on new long term rate filings pursuant to Order 17,838 should have been fixed at June 21, 1986 rather than May 21, 1986. They therefore assert that Marmac's long-term rate petitions, filed between May 21 and June 21, 1986 should be accepted and request a rehearing on their rejection without prejudice. Marmac's assertions rest on four arguments:

1. Marmac placed reasonable reliance on their interpretation that a "predictable annual update" meant that they could file pursuant to Order 17,838 anytime during the 12 months

following June

21, 1985 and that therefore given its substantial investments Marmac has a vested right to a long term rate order pursuant to Order 17,838;

2. that the avoided cost rate orders are rules under the New Hampshire Administrative Procedures Act (RSA 541-A) and cannot be suspended without adherence to the procedures established in the Act;

3. that the suspension of the DR 85-215 rate was arbitrary, capricious, unreasonable and not supported by record evidence; and

4. that the suspension was contrary to the legislative policies embodied in the Public Utility Regulatory Policies Act of 1978, 16 U.S.C.A. §824a-3, Section 210 (PURPA) and the Limited Electrical Energy Producers Act, RSA 362-A (LEEPA), which were intended to encourage the development of alternative sources of energy.

In its Memorandum of Law PSNH argues:

1. that Marmac's motion for rehearing is untimely, as it was not filed within 20 days of the Commission's May 21, 1986 Order of Notice;

2. that nothing in the Commission's previous orders binds the Commission to a rigid 12 month schedule to modify QF rates;

3. that Marmac cannot claim a vested right to rates pursuant to Order 17,838 as absent approval of rate orders for its projects, planning expenditures were at its own risk; and

4. that if any party is injured by the Order of Notice it is PSNH and its ratepayers because the moratorium should have been imposed in February when it was evident that the avoided cost forecasts were significantly declining.

[3-5] Having reviewed our Order of Notice and previous decisions, Marmac's Motion for Rehearing, and PSNH's and Marmac's Memoranda of Law, the Commission denies the Motion for Rehearing.

Marmac errs when it characterizes rates established for qualified facilities as rules pursuant to RSA 541-A, alleging in part that the Commission lacks authority to set rates for qualified facilities under RSA 362-A:2. The rates established for the purchase of power from alternate energy facilities have never been adopted by the Commission in a rulemaking procedure. Contrary to Marmac's assertion, the QF rates are rates, not rules. The Commission does not set rates at which the QFs sell their power to the utility; rather we establish rates at which, absent a privately negotiated contract, the franchised utility is required to purchase energy and capacity from alternative energy facilities, rates based on calculations of each franchised utility's avoided costs. The rulemaking provisions of RSA 541-A do not apply to the establishment and modification of the purchase power rates; but rather the Commission acts in this regard pursuant to its broad, ratemaking authority.

Further, while the Commission has expressed its intent to update the long term rates annually, nothing in its orders suggests that the Commission intends or is required to adhere to a rigid 12 month schedule. To the contrary, rates established in DE 83-62 took effect on July 5, 1984 and were suspended less than a year later on June 20, 1985 by the Order of Notice in DR 85-215. Marmac cannot claim to have been unfairly surprised by the Commission's decision to update the long term rate and reject new filings under the June 1985 rates. Marmac should have expected that the Commission could commence its investigation any time following the Company filing on April 15, 1986.

In the instant docket, far from acting arbitrarily and capriciously, the Commission contemplated that new rates would be available approximately a year after the effective date of the rates established by Order 17,838 in DR 85-215 (70 NH PUC 753, 69 PUR4th 365). Examination of the new rate before its effective date is a more logical sequence than analyzing the rate after its effective date. Therefore, in keeping with our prior practice of declining to accept or approve new rate filings during the investigation, we issued an Order of Notice opening the inquiry and establishing a moratorium a month before the target effective date of the new rate. The one month period approximates the investigation period for the short term rate that is filed and approved in conjunction with PSNH's Energy Cost Recovery Mechanism investigations.

Marmac cannot creditably claim that it relied on rates under Order 17,838 as it did not petition for long term rates for its projects until, at earliest, May 26, 1986 and was not granted long term rates for any of its projects. As we have stated previously, a developer

... has a right, as a small power producer, to file for long term purchase power rates set by the Commission subject to the requirements set forth for the filing. It does not have a right to a particular long term rate or a right to any long term rate without fulfilling the required conditions. Re Concord Regional Waste/ Energy Co., 70 NH PUC 736, 739 (1985).

Any investment made by Marmac in its proposed facilities prior to being granted a long term rate is at its own risk and Marmac cannot claim to have a vested right in a rate for which it had not yet petitioned.

Further, Marmac's argument that it "relied on the Commission's orders prior to May 21, 1986 regarding the timing of rate updates for purposes of gauging the timeliness of rate applications" (Marmac Memorandum of Law at 9) is without merit. The timeliness of a rate filing is gauged with reference to the progress made in the development of a project, not the timing of the rate update. Developers who file for long term rates out of the normal sequence of project development risk having the Commission reject their filings as premature. It is in the nature of the varying timetables of project development that some projects will reach the stage where a timely rate filing can be made at a point immediately subsequent to the initiation of the investigation into the update of the existing rates. Such projects must then delay their filing until the new rates become effective.

Finally, Marmac errs when it claims that the suspension was contrary to the legislative policies set forth in PURPA and LEEPA. Both federal and state policy promote the development

of economic alternative sources of energy. Both use as their standard of economic qualified facilities those projects that can produce power at or below the utility's avoided cost. It is not the intent of either PURPA or LEEPA to promote projects that are feasible only at rates that are above the best estimate of long term avoided cost. That best estimate is now embodied in the rates found in the instant docket, not those found in Order 17,858.

Our Order will issue accordingly.

ORDER

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

ODERED, that the Motions for Rehearing of Marmac, Connecticut River Power Company, Coos Power Corporation, Riverside Steam and Power Company and New Lyman Falls Power Company be and hereby are denied and Docket Nos. DR 86-166, DR 86176, DR 86-192 and DR 86-193 be and hereby are closed; and it is

FURTHER ORDERED, that the short term avoided cost rates for capacity of Public Service Company of New Hampshire shall be as set forth at Table 1 of the foregoing Report; and it is

FURTHER ORDERED, that the long term avoided cost rates for energy and capacity of Public Service Company of New Hampshire shall be as set forth at Table 2 and 2a of the foregoing Report; and it is

FURTHER ORDERED, that the rates established herein will be applicable to all small power producers and cogenerators filings submitted to and accepted by the Commission on or after June 21, 1986.

By Order of the Public Utilities Commission of New Hampshire this tenth day of July, 1986.

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

TABLE 1

MARGINAL COST OF GENERATING CAPACITY

Year	Fuel Costs Capacity Base Case $1000's	Change Case(1) -57.6 MW Cap $1000's	Cost Difference $1000's	Net Present Change(2) $1000's	Marginal Cost Change $1000's	Worth to July	Generation(3) $/KW-YR
1985	213,973	217,424	3,451	5,399	1,948	1,816	36.31

Voltage Level At Which Service Is Taken	(Marginal Cost) (of Generation)	X	(Loss) (Factor)	=	Rate
Primary	$36.31	X	1.159	=	$42.08
Transmission	$36.31	X	1.074	=	$36.93
	36.92727				

(1) Per ECRM capacity for cases January-June and July-December.

(2) Cost of Brayton 4 purchases including transmissions and wheeling.

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

PRIMARY DISTRIBUTION
TABLE 2
SUMMARY OF AVOIDED COSTS RELEVANT TO SPP LONG TERM RATES

Year	COLUMN A Avoided Cost Total Loss Adjusted Capacity Costs	COLUMN B-ALL Avoided Cost of Energy After Adjustments	COLUMN B-ON Avoided Cost of Energy After Adjustments	COLUMN B-OFF Avoided Cost of Energy After Adjustments
	$/KW/YR	cents/KWH	cents/KWH	cents/KWH
1986	56.06	3.54	4.18	3.04
1987	59.83	2.77	3.06	2.55
1988	63.84	3.00	3.32	2.75
1989	68.11	3.22	3.61	2.93
1990	72.68	3.38	3.79	3.05
1991	77.55	4.06	4.56	3.67
1992	82.73	4.54	5.13	4.09
1993	88.29	4.81	5.38	4.38
1994	94.19	5.40	6.11	4.86
1995	100.52	6.11	7.04	5.41
1996	107.25	6.94	7.98	6.14
1997	114.44	8.53	9.93	7.46
1998	122.09	9.23	10.68	8.11
1999	130.27	10.60	12.56	9.11
2000	139.00	11.11	13.02	9.66
2001	148.33	11.22	12.84	9.99
2002	158.26	13.46	15.58	11.83
2003	168.86	15.61	18.32	13.54
2004	180.17	17.43	20.66	14.93
2005	192.24	20.35	23.93	17.63
2006	205.12	23.68	28.01	20.38
2007	218.87	26.71	31.74	22.84
2008	233.53	30.06	35.16	26.14
2009	249.17	34.09	40.64	29.05
2010	265.88	37.70	45.02	32.06
2011	283.68	40.75	48.76	34.64
2012	302.69	43.96	52.02	37.79
2013	322.97	47.00	55.99	40.08
2014	344.62	50.25	59.74	42.94
2015	367.70	54.14	64.80	45.94
2016	392.34	57.83	69.20	49.07
2017	418.63	61.76	73.91	52.40
2018	446.66	65.96	78.93	55.97
2019	476.60	70.44	84.30	59.77
2020	508.54	75.23	90.03	63.84
2021	542.60	80.35	96.16	68.18

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

GREATER THAN PRIMARY DISTRIBUTION
TABLE 2A
SUMMARY OF AVOIDED COSTS RELEVANT TO SPP LONG TERM RATES

Year	COLUMN A Avoided Cost Total Loss Adjusted Capacity Costs	COLUMN B-ALL Avoided Cost of Energy After Adjustments	COLUMN B-ON Avoided Cost of Energy After Adjustments	COLUMN B-OFF Avoided Cost of Energy After Adjustments
	$/KW/YR	cents/KWH	cents/KWH	cents/KWH
1986	51.80	3.37	3.94	2.91
1987	55.28	2.64	2.89	2.44

1988	58.98	2.85	3.13	2.64
1989	62.93	3.07	3.41	2.81
1990	67.15	3.21	3.58	2.92
1991	71.65	3.87	4.31	3.52
1992	76.44	4.32	4.84	3.92
1993	81.56	4.59	5.08	4.19
1994	87.03	5.14	5.77	4.65
1995	92.86	5.82	6.64	5.17
1996	99.08	6.60	7.53	5.87
1997	105.72	8.12	9.38	7.14
1998	112.81	8.79	10.08	7.76
1999	120.36	10.10	11.85	8.72
2000	128.42	10.58	12.29	9.24
2001	137.03	10.69	12.12	9.56
2002	146.21	12.82	14.70	11.32
2003	156.00	14.87	17.29	12.96
2004	166.45	16.59	19.50	14.29
2005	177.61	19.38	22.59	16.87
2006	189.52	22.55	26.44	19.50
2007	202.21	25.44	29.96	21.86
2008	215.75	28.63	33.19	25.02
2009	230.21	32.46	38.37	27.79
2010	245.64	35.91	42.50	30.68
2011	262.10	38.81	46.03	33.14
2012	279.64	41.87	49.11	36.16
2013	298.39	44.76	52.86	38.36
2014	318.38	47.85	56.39	41.09
2015	339.71	51.56	61.17	43.97
2016	362.48	55.07	65.33	46.95
2017	386.75	58.81	69.77	50.15
2018	412.67	62.81	74.52	53.56
2019	440.32	67.09	79.58	57.20
2020	469.81	71.65	84.99	61.09
2021	501.29	76.52	90.77	65.24

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

PRIMARY DISTRIBUTION
TABLE 3

ENERGY - ALL HOURS cents/KWH

Start	1986	1987	1988	1989
Term				
10	3.76	3.98	4.44	4.97
15	4.58	4.91	5.45	6.08
20	5.39	5.87	6.57	7.37
30	7.16	7.82	8.68	9.64

CAPACITY $/KWYR.

Start	1986	1987	1988	1989
Term				
10*	35.73	38.12	40.68	43.41
15**	59.34	63.33	67.57	72.11
20	85.87	91.62	97.76	104.31
30	96.22	102.67	109.55	116.89

*discounted 50%

**discounted 25%

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

GREATER THAN PRIMARY DISTRIBUTION
TABLE 3A

ENERGY - ALL HOURS cents/KWH

Start	1986	1987	1988	1989
Term				
10	3.58	3.79	4.23	4.73
15	4.37	4.67	5.19	5.79
20	5.13	5.59	6.26	7.02
30	6.82	7.44	8.26	9.18

CAPACITY $/KWYR.

Start	1986	1987	1988	1989
Term				
10*	33.01	35.22	37.58	40.10
15**	54.84	58.51	62.43	66.61
20	79.34	84.65	90.33	96.38
30	88.90	94.86	101.21	107.99

*discounted 50%

**discounted 25%

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NH.PUC*07/11/86*[60840]*71 NH PUC 419*Connecticut Valley Electric Company, Inc.

[Go to End of 60840]

71 NH PUC 419

Re Connecticut Valley Electric Company, Inc.

DR 86-205, Order No. 18,335

New Hampshire Public Utilities Commission

July 11, 1986

ORDER authorizing an electric utility to adjust its purchased power cost adjustment clause rate.

Automatic Adjustment Clauses, § 13 — Energy cost clauses — Purchased power cost adjustment — Commission authorization.

An electric utility was authorized to adjust its purchased power cost adjustment clause rate to reflect a proposed increase in the purchased power rate charged by the utility's wholesale supplier and to allow for the recovery of undercollected purchased power costs; authorization was conditioned upon the Federal Energy Regulatory Commission's approval of the increase in the wholesale supplier's rate.

By the COMMISSION:

ORDER

WHEREAS, Connecticut Valley Electric Company, Inc., a wholly owned subsidiary of Central Vermont Public Service Corporation, on June 27, 1986 filed certain revisions to its Purchased Power Cost Adjustment effective August 1, 1986; and

WHEREAS, said filing is a reconciliation of estimates to actual purchase power costs forecasted and approved in Order No. 17,387 (70 NH PUC 13) and subsequently through Order No. 18,148 (71 NH PUC 145); and

WHEREAS, said tariff revisions represent an increase in the RS-2 rate filed with the Federal Energy Regulatory Commission (FERC) by Central Vermont Public Service Corporation (Connecticut Valley Electric Company, Inc.'s sole supplier of electricity); and

WHEREAS, approval of the RS-2 rate by FERC federally preempts this Commission from adjusting the rate charged by Central Vermont Public Service Corp., Re Sinclair Machine Products, Inc., 126 N.H. 822, 498 A.2d 696 (1985); and

WHEREAS, the Commission in Order No. 18,148 found that the RS-2 rate was reasonable; and

WHEREAS, upon review of the proposed tariff increase the Commission finds the recovery of $133,367 undercollected purchase power costs is just and reasonable; it is hereby

ORDERED, that Connecticut Valley Electric Company, Inc.'s 8th Revised Page 15, NH PUC No. 4-Electricity, providing a power cost adjustment

recovery of $0.0021/KWH be, and hereby is, approved effective August l, 1986 through December 31, 1986; and it is

FURTHER ORDERED, that said tariff page be made effective subject to FERC approval of Central Vermont Public Service Corporation's RS-2 rate.

By order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1986.

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NH.PUC*07/16/86*[60841]*71 NH PUC 420*Keene Gas Corporation

[Go to End of 60841]

71 NH PUC 420

Re Keene Gas Corporation

DR 86-185, Supplemental Order No. 18,336

New Hampshire Public Utilities Commission

July 16, 1986

ORDER approving temporary rates for natural gas distribution service and setting a procedural schedule for a permanent rate increase filing.

Rates, § 373 — Gas — Temporary rates — Commission approval — Distribution service.

A stipulation agreement calling for temporary rates for gas distribution service was adopted where the increased revenues collected under the temporary rates would yield a reasonable return on rate base and the rate design to be employed was reasonable for temporary rate purposes. [1] p. 421.

Rates, § 237 — Filing requirements — Waiver of full compliance — Small natural gas distributor.

A small natural gas distribution utility was not required to comply with all of the tariff filing requirements contained in Chapter 1600 of the commission's rules; the significant burdens that full compliance would place on small utilities was held to justify waiver of certain requirements at the discretion of the commission staff. [2] p. 421.

APPEARANCES: Harry B. Sheldon, Jr., President, on behalf of Keene Gas Corporation; Eugene Sullivan, Finance Director, Edwin P. LeBel, PUC Examiner and Mark Collin, PUC Economist I on behalf of Commission Staff.

By the COMMISSION:

REPORT

On June 12, 1986, Keene Gas Corporation (Company), a public utility providing gas service in the State of New Hampshire, filed revised tariff pages reflecting an increase in gross annual revenues of $78,891 to become effective on July 1, 1986. The Company also filed a petition for temporary rates pursuant to RSA 378:27 on June 12, 1986 requesting an increase in revenues of $78,891, the same amount sought by its permanent rate filing, to take effect on July 1, 1986. Thereafter, the Commission issued Order No. 18,317 suspending the effective date of the tariff revisions

pursuant to RSA 378:6 to allow for a full investigation, and scheduled a hearing for July 11, 1986 to consider the issues of temporary rates and an appropriate procedural schedule for the remainder of the proceeding.

Harry B. Sheldon, Jr., the Company's President, submitted testimony and exhibits (Nos. 1-13) in support of the Company's request for temporary rates. Testifying and submitting exhibits on behalf of the Commission Staff was Eugene F. Sullivan, the Commission's Finance Director.

During the hearing the Staff and Company met, and as a result of their discussion entered into a stipulation regarding the appropriate amount of a revenue increase for temporary rate purposes. Staff and the Company propose that the Company's revenues be increased by $68,903, the calculation of which is set forth in Exhibit 14. Further, the Company proposed and Staff agreed that the rate structure requested in the permanent rate filing consisting of a customer charge and a declining four block rate design be utilized for the temporary rate increase.

[1] After a complete review, we find that the revenue requirement terms of the settlement agreement are amply supported by the record, and that the increase in revenues for temporary rate purposes contained therein shall be "sufficient to yield not less than a reasonable return on the cost of property of the utility used and useful in the public service ..." RSA 378:27. In addition, we find the proposed rate structure consisting of a customer charge and four-block declining block rate design to be reasonable for temporary rate purposes.

The temporary rate increase approved herein ($68,903) is less than that originally requested ($78,891). Thus, the customer charge and specific rate levels of the four-step design requested will need to be recalculated to yield the approved revenue increase. Accordingly, we will order the Company to file revised tariff pages incorporating that recalculation by July 25, 1986. These revised tariff pages shall bear an effective date of August 1, 1986. The temporary rates approved herein will therefore take effect for all bills rendered on or after August 1, 1986. In addition, we will order the Company to file a schedule detailing the revenues to be derived from each step of the four-step rate design by July 25, 1986.

[2] As pointed out at the hearing, the Company's filing does not comply with the tariff filing requirement contained in Chapter 1600 of the Commission's rules. We are sympathetic to the significant burden these requirements place on a small utility like the Company. However, these requirements are designed to provide the Commission with the information necessary to adequately investigate and review the Company's rate filing. We are unable to undertake an adequate and complete review given the current state of the Company's filing. We therefore will order the Company to revise its filing to provide the necessary information. However, given its small size, we will not require that full compliance be rendered. Instead, we will direct the Commission Staff to meet with the Company's representatives and will vest the Staff with discretion to determine which of the Chapter 1600 filing requirements should be met.

The parties proposed the following procedural schedule:

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

October 10, 1986 Company to file revised
 filing.
November 5, 1986 Conference of the parties
 to narrow the issues.
November 12, 1986 Hearing.

After review, we find this schedule to be reasonable and will adopt it as the schedule for the remainder of these proceedings.

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 proposed stipulation agreement of the parties set forth in the foregoing Report and the temporary rates contained therein be, and hereby are, accepted; and it is

FURTHER ORDERED, that Keene Gas Corporation file revised tariff pages reflecting said temporary rates by July 25, 1986; and it is

FURTHER ORDERED, that said revised tariff pages shall bear an effective date of August 1, 1986; and it is

FURTHER ORDERED, that Keene Gas Corporation shall also file by July 25, 1986 a schedule detailing the revenues to be derived from each step of the four-step rate design by July 25, 1986.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1986.

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NH.PUC*07/23/86*[60842]*71 NH PUC 423*New England Alternate Fuels, Inc. - Swanzey

[Go to End of 60842]

71 NH PUC 423

Re New England Alternate Fuels, Inc. - Swanzey

DR 86-152, Order No. 18,343

New Hampshire Public Utilities Commission

July 23, 1986

ORDER denying rehearing of an order that had held that the failure of a small power production project to meet its commercial operation deadline would result in the rescindment of the long term rate orders applicable to the project.

Cogeneration, § 19 — Small power production — Long term rate order — Effect of failure to meet commercial operation deadline.

The effectiveness of a long term rate order for a small power production project is dependent on the project developer fulfilling his obligations in the rate order as it was originally granted; accordingly, the commission denied a request for rehearing of an order that had held that the failure of a small power production project to meet its commercial operation deadline would result in the rescindment of the long term rate orders applicable to the project. [1] p. 425.

Cogeneration, § 19 — Small power production — Long term rate orders — Commercial operation deadlines.

Long term rate orders are intended to be project specific, therefore, because of the possibility

that a small power production project may evolve over time into a project that is substantially different from that originally envisioned, the commission will not grant rate orders to projects that have commercial operation dates more than four years beyond the requested date of the rate order. [2] p. 426.

Cogeneration, § 19 — Small power production — Long term rate orders — Woodburning facilities.

A request by a woodburning small power production project for a thirty year rate order was denied; the commission does not grant rates for periods longer than 20 years for woodburning facilities because much of the equipment is designed for a twenty year life and economic studies that support the feasibility of woodburning facilities beyond twenty years cannot be relied upon. [3] p. 428.

By the COMMISSION:

REPORT

On February 25, 1983 the Public Utilities Commission (Commission) opened Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 (DE 83-62) for the purpose, inter alia, of establishing a long term rate to be paid by Public Service Company of New Hampshire (PSNH) for sales of electricity from qualified small power producers and cogenerators (qualified facilities or QFs). A procedural hearing was held on March 25, 1983 and a prehearing conference on April 20, 1983. When it became clear that PSNH would be unable to file its direct

testimony until late July, two companies, Pequod Associates, Inc. (Pequod) and New England Alternate Fuels, Inc. (NEAF) requested that the Commission establish an interim long term rate. NEAF, in its letter of June 23, 1983 represented

Inasmuch as we have all of the other parts of the project ready, we fear that a delay in rate determination to the Fall will severely jeopardize our underwriter's funding efforts. Without timely funding and with the threat of inclement weather our project, which has been in development for three years, may be cancelled.

Following three days of hearings in July and August the Commission established interim rates by Report and Fourth Supplemental Order No. 16,619 (68 NH PUC 531) and clarified its findings in Report and Fifth Supplemental Order No. 16,664 (68 NH PUC 575) (hereinafter jointly referred to as Interim Order). On March 20, 1984 NEAF filed a petition pursuant to the Interim Order for a 20 year long term rate commencing in 1986 for a ten megawatt bio-mass project located near Keene. The Commission approved NEAF's petition in Re New England Alternate Fuels, Inc., Docket No. DR 84-74, Order Nos. 16,955 (69 NH PUC 197) and 16,986 (69 NH PUC 220) (referred to hereinafter as Orders 16,955 and 16,986). Based on the testimony and the project description in the subsequent filing, the project for which NEAF was filing was a ten megawatt biomass facility whose primary energy source would be wood chips and industrial/commercial cellulosic materials. The plant was to be built by TompkinsBeckwith, Inc.

of Jacksonville, Florida using gasification equipment supplied by National Synfuels, Inc. The project cost was estimated at approximately $10 million.[1](80)

On May 14, 1986, NEAF petitioned the Commission for a clarification (Motion for clarification) of Orders 16,955 and 16,986 proposing that said Orders remain in effect except that delivery of electricity commence in 1988 and span a period of 18 years rather than 20 years. In its motion, NEAF represented

The Proposed Facility is now projected to come on line between March and September of 1988. It is important to note that during the past two years NEAF has been actively engaged in moving the project along. Indeed, all work necessary to the commencement of construction has been completed. All necessary permits and approvals have been obtained; rights to all necessary real estate have been obtained; all necessary studies, designs, and drawings have been completed; and all bids necessary to verify cost projections have been obtained. Approximately $1.8 million has been invested in the project to date. All that remains is the finalization of the [financial arrangements] with [G.C. Swift River/ Hafslund Company]. (Motion for Clarification at 3.)

The Commission responded in Re New England Alternate Fuels, Inc.-Swanzey, 71 NH PUC 334 (1986) (Order No. 18,284) that rates commencing in 1988 were not available pursuant to the Interim Order, and rescinded the

approval of NEAF's long term rates under Orders 16,955 and 16,986. The Commission allowed NEAF to amend its petition in order to file for a long term rate pursuant to the then effective rate orders, Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), the final order in DE 83-62 which had established the term and conditions for long term rates, and Docket No. DR 85-215, Report and Order No. 17,838 (70 NH PUC 753, 69 PUR4th 365) which had updated the data contained in the long term rate. (Orders 17,104 and 17,838.)

NEAF filed a Motion for Rehearing with respect to the Commission's Order 18,284 on June 18, 1986 and a long term rate filing for a 30 year rate order pursuant to Orders 17,104 and 17,838. Attached to the petition for the 30 year rate was an Affidavit by Louis G. Audette, which testified to the need for a 30 year rate for the Swanzey project and offered as security a lien on the facility and an escrow account; and an Affidavit of Herb Fruh, testifying that the operational life of the Swanzey plant would be no less than 30 years. An Affidavit of Louis G. Audette was also appended to the Motion for Rehearing, which provided an explanation for the delays to the Swanzey project.

On July 2, 1986 the Commission issued supplementary Order No. 18,324 suspending its Order No. 18,284 and ordered that the Commission Staff further investigate the NEAF filing by way of data requests. The Staff issued said data requests on July 2, 1986 and NEAF responded on July 10, 1986.

COMMISSION ANALYSIS

Motion for Rehearing

[1] In its Motion for Rehearing NEAF contends that its investment in the Swanzey project was taken in good faith reliance on Orders 16,955 and 16,986 and that such reliance was reasonable despite the delay in the project because the long term rate orders contain no "drop dead" dates. NEAF states that its petition for clarification was filed solely "to provide NEAF's financiers with a current affirmation of the Commission that the 1984 Rate Order would apply when NEAF's project went on line after 1986". Motion for Rehearing at 3. NEAF notes that the delay in the project eliminates two years of front end loading and therefore decreases the rate to a level below those projected in 1984. NEAF argues that the Commission's action to rescind Orders 16,955 and 16,986 absent NEAF's commercial operation prior to September 1, 1986 established a new rule applying to rate orders and "tells the financial community that a simple unforeseen delay in the on-line date of a small power production facility can result in a loss of assumed revenue and, indeed, the loss of an investment". Motion for Rehearing at 4.

The Commission has reviewed the proceedings in DE 83-62 and NEAF's representations therein, the NEAF Motions, the Commission orders and the data requests and responses of July 2 and 10, 1986, and hereby denies the Motion for Rehearing.

The Commission finds that the argument that NEAF's reliance on Orders 16,955 and 16,986 was reasonable despite a two year delay in the project's commercial operation date is without merit. The Commission is not formulating a new rule, but is merely requiring that the developer fulfill his obligations in the rate order as it was

originally granted in order for the rate order to continue to be effective.

[2] The Commission long term rate orders are project specific. They are granted to projects with stated locations, sizes, technologies, design and commercial operation dates. Given the evolution of all of these characteristics during the project development, the Commission is not willing to grant rate orders to projects whose commercial operation dates are beyond fou

r years of the establishment of the rate order precisely because of the likelihood that the project as developed will be essentially different from the project for which the rate order was approved.[2(81)] The validity of the Commission's concern is amply demonstrated in the instant case. As currently proposed, the installed capacity of the facility in Swanzey is 15.7 MW rather than 10 MW, TompkinsBeckwith is no longer associated with the project, gasification technology will not be employed, the project cost is estimated at $31 million rather than $10 million and the commercial operation date is 1988 rather than 1986. The only similarities between the current project and that for which Orders 16,955 and 16,986 granted a long term rate is the location (West Swanzey) and the developer (NEAF). Indeed a comparison of the NEAF representations made in its June 23, 1983 letter and in its May 14, 1986 Motion for Clarification indicates that NEAF in 1986 is at the same stage of development as they were in 1983, but for an essentially different project.

The Commission does not grant rate orders to developers in order that they can transfer the rate from one project to another as their ideas evolve and mature. Rather we expect that the project planning is sufficiently mature at the time of the filing that the representations made by

developers regarding the essential characteristics of their projects will continue to obtain when the projects achieve commercial operation. To find otherwise would lead to the creation of a secondary market in rate orders. Developers who had been granted rate orders but had not been able to bring their projects to fruition would be able to assign the rates to any other project with the same superficial characteristics. Creation of such a market would be especially likely if the Commission waives the importance of the commercial operation date in a period of declining avoided cost forecasts and therefore declining long term rates. Conceivably, any time during the 20 year rate order it could be more advantageous for a developer to purchase an existing rate order from a defunct developer instead of petitioning the Commission for a rate order pursuant to the then current long term rates.

NEAF is disingenuous when it suggests that the Commission erred when it responded to NEAF's Motion for Clarification by rescinding Orders 16,955 and 16,986, alleging that the Commission did not provide NEAF with sufficient notice that the clarification could produce such a result. The Commission responded to NEAF's request by clarifying Orders 16,955 and 16,986 to the extent that absent NEAF fulfilling its obligations under its rate orders and bringing its project on line before the end of the 1986 power year (September 1, 1986) its rate orders would

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no longer be effective.3(82) Presumably NEAF (and its financiers) anticipated just such an interpretation, which is why they requested the clarification. The Commission could have clarified Orders 16,955 and 16,986 without rescinding them, but had it done so, NEAF would not have been eligible to apply for long term rates under DR 85-215. Instead, given the timing of NEAF's request, the Commission response and the annual update in the long term rate, NEAF would have had to notify the Commission that it wished to abrogate its existing rate orders and file for a new order under the new, lower, rates established in Re Small Energy Producers and Cogenerators, 71 NH PUC 408 (1986) (Order No. 18,334).

NEAF is also incorrect when it suggests that the Commission did not consider that NEAF's power under 18 years of its contract would be less expensive for ratepayers than it would have been under the full 20 year contract. The Commission has contrasted the 18 year payments to payments under the 20 year rate orders pursuant to both DE 83-62 and to DR 85-215. The Commission analysis indicates that while it is true that "the power promised over the next 18 years" would be provided "at rates below the projected avoided costs" (Motion for Rehearing at 3), it is also true that over those 18 years the power would be provided at approximately $40 million in excess of the avoided costs as then currently projected in DR 85-215. Such a difference is not de minimis, and requires the Commission to consider fully the implications to ratepayers before waiving the obligations in the NEAF rate orders. NEAF is clearly fully aware that 18 years of its previous rate orders contains a higher payment schedule than comparable orders under current rate orders as it states that "NEAF's project is probably not financeable under 20year 1985 rates". Motion for Rehearing at 5.

Finally the Commission finds that the argument that Order 18,284 discriminates among qualified facilities because "mere fortuity determines whether there are four start up years (Final Order) or two (Interim Order)" (Motion for Rehearing at 8) is without merit. The Interim Order

approved initial contract years of 1983, 1984, 1985 and 1986. Approval of these start up years was based on the representations by Pequod and NEAF[4(83)] that financing for their projects was essentially committed and only lack of the rate orders would prevent construction commencing in the fall of 1983. But for these representations, which indicated that there was no need for rates to be established beyond 1986, the Commission would not have engaged in the exercise of establishing interim rates at all. Absent the urgency and project maturity claimed by NEAF and Pequod, ratemaking for QFs could have been delayed until the final order in DE 83-62.

NEAF Long Term Rate Petition

The Commission has reviewed the NEAF long term rate petition, its orders in DE 83-62 and DR 85-215 and the long term rate orders approved pursuant to those orders.

In the Interim Order the

Commission approved only 20 year rates, stating that "a 20 year rate appears to be the longest period any developer would require". 68 NH PUC at p. 545. In Order 17,104 the Commission was willing to allow 30 year rates because in the course of the settlement negotiations, hydroelectric developers argued that the greater capital investment, lower operating costs and extended longevity of hydroelectric facilities made the longer term rate appropriate. In the past two years, the Commission has acceded to this argument, accepting that the 50 year life expectancy of a hydroelectric facility and appropriate liens provide sufficient guarantees to the ratepayer for the added risk embodied in the long term rate. The Commission has only twice approved 30 year rates for non-hydro facilities and only once for a woodburning facility. The latter was a unique case of an operating woodburning facility transferring from an existing 30 year contract with PSNH to a 30 year rate. Therefore, approval of a 30 year rate did not add to the ratepayer risk already present in the contract. Re Bio-Energy Corp., 70 NH PUC 557 (1985) (Order No. 17,687).[5(84)]

[3] The Commission does not grant rates longer than 20 years to wood/ electric facilities because much of the equipment is designed for a 20 year life; a facility therefore requires substantial new investment to extend its life beyond the 20th year. In addition, unlike hydroelectric facilities, which are not subject to escalating fuel costs, woodburning facilities must be able to survive potentially substantial increases in fuel prices. Given the variances in the necessary assumptions, the Commission is unwilling to rely on economic feasibility studies that support the feasibility of woodburning facilities beyond 20 years. Nothing in the Affidavits of Louis Audette or Herb Fruh cause us to disturb these findings. We will therefore deny NEAF's petition for a 30 year rate and allow NEAF, if it wishes to continue to file under DR 85-215, to amend its filing to petition for a 20 year rate.

Our Order will issue accordingly.

ORDER

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

ORDERED, that NEAF's Motion for Rehearing in Docket DR 86-152 is denied, and it is

FURTHER ORDERED, that NEAF's petition for a 30 year long term rate is denied; and it is

FURTHER ORDERED, that NEAF may amend its petition to file for a 20 year long term rate pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) and Docket No. 85-215, Report and Order No. 17,838 (70 NH PUC 753, 69 PUR4th 365) any time prior to August 23, 1986.

By order of the Public Utilities Commission of New Hampshire this twentythird day of July, 1986.

FOOTNOTES

[1]Between the August hearings and the March filing, the stated size of the project increased from 7.2 MW to 10 MW.

[2]The other reason that the Commission does not grant rate orders for commercial operation more than four years from the establishment of the rates is that the Commission is reluctant to rely on a forecast that is more than four years old by the time the project commences production.

[3]No case has yet come before us involving an already constructed project whose commercial operation is a short period beyond the date specified in its rate order. Therefore, the Commission has not yet decided the continuing effectiveness of a rate order in such a circumstance.

[4]Subsequent events proved both sets of representations to be incorrect.

[5]The other non-hydroelectric 30 year rate was approved in Re SES Concord Regional Waste/ Energy Project, 71 NH PUC 168 (1986) (Order No. 18,171) (SES). The Commission generally considers municipal solid waste projects to be less risky than woodfired facilities. This is especially true in the case of municipal-sponsored projects that have undergone review in the "request for bid" process before applying for a Commission rate. In addition, SES had already finalized its financing predicated on a 30 year rate when it applied for the Commission rate.

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NH.PUC*07/24/86*[60843]*71 NH PUC 429*Sunapee Hills Water Company, Inc.

[Go to End of 60843]

71 NH PUC 429

Re Sunapee Hills Water Company, Inc.

DE 86-212, Order No. 18,348

New Hampshire Public Utilities Commission

July 24, 1986

ORDER rescinding a grant of authority to operate as a public utility.

Public Utilities, § 3 — Termination of public utility status — Bankruptcy — Water utility.

An order authorizing a water company to act as a public utility was rescinded where the company had been declared bankrupt and its assets sold to a non-profit water services corporation.

By the COMMISSION:

ORDER

WHEREAS, in Docket DE 81-165 and Order No. 15,039 (66 NH PUC 288), this Commission granted Sunapee Hills Water Company, Inc, (Sunapee), the authority to operate as a public utility in a limited area in the town of Newbury, New Hampshire; and

WHEREAS, on August 28,1985, pursuant to Chapter 7 of the United States Code, the United States Bankruptcy Court for the District of New Hampshire ordered an involuntary Bankruptcy for Sunapee; and

WHEREAS, on July 8,1986, the United States Bankruptcy Court for the District of New Hampshire approved the sale of the physical assets of Sunapee to the Chalk Pond Water Corporation (Chalk Pond); and

WHEREAS, Chalk Pond is a nonprofit membership corporation that will provide water service only to members of the Corporation; and

WHEREAS, in accordance with the provision of an opinion rendered by the Attorney General of the State of New Hampshire, Chalk Pond will provide no water service to the public, thus is not a public utility; and

WHEREAS, after investigation and consideration it is the opinion of this Commission that the sale and transfer of the physical assets of Sunapee to Chalk Pond is in the public good; it is hereby

ORDERED, that the authority granted to Sunapee Hills Water Company, Inc in Docket DE 81-165 and Order No. 15,039, be and hereby is rescinded.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of July, 1986.

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NH.PUC*07/24/86*[60844]*71 NH PUC 430*EUA Power Corporation

[Go to End of 60844]

71 NH PUC 430

Re EUA Power Corporation

DF 85-338

Re Maine Public Service Company

DF 85-351

Re Central Maine Power Company

DF 85-351

Re Bangor Hydro-Electric Company

DF 85-351

Re Central Vermont Public Service Company

DF 85-351

Re Fitchburg Gas and Electric Light Company

DF 86-150

Order No. 18,349

New Hampshire Public Utilities Commission

July 24, 1986

ORDER authorizing a power corporation to issue notes to facilitate its acquisition of additional interests in a nuclear power plant.

Security Issues, § 57 — Purposes — Securing obligations — Transfer of interests.

Where several electric utilities had transferred their interests in a troubled nuclear power plant project to an independent power corporation, but had subsequently issued individual modifications to the various transfer agreements regarding lump sum payments, transfer delays, and carrying charges, the power corporation was authorized to issue promissory notes in the amount of $10 million in order to secure its obligations while all the details of the transfer were being worked out.

By the COMMISSION:

ORDER

WHEREAS, on January 15, 1986, this Commission issued Order No. 18,058 (71 NH PUC 73), which authorized the transfer of ownership in Seabrook Station from Bangor HydroElectric Company (Bangor), Central Maine Power Company (CMP), Central Vermont Public Service Corporation (CVPS) and Maine Public Service Company (MPS) to EUA Power Corporation and granted certain authorization to EUA Power Corporation for the financing and operation of such ownership interest; and

WHEREAS, on May 23, 1986, this Commission issued its Order No. 18,275 (71 NH PUC 321) approving NISI EUA Power's request for certain modifications in Order No. 18,058 and authorizing the transfer of the Seabrook ownership interest in Fitchburg Gas and Electric Light

Company to EUA Power. Such order became effective according to its terms on June 20, 1986; and

WHEREAS, the parties have now each entered into separate addenda to the respective purchase agreements which contain numerous substantive changes in the proposed transactions,

among which are reduced lump sum purchase price payments, elimination of the provisions for additional payments by EUA Power attributable to delays in the closings on the transfers from October 31, 1985 through March 1986, an increase in the rate per annum for carrying charges to be payable by EUA Power to the sellers, elimination of the June 30, 1986 termination date; and

WHEREAS, EUA Power and the sellers have agreed in principle to the apportionment of liability for certain decommissioning expenses and costs of cancellation in order to meet concerns specified by certain joint owners of Seabrook Station who are not selling their ownership shares to EUA Power; and

WHEREAS, the sellers, with the exception of Fitchburg, will remain secondarily liable for defined decommissioning expenses and costs of cancellation in amounts not exceeding $1,791,822 for Bangor, $4,979,872 for CMP, $1,311,332 for CVPS, and $1,203,851 for MPS; and for Fitchburg, $713,123 from the purchase price will be paid directly by EUA Power into an Escrow fund for those purposes; and

WHEREAS, EUA Power will issue to a trustee for the benefit of Seabrook joint owners one or more promissory notes not to bear interest in an aggregate principal amount equal to the amounts for which the sellers are to remain secondarily liable; and

WHEREAS, the principal will be payable on the projected retirement date of Seabrook Unit I or earlier, in whole or in part, for the purpose of satisfying decommissioning payments and cost of cancellation; and

WHEREAS, the aggregate principal amount of the notes, if all of the proposed transfers are consummated, will total $10,000,000; and

WHEREAS, EUA Power's obligation under the notes will be secured by a pledge by EUA Power of cash and marketable securities having a value not less than the aggregate principal amount outstanding under the notes to be discharged in full in the event that Eastern Utilities Associates guarantees the decommissioning and cancellation obligations of EUA Power; or in full or in part, as the case may be, in the event that EUA Power enters into one or more life-of-the-unit power contracts for the sale of some or all of the power from its ownership share of Seabrook Unit I with take-or-pay obligations with a utility or utilities having financial strength acceptable to the Seabrook joint owners; or to the extent that sum of the aggregate amount of funds paid to the Nuclear Decommissioning financing fund plus the value of the cash and marketable securities pledged plus the aggregate amount as to which the sellers remain secondarily liable, exceeds EUA Power's share of the then projected decommissioning expense of Seabrook Unit I; and

WHEREAS, it appears that the issuance of an order as requested will be consistent with the

public good; it is

ORDERED NISI, that the request by EUA Power for the issuance of the notes in an aggregate principal amount not exceeding $10,000,000 for the purpose and upon the terms described will be consistent with the public good; and it is

FURTHER ORDERED, that the pledge by EUA Power of cash and marketable securities having a value of not less than $10,000,000 for the purpose of securing EUA Power's obligations under the notes be approved; and it is

FURTHER ORDERED, that with respect to the proposed further changes in the terms of transfer of the Seabrook ownership shares, this Commission reaffirms Order Nos. 18,058 and 18,275 in all other respects; and it is

FURTHER ORDERED, that EUA Power give notification by publication of this order once in a newspaper having general circulation in that portion of the state in which operations are conducted, such publication to be no later than July 29, 1986, and said publication is to be designated in an affidavit to be made on a copy of this order and to be filed with this office; and it is

FURTHER ORDERED, that any person proposing to intervene as a party to this proceeding pursuant to RSA: 541-A: 17 and N.H. Admin. Rules, PUC 203.02, and to object to this order becoming final must do so, with a copy of the petition to intervene to all parties no later than August 8, 1986; and it is

FURTHER ORDERED, that this order NISI shall become effective on August 19, 1986 unless the Commission provides otherwise in a supplemental order issued prior to such effective date.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of July, 1986.

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NH.PUC*07/28/86*[60845]*71 NH PUC 433*PRS (Derry), Inc.

[Go to End of 60845]

71 NH PUC 433

Re PRS (Derry), Inc.

DR 86-48, First Supplemental Order No. 18,352

New Hampshire Public Utilities Commission

July 28, 1986

PETITION by a small power producer for authority to implement thirtyyear long-term rates; denied.

Cogeneration, § 24 — Rates — Long-term prices — Performance assurance as a factor.

Where a small power producer could not give the commission the assurance the commission wanted that the producer would meet its milestone steps in its project development sequence, and where the project might not yet be sufficiently financed, the small power producer's request for thirtyyear long-term energy and capacity rates was denied.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on February 12, 1986 PRS (Derry), Inc. (PRS) filed a longterm petition for its proposed 10.3 MW resource recovery project, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 353, 61 PUR4th 132 (1984) and DR 85-215, 70 NH PUC 753, 69 PUR4th 365 (1985); and

WHEREAS, the petition requested, inter alia, a thirty-year (30) long-term energy and capacity rate with a 1988 start year; and

WHEREAS, on February 14, 1986, February 21, 1986 and March 3, 1986 PRS filed amendments to their longterm rate petition; and

WHEREAS, Order No. 18,176 (71 NH PUC 181) in this docket approved the petition nisi on March 14, 1986 and allowed Public Service Company of New Hampshire (PSNH) thirty (30) days to file comments and exceptions to the petition; and

WHEREAS, PSNH filed comments and exceptions on April 3, 1986 that inter alia, contended that a pre-hearing conference, a period of discovery and a hearing on the merits are required to protect the interests of its ratepayers; and

WHEREAS, by letter dated April 10, 1986 the Commission granted PRS time to respond to PSNH's comments and exceptions and confirmed a telephone conversation between Commission Staff and PRS in which the petitioner requested a suspension of the nisi period to allow time for proper response; and

WHEREAS, PRS filed its response on April 18, 1986 opposing PSNH's motion for a hearing and scheduling

of a pre-hearing conference and asserted, inter alia, "the vast majority of issues that PSNH raises were specifically addressed by the Commission in Dockets DE 83-62 and DR 85-215"; and

WHEREAS, upon a review of PSNH's comments and exceptions and PRS's opposition to the comments and exceptions the Commission directed the Commission Staff to further investigate the PRS petition by way of data requests; and

WHEREAS, the Commission Staff issued data requests on May 8, 1986 and PRS responded on June 6, 1986; and

WHEREAS, the Commission finds that it requires additional assurances that PRS will achieve milestones in the project development sequence such that PRS can reasonably assure the Commission that it will be on-line no later than August 30, 1988 as specified in its rate filing; and

WHEREAS, the Commission notes that PRS's Waste Disposal Agreement with the town or [sic] Derry may be terminated "if the construction of the Project has not been financed by January 1, 1987 ..."; and

WHEREAS, PRS has not satisfied the Commission that its resource recovery project requires the front-end loading of 30-year long-term rates; it is therefore

ORDERED, that PRS's petition for a thirty year rate is hereby denied; and it is

FURTHER ORDERED, that PRS may file for a 20 year long term rate pursuant to DR 85-215, supra, any time prior to August 28, 1986; and it is

FURTHER ORDERED, that the longterm rate so granted PRS is null and void if PRS does not provide the Commission with an affidavit attesting to the finalization of the financing for this project by January 1, 1987.

By Order of the Public Utilities Commission of New Hampshire this twentyeighth day of July, 1986.

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NH.PUC*08/01/86*[60846]*71 NH PUC 435*Vicon Recovery Systems, Inc.

[Go to End of 60846]

71 NH PUC 435

Re Vicon Recovery Systems, Inc.

DR 86-130, Order No. 18,356

New Hampshire Public Utilities Commission

August 1, 1986

ORDER approving a small power producer's long term rates.

Cogeneration, § 24 — Rates — Long term prices — Approval.

Where the completion of a small power producer's financing and construction permit applications was imminent, the commission approved the producer's proposal for a twenty-year levelized rate.

By the COMMISSION:

ORDER

WHEREAS, on April 11, 1986 Vicon Recovery Systems, Inc. (Vicon) filed a petition for a long term rate for its 13 MW municipal solid waste project, located on the Dunbarton Road in Manchester, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 353, 61 PUR4th 132 (1984) and 70 NH PUC 753, 69 PUR4th 365 (1985); and

WHEREAS, the petition requested, inter alia, twenty-year (20) energy and capacity rates with a 1989 commercial operation date; and

WHEREAS, the Commission staff issued data requests on May 8, 1986 and Vicon responded on June 18, 1986; and

WHEREAS, the Commission finds that it requires additional assurances that Vicon will achieve such milestones in the project development sequence that the Vicon Project will be in commercial operation no later than August 30, 1989 as specified in its rate filing; and

WHEREAS, Vicon has responded to Staff data requests that it expects to have its financing completed, its construction permits approved and its agreements with the participating communities finalized by December 31, 1986; and

WHEREAS, the filing appears to be consistent with the requirements of the above-referenced orders; it is therefore

ORDERED Nisi, that Vicon's petition for a 20 year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to this instant petition

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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; and it is

FURTHER ORDERED, that the long term rate so granted Vicon is null and void if Vicon does not provide the commission with an affidavit attesting to the finalization of its financing, construction permits and agreements with participating municipalities by January 1, 1987.

By Order of the Public Utilities Commission of New Hampshire this first day of August, 1986.

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NH.PUC*08/05/86*[60847]*71 NH PUC 437*SES Concord Company, L.P.

[Go to End of 60847]

71 NH PUC 437

Re SES Concord Company, L.P.

Intervenor: Public Service Company of New Hampshire

DR 86-39, Second Supplemental Order No. 18,358

New Hampshire Public Utilities Commission

August 5, 1986

PETITION for rehearing on an order approving long-term rates for a small power producer; denied.

Cogeneration, § 24 — Rates — Long-term pricing — Factors and requirements.

Long-term rates for 20- or 30-year periods may be established for a small power producer when the producer can assure the commission that it will make all reasonable efforts to provide reliable service in selling its output to a purchasing utility, that it will abide by all applicable commission rules and regulations, that the project's life will be equal to or exceed the rate period, that rates will follow avoided costs except under extraordinary circumstances, and that all financial or surety bond requirements will be met. [1] p. 442.

Procedure, § 34 — Rehearings — Time limitations — Long-term cogeneration rates.

Where an electric utility had had over six months to investigate the long-term rates approved for a small power producer whose output the utility intended to purchase, but the utility sought a rehearing on the producer's rate schedule citing only the most general of terms, the petition for rehearing was denied. [2] p. 444.

By the COMMISSION:

REPORT

This docket was opened on February 5, 1986, when SES Concord Company, L.P. (SES) filed a petition for a 30 year rate for its Concord Regional Waste Energy Project (project) pursuant to RSA 362-A. SES filed amendments to its filing on February 13, 1986 and on March 7, 1986. The intended purchaser of the electricity generated from the project is Public Service Company of New Hampshire (PSNH).

The proposed project is an 11MW small power production facility (SPP or QF) to be located in Concord, New Hampshire. It will burn biomass consisting of solid waste supplied to SES by the Concord Regional Waste Energy Cooperative.

After review of the filing, the Commission approved the petition nisi on March 12, 1986, allowing PSNH twenty days to file comments and exceptions to the petition.[1(85)]

PSNH filed comments and exceptions on April 1, April 14, and April 25, 1986, asserting that, among other things, an opportunity for discovery

and a hearing on the merits of the petition are required to protect the interests of PSNH and its ratepayers.

In its April 1 filing, PSNH noted its concerns about a 30 year front loaded rate being applied to the project. PSNH alleges that the project may not continue in operation for the full 30 year rate period, exposing PSNH ratepayers to a potential loss of $205.76 million in front end loaded payments. PSNH included five exhibits demonstrating its calculations. PSNH also expressed concern about adequate fuel supply, about the long term economic viability of the project given questionable fuel supply, transportation charges and environmental regulation. At the same time, PSNH avers that it has insufficient information available to it to challenge the financial and technical feasibility of the project. PSNH Comments and Exceptions dated April 1, 1986 at 2.

In its April 14 filing, PSNH repeated its request for a hearing citing Commission Order 17,104 (69 NH PUC 352, 61 PUR4th 132) as requiring small power producers to "provide assurances that the level of annual output will be adequately maintained throughout the life of the rate so that ratepayers may recoup the full net present value of payments."[2(86)]

In its April 25, 1986 filing,[3(87)] PSNH asserts, inter alia, that SES has the burden of demonstrating that ratepayers will be made whole over time. PSNH also countered SES allegations that PSNH did not avail itself of prior opportunities for discovery[4(88)] by stating that PSNH restricted prior communication with SES to issues of the proposed interconnection agreement and the rate filing.

SES filed responses to PSNH's comments and exceptions on April 10, April 18 and May 2, 1986. In these filings, SES asserted that PSNH had sufficient time since the filing of the site data sheet with PSNH on June 13, 1985 to raise technical questions regarding the SES Municipal Solid Waste Project. SES further asserts that PSNH's request for a hearing is an "attempt to delay construction of the Facility without regard to whether there's a good faith basis for challenging project feasibility."[5(89)]

The Commission reviewed the SES and PSNH filings in this docket and found that the filings were sufficient to satisfy the Commission that[6(90)] :

1. The Regional Municipal Solid Waste Project as developed by the 27 participating municipalities and Signal Environmental Systems, Inc. is economically feasible over the 30 years of the requested rate petition.

2. SES has achieved sufficient milestones in the project development sequence to enable it to reasonably assure the Commission that it will be on-line no later than

August 30, 1989 as specified in its rate filing. And

3. There remains a dispute over the terms of the interconnection agreement as filed by SES.

The Commission accordingly approved SES's petition for a 30 year rate order conditioned on the execution of a satisfactory interconnection agreement, either mutually agreed upon by the parties or, in the absence of such agreement, following adjudication by the Commission pursuant to RSA 362-A:5.[7](91)

On June 11, 1986 PSNH filed a Motion for Rehearing on Supplemental Order No. 18,269 which repeated the arguments made in earlier PSNH filings in this docket, discussed above. On June 19, 1986 SES filed a Memoran- dum in Opposition to the Motion of Public Service Company of New Hampshire for a Rehearing.

PSNH MOTION FOR REHEARING

The PSNH Motion for Rehearing filed on June 11, 1986, alleged, in summary:

I. The issue of long term avoided cost rates, the subject matter of this docket, is a matter of substantial significance to PSNH who must pay the rates and to its rate payers to whom these costs will ultimately be charged. PSNH, quoted the New Hampshire Supreme Court as saying that an erroneous and excessive application of the avoided cost standard:

will result in subsidizing, and thus, stimulating cogeneration beyond the point of consumer benefit as intended by the statute. Re McCool and Easton, 128 N.H. —, — A.2d — (1986) (slip Op., p. 9)

II. A hearing is required to afford PSNH an opportunity to present its position fully on all issues raised by this rate filing, including the technical feasibility of the project, the feasibility of the projected on-line date, the life of the project and the need for and extent of front end loading.

III. PSNH should not be required to present its complete case regarding SES in advance of an Order from the Commission permitting a hearing.

IV. Supplemental Order No. 18,269 deprived PSNH of this right to due process guaranteed under the United States and New Hampshire Constitutions. US CONST. AMEND. XIV; N.H. CONST., Pt. 1, Art. 15; City of Claremont v. Truell, 126 N.H. 30, — A.2d — (1985).

V. Supplemental Order No. 18,269 deprives PSNH of its statutory right to an adjudicative proceeding in a contested case pursuant to RSA 541-A:14 & 15.

VI. The Order deprived PSNH of the right to a hearing with respect to an independent investigation conducted by the Commission pursuant to RSA 565:19, Re Public Service Co. of New Hampshire, 122 N.H. 1062, 51

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PUR4th 298, 454 A.2d 435 (1982).

VII. The Order is unlawful, unjust and unreasonable because it failed to set forth the reasons for the decision as required by RSA 363:17-b in that it does not include the reasons why the Commission believes the SES project is economically feasible or why it believes that sufficient significant milestones were achieved that could assure that the project would be on line when represented.

VIII. The hearing is necessary to ensure that SES meets its obligation to meet the two part test set forth in docket DE 83-62 in Order 17,104 (July 5, 1984) and improperly deprived PSNH of an opportunity to contest SES's assertions in the context of an adjudicated proceeding.

IX. The Order is unlawful, unjust and unreasonable in failing to authorize for SES those rates proposed in PSNH's Motion for Interim Rates.

SES POSITION

SES filed on June 20, 1986 a memorandum in opposition to PSNH's motion for rehearing. In its memorandum, SES argues that PSNH's motion should be denied because, among other things, PSNH presents no new arguments and has no statutory or due process right to hearing. In brief, the SES position, as set forth in the June 20, 1986 memorandum is:

I. PSNH has misleadingly interpreted the New Hampshire Supreme Court decision in Re McCool and Easton, 128 N.H —, — A.2d — (1986) (Slip Op. at 2) by stating that the "New Hampshire Supreme Court has recently noted [that] an erroneous and excessive application of the `avoided cost' standard ... `will result in subsidizing, and thus, stimulating cogeneration beyond the point of consumer benefit as intended by the statute.'" PSNH Motion for Rehearing at 3. The quoted language is nothing more than that Court's summary of an argument made by PSNH in its brief and is not an expression of the Court's own opinion. At most, the quoted language is dicta and is not a holding of the Court. The decision itself involves issues unrelated to those currently under consideration and does not suggest judicial hostility toward levelized rates.

II. PSNH's argument regarding the necessity of addressing "the need for and extent of any front end loading" (PSNH Motion for Rehearing at 3) is confusing its own position with established law. In Order No. 17,104 in Docket DE 83-62, which was a generic docket opened "for the purpose of inter alia updating and establishing ... long term rates to be paid by [PSNH] to small power producers ... ,"[8(92)] accepted what was a comprehensive stipulated settlement by the parties to the proceeding, including PSNH. DE

83-62 provided for the payment of long term front loaded or "levelized" rates (Order No. 17,104 at 25-28; stipulated recommendations at 27-31) to be available to any qualifying small power producer under the Public Utility Regulatory Policies Act of 1978 (Order No. 17,104 at 17; stipulated recommendation at 18 et seq.

The long term front loaded rates were updated in Order No. 17,838 (70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85-215). In DR 85-215, as in DE 83-62, there was no burden placed on small power producers to prove "need" to qualify for a levelized rate. These policy issues should be addressed only in the context of a generic proceeding.

III. The Commission has complied with all statutory and constitutional requirements. Any rights to a hearing that may arise in an administrative proceeding are not applicable here for the following reasons:

a. PSNH's procedural claims are frivolous.

b. The policy formulated in Commission Orders No. 16,619 (68 NH PUC 531) and 16,664 (68 NH PUC 575) in docket DE 83-62 establish a policy which placed on PSNH the burden of making a reasonable inquiry into the technology and economics of a project before making a motion for a public hearing on a rate filing. This policy does not require PSNH "to present its complete case ... in advance of an Order from the Commission permitting a hearing" as alleged by PSNH. PSNH must only demonstrate a good faith basis for requesting such a hearing. In this case PSNH has failed to do so, and indeed has failed to make any inquiries of SES Concord in advance of its request for a hearing.

c. There is no entitlement to a hearing until a party indicates that there is a dispute worth hearing; Greenwald v. Whalen, 609 F.2d 665, 669 (2nd Cir. 1979); and unless there is an issue to decide. Fay v. Douds, 172 F.2d 720, 725 (2nd Cir..Pp 1949). In the case at bar, PSNH stipulated, in the prior generic docket, DE 83-62, to the procedures being used and has made no showing that it has any serious concerns warranting further inquiry. Pharmaceutical Manufacturers Asso. v. Richardson, 318 F.Supp. 301, 312 (D.Del.1970)

d. This is not a "contested case" under RSA 541-A:16 requiring a hearing. RSA 541-A:1 (III) defines "contested case" as "a proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing." (Emphasis added) PSNH cites no such law.

e. PSNH's argument that it is entitled to a hearing under

RSA 365:19 is not valid because that statute merely authorizes the Commission, in cases where a hearing is to be held, to make an independent investigation into the matters before it. It is only when the Commission exercises this authority and the Commission intends to consider facts disclosed by the investigation in its ruling that any party whose rights may be affected must be afforded a reasonable opportunity to be heard. Here, the Commission has determined that sufficient basis for a hearing has not been demonstrated. In fact PSNH had ample opportunity to be heard via its two submitted memoranda. PSNH's problem is not that it had no opportunity to be heard, but that it had nothing to say.

[1] The Commission's authority to set rates for power sold by SPP's to PSNH is based on both LEEPA (RSA 362-A) and its federal progenitor, the Public Utility Regulatory Policies Act of 1978 (PURPA)[9(93)] .

In DE 83-62, 4th Supplemental Order No. 16,619, 68 NH PUC at p. 544 (Interim Order) the Commission established a procedure[10(94)] for a small power producer wishing to invoke the longterm rate to follow by requiring the SPP to file with the Commission and with PSNH a certificate signed by the duly authorized agent of the entity, attesting to the following[11(95)] :

1. that, unless the producer elects the termination option set forth at paragraph 5 below, the producer will sell its entire output to PSNH at the specified rates over the entire applicable time period;

2. that the producer will abide by all applicable rules, regulations and orders of this Commission and will obey the Commission's directives in the case of any disputes with PSNH;

3. that the producer will make all reasonable efforts to provide reliable service to PSNH over the life of the obligation;

4. that, in the event that the producer opts for a rate above avoided costs in any year, the producer agrees to pay PSNH the net of excess payments over avoided costs, in net present value, actually experienced, in the event of a service termination prior to the end of the obligation period.

5. that service may be terminated on 60 days' notice at the option of the producer;

6. that the producer agrees to appear before this Commission with such documents as may be requested upon reasonable notice, to the extent required by this Commission to fulfill its statutory obligations; and

7. that in all respects not otherwise provided herein or in Commission

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orders, the producer will adhere to the non-pricing terms in the PSNH standard long term contract referred to at Tr. 4-14 [in DE 83-62].

The Commission subsequently modified these requirements in Eighth Supplemental Order No. 17,104, 69 NH PUC at pp. 366, 367, 61 PUR4th at pp. 147, 148, providing that in order to qualify for a levelized rate, the SPP must demonstrate that the full levelized rate is necessary to permit development of this site; and to provide for additional ratepayer protection:

I. project life must be equal to or greater than the rate term.

II. 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.

III. 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.[12(96)]

This latter order further modified the Interim Order by allowing an SPP to buy out of the rate, provided that the SPP continues 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. To exercise the buy out, SPP must provide 60 days notice and notify PSNH of the difference between the energy component payments and the amount which would have been paid at the annual values of the applicable rate or applied.[13(97)] The Commission also reaffirmed a provision made in its Interim Order that the judgment of the project's financiers will be deemed, in effect, prima facie evidence of feasibility.[14(98)]

The SES long-term rate filings of February 6, 1986, as revised on Febru- ary 13, 1986 and on March 7, 1986 satisfied the Commission that the proposal met the above cited requirements and that it would be in the public good to grant the application.

SES's filings demonstrated that financing was secured for the project predicated on a thirty year rate by December 1985. This was not specifically challenged by PSNH and is indicative of project feasibility.[15(99)] Project feasibility was further supported by the fact, again unchallenged

by PSNH, that the proposal was reviewed and approved by the City of Concord and the other 27 participating towns that have agreed to supply fuel.

Use of a solid waste as a fuel is also a worthy policy goal in keeping with the purpose of LEEPA and PURPA in seeking alternatives to dependency on foreign fuel supplies. It also has obvious environmental and ecological advantages as an efficient means of solid waste disposal. There is no reason given by PSNH, or evident elsewhere in the file, for believing that there may be a shortage of solid waste in the Concord area to serve as fuel for the plant over

its projected 30 year[16(100)] life span. In fact, the approval of the project by the participating cities and towns and by the project's financiers along with the Commission's general knowledge of New Hampshire solid waste disposal problems indicate that potential fuel supply will be plentiful for the full term of the rate.

These considerations, along with the safeguards provided for in the procedures established in DE 83-62 convince the Commission that SES has met its burden of proof,[17(101)] that no further investigation or hearings would be productive in this matter and that PSNH's motion for rehearing should be denied. PSNH was a party to the Stipulated Recommendations, which were accepted by the Commission in DE 83-62, and which established the procedures used in this case.

[2] PSNH has had over six months to investigate any concerns it may have, yet its motion for rehearing addresses only general concerns applicable to any QF and offered no proof that its concerns should be further investigated in relation to SES. This does not mean that PSNH is necessarily obligated to submit its case in full before hearing. PSNH should, however, indicate in its request for a hearing the nature of the evidence it would produce to prove specific concerns about the particular applicant at issue.

Except for the disputed interconnection agreement, because of which the Commission conditioned its acceptance of the SES rates on the execution of a satisfactory interconnection agreement,[18(102)] PSNH has not cited any specific concern as to why the application should not be granted. This would be understandable if PSNH had had only the 17 day notice normally allowed under PUC rules (PUC 203.1). However, PSNH has had at least six months to investigate its concerns regarding this filing. The procedure in small power producer cases was addressed in DE 83-62, 5th Supp. Order No. 16,664, 68 NH PUC at p. 580 where the Commission said:

PSNH requested clarification as to whether it is obligated to challenge the financial and economic feasibility of any long-term applicant. PSNH also requested clarification of the mechanism, if any, by which it may obtain information to determine whether such a challenge is warranted.

... If PSNH wishes to challenge this evidence, it may do so. The Commission has assumed that PSNH will have adequate access to information about the QF to make a decision as to whether a challenge is warranted through its preliminary contractual discussions with the QF or through other sources of information. In addition, PSNH will have access to information through

the written interconnection agreement required by this order. If further information is

necessary, the Commission will consider directing a QF to respond to reasonable specific PSNH inquiries submitted in the form of data requests.

In its response to SES Concord Company's memorandum in opposition to a hearing dated April 25, 1986, PSNH states, on page two:

... Specifically, SES Concord claims that, at a certain meeting, representatives of PSNH stated that they had no questions about the facility and that counsel for PSNH, in earlier conversations, stated that PSNH would not require additional information. Both claims by SES Concord are, at best, inaccurate recountings of events. Discussions between SES Concord and PSNH concerned the proposed interconnection agreement and the rate filing. The conversations in question did not extend to the technical or financial feasibility of the project.

PSNH therefore admits that it did not utilize the established procedure in ascertaining essential information in a timely fashion.[19](103) It cannot now, after letting precious months go by with inaction, allege a need for further discovery and hearing, especially when said rights are asserted in the most general of terms.

Whatever due process rights PSNH may have were more than adequately addressed by the procedures exercised in this case. Drown v. Portsmouth School Dist., 435 F.2d 1182, 1185 (1st Cir.1970), cert. denied, 402 U.S. 972 (1971); Goss v. Lopez, 19 U.S. 569 (1965) [sic]. The Commission also finds, for the above cited reasons, that PSNH is not entitled to a hearing or to further discovery under RSA 365:19 or RSA 541-A:16 III. Accordingly, the Commission will deny PSNH's motion for a rehearing.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

For reasons cited in the foregoing Report, which is herein incorporated by reference, the Motion for Rehearing filed by Public Service Company of New Hampshire on June 11, 1986 is denied.

By Order of the Public Utilities Commission of New Hampshire this fifth day of August, 1986.

FOOTNOTES

[1]Order No. 18,171 dated March 12, 1986 (71 NH PUC 168).

[2]Response of Public Service Company of New Hampshire to Motion of SES Concord Company, L.P. for Extension of Time dated April 14, 1986.

[3]Reply of Public Service Company of New Hampshire to SES Concord Company's Memorandum Opposing Hearing dated April 25, 1986.

[4]Memorandum of SES Concord Company, L.P. In Opposition to the Motion of Public Service Company of New Hampshire for a Hearing and for the Scheduling of a Prehearing

Conference (April 18, 1986) at 4-5.

[5]Supplemental Memorandum of SES Concord Company, L.P. in Opposition to the Motion of Public Service Company of New Hampshire in docket number DR 86-39 dated May 2, 1986, at 2.

[6]Supplemental Order No. 18,269 (71 NH PUC 313, 314).

[7]Id., 71 NH PUC at p. 314.

[8]Order No. 17,104 (69 NH PUC at p. 353, 61 PUR4th at p. 133).

[9]Re Small Energy Producers and Cogenerators, 68 NH PUC at p. 535; 69 NH PUC at p. 355, 61 PUR4th 132.

[10]To implement the rate setting process, the Commission opened docket DE 83-62 in which the Commission established a procedure for processing small power producer rate cases and established an avoided cost rate for PSNH; Re Small Energy Producers and Cogenerators, 68 NH PUC at p. 535.

[11]Id., 68 NH PUC at p. 544.

[12]The filing requirements and procedures established in the Interim Order were subsequently adopted as modified in DE 83-62, 8th Supp. Order No. 17,104, 69 NH PUC at p. 367, 61 PUR4th at pp. 146, 147.

[13]Id., 69 NH PUC at p. 367, 61 PUR4th at pp. 146, 147.

[14]Re Small Power Producers and Cogenerators, 68 NH PUC at p. 580.

[15]Id., 68 NH PUC at p. 580.

[16]Although the Commission is granting a 30 year rate in this case, we are becoming increasingly concerned about the potential ratepayer exposure under 30 year rates in general. Thirty year rate proposals will be particularly scrutinized to insure that ratepayers are not exposed to unnecessary risk of losing front end loaded amounts.

[17]The Commission disagrees with SES's implication, however, that the procedures established in DE 83-62 are mere checklist procedures. The SPP has the burden of proof and must demonstrate that the full levelized rate is necessary to permit development of the site. 69 NH PUC at p. 366, 61 PUR4th 132.

[18]Supplemental Order No. 18,269 at 2 (71 NH PUC 313).

[19]The parties to DE 83-62, including PSNH, also recommended to the Commission, which accepted the recommendation, that where possible, informal discussion, rather than formal litigation or arbitration, be used to resolve disputes among the parties. 69 NH PUC at p. 367, 61 PUR4th 132.

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NH.PUC*08/11/86*[60848]*71 NH PUC 446*Manchester Gas Company

[Go to End of 60848]

71 NH PUC 446

Re Manchester Gas Company

DR 85-214, Second Supplemental Order No. 18,365

New Hampshire Public Utilities Commission

August 11, 1986

PETITION by a natural gas distributor for authority to increase its rates and charges; granted as modified.

Expenses, § 19 — Post test-year expenditures — Known and measurable changes — Balancing principle.

Although it is permissible for a utility to reflect known and measurable expense changes occurring after the end of the test year, any changes occurring beyond 12 months after the end of the test year may not be so considered because they would be too far removed from the test year and could cause an extreme mismatch of test year expenses and revenues. [1] p. 452.

Expenses, § 35 — Amortization of obsolete plant — Computers — Allocation between utility and nonutility operations.

Because rapidly changing technology can make new computer equipment obsolete within a very short period of time, a natural gas distributor was allowed to use a shorter amortization period for its computer than it would for other comparable plant, but it was ordered to allocate its computer costs between both utility and nonutility operations, where it was shown that its nonutility divisions benefitted from the computer as much as did its utility divisions. [2] p. 455.

Expenses, § 15 — Recoverability — Reasonableness — Ratepayer benefits.

A utility may recover through rates those expenses relating to items that are necessary for providing service, that are ongoing and recurring, and that provide ratepayers with direct benefits, whether tangible or intangible. [3] p. 457.

Expenses, § 89 — Rate case expense — Offset against recoupment or refund.

Following a recent precedent, the commission removed a utility's rate case expense from its cost of service and said that any reflection of such costs would have to be netted against any recoupment (or refund) of temporary rates that had been established. [4] p. 458.

Expenses, § 114 — Income taxes — Effect of corporate reorganization.

Where, during the course of a gas utility's test year, a corporate reorganization had occurred, and the parent company's costs were being allocated among a greater number of subsidiaries that now fell under its ownership, the gas utility was required to recalculate some of its expenses, particularly its income tax expenses, for a net change of an annualized reduction in the utility's expenses. [5] p. 458.

Valuation, § 197 — Property included or excluded — Non-revenue producing capital additions

— Burden of proof.

A petitioning utility has the burden of proof to show that post test-year capital additions could be added to rate base without violating the matching principle; such capital additions may be reflected in rate base if they are non-revenue producing and provide no deferred tax benefits relating to accelerated depreciation, but if the

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additions are revenue producing, even indirectly through time- or labor-saving devices, the additions will not be recognized in rate base. [6] p. 465.

Valuation, § 294 — Working capital — Daily versus future cash needs.

Working capital allowances are intended to provide only for a utility's normal and current day-to-day cash outlay needs, and therefore, any expense items requiring future cash outlays, such as deferred taxes, interest, depreciation, or dividends, are inappropriate for working capital consideration. [7] p. 466.

Valuation, § 295 — Working capital — Customer deposits — Alternative treatment.

Traditionally, the commission has excluded both customer deposits and the interest due on those deposits from a utility's rate base, but an alternative treatment would be to include the deposits in a utility's capital structure. [8] p. 468.

Return, § 26.4 — Common equity — Discounted cash flow method — Comparison factors.

In using the discounted cash flow method for determining a utility's rate of return on common equity, it is not as important to compare the utility to other in-state utilities or to other companies of comparable size as it is to compare the utility to other freely traded utilities which, on a nationwide basis, have comparable risks and operations even if their size and geographical location are not similar. [9] p. 473.

Return, § 37 — Common equity — Factors — Premium to allow financial improvements.

A natural gas distributor's proposal that a premium be added to its cost of equity, to account for it being "equity thin" when compared to other utilities, was rejected, because the distributor had been directed three years earlier to thicken its equity ratio but had taken no appropriate steps since then for doing so. [10] p. 475.

Expenses, § 10 — Attrition allowance — Natural market forces as factors.

A natural gas distributor's request that it be granted an attrition allowance was rejected where it was found that natural market forces, including lower interest rates, falling gas supply prices, and the increasing competitive edge of gas vis a vis electricity as a heating fuel source, were sufficient to offset the financial problems the distributor had faced in the past. [11] p. 477.

Rates, § 373 — Gas — Uniform increases — Generic issues.

In granting a natural gas distributor a small rate increase, the commission declined to disturb the distributor's existing rate structure and chose instead to allocate the increase on an equal percentage basis, but the commission noted that it was interested in examining gas rate design in general, especially with respect to marginal cost of service, declining block rates, and cost of gas

adjustment clauses. [12] p. 479.

APPEARANCES: Orr and Reno by Charles H. Toll, Jr., Esquire and David W. Marshall, Esquire on behalf of Manchester Gas Company; Eugene Sullivan, Finance Director, Daniel Lanning, Assistant Finance Director, Dr. Sarah Voll, Chief Economist and Mark Collin, PUC Economist II on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On August 16, 1985, Manchester Gas Company (Company), a public utility providing gas service in the State of New Hampshire, filed revised tariff pages reflecting an increase in gross annual revenues of $1,747,961 (10.47%) to be effective on all bills rendered on or after September 16, 1985. Pursuant to the provisions of RSA 378:6, the Commission thereafter issued Order No. 17,856 on September 9, 1985 (70 NH PUC 782), suspending the effective date of the tariff revisions to allow for investigation.

On October 10, 1985, the Company filed a Petition for Temporary Rates

pursuant to RSA 378:27 requesting a revenue increase of $1,747,961, the same amount requested in the permanent rate filing, or, alternatively, an increase of $1,280,348 (7.7%) to become effective on all bills rendered on or after September 16, 1985. An Order of Notice was issued on October 21, 1985 setting a hearing for November 26, 1985 to address the issues of temporary rates and an appropriate procedural schedule.

At the November 26, 1985 hearing the Company and Staff presented a Stipulation Agreement (Agreement) regarding the Company's temporary rate petition. The Agreement proposed an increase in gross annual revenues of $654,828 for temporary rate purposes to take effect on all bills rendered on or after December 1, 1985. The Agreement also proposed that the increase be reflected in the Company's rate structure by increasing the base rates, including the customer charge, on a pro rata basis. In Report and Order No. 17,972 issued on November 27, 1985 (70 NH PUC 999), the Commission approved the Agreement and set a procedural schedule for the remainder of the proceedings.

The exchange of data requests and the filing of Staff testimony took place during January to April, 1986. On April 7, 1986, approximately two weeks prior to the start of the hearings on the merits, the Company filed several updated schedules and supporting worksheets that revised its initial filing. The revisions supported an increase in the Company's revenue deficiency from $1,748,072 as originally requested to $1,850,602. While the Company requested that the Commission allow its case to be based on the updated information, it did not file new tariff pages to reflect the additional increase. Because of its desire to avoid the delay that would have certainly accompanied a new filing, the Company proposed that even if the Commission found that the Company's revenue deficiency exceeded $1,748,072, its rates not be increased by more

than that amount.

The Company's April updated filing contained not only the correction of errors made known to the Company by the Staff during its audit, but also, inter alia, adjustments to expense items and rate base. In response thereto, the Staff requested a continuance in order to adequately investigate this new material and, if necessary, to update individual Staff members' testimony. A hearing on that request was held on April 15, 1986 at which time the Com- pany objected to any postponement of the proceedings. At the conclusion of the hearing the Commission denied Staff's request. However, the Commission ruled that Staff would be afforded the privilege of recalling the Company's witnesses for cross-examination on the April filing after Staff had an opportunity to review it.

Hearings before the Commission were held on April 22, 23 and 24, May 19, 23 and 26 and June 13, 1986. At the hearings, the Company submitted several additional exhibits, some of which contained revisions to earlier-filed exhibits. These additional exhibits included a revised lead/lag summary (Exhibit 36), revisions to the recommended cost of capital (Exhibit 31, Schedule 2A, 3A and 4A), additional supporting documentation on the April 7, 1986 update (Exhibits 39, 39A, 40, 47 and 53) and additional material regarding the Company's computer installation (Exhibit 48-52 and 55). In response to the additional exhibits as well as the

substantive April 7, 1986 update, both Staff witnesses submitted supplemental testimony at the time of their direct testimony.

During the hearings the Staff pointed out that the revenue deficiency calculation contained in the April 7 filing had to be updated as a result of the additional exhibits, especially the revised cost of capital recommendation submitted by the Company's witness on April 22, 1986. The Staff requested that the Company file an update to the April 7, 1986 update with another rev- enue deficiency calculation (the third) prior to the close of the hearings. That calculation was filed with the Commission on May 5, 1986.

The Company filed a brief on July 3, 1986. Staff did not file a brief.

II. Operating Income

A. Position of the Parties

In its original filing, the Company computed its net utility operating income by making several proforma adjustments to both operating revenue and expenses for the 12 months ended March 31, 1985.

The operating revenues for the test year consisted of firm revenues in the sum of $16,234,427, revenue for the sale of interruptible gas of $493,376 and other revenues of $535,069. The test year operating revenues of $17,262,872 were proformed to eliminate the revenue associated with the role of interruptible gas ($493,376) and to reflect a weather adjustment increase of $503,997, leaving proformed test year operating revenues of $17,273,493.

The test year operating expenses of $16,310,047 were proformed to reflect the following: 1) an increase to the cost of gas due to the normalization of the weather adjustment in revenue; 2)

elimination of the cost of gas applicable to the interruptible sales; 3) annualizing payroll increases; 4) an increase in bad debt expense; 5) an increase in health insurance; 6) an increase in life and liability insurances; 7) an increase in rate case expenses; 8) an increase in the public utility assessment; 9) an increase in rent; 10) increased computer operating costs; 11) the amortization of computer installation conversion and strike costs; 12) an adjustment to pension costs; 13) elimination of certain items, such as lobbying expenses; and 14) an increase in property and payroll. The adjustments resulted in proformed test year operating expenses of $16,442,833.

Adding in operating rents of $406,086 to the difference between the above operating revenue and expenses yields a net utility operating income of $1,236,746.

Staff - through the testimony of Daniel Lanning - calculated the Company's proforma operating income by taking the Company's proformed operating income statement as discussed above and applying its recommended proforma expense adjustments thereto.[1(104)] Staff's proforma adjustments to operating expenses, which reduced the Company's expenses by a total of $157,386, eliminated those expenses which the Staff argues are either nonrecurring, excessive, unreasonable or expenses which should have been capitalized. The Staff also eliminated appliance sales from utility operations on the grounds that the appliance sales are nonutility operations which should not be borne by the Company's ratepayers. In addition,

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the Staff changed the amortization of computer conversion costs from 5 years as requested by the Company to 10 years.

Further, Staff's adjustments included the correction of errors in the Company's filing and the elimination of certain labor costs which will be replaced by the new-installed computer. Income taxes were adjusted to reflect the proforma adjustments as well as the Company's restatement of the test year effective tax rate.

Adding operating rents of $406,086 to the difference between operating revenues of $17,273,493 and Staff's proformed operating expenses of $16,285,447 yields a net operating income of $1,394,132.

As noted above, the Company updated its filing prior to the hearings. While there were no adjustments to the proforma operating revenue of $17,273,493, the Company increased its proforma operating expenses by $202,876. The increase was comprised of the following: 1) payroll increases effective as of March and April of 1986; 2) increases and decreases to insurance expenses; 3) increases to public utility tax assessment; 4) an increase to rent; 5) a transfer of the amortization of computer conversion costs from General and Administrative Expense to amortization expense; 6) increased depreciation expense to reflect growth in plant; 7) the elimination of a LNG plant lease; 8) pension costs were increased; 9) office temporary help was decreased due to the installation of a new computer; 10) computer operating costs were increased; 11) property taxes were decreased; 12) payroll taxes were increased applicable to the proforma adjustment to payroll; and 13) various errors were corrected from the original filing as per Staff's testimony. The additional adjustments resulted in a revised operating expense figure of $16,645,709. Adding operating rents of $406,086 to the difference between operating

revenues of $17,273,493 and operating expenses of $16,645,709 yields a net operating income of $1,033,870.

The Company filed responses to informational requests made during the hearings by the Commission. In the responses the Company again updated its operating income. The Company proposed additional proforma expense adjustments to reflect the following: revised depreciation and amortization expenses, elimination of aircraft liability insurance originally included in both its original and updated filing, an increase in directors and officers liability insurance and a decrease in bad debt expenses. The net effect of the adjustments was to increase operating expenses by $45,159 which resulted in a revised operating income of $1,079,029.

In response to the two Company updates, the Staff, through Mr. Lanning, filed supplemental testimony supporting a revised operating expense figure of $16,312,948, $129,885 less than the $16,442,833 figure contained in Staff's original filing. The $129,855 reduction in operating expenses resulted from the following adjustments: an increase in insurance and rent expense, a transfer of the computer conversion costs to the amortization expense, the elimination of adjustments to payroll benefits in the original testimony, the reduction of the property tax expense recommended by the Company and a revised federal income tax calculation necessitated by the other adjustments. The Staff also made a correction to appliance sales as a result of additional information provided by the Company. Subtracting $16,312,948

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from operating revenues of $17,273,493 yields $960,545, which, when added to net operating rents of $406,086 results in a net operating income of $1,366,631.

The adjustments made by Staff included increases to expenses for up to 12 months beyond the end of the test year. Staff did not accept Company adjustments beyond that period nor did it accept the depreciation expenses and public utility tax assessment adjustments made by the Company in its second updated filing.

Lastly, in its Brief, the Company proposed further proforma adjustments to operating expenses, including the elimination of appliance sales (as per Staff testimony), an increase in depreciation expenses for utility plant in services as of December 31, 1985 and adjustments of $1,000 and $18,113 which are not explained. An adjustment of federal income taxes was made to account for these further proforma adjustments.

In summary, the differences between the Staff and Company are in the area of operating expenses. As stated above, both parties agree that the appropriate level of operating revenue to be utilized in determining the Company's operating income is $17,273,493 . The differences regarding operating expenses are as follows:

1. The Company has proformed computer conversion costs which it amortized over a five year period. Staff's proforma of the computer conversion costs are amortized over a 10 year period.

2. The Company proposes proforma adjustments to expenses which extend beyond twelve months past the end of the test year. Staff's proforma adjustments go up to the period ending March 31, 1986, i.e. no more than 12 months beyond the end of the test year.

3. The Company has proformed depreciation expense for plant in service as of December 31, 1985. The Staff has not proformed depreciation expense other than that applicable to capitalized expenses (Derryfield Green legal expenses);

4. Staff has removed legal expenses for Derryfield Green and Manchester Housing Authority incurred during the test year. Staff has capitalized the Derryfield Green expenses and has eliminated the Manchester Housing Authority completely. The Company has included these expenses in their test year.

5. Staff has taken numerous General and Administrative Expenses and called them excessive. These are as follows:

a) expenses for Warren Heckman for supervisory training programs;

b) expenses for spousal travel;

c) expenses for a stockholders meeting at the Margate in Laconia, N.H.;

d) expenses for counseling services for a former officer of the Company;

e) expenses for Manchester

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Country Club dues and expense for the use of the facility;

f) expenses for commuting costs for Company cars;

g) expenses for strike costs which are applicable to bonuses paid during the strike;

6. The allocation of computer operating expense to the nonutility operations;

7. The appropriate amount of advertising expenses;

8. An appropriate adjustment to uncollectible expenses;

9. The restatement of a base year effective tax rate. (the Company has proposed to restate the federal income tax effective rate based on a two year average while Staff has eliminated the adjustment made by the Company and has accepted the booked entry during the test year);

10. Interest expense (the Company and Staff differ in that the Company's capital structure was proformed as of March 31, 1985 and the Staff's capital structure was proformed as of March 31, 1986);

11. Staff eliminated discounts which were missed by the Company during the year;

12. Staff indicates the need to include some portion of allocations of EnergyNorth, Inc. expenses to Concord Natural Gas. The Company has in part complied with this and has in part objected. Neither Staff nor Company proformed operating income to include an adjustment for this amount;

13. Staff recommends a change in the expense allocation formula from ENI but Staff has not incorporated a revised formula in its proforma expense items.

B. Commission Analysis

1. Proforma Adjustments to Test Year Expenses

[1] The numerous updated filings submitted by the Company propose proforma adjustments to the test year operating expenses which reflect known and measurable changes to operating expenses occurring up to 24 months beyond the end of the test year. The breakdown of these adjustments is as follows:

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

Original Filing Insurance:	Update 1 Adjustments	Update 2/Brief Adjustments	Adjustments
BC/BS	22,674	38,852	Same
Dental	6,232	5,870	Same
Life	(669)	(137)	Same
Liability/ Auto/Misc.	149,181	196,142	207,317
P.U.C. Assessment	2,294	11,624	Same
Pension	53,970	57,156	Same
Payroll	149,303	302,121	Same
Property Taxes	37,020	20,863	Same
Depreciation Exp.	-0-	39,434	63,434
Rent	4,660	8,659	Same
Total	424,665	680,584	715,759

As noted above, the Staff also updated certain expenses in response to the Company's updated filings. However, the Staff updated its expenses only for known and measurable changes occurring up to 12 months beyond the end of the test year. Staff's adjustments are as follows:

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

Original Insurance:	Updated Proforma Adjustments	Proforma Adjustments
BC/BS	(22,674)	Same
Dental	(6,232)	Same
Life	(669)	Same
Liability/ Auto/Misc.	(148,808)	172,950
P.U.C. Assessment	2,294	Same
Pension	53,970	Same
Payroll	149,303	Same
Property Taxes	37,020	20,863
Depreciation Exp.	-0-	-0.Pp
Rent	4,660	6,660
Total	419,632	434,277

In its Brief the Company argues that its post-test year adjustments to expenses are within established Commission policy, and that Staff's attempt to proform only 12 months beyond the end of the test year is not consistent with prior Commission practice nor is supported by logic or law. The Company takes the position that the use of 12 months is totally arbitrary. If the increases in expenses are not recognized, the Company argues that it will immediately experience accelerating attrition.

This Commission's policy has been to allow proforma adjustments to test year expenses for known and measurable changes occurring up to 12 months beyond the end of the test year. Re Concord Electric Co., 63 NH PUC 240, 241, 242 (1978); Re Public Service Co. of New Hampshire, 69 NH PUC 67, 71, 57 PUR4th 563 (1984). Nothing presented by the Company

persuades us that this policy should be changed. Allowing adjustments for expenses incurred beyond 12 months after the end of a test year is contrary to the wellestablished regulatory principle of "matching" test year expenses and revenues. This matching is necessary to obtain an accurate determination of a utility's operating income. To the extent post-test year expenses are allowed without recognizing post-test year revenues, a mismatch takes place. While there is a slight mismatch in allowing known and measurable changes to expenses which occur up to 12 months beyond the end of the test year without a corresponding revenue adjustment, those adjustments are necessary

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to insure that rates reflect expenses that will be incurred while they are in effect. Moreover, allowing proforma adjustments up to 12 months beyond the end of the test year will help to mitigate whatever attrition the Company may experience. However, to go beyond that time period without a corresponding revenue recognition significantly compromises the matching principle. We therefore will accept Staff's recommendation that the Commission's policy in this regard be continued.

During the course of these proceedings the Company presented numerous updates. It is a frustrating task to follow, let alone adequately review and investigate, the many filings. Continuous changes in effect create a "moving target" which, by virtue of the need for further discovery, extends the hearing process.

In this case it appears that the original filing was not presented in sufficient detail to identify and include the numerous adjustments sought by the Company. In future cases we will expect that the Company's initial filing be complete. Moving targets such as the one presented in this case will not be allowed. Should the Commission be presented with this scenario in the future, we will require the Company to refile its rate case.

2. Public Utility Tax Assessment Expense

The Company made a proforma adjustment of $9,330 to test year expenses for an increase in the Public Utility Tax Assessment which occurred within the 12 month period after the end of the test year. Staff argues that despite it being within the appropriate time period for adjustments, this expense is non-recurring, that is, it is a one-time increase which will not occur in the future and thus should not be included in rates on an ongoing basis. We acknowledge that the post-test year increase in this item will probably not occur in the future. However, it is impossible to know for certain at this juncture exactly what will happen to this expense. We therefore will allow the adjustment. To the extent this item does decrease in the future, the recovery of this amount will help to offset whatever attrition the Company may experience.

3. Depreciation Expense

The Company seeks to include a proforma adjustment to the test year depreciation expense in the amount of $63,434. This was computed by utilizing the plant in service balances as of December 31, 1985. Those balances were depreciated at their appropriate rate and totalled to arrive at an annual depreciation expense of $564,063 which is $63,434 above the test year depreciation expense. Staff declined to make this adjustment. We agree. Utilizing plant balances beyond the end of the test year to generate a proforma adjustment to depreciation is

inappropriate. It results in a substantial mismatch of revenue and expenses in that the revenue associated with the post-testyear plant additions is not included in operating revenue. This yields an inaccurate and incomplete calculation of the Company's operating income and contravenes the fundamental matching principle discussed above. We therefore will disallow the adjustment requested by the Company.

4. Advertising Expense

The Company asserts that Staff has

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erroneously calculated its proforma adjustment to advertising expense (Ex. 45, Ex. 3, Schedule 2). In its Brief, the Company recalculates the appropriate amount and cites Ex. 34 Adjustment 2 as support for its assertions.

After review, we find Staff's calculation to be in error. However, the evidence also indicates that the Company has not made the proper calculation.

The Company calculates its adjustment by utilizing the amount that should have been allocated to the Nonrecoverable Advertising Expense Account ($3,377) and adding an amount which should have been charged earlier in the year to the same account ($550). The amount which was charged to the Non-recoverable Advertising Expense Account was then subtracted ($220) to arrive at an aggregate adjustment of $3,707.

In adjustment 2 of Exhibit 34, the total expense subject to adjustment is provided. This exhibit displays the total cost charged to the Sales and NonRecoverable Advertising Account as $4,996. Upon review of the corrected allocation of costs as put forth in the exhibit, the Commission finds only $228 is recoverable by Manchester Gas Company through rates. The remaining amounts are derived from the NonRecoverable Advertising Account or Accounts Receivable from Gas Service, Inc. account and are not recoverable operating expenses for ratemaking purposes. The calculation of the adjustment to the Company's test year expense to eliminate the non-recoverable expenses is as follows:

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

Total expense booked during test year $4,996.00
 Less: Amount previously booked to
   Non-Recoverable Advertising
   expense 220.00
 Less: Commission Expense 228.00
 Amount to be adjusted (reduction
   to Sales Expense) $4,548.00
```

The difference between the adjustment proposed by the Company ($3,707.00) and the adjustment approved herein of $4,548 is applicable to the item Accounts Receivable Gas Service, Inc. ($841.00) which is not a recoverable expense item.

5. Computer Conversion Costs

[2] The Company and Staff differ in the amount of computer conversion amortization costs which should be included in rates. The Company argues that the total cost is $813,917 ($13,565.28 x 60 months (Exhibit 34, Adjustment 1)) which should be amortized over a period

of five years. Staff disagrees. It contends that the total cost is $771,840 which should be amortized over a period of ten years. The Company attributes the cost difference between Staff and itself to timing. The Company avers that the update in cost was provided just prior to the date Staff revised its testimony and that Staff's revision is therefore inaccurate.

The Company bases its amortization period on its past history and a survey of utilities. It is the Company's belief that the computer's obsolescence and lack of manufacturer backing once it

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occurs supports the need for a shortened amortization period. Staff argues that the length of time the Company took to convert the computer is extraordinary and that the Company's history does not support a five year amortization period.

After review, we find the total cost of the computer to be $813,917 (Ex. 40, Item 7). This cost utilizes the most current data and will help to mitigate any attrition the Company may experience. In addition, we agree with the Company that in general technical obsolescence of a computer indicates a need for the Company's proposed 5 year amortization period which we will adopt. However, we will monitor this item in the future and make whatever adjustments are indicated by the actual life of the computer. The Company shall begin amortization of the costs in the month the computer became used and useful.

An additional issue raised by the parties is whether some allocation of the computer costs should be made to the Company's non-utility operations. In its original filing the Company proposed that the Company's utility operations be allocated 89.27% of the total cost. However, in its final update the Company changed its position and now contends that no allocation should be made to non-utility operations. It argues that its nonutility operations will soon be reorganized into a separate corporation under the ENI umbrella which will possess its own computer. Staff argues that the original 89.27% allocation should be utilized.

The Commission will not accept the Company's assertion that the computer is for utility operations only. The computer's capabilities and planned utilization as detailed in a report by Arthur Andersen submitted after the close of the hearings evidences movement toward a consolidated accounting system which would include the nonutility operations of Manchester Gas and other ENI Companies. We believe that the most efficient use of the computer requires use by all ENI companies. The nonutilty operations are currently part of Manchester Gas Company and therefore an allocation of Manchester Gas Company's share of conversion costs must be made to the nonutility operations of the Company. We will accept 89.27% allocation in this regard.

Thus, the total amortization allowed in rates can be computed as follows:

[Equation below may extend beyond size of screen or contain distortions.]

$$\frac{813{,}917 \times .44 \text{ (the Company's share)} \times .8927 \text{ of ENI costs}}{5 \text{ Years}} = \$63{,}939$$

6. Computer Operating Expense

In its initial filing the Company requested a proforma adjustment to operating expenses of $67,434 which represents 89.27% of the Company's allocation of estimated ENI computer operating expenses of $75,540. However, as stated above in the discussion on computer conversion costs in its update, the Company abandoned 89.27% and argued that all of the expenses should be allocated to its utility operations. For the reasons stated above, we find the 89.27% to be a reasonable allocation factor. We therefore will disallow the Company's adjustment and adopt the originally-filed adjustment of $67,434.

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7. General and Administrative Expenses

[3] Staff recommends that certain general and administrative expenses be removed from the Company's cost of service on the grounds that the costs are excessive and/or nonrecurring. We will address each of these items in turn.

Staff argues that expenditures paid to Warren K. Heckman for supervisory training and Troy Associates, Inc. for counseling services are excessive and unreasonable. We disagree. Both these costs are legitimate business expenditures and provide the utility and its ratepayers with a certain intangible benefit. In particular, the Heckman course and courses of a similar nature should maximize utility personnel efficiency which is a desirable goal. We therefore will allow the cost of $14,529 which Staff has recommended be excluded.

In addition, Staff argues that certain items should not be charged to the utility ratepayers. These costs include the Manchester Country Club dues and related expenditures of $660.00, strike bonuses of $2,804, the personal use of vehicles of $13,052, spousal travel of $1,158 and $1,385 relating to the stockholders meeting at the Margate Hotel in Laconia, New Hampshire, $732 of which was expended for a trip on the Winnipesaukee Flagship. Although the Company argues that the above mentioned expenditures are legitimate business expenses, that is not sufficient to allow them to be recovered by the Company's ratepayers. An expense must be necessary to providing service and provide a benefit (tangible or intangible) to the ratepayer to be included in the utility's cost of service for ratemaking purposes. After review, we find that the Company has not met its burden of establishing that the above-listed costs are necessary to providing service and benefit the ratepayers except for two items. We will allow the Company to recover $653 relating to the stockholders meeting at the Margate (but not $732 expense of the trip on the Winnipesaukee Flagship) and the strike bonuses ($2,804). The strike bonuses were necessary to provide incentives to employees who were called upon to undertake additional duties during a strike in order to keep the Company functioning properly. As such, both the utility and the ratepayers were benefited.

8. Legal Expenses

The Company incurred substantial legal expenses in connection with two incidents during the test year: an explosion at Derryfield Green in Manchester, New Hampshire and the relocation of mains at the request of the Manchester Housing Authority. Staff argues that the legal expenses attributable to the Derryfield Green expenses should be capitalized as with all other costs the Company incurred in fixing the damages. Regarding the relocation of mains, Staff proposes that they be eliminated from the Company's cost of service on the grounds that they are nonrecurring. Staff contends that the proceeds of the legal action against the Manchester Housing Authority should be applied toward the related legal expenses and any excess proceeds should be treated as a contribution in aid of construction. The Company on the other hand argues that these costs are representative of ongoing expenditures.

After review, we find that the abovedescribed expenses are non-recurring and therefore not reflective of the

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Company's ongoing cost of providing service. They will therefore not be included in the Company's cost of service. However, the Commission also recognizes that expenses such as the main relocation and Derryfield Green legal expenses are necessary and reasonable and should be recovered. Thus, the Commission has allowed utilities to amortize non-recurring, extraordinary expenses by amortizing them over a defined period of years. Such amortization permits the recovery of the expense of a unique transaction while preventing multiple recovery on an ongoing basis implied by base rate treatment. We will allow these legal costs to be amortized over a 2 year period. The allowed test year expense will be $3,887 (Derryfield $3,514 and main relocation $4,260 divided by 2 years).

9. Rate Case Expenses

[4] The Company proformed rate case expenses of $61,000 and amortized that amount over a two year period (Ex. 9, Sch. D). In its Brief the Company requested that any difference between its estimated costs and actual rate case costs be recovered through the recoupment of the difference between permanent and temporary rates.

The Commission has many concerns with rate case expenses. These concerns have been addressed in the following cases: Re Union Teleph. Co., 65 NH PUC 30 (1980); Re Gas Service, Inc., 65 NH PUC 76 (1980); Re Hillsboro Water Co., Inc., 67 NH PUC 785 (1982); Re Lakes Region Water Co., Inc., 68 NH PUC 154 (1983). The recovery of rate case expenses was addressed recently in Re Pennichuck Water Works, Inc., 71 NH PUC 351 (1986).

In all of the dockets listed above the Commission found it was necessary to disallow expenses presented by a utility as rate case expenses. The investigation of the rate case expenses

incurred by a utility is a responsibility of this Commission which cannot be overlooked. Thus, we will remove the rate case expense from the cost of service allowed herein and will allow the cost to be netted against the recoupment/ refund of temporary rates.

In addition, we will order the Company to file an affidavit of rate case expenses. The expenses are to be detailed in such a manner that the purpose of each cost is easily discernable. Upon receipt of the affidavit the Commission will review the expenses. Based on that analysis the Commission will then determine whether a further hearing is necessary to address whether the amount requested to be recovered is reasonable.

10. Concord Allocation of Costs

[5] During the hearings the Commission inquired about the effect Concord Natural Gas Corporation's (Concord) consolidation with EnergyNorth, Inc. (ENI) will have on the allocation of ENI's costs to its other subsidiaries, principally the Company. Staff also questioned the absence of Concord in this filing's allocations. The Company provided a response in Exhibit 47. Therein the Company estimates an annualized reduction in its expenses of $34,400 if Concord is included in the allocation of ENI expenses.

After review, we find that the allocation of ENI expenses should be updated to include Concord for purposes of making an adjustment to the Company's expenses in this rate case. However, we recognize that it would be

inappropriate to utilize the $34,400 figure proposed by the Company because it includes expenses incurred more than 12 months beyond the end of the test year. Accordingly, we have adjusted the Company's allocation to exclude those expenses. An explanation of our calculation and the methodology used therein follows.

Our adjustment utilizes the summary of the cost adjustments contained in the Company's Exhibit 47 as follows:

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

Increase/(Decrease)

Payroll	(48,000)
FICA	(3,300)
Blue Cross	4,200
Dental & Life Ins.	2,000
Federal Tax	1,000
Amortization	9,700
Net Decrease in Company Expenses	(34,400)

In our calculation below we have revised the above Exhibit 47 costs by including only known and measureable changes in expenses up to 12 months beyond the end of the test year.

The following calculation therefore represents what the Commission finds to be the proper adjustment to the Company's share of ENI's costs as a result of including Concord in the overall allocation of ENI costs.

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

 Payroll - Total Ex. 10, Sch. A $  978,674
   divided by Ex. 34, Ex. 10, Sch. 1,110,457
   Payroll Increase Factor   88%
     Payroll per Ex. 47   (48,000)
     FICA per Ex. 47   (3,300)
         TOTAL   (51,300)


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

Payroll Increase Factor   x  88%
     (45,144)

         Less Increase in MEC Cost Due to:
             Blue Cross   4,200
             Dental & Life Ins.   2,000
             Amortization   9,700

         Total Annual Reduction in ENI
         Expense Allocation including Concord   (29,244)
         12 Months Beyond test year
           10/1/85-3/86 (6/12 months)   x  .50
     (14,600)
         Less: Federal tax effect   1,000
     (13,622)
     13,500
```

The Company's updated filing contained additional proforma adjustments to test year expenses which reflected expenses incurred more than 12 months beyond the end of the test year which we have disallowed for the reasons stated above in section 1. In its calculation of a $51,300 reduction in FICA and payroll expenses resulting from Concord's inclusion in ENI, the Company utilized the expense levels contained in the updated filing. Because we have found it inappropriate to include expenses incurred more than 12 months beyond the end of the test year, we must remove those expenses from

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the Company's $51,300 figure.

The payroll and FICA expenses in the Company's updated filing are 12% higher than those in its original filing. We have reduced $51,300 by 12% to eliminate the disallowed expenses. The estimation of the savings to the Company from Concord's inclusion in the ENI therefore only utilizes expenses incurred up to 12 months beyond the end of the test year.

For purposes of our calculation we have accepted Blue Cross/Blue Shield ($4,200), Dental and Life Insurance ($2,000) and Amortization costs as filed in Exhibit 47 because they were increased by an insignificant amount in the updated filing. The adjusted decrease in payroll of $45,144 ($51,300 x 88%) less the $6,200 in unchanged items yields $29,244. Because this cost is annualized up to March 31, 1986 and Concord was not associated with ENI until October 1, 1985, 50% or 6 months of the cost must be removed. This results in a revised adjustment of $14,622.

The calculation is completed by reducing $14,622 by $1,000 which is the amount the Company contends its federal income tax will be increased as a result of the surtax exemption being spread to a larger number of companies as a result of the inclusion of Concord. This will reduce the adjustment to $13,622 which rounded to the nearest $500 is $13,500. lt is important to note that we are accepting this estimated surtax effect for purposes of this calculation only. This issue will be addressed in depth in the forthcoming hearings regarding the rate increase request of Gas Service, Inc., the Company's sister ENI company.

Accordingly, for purposes of this proceeding only, we find that including Concord in allocation of ENI costs results in an annualized reduction of the Company's costs in the amount of $13,500.

Lastly, we are concerned about the allocation factors utilized by the Company in arriving at the $34,400 calculation in Exhibit 47. The factors differ from those contained in the revision to the ENI allocations proposed by Staff. After review, we decline to adopt Staff's proposal at this time. We are of the opinion however that this issue merits further investigation and study. In our view the appropriate context for such a review are the proceedings this Commission will conduct when ENI and the Company request approval pursuant to RSA 374:3, 4 and 30 to transfer its assets to a new ENI subsidiary.

11. Federal Income Tax Expense

The Company adjusted federal income taxes by $38,324 in order to restate the base year effective tax rate. Staff has eliminated that adjustment on the basis that the adjustment does not reflect actual taxes booked by the Company during the test year. The Company contends that it is proper to adjust taxes to the average effective tax rate experience over two fiscal years. The Company further states that the test year ended March 31, 1985 results in taxes being stated which cover six months from each tax year and that there may be year end adjustments included in the first six months. They further contend that the last six month period is based on estimates of the actual taxes. Staff accepts the taxes which were included in the test year as filed by the Company.

Our review of the testimony in this

case reveals that the Company did not attempt to identify out of period adjustments or to explain the reasons that they would book estimated taxes at a lower level than they previously experienced. A review of our filing requirements reveals that a tax reconciliation for the test year was not provided. Taxes are based upon the actual results for the test year. The proper tax calculation is found by applying current tax rates to operating results in the test period. In this instance, the Company has not met its burden of proof. We will accept the position of Staff.

The Company is hereby directed to file a tax reconciliation in any future rate filing or the filing will be rejected. The Commission has been following developments in the federal income tax rewrite in Washington. The tax rates presently being proposed by the House and the Senate are substantially below the 46% rate used in this case. We will carefully monitor the potential impact any change in the tax law might have on the Company's earnings.

12. Foregone Discounts

The Staff recommends that distribution expenses be reduced by $675. This amount represents discounts available from vendors which the Company had foregone during the test year. Staff contends this is an appropriate adjustment because the discounts were available and prudent business practice would mandate utilizing them. While we agree with Staff, we cannot accept the amount proposed for reasons discussed below in our discussion on rate base. We therefore will not reduce the distribution expense by the foregone discounts.

C. Calculation of Operating Income

In view of the foregoing, the Commission calculates the proformed operating income for the Company for the test year ending March 31, 1985 as follows:

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

MANCHESTER GAS COMPANY
Operating Income Statement
March 31, 1985

	Test Year as Proformed	Test Year as Proformed	Commission Approved Test Year Income
Operating Revenues in Company Brief by Staff			
Revenues - Firm	16,738,424	16,738,424	16,738,424
Revenues - Other	0	0	0
CGA (over-under collection)	0	0	0
Other Revenues	535,069	535,069	535,069
Total Revenue	17,273,493	17,273,493	17,273,493
Operating Expenses			
Operation & Maintenance Exp.	15,268,282	14,996,308	14,965,201
Taxes:			
Federal Income Tax	(52,926)	75,413	71,166
Property	472,687	456,900	456,900
State	170,718	170,718	170,718
Other	34,062	34,062	34,062
Depreciation	564,000	500,498	500,498
Amortization	133,199	79,049	112,671
Total Revenue Deductions	16,590,022	16,312,948	16,311,216
Operating Rents - Net	406,086	406,086	406,086
Interest on Customer Deposits	0	0	6,717
Net Gas Operating Income	1,089,557	1,366,631	1,361,645

NB: The Company and Staff calculations are provided to allow for comparison.

By way of further explanation, the Commission's $1,361,645 figure can be calculated by taking the Staff's recommended operating income (most of the adjustments to which we have accepted) and making the Commission's adjustments thereto.

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

Net Operating Per Ex. 45, Ex. 2 $1,366,631
Less: Discounts 675
Strike Bonus 2,804
Utility Assessment 9,330
Heckman 11,295
Troy 3,234
Board Meeting 653


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   Legal Expense 3,887
   Computer Conversion 33,622
   Interest on Customer Deposits
     (Exhibit 38, DR 35) 6,717
 Add: Advertising 322
   Rate Case Expense 31,000
   2% Insurance (Per Co. Brief) 18,113
   Concord Allocation 13,550
   FIT on the Above 4,247
     $1,361,645

NB: The Computer Conversion figure utilized above is the difference between approved
amount of $63,939 and that recommended
by Staff ($30,317).
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III. RATE BASE

The Company in its original filing dated August 16, 1986 calculated a total rate base for the test year ending March 31, 1985 in an amount of $14,- 718,582 (Exhibit 20, Schedule A). The filed rate base included total utility fixed capital at $19,475,395 less construction work in progress at $66,724, less depreciation reserve of $5,650,268 and less contributions in aid of construction of $36,840. The Company added a cash working capital allowance of $997,019 derived by reducing the $1,040,000 calculation of its witness, James F. Callahan Jr., by $114,758 for customer deposits, Deferred Income Tax of $534,129 and Investment Tax Credits prior to 1970 of $35,142. Materials and supplies of $309,552, prepayments of $39,031 and miscellaneous deferred items of $292,465 were also added.

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In developing rate base in the original filing, the Company made a number of proforma adjustments. The first adjustment reduced the fixed capital by the amount of $15,167 to eliminate an LP tank then allocated to the Company's non-utility operation. In addition, the Company has increased fixed capital by $352,770 to account for nonrevenue producing fixed capital items. The Company also reduced depreciation reserve by $12,285 applicable to the non-utility LP tanks and increased depreciation reserve by $15,118 applicable to the annual depreciation expense on the proformed non-revenue producing fixed assets.

Staff filed a rate base of $13,060,946 in its original testimony. This amount consisted of $19,122,625 of gas plant in service less construction work in progress of $100,754. Staff then added capitalization of legal expense of $3,514. It further reduced rate base by a depreciation reserve of $5,635,150, contributions in aid of construction of $36,840 and discounts which were foregone during the test year of $7,761. To this Staff added materials and supplies of $309,552, prepayments of $39,031 and miscellaneous deferrals of $292,465. Staff then calculated a cash working capital allowance of $682,916 and then reduced working capital by the discounts foregone of $8,436, customer deposits in the amount of $114,758, interest on customer deposits of $12,071, deferred Federal Income Tax in the amount of $1,454,209 and pre-1970 ITC's of $34,395. Staff then added back deferred income tax applicable to nonutility property. Thus, the total working capital component calculated by Staff was a reduction of $284,689 to rate base.

Staff also made a number of proforma adjustments to rate base, two of which were the addition of capitalized legal expense applicable to the Derryfield Green "incident" and the discounts foregone that were available from vendors. In addition, Staff reduced gas plant in

service by $15,167 to account for the LP tank that was allocated to the Company's non-utility division. Accumulated depreciation was reduced by $12,285 also applicable to that tank.

The major differences between Staff's originally filed rate base and the Company's are:

A) A reduction to rate base of $12,071 applicable to interest on customer deposits which Staff believes is non-investor supplied funds.

B) Discounts not taken applicable to materials and supplies and plant in service, as per Staff testimony.

C) Staff's working capital computation differs from Company in that Staff did not take into consideration the lag of revenue applicable to depreciation, deferred taxes, investment tax credits and operating income. In addition, Staff did not provide a lag in revenues applicable to the margin on interruptible customers. However, Staff did accept in theory the lead/lag study put forth by Mr. Callahan (See Exhibit 9, Hearing Exhibit 44).

D) Staff increased the deferred federal income tax average balance by $842,917 which are the tax benefits applicable to unamortized deferred items.

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E) Staff normalized the Deferred Income Tax balances and the pre1970 Investment Tax Credits to reflect monthly balances. The Company records deferred taxes and pre-1970 ITC amortization on a quarterly basis. Staff asserts that it was appropriate to extrapolate a monthly balance from these quarterly balances to provide a proper match for ratemaking purposes. Therefore, Staff believes the new balances for these accounts would be 13 monthly balances and not just 5 quarters to calculate an average test year balance.

F) Based on the audit conducted by Staff, their Construction Work in Progress balance was $100,754 compared to the Company balance of $66,724.

G) Staff added back deferred taxes applicable to non-utility business.

H) Staff did not make a proforma adjustment for what the Company terms as non-revenue producing plant. It is Staff's contention that there are no plant additions which are not revenue or service related for a gas utility.

After Staff filed testimony, the Company filed an update to its original filing. The update increased rate base by $20,688 to account for the increased cash working capital required by the increased expenses in the update. This increase was offset by a reduction of $842,927 which recognized an increase in the Deferred Income Taxes balance that had not been included in its original filing. These taxes are a result of unamortized deferred costs as per Staff's testimony (see above). The net effect of these two items provided a reduced rate base of $13,896,343.

Subsequent to this update the Company again revised its filing and reduced rate base by $58,576. This third revision to the Company's filing included a reduction in rate base of $7,189 applicable to the adoption of monthly balances for pre-1970 ITC and Deferred Federal Income tax as per Staff's testimony. In addition, the Company reduced its revenue and working capital applicable thereof for a total of $51,446. The total revised rate base claimed by the Company was $13,896,343. Staff provided revised testimony based on the updated information submitted

by the Company. Staff's new rate base was $13,042,191. Staff's revision included a reduction to plant in service of $32,944 applicable to non-utility transportation equipment originally recorded by the Company in utility operations. In addition, Staff reduced its construction work in progress average balance to $86,915.

Finally, in its Brief the Company again reduced rate base to $13,769,883. This reduced rate base consists of a adjustment to working capital of $1,000 to reflect a decrease in revenues, an increase in construction work in progress of $20,191 to match Staff's $86,915 construction work in progress balance, the reduction of utility fixed capital by $47,586 applicable to the vehicle which was booked as utility property and is actually a non-utility vehicle, and the reduction of depreciation reserve by $952.00 which is applicable to the discounts foregone on the non-utility equipment.

The difference between the Company's final rate base of $13,769,883 and

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Staff's final filed rate base of $13,042,191 is:

1. The inclusion of non-revenue producing assets;

2. The increase to depreciation reserve applicable to the non-revenue producing assets;

3. The method of calculating the lead/lag study to determine cash working capital;

4. The interest on customer deposits;

5. Capitalized legal expense for the Derryfield Green "incident";

6. The discounts foregone applicable to both the plant in service and materials and supplies.

Since there is a substantial dispute between Staff and the Company over the proper rate base calculation, we will address each of the aforementioned items in turn.

Non-Revenue Producing Additions

[6] The major difference between the Company's and the Staff's calculation of rate base is related to the adjustment for non-revenue producing capital additions in the amount of $352,770. The Company has made an adjustment to include assets added during the test year as if they were in service for the full twelve months of the test year. The Company claims that the additions are non-revenue producing and that they should be included because they will not create a mismatch. They further contend that the evidence presented that the additions were non-revenue producing was uncontroverted on the record. It avers that similar adjustments have been accepted by this Commission in the past and refers to Re Hampton Water Works, 64 NH PUC 374 (1979) and Re Manchester Gas Co., 61 NH PUC 155 (1979).

Staff witness Lanning testified that the Company's non-revenue producing additions adjustment should not be included in rate base on a year end basis because all plant additions are service or revenue related. He further testified that to include those additions without making an appropriate revenue adjustment would be contrary to the matching principle.

The Company argues that the nonrevenue producing nature of these additions was proven uncontrovertibly on the record. However, a review of the record fails to convince the

Commission that the additions are in fact nonrevenue producing. Witness Huber testified that such items as relocating an LNG unloading station increased the efficiency and operation of the LNG plant. The purchase and installation of mobile radios will also provide efficiency in operations which reduce time and expense.

At several points in its Brief the Company argues that the Staff has the burden of proof of establishing its position on the various issues. With regard to rate base, it argues Staff has the burden of establishing that the additional items of plant are revenue producing in order for them to be excluded. We strongly disagree. Well established regulatory principles and the laws of this state clearly assign the burden of proof to the Company. RSA 378:8 provides as follows:

Burden of Proof. When any public

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utility shall seek the benefit of any order of the Commission allowing it to charge and collect rates higher than charged at the time said order is asked for, the burden of proving the necessity of the increase shall be upon such applicant.

We agree with Mr. Lanning that the matching principle would be compromised by the inclusion of these capital additions in rate base. Moreover the Company's year end calculation does not take into account other factors related to those additions. For instance, the Company provides no adjustment for the retirement of services or mains although those assets were in service for part of the test year. In this instance, revenues were being collected for those assets during the portion of the year that the retired assets were still in service. In addition, no adjustment has been made to account for the fact that new additions will provide additional deferred taxes related to accelerated depreciation. Thus, we find that it is contrary to the matching principle to include the subject assets on a year end basis. Further, the Company has not provided sufficient justification regarding the efficiencies and costs savings that will result from these additions and replacements. Therefore, we find that the average plant in service should be used and that the average be calculated using a thirteen month average.

Working Capital

[7] The second area of rate base disagreement between the Company and the Staff is in the working capital computation. In order to pinpoint the differences, it will be necessary to disaggregate the various components. The Commission traditionally does not include customer deposits, deferred federal income taxes, and pre-1970 investment tax credits as part of the working capital computation. Therefore, we will address each of those items separately.

The major difference between the Company and Staff is in the calculation of cash working capital. The Company claims a requirement of $1,008,242 and Staff claims an allowance of $629,267. Both parties have used the lead/ lag methodology to calculate the working capital allowance.

The Company's original cash working capital allowance was $1,040,000 which was revised upward by $20,688 by the April 7 update. It was reduced by further revisions detailed in Exhibit 39 in the amount of $51,446. A $1,000 downward adjustment was made in the Company's brief, which brings the cash working capital allowance to $1,008,242. Staff witness Lanning's cash

working capital allowance is $629,267.

The differences are explained by Mr. Lanning's treatment of depreciation and amortization, deferred income taxes, investment tax credits and operating income. These reductions are due to the assignment by Mr. Lanning of a weight equivalent to the lag in firm gas sales of 45.7 days to the aforementioned expenses, therefore providing no allowance for a lag or lead for them. The Company takes the position that Mr. Lanning's view is excessively narrow and will not provide investors with compensation for their full cash investment. Mr. Lanning's position is that cash working capital represents the daily cash outlays and that depreciation, deferred taxes, investment tax credits and operating income should not be included in determining cash

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working capital since those items do not in fact require daily cash outlays.

The Commission's position in regard to working capital has been to provide a Company with a return on its investment in working capital necessary to carry on the day-to-day operations. In examining the record in this case, we have found that depreciation and amortization, deferred taxes and net operating income excluding interest should not be included in the cash working capital calculation. Cash working capital for this rate case will include only those expenses which require a day-to-day cash outlay of funds. Depreciation and deferred taxes do not require a physical outlay of cash funds. Deferred taxes are not paid out by the Company until some time in the future after they have been collected from ratepayers. The Commission has provided for depreciation and deferred taxes as part of the cost of service and cannot envision any reason that the Company should be further rewarded by including non-cash items in working capital. In as far as investment tax credits have not been excluded from rate base, the Company has been allowed to earn its rate of return on the associated plant investment. That return and the deferred investment tax credit have been allowed in the cost of service. Therefore, there is no reason to include those items in working capital.

Staff witness Lanning excludes net operating income from the working capital computation by assigning the same 47.5 day lead as the Company has calculated as the lag in collecting revenues. His rationale is that this item requires no cash outlay and, therefore, does not require an allowance for cash working capital. The funds are required to meet interest and dividend expenses of the Company and are required to be provided by the ratepayer prior to the time that the interest and dividend expenses are actually payable. Dividends are considered as return in the cost of capital. If dividends were included in working capital, we would be allowing a return upon a return. Interest which is collected by the Company is contractually obligated to bond holders and is only under the control of management. Both items should be excluded because the Company has had the use of the funds from the time of collection until they are actually paid. It is therefore proper to exclude those amounts from working capital.

To clarify this issue we have reviewed the lead/lag study which was included in the last New England Telephone rate case (DR 84-95). In that case a lag between the date service was furnished and revenue collected and a lead from the date expenses were furnished and paid for was used to calculate the net days of lag. That lag was then applied against net expenses, after excluding depreciation, investment credit, deferred taxes, federal and state taxes. Return was not

included in the working capital computation. We consider that method to be the proper way to calculate the allowance.

The final area of disagreement in cash working capital is the treatment of the margin in interruptible gas sales. In the past, the margin has been treated as part of the calculation of the base rates for Manchester Gas. Gas Service, Inc., another EnergyNorth subsidiary has included the interruptible margin as a reduction in the winter cost of gas adjustment. In this case, Manchester Gas has requested that the margin be treated similarly to Gas Service. We will

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accept the Company's proposal in this regard.

Interruptible sales take place during the warmer months, typically during the summer. If that margin is retained until the winter period, the Company has the use of that capital for approximately six months. In the case of Gas Service, no interest was paid on the margin. In effect the Company has the use of the margin which is provided by ratepayers at no cost. No cash outlay has been made by the Company. We therefore will accept Staff's proposal that the margin in interruptible sales be excluded from cash working capital.

In view of the above, the Commission will accept the cash working capital allowance as computed by the Staff. After adjusting the income statement with the proforma adjustments, the cash working capital allowance is $629,911. This allowance will adequately compensate the Company for the daily cash outlay provided by its investors.

Customer Deposits

[8] Staff witness Lanning has included interest accumulated on customer deposits as a rate base deduction. The Company has not included interest as part of the calculation and claims that the interest expense should be included as a part of the cost of capital. This Commission has consistently included the full amount due to customers as customer deposits and has included the interest earned as part of that amount. We therefore will continue to abide by that principle in this case.

Another way that the Commission could treat this item would be to include customer deposits in the capital structure and assign the 10% costs to that source on a weighted cost basis. If that method were followed the cost of capital would be reduced. An adjustment for the interest expense has been included above the line to be consistent with past practice. However, the Commission will examine this policy closely in the future.

Missed Discounts

Staff witness Lanning deducted $8,436 from materials and supplies inventory for discounts not taken during the test year. A total of $7,761 was also deducted from plant in service on the basis that a percentage of materials and supplies are issued to work orders for plant accounts. The Company claims that there is a duplication because the $7,761 of missed discounts was included in the $8,436 from materials and supplies inventory. The Company further contends that Staff has not averaged the deduction over the 12 month period (erroneously called a 13 month period). Mr. Lanning argues that all of the missed discounts were not found and the Company claims that they should have been found during Staff's audit. A review of the records

in this case indicates that the Company was asked to provide completed figures for "missed discounts" and claimed that it could not perform that analysis because of personnel constraints.

The Company notes that a $952 discount related to a non-utility vehicle should be removed from the adjustment if it is made by the Commission. It concerns the Commission that the Company has failed to take discounts. The discounts help to reduce the cost of service to the ratepayers, and a utility should take all reasonable steps to keep the rates as low as possible to the

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ratepayers. It further concerns us that it was necessary to remove a non-utility vehicle from utility accounts. Staff's audit of Company books indicates a lack of attention to plant accounting, and especially continuing property records. We will expect those records to be kept up to date. Furthermore, we will expect that non-utility property be transferred to the proper account.

The Commission will use the missed discounts of $7,761 as an adjustment for materials and supplies. As the record in this case does not provide substantiation for the amount of fixed plant or operating expenses affected by the missed discounts (Ex. 45) a further adjustment will not be made. This adjustment will be made on the assumption that the discounts are included in inventory for the full test year. The Commission considers this adjustment as an adequate penalty at this time. It should be pointed out that Staff does have a legitimate claim for reducing plant in service. When materials and supplies are inflated by the lost discounts any transfers from that inventory will also be inflated.

Based upon the preceding analysis, we calculate the Company's rate base as follows:

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

Average Rate Base
Test Year Ended 3/31/85

 Gross Plant in Service $ 19,137,792
 Less: Non-utility - Tank 15,167
   D    D - Vehicle 32,944
 Construction Work in Progress 86,915
     TOTAL $19,002,766
 Less: Accumulated Depreciation 5,635,150
 Contributions in aid of construction 36,840
 Net plant in service $ 13,330,776
 Less: Deferred Income Taxes 1,384,992
 Pre-1970 Investment Tax Credits 34,395
 Customer Deposits and interest 126,829
 Net Investment in Plant $ 11,784,560
 Plus Working Capital:
     Expense Allowance 629,911
     Materials and Supplies 301,791
     Misc. Deferrals 292,465
     Prepayments 39,031
         TOTAL $ 1,263,198
 Rate Base $13,047,758
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IV. RATE OF RETURN - COST OF CAPITAL

The Company presented the testimony of Robert S. Jackson on the cost of equity and overall rate of return. Mr. Jackson's original testimony recommended a cost of equity of 17.00% and an overall cost of capital of 13.736%; his updated schedules submitted on April 23, 1986

recommended a cost of equity of 15.50% and an overall cost of capital of 13.095%. His recommendations were based on the March 1985 capital structure proformed to include $1 million of equity and $2.5 million in long term debt:

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

Component Amount	Component Ratio	Cost	Weighted Cost
Long term debt	8,473,162	.5305	11.637	6.174
Preferred Stock	668,600	.0419	7.000	.293
Common Equity	6,829,915	.4276	15.500	6.628
Total	15,971,677	1.0000	13.095	

(Exhibit 31)

Mr. Jackson employed a discounted cash flow (DCF) methodology based on a sample of nine New England natural gas distribution companies listed in Standard & Poor's Compustat. He derived an average historical growth rate of 5.58% for earnings, dividends and book value per share. He weighted by the coefficient of variation and the standard deviation the three growth rates for each period (1979-1984, 19811984, and 1983-1984), and then averaged the results of the time periods. A second growth calculation was made for the growth in the current indicated dividend (i.e., current quarterly dividend times four) between March 1985 and March 1986. The average 1985-1986 growth rate was 7.18%. He, therefore, concluded that a growth rate of 6.00% was reasonable.

In his update, Mr. Jackson calculated his yield (dividend divided by price) as the average of the yields of the 12 months preceding March 1986 (8.74%). As he made no adjustment to the yield component, his basic DCF result was 6.00 + 8.74 = 14.74%. Mr. Jackson then performed two modifying analyses, a market to book analysis that at ratios from 1.00 to 1.10 established a range for equity of 14.74% to 15.71% (Exhibit 31, Schedule 2A p. 2), and a pre-tax analysis that results in a cost of equity for Manchester Gas of 15.96% at a tax rate of 33% and of 16.2% at a tax rate of 46%. II Tr. 14. The tax analysis also adjusts for the difference in the capital structure between Manchester Gas and the sample companies by calculating as a residual value the cost of equity given the capital structures, cost of debt and preferred stock, and the overall cost of capital. Based generally on these analyses, Mr. Jackson recommends a cost of equity of 15.5% as reasonable.

Staff presented the testimony of Mark Collin who recommended a cost of equity of 13.70% and an overall cost of capital of 11.94%, based on the September 30, 1985 capital structure, proformed to include $1 million of equity:

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

Component Amount	Component Ratio	Cost	Weighted Cost
Long term debt	8,181,329	.512	11.38	5.83
Short term debt	1,000,000	.063	9.00	.56
Preferred Stock	668,700	.042	7.00	.29
Common Equity	6,131,257	.384	13.70	5.26
Total	15,981,286	1.001	11.94	

Mr. Collin also filed Supplementary Testimony to confirm the validity of his original testimony in light of falling interest rates. He found that the costs of

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both short and long term debt had fallen (to 8.50% and 11.11% respectively) as had his point estimate for the cost of equity (to 13.53%). However, as the point estimate of the cost of equity remained in his original range of 13.37% to 13.85%, and the updated overall cost of capital of 11.78% was not significantly outside his original range of 11.81% - 12.00%, he continued to support his original cost of capital recommendations contained in his prefiled testimony as reasonable.

Mr. Collin's analysis also employed the DCF methodology. He chose as his sample group ten gas distribution companies listed in the Value Line Investment Survey, as companies that are highly visible and widely traded and whose stock prices readily reflect changing conditions in the natural gas industry and capital markets. He used ValueLine because it published consistent data over a long historical period.

Mr. Collin derived his growth rate from a weighted calculation of the 5 and 10 year historical growth rates in earnings and dividends (5.91%) supplemented by the growth rates projected by ValueLine (6.14%) and the Institutional Brokers Estimate System (I/B/E/S) (6.64% for earnings alone). As a result of these analyses, he found 6% a reasonable estimate of growth.

Mr. Collin calculated his yield component by utilizing the sum of the last four quarters dividends and the average High-Low price for the most recent month (January). He then applied the growth rate to the dividend yield to obtain the yield an investor purchasing stock in the most current period would expect to receive in the coming year on his investment[2(105)] . The dividend yield as adjusted is 7.70% (7.26% x 1.06), which when added to his 6.00% growth rate results in the point estimate for the cost of equity of 13.70%.

The major points of disagreement between the cost of equity testimonies of Mssrs Jackson and Collin relate to their choice of sample companies, their yield calculations and adjustments to the basic DCF results. While they arrive at the growth estimates in different ways, both find the estimate of 6% to be reasonable.

Both sample groups include Bay State Gas and Connecticut Natural Gas. Beyond those two companies the witnesses diverge, choosing either additional New England natural gas distribution companies with characteristics similar to those of Manchester Gas (Mr. Jackson) or additional widely traded gas distribution companies with consistent historical data (Mr. Collin).

The Company criticizes Mr. Collin's sample as being not comparable to Manchester Gas in location and size and therefore as unacceptable given the landmark cases of Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 U.S. 679, 692, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923) (Bluefield) and Federal Power Commission v. Hope Nat. Gas Co., 320 U.S. 591, 603, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944) (Hope), and prior orders of this Commission. The Commission notes, however, as admitted in the pre-filed testimony of Mr. Jackson, "the geographical restrictive comparability of companies in the 1923

Bluefield decision ... was omitted in the 1944 Hope decision." Jackson, Prefiled Testimony, p. 5. Further, the Company misstates the Commission when it alleges "such a regional sample was required by this Commission in the last fully litigated rate case of any of the Energy North companies, i.e., the 1982 Concord Natural Gas rate case." Brief at 36. The Commission's discussion and findings in Re Concord Nat. Gas Corp., 67 NH PUC 668 (1982) (Concord Gas) relate not to the choice of sample companies but to the return found reasonable by the Commission in a case in which only the Company presented cost of equity testimony:

... In terms of size, locality, accessibility to the capital markets and business risks, New Hampshire gas utilities are more comparable than the companies offered by Witness Jackson [which the Commission understood to be a sample of 1200 companies from 39 industries].

In comparing Concord Natural Gas to other New Hampshire utilities, it is appropriate to compare the return on equity granted by this Commission to these other companies, the financial markets at the time of those decisions, and the tests the Commission uses in measuring risk factors. Concord Gas, 67 NH PUC at p. 674.

The Commission then proceeded to make such a comparison with its findings in previous gas company rate cases. The Commission's analysis related to consistency in its cost of equity findings among the natural gas distributing companies under its jurisdiction. It did not, and does not, suggest that New Hampshire companies constitute an appropriate sample group for DCF analysis.

The Company further errs when it cites the Commission's decision in Re Concord Electric Co., 63 NH PUC 240 (1978) (Concord Electric) and Re Pennichuck Water Works, 64 NH PUC 206 (1979) (Pennichuck) as requiring adjustments to be made to the cost of equity based on a size differential between the New Hampshire utility and a sample of gas distributing companies. In Concord Electric the Commission was evaluating a cost of equity recommendation based on a sample of Standard & Poor's 400 Industrials, Moody's 125 Industrials and AT&T (before divestiture). The discussion of size in Pennichuck related to adjustments that needed to be made to compensate for the size of the Pennichuck Water Works rate base relative to the requirements of the Safe Drinking Water Act. The Commission concluded that "the impact of size does not need to be analyzed separately since it has been recognized in the differential between existing rate base and future construction." Pennichuck, 64 NH PUC at p. 212.

Finally we note that all of the companies in Mr. Collin's sample were accepted as a reasonable basis for a cost of equity recommendation in Re Gas Service, Inc., 70 NH PUC 676 (1985). This includes Michigan Energy Resources Company and Piedmont Natural Gas. Our reading of the referenced ValueLine descriptions of these two companies (Brief at 40) is that Michigan Energy Resources Company's TV holdings are only 20% of the Company's assets and Piedmont Natural Gas' exploration activities are not extensive. Given the difficulty of obtaining a sample of natural gas distribution companies that are not diversified to some

extent[3(106)] we will accept the appropriateness of Mr. Collin's sample companies for purposes of the current proceedings. However, should Michigan Energy Resources continue to expand its cable TV/broadcasting assets, the Commission will find its inclusion in the sample less valid.

Mr. Jackson has made a commendable attempt to use New England gas distribution companies as his sample. While these companies are comparable to Manchester Gas, there are clear flaws in basing a DCF methodology on them. The DCF methodology depends on a freely traded market price in order to avoid circularity in the results. Because of their size, nearly half of Mr. Jackson's sample (four of nine) are traded Over-the-Counter (OTC) and the data used by Mr. Jackson are bid-and-asked prices rather than prices for actual sales. II Tr. 27. Counsel notes in Brief (at 37) that use of NASDAQ quotes reduces the disparity between actual prices and bid-and-asked quotations for OTC stocks. Unfortunately, Mr. Jackson did not use the NASDAQ quotes, but relied instead on Standard and Poor's Compustat tapes.

Further difficulties of using very small companies particularly in conjunction with the Compustat tapes, arise in connection with the calculation of the growth component of the DCF method. As of the April hearings, 1985 information was not yet available for 53% of the companies listed in Compustat. II Tr. 33. Therefore any growth calculation will tend to be stale especially given Mr. Jackson's methodology of calculating three historical growth rates, all ending with the latest year for which data are available (1984).

Finally, while Mr. Jackson agrees that if information had been available he would have employed ten year growth rates in his analysis, "many of the companies simply weren't in existence or didn't report the results of those operations on a comparable basis for that time period." II Tr. 41.

[9] We find therefore, in the balance between comparability and appropriateness for the DCF method, it is more important that the sample be comprised of freely traded companies for which both current and long term historically consistent data are available than that the companies be of a size similar to New Hampshire companies or based in New England. We will continue to expect that the companies chosen will have operating characteristics and risks comparable to those under our jurisdiction, or that appropriate adjustments will be made when operating characteristics and risks are not comparable. We do not find that size, per se, necessarily affects operating risks, and requires any adjustment to the cost of equity.

The second area of disagreement in the cost of equity recommendations is in regard to the yield component. Mr. Jackson's recommendation is backward looking as he averages the monthly yields for each of the past 12 months. Mr. Collin's recommendation is forward looking, as he adjusts the yield based on historical dividends by the growth rate to obtain the return an investor purchasing stock today would expect to receive in the coming year. The Company apparently misunderstands the effect of the adjustment when it claims that Mr. Collin has mismatched

price and dividend. Brief at 42. It also errs in its application of the discussion in R. Morin,

Utilities' Cost of Capital (1984) to the question of future rather than current dividends; the quarterly dividend adjustment analyzed by Morin is a discussion of timing and compounding of dividends not current vs. future dividends. Brief at 43-45.

The Commission accepts Mr. Collin's methodology as the preferred calculation of cost of equity. The cost of capital should be a forward looking calculation, matched to the period for which the rates will be in effect. Therefore, a calculation that relates current price and expected yield and thus current financial market and industry conditions, embodies the most appropriate timing for the calculation. Mr. Jackson's historical calculation reflects market conditions as long ago as March 1985. Since that time the financial markets have experienced sharp declines in the cost rates. Had cost rates radically increased, we could not expect the Company to remain financially healthy were we to award the Company only a cost of capital based in part on year old data. Similarly, we cannot use outdated data representing levels of returns no longer required by investors when the movements in the financial markets have benefited the Company and its ratepayers.

Mr. Collin's recommendation of a cost of equity as corrected, was a range of 13.37 to 13.85% with a point estimate of 13.70%. His update, using data current at the time of the May hearings, estimated a range of 13.20% to 13.74% with a point estimate of 13.53%. He continued to support his originally recommended point estimate as reasonable because, at 13.70%, it still fell within the updated range. The Commission is aware, however, that interest rates have continued their decline, and Mr. Collin's point estimate in March would no longer fall within a range calculated today. In all probability, a return at the lower end of Mr. Collin's March and May calculations would more accurately reflect current market conditions. However, in the interests of matching the timing of the expenses (test year plus one year of additions) with the timing of the rate of return calculations, we will adopt 13.70% as a reasonable rate of return for Manchester Gas. To the degree that lower interest costs accelerate growth in the Manchester Gas service territory, the increased burden imposed by the required rate base additions will be mitigated by the differential betwee

n the cost rates that match the approved expenses and cost rates that the Company will experience on an ongoing basis.

The Company has proposed several adjustments to the basic cost of equity calculation. Mr. Jackson has proposed an adjustment to provide a return that would support a market to book ratio at a level of greater than 1.00, assuming that the DCF results provide a return that equalizes book value and price per share and therefore a market to book ratio of 1.00. He also recommends that a premium be added to Manchester gas cost of equity to reflect their lower than average equity ratio.

The Commission does not adjust the cost of equity calculations to provide for market to book ratios of other than 1.00. In the instant case such an adjustment would lead to a reduction in our cost of equity finding as the gas companies in both Mr. Collin's and Mr. Jackson's samples are selling at prices considerably greater than book value.

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However, the Commission has not found such adjustments appropriate in the past when

utility shares sold below book value, and nothing in the instant case causes us to disturb that practice now.

[10] The Company also proposes a premium to be added to the cost of equity to compensate investors for the additional risk posed by the Manchester Gas lower than average equity ratio. The Commission recognizes that the Company's equity ratio is lower than the industry standard and that its coverage ratio is low. It acknowledged this problem in Re Manchester Gas Co., 67 NH PUC 885, 886 (1982) (Manchester, 1982) when it ordered the Company to thicken its equity participation:

The return on capital represents a very large component revenue requirement. The Commission is therefore very concerned that utilities maintain capital structures which minimize the overall cost of capital but also provide sufficient "coverage" of interest costs of debt. It is the latter which most concerns the Commission with regard to Manchester Gas Company. Given the Company's high interest cost of debt ..., the Company requires thicker equity participation in order to provide adequate coverage of debt.

The Commission went on to find that when Manchester Gas returned for a step adjustment in July 1983, the Commission would use an imputed capital structure that embodied a lower cost of equity and a higher (42%) common equity ratio "as a matter of principle, in recognition of the issue of the optimality of capital structure." Re Manchester Gas Co., supra, 67 NH PUC at p. 887. (The structure was never implemented as Manchester withdrew its 1983 step adjustment.) Further the Commission stated that it wished

to emphasize its continued concern that New Hampshire utilities employ proportions of debt and equity which minimize total capital cost rates plus provide access to external capital on reasonable terms. It is the Commission's view that Manchester Gas Company should have perceived the implications of its thin equity long ago and took [sic] appropriate action to employ relatively more equity in total invested capital.

... Should Manchester Gas fail to take appropriate action, in the near term, to correct the existing thin equity participation, the Commission will consider the employment of imputed capital structures for ratemaking purposes. Like all items of the cost of service, this Commission demands that New Hampshire utilities will choose those combinations of resources (i.e., debt and equity) which are consistent with cost minimization. Re Manchester Gas Co., supra, 67 NH PUC at p. 887.

The Company has not acted to correct the problem of equity participation noted by the Commission 3 1/2 years ago. The Commission will not in the instant case reward the Company with a risk premium added to its cost of equity to compensate it for failing to comply with the Commission's directives.

The final issues involving the overall rate of return concern the timing of the capital structure to be adopted, the cost rates of the long term debt and the inclusion of short term debt. The

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Company proposes adoption of the capital structure and cost rates existing as of March 31, 1985 proformed for a May 29, 1985 debt issue and an estimated $1,000,000 equity infusion from

Energy North Inc. Brief at 46. Mr. Collin proposes the adoption of the September 31 [sic], 1985 capital structure (which included the May 1985 debt issue) proformed for the $1,000,000 equity infusion. The Commission notes that unreported to the Commission until the May hearings were two additional equity infusions, $350,000 in January 1986 and $400,000 proposed for May 1986, neither of which was known to or recommended by either witness. While fluctuations in the capital structure occurring between March and September 1985 account for minor differences in the proposed capital structures, the major difference is Mr. Collin's inclusion of short term debt. The Company argues that the debt and equity additions were used to replace short term debt and therefore it is inappropriate to include both the short term debt and the capital additions. However, it is clear from the testimony of Company witness Jackson that over a one year cycle the Company will carry some level of short term debt. II Tr. 104-105. As that level was $3,020,000 in March 1985 and $2,200,00 in March 1986, Mr. Collin's estimate of $1,000,000 in short term debt appears conservative. IV Tr. 117-119.

For reasons discussed above relating to cost of common equity, the Commission will adopt the capitalstructure that most nearly approximates the company's capital structure and cost rates of March 1986. This structure is best represented by using Mr. Collin's recommendation proformed to include the additional $350,000 equity infusion into capital surplus from the dividend reinvestment plan of January 1986. We will not include the additional $400,000 equity contribution, which was proposed in May 1986, both because it falls beyond the test year plus 12 month period and because we have no record evidence concerning it beyond the unsubstantiated statement by Mr. Giordano at the May 19, 1986 hearing that "at the Company's Board of Directors meeting last Wednesday an additional $400,000 of proceeds from the dividend reinvestment plan were allocated to Manchester Gas Company ... ." IV Tr. 77.

We recognize that the cost rates on debt have fallen since Mr. Collin's March calculations. The cost rate of short term debt is set at prime, which now stands at 8%. The fall in interest rates since March has also reduced the cost of the Company's long term rates. For the reasons stated above in relation to the cost rates associated with equity, however, we will not make a downward adjustment to the debt cost rates at this time.

We will also recognize the $10,000 commitment fee for the NEMB note discovered by the Company only in time for the May 19th hearing. The late recognition of this financing fee is further evidence of the carelessness of the Company's filing in this proceeding. The Company had not included this fee even in its response to Staff's data request specifically regarding the costs associated with the company's short-term debt. However, in checking the Commission records, we do find in Re Manchester Gas Co., 70 NH PUC 642 (1985), substantiation of the commitment fee, and will therefore add this fee to the cost of the NEMB loan.

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Therefore, for ratemaking purposes we will adopt the following capital structure and cost rates:

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

Component Amount	Component Ratio	Weighted Cost	Cost

Long term debt	8,181,329	.501	11.50	5.76
Short term debt	1,000,000	.061	9.00	.55
Preferred Stock	668,000	.041	7.00	.29
Common Equity	6,481,257	.397	13.70	5.44
Total	16,331,286	1.000	12.04	

V. ATTRITION

[11] The Company argued in testimony (Ex 30, II Tr. 109-145, IV Tr 78-82, VII Tr. 11-13) and in brief (4953 and App. 2, Schedule D) that the Company should be granted an adjustment to its allowed rate of return to compensate for attrition. The proposed adjustment was amended twice; the final request is an adjustment of .875%. Attrition was defined as an erosion of the utility's rate of return over time and delineated as taking any or all of three forms: rate base attrition, operational attrition and financial attrition. II Tr. 111-113. Mr. Mancini calculated attrition on the assumption that the experience of the 36 months prior to March of 1985 will be indicative of the next 36 months. However, the Company has not met its burden of proof in demonstrating that this will be the case, and has not done any particular study or developed long range plans which support its position. III Tr. 22, II Tr. 132, 133.

The extent of the Company's analysis of rate base attrition, estimated at .58% of the requested .875%, is an assessment of the present growth situation in general and a belief that it will continue to add some 1,000 plus customers a year at a higher incremental cost than increased revenues will support. IV Tr. 80-82; VII Tr. 22. However, the Company witnesses themselves acknowledge that there are dramatic changes occurring in the gas and energy markets which may in fact change these conditions. As Mr. Giordano acknowledges, the Company would not experience rate base attrition if the Company experiences conversion of customers who are not presently using gas. If new customers hook-up on streets with existing gas mains, the cost is roughly $600 compared to an average cost of $3,000 when main extensions are required. IV Tr. 126-130. Since the $600 cost is below the average embedded cost of $900, growth on existing lines would negate rate base attrition. Since gas prices may soon have a significant competitive edge over electricity, it is entirely possible that the Company may experience a large number of conversions. However, no analysis has been performed to assess this situation. VII Tr. 22.

Mr. Giordano acknowledges that relative price changes for electricity as well as other market changes may significantly change the operating circumstances of the Company. Other significant changes include sharply declining oil prices, FERC Order 436 (33 FERC ¶ 61,007) encouraging competition in the gas industry, increasing use of gas for

cogeneration projects and the effect of these changes on the underlying economic trends. The Commission acknowledges the complexity of the situation. However, all of these changing market conditions make it far from clear that customer growth in the future will result in the degree of rate base attrition estimated by the Company from historical data.

In light of the significant market uncertainties facing the Company, the Commission believes the Company should place greater emphasis on strategic planning. In addition to the national econometric models with which Mr. Giordano is familiar, the Commission is also aware that the National Regulatory Research Institute (NRRI) has developed a gas demand/supply balancing

tool for use by the gas distribution companies. This model is particularly designed for planning under uncertainty in light of the emerging trends in the gas distribution industry. One of the Commission's objectives in approving the formation of EnergyNorth and the subsequent acquisition of Concord Natural Gas Corporation was to enhance the ability of the Companies to deal with growth and significant market changes. Just as larger size provides opportunities for operating efficiencies, so does it provide opportunities for better planning.

Similarly, the Company has not analyzed the likelihood that the experience of the last 36 months will be indicative of the next 36 months in regard to operational or financial attrition. Operational attrition results primarily from general inflation and lack of increases in productivity. Mr. Mancini admits that current inflation is below that experienced in the past. II Tr. 124-125. Further, the Company has testified on numerous occasions that it expects the formation of the holding company to result in increased efficiency and lower costs. These savings have not been realized in the past, but the Company has assured the Commission that they will materialize in the near future. A third element in negating operational attrition in the future is the changes in the tax code being contemplated at the federal level. Our findings in the instant docket are based on current tax law. To the extent that the lower tax rates are not offset by the elimination of the Investment Tax Credits, the Company will incur lower tax expenses than provided for in this case. These lower tax expenses will also act to eliminate or reverse operational attrition in the future period.

Finally, financial attrition is unlikely to occur in a period of declining interest rates. The Company's analysis has erred when it calculates attrition from an allowed rate of return of 13.38%. Since the findings of the Company's last rate case DR 81-234, where the allowed rate of return was set at 13.32%, the Commission dropped the allowed return twice: to 13.14% in the Step Adjustment of December 9, 1982 (Order No. 16,032) and 12.48% to take effect in the second step adjustment of July, 1983. Thus the weighted cost of capital of the 36 months would be 12.83% rather than 13.38% and the Company's own calculation should be revised to reflect the decline in allowed return. Using the methodology in App. 2, Schedule 4, the calculation would result in a proposed adjustment of .701 rather than .875 (12.83 - 10.61 = 2.22 ° 38 x 12 = .701).

The difference between 13.38% and 12.83% and the resulting difference between .875 and .701 demonstrates the

offsetting effects of financial "accretion" or "negative attrition" in a period of falling interest rates. The Commission's adoption of the cost rates of March 1986 rather than the current lower rates, will assure that the Company's declining financial requirements will continue to offset any attrition caused by the growth of the rate base.

Therefore, the proposed attrition allowance will not be allowed in this filing.

VI. REVENUE REQUIREMENT

Based upon the foregoing analysis, the following is a computation of the revenue deficiency:

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


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MANCHESTER GAS COMPANY
Computation of Revenue Deficiency

Rate Base $13,047,758
Rate of Return 12.04%
Required Net Operating Income 1,570,950
Proforma Net Operating Income 1,361,645
Required Increase in Net Operating Income 209,305
Tax Effect (y .54) 178,297
Revenue Increase Required $  387,602
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VII. RATE STRUCTURE

[12] On the issue of rate structure, the Company proposed to increase the monthly customer charge for Domestic (D) and General (G) service classifications, which the Company represented at $3.08 to $4.75 for class D and $7.60 for class G. The remaining revenue increase is proposed to be applied on an even percentage to the rate blocks in each class. These proposed increases were requested by the Company in its original petition and subsequently recommended by Mr. Russell A. Fiengold, a Company expert witness who performed an embedded customer cost analysis. In Mr. Fiengold's testimony he performed an analysis which focused only on customer related costs. Demand and Commodity Costs were deemed not relevant to the analysis. As a result of examining only costs associated with providing minimum service, the monthly customer costs for Class D and E were calculated at $18.20 and $57.42 respectively. From the above analysis, the witness concludes that the Company proposed rates of $4.75 and $7.60 are cost justified.

The Commission does not accept the proposed increase nor the recommendations in witness Fiengold's testimony. Clearly the proposed rates do not properly reflect current demand or commodity components of the basic rates on a per therm basis currently in effect. A monthly customer charge increase for Rate D of 54.22% and for Rate G of 146.75% cannot be accepted in that an embedded customer cost analysis exclusive of demand and commodity cost components is simply inconclusive. The fact that the petitioner's proposed customer charges are well below the results of the witness' analysis establishes no cost related basis for approving an increase of the

magnitude requested by the Company. Furthermore, we do not consider the study to be appropriate because it does not address fully allocated demand costs which can only be determined through an analysis of total Company costs. The Commission, therefore, accepts Staff's recommendation that revenue increases be applied evenly to all components of the rate structure.

The Commission, however, does recognize the need for further investigation into the overall rate design and cost methodologies for gas companies and has opened a generic docket, DE 86-208, for the purpose of assessing:

(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.

All gas companies will be afforded the opportunity to participate as full parties in this investigation and present their views regarding these various rate design issues.

VII. REFUND

The Company was allowed a temporary rate increase of $654,828 effective with bills rendered on or after December 1, 1985. This decision allows an increase of $387,602. Therefore, a refund should be made for the excess amount which has been collected from customers since December 1, 1985. That excess amount shall be refunded over the period of one year. When the revised tariffs are filed the Company shall submit a detailed calculation of the overcollection during that period. As stated above, the rate case expenses will be applied against the overcollection. In order to provide sufficient time for submission and review, the Company shall file revised tariff pages to be effective on September 1, 1985.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the tariff revisions filed by Manchester Gas company on August 16, 1985 reflecting an increase in gross annual revenues of $1,747,961.00 (10.47%) be, and hereby are, rejected; and it is

FURTHER ORDERED, that Manchester Gas Company shall instead be allowed to collect additional annual gross revenues of $387,602; and it is

FURTHER ORDERED, that the Company shall file revised tariff pages reflecting the increase which shall become effective on all bills rendered on or after September 1, 1986; and it is

FURTHER ORDERED, that because the temporary rate increase effective on all bills rendered on or after December 1, 1986 is greater than the increase approved herein, Manchester Gas

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Company shall file a detailed calculation of the amounts overcollected under said temporary rates; and it is

FURTHER ORDERED, that Manchester Gas Company shall file an affidavit detailing and describing the rate case expenses it seeks to recover; and it is

FURTHER ORDERED, that Manchester Gas Company shall file a mechanism which will allow it to refund the difference between the amounts overcollected under temporary rates and its rate case expenses in accordance with the Commission's discussion in the foregoing Report; and it is

FURTHER ORDERED, that the above-stated items shall be filed on or before August 18, 1986.

By order of the Public Utilities Commission of New Hampshire this eleventh day of August, 1986.

FOOTNOTES

[1]The Staff accepted the proforma adjustment to operating revenues proposed by the Company.

[2]Applying the growth rate to the yield is mathematically the same as applying the growth rate to the dividend. The product of multiplying the growth rate times the last four quarters is the calculation of the next four quarters of dividends assuming a constant growth rate.

[3]We note, for example, that Connecticut Natural Gas, used by both witnesses, sells steam and chilled water as well as propane. Bay State, also in both samples, engages in exploration, and Connecticut Energy Corporation, used by Mr. Jackson, has subsidiaries engaged in transmission, exploration and general building contracting.

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NH.PUC*08/11/86*[60849]*71 NH PUC 481*PRS (Derry), Inc.

[Go to End of 60849]

71 NH PUC 481

Re PRS (Derry), Inc.

Intervenor: Public Service Company of New Hampshire

DR 86-48, Second Supplemental Order No. 18,366

New Hampshire Public Utilities Commission

August 11, 1986

ORDER substituting a twenty-year rate for a small power producer's rejected thirty-year rate.

Cogeneration, § 24 — Rates — Long-term prices — Conditions.

A twenty-year rate was adopted for a small power producer as a substitute for the producer's rejected thirty-year rate proposal, but the twenty-year rate was subject to becoming null and void if the small power producer did not submit proof of the finalization of its financing arrangements.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on February 12, 1986 PRS (Derry), Inc. (PRS) filed a longterm petition for its proposed 10.3 MW resource recovery project, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (DE 83-62) and 70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85215); and

WHEREAS, Order No. 18,176 (71 NH PUC 181) in this docket approved the petition nisi on March 14, 1986 and allowed Public Service Company of New Hampshire (PSNH) thirty (30) days to file comments and exceptions to the petition; and

WHEREAS, PSNH filed comments

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and exceptions on April 3, 1986 and PRS filed its response on April 18, 1986; and

WHEREAS, the Commission Staff issued data requests on May 8, 1986 and PRS responded on June 6, 1986; and

WHEREAS, Order No. 18,352 (71 NH PUC 433) in this docket denied PRS's petition for a thirty year rate and gave PRS the opportunity to file for a twenty year long term rate pursuant to DR 85-215, supra, any time prior to August 28, 1986; and

WHEREAS, on August 1, 1986 PRS filed for a twenty year long term rate petition for its proposed 10.3 MW resource recovery project; it is

ORDERED, that PRS's petition for a twenty year rate order is approved; and it is

FURTHER ORDERED, that the long-term rate so granted PRS is null and void if PRS does not provide the Commission with an affidavit attesting to the finalization of the financing for this project by January 1, 1987.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of August, 1, 1986.

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NH.PUC*08/11/86*[60850]*71 NH PUC 483*Sugar River Hydroelectric Power Company

[Go to End of 60850]

71 NH PUC 483

Re Sugar River Hydroelectric Power Company

DR 86-99, Second Supplemental Order No. 18,367

New Hampshire Public Utilities Commission

August 11, 1986

ORDER approving long term rates for a small power producer.

Cogeneration, § 24 — Rates — Long term prices — Insurance as a factor.

A small power producer's proposed long term rate was accepted where it was shown that the producer had complied with the commission's directive on obtaining liability insurance.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on March 31, 1986 William B. Ruger, Jr. d/b/a Sugar River Hydroelectric Power Co., (Sugar River) filed a long term rate petition for the Sugar River Hydroelectric Power Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) and 70 NH PUC 753, 69 PUR4th 365 (1985) (Order No. 17,838); and

WHEREAS, the Commission issued Order No. 18,224 (71 NH PUC 251) approving said long term rate petition; and

WHEREAS, Order No. 18,261 (71 NH PUC 295) suspended Order No. 18,224 pending submission of an affidavit from Sugar River attesting that it has obtained the required amount of insurance of $3,000,000; and

WHEREAS, by letter dated July 30, 1986 Sugar River submitted a signed interconnection agreement with PSNH in which Sugar River agreed to obtain $3,000,000 of liability insurance before physical interconnection takes place; and

WHEREAS, the condition in Order No. 18,261 that Sugar River obtain sufficient insurance has been satisfied; it is therefore

ORDERED, that Order No. 18,261 be, and hereby is, vacated, and Order No. 18,224 be, and hereby is, effective as of July 30, 1986.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of August, 1986.

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NH.PUC*08/14/86*[60852]*71 NH PUC 488*Public Service Company of New Hampshire

[Go to End of 60852]

71 NH PUC 488

Re Public Service Company of New Hampshire

DE 86-155, Order No. 18,369

New Hampshire Public Utilities Commission

August 14, 1986

ORDER conferring licenses on existing but previously unlicensed electric transmission lines.

Electricity, § 7 — Authorization of transmission lines — Retroactive licenses.

Where it was discovered that an electric utility had 16 transmission lines crossing certain public waters that had never been officially licensed, the commission granted the utility retroactive licenses for those lines.

APPEARANCES: For the Petitioner, Donald Thompson.

By the COMMISSION:

REPORT

On May 21, 1986, Public Service Company of New Hampshire (PSNH) filed with this Commission a petition to license 16 existing electric transmission and distribution lines over and across certain public waters in the State of New Hampshire.

On May 27, 1986, an Order of Notice was issued setting a hearing for July 24, 1986, at 2:00 p.m. Notices were sent to Pierre O. Caron, Esquire, PSNH (for publication); Wallace E. Stickney, Commissioner, New Hampshire Department of Public Works and Highways; Robert X. Danos, Director, Department of Safety Services; James Carter, Chief of Land Management, Department of Resources and Economic Development; Christopher J. Kersting, New Hampshire Aeronautics Commission; and the Office of the Attorney General.

On June 13, 1986, the petitioner filed certification that publication had been made in the Union Leader on June 6, 1986.

The petitioner offers that it is in the process of reviewing all its existing installations of lines and wires across the waters of the State and the classification of waters as public waters.

In the course of its review, the Company identified 16 existing water crossings which were without licenses.

The 16 crossings are all in place. Each crossing has been found to be essential for continued service to the public.

Upon consideration of this petition, the Commission finds that it is in the public good to approve the requested licenses. The Company has shown that

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each crossing is necessary to serve specific customers. There is no challenge by other State agencies or individuals as to the crossing locations. We approve the petition.

Our Order will issue accordingly.

ORDER

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

ORDERED, that authority be granted to the Public Service Company of New Hampshire to maintain electric distribution lines over and across public waters of the State of New Hampshire at the following locations which are specifically identified in the petitions in this docket.

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

TOWN TOPO EXHIBIT PLAN

Barnstead 1A1 1A2 320
Barrington 2A1 2A2 321
Bradford 3A1 3A2 322
Deerfield 4A1 4A2 323
Hampstead 5A1 5A2 324
Hillsborough 6A1 6A2 325
Strafford 7A1 7A2 326
7A3 327
8A1 8A2 328
Wakefield 9A1 9A2 329
9A3 330
10A1 10A2 331
11A1 11A2 332
12A1 12A2 333
Weare 13A1 13A2 334
13A3 335

By order of the Public Utilities Commission of New Hampshire this fourteenth day of August, 1986.

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NH.PUC*08/15/86*[60853]*71 NH PUC 490*New Hampshire Electric Cooperative

[Go to End of 60853]

71 NH PUC 490

Re New Hampshire Electric Cooperative

Additional petitioner: Public Service Company of New Hampshire

DE 86-225, Order No. 18,370

New Hampshire Public Utilities Commission

August 15, 1986

ORDER approving an exchange in electric service areas.

Certificates, § 143 — Transfers — Territorial exchange — Public convenience and necessity.

A rural electric cooperative was authorized to transfer to an electric utility a portion of its service territory where the transfer would be in the public interest because it would eliminate maintenance problems that had been encountered by the cooperative in its plant having to cross a swamp and an interstate highway, but the transfer would only be effectuated if no member of the public sought a hearing in protest of the transfer.

By the COMMISSION:

ORDER

WHEREAS, the New Hampshire Electric Cooperative, Inc., (NHEC) and the Public Service Company of New Hampshire (PSNH), electric utilities operating under the jurisdiction of this Commission, having filed a joint petition on August 1, 1986 seeking authority under RSA 374:22-C IV to change service from NHEC to PSNH in a limited area of Sutton, New Hampshire; and

WHEREAS, such change will eliminate a difficult crossing of a swamp area as well as Interstate Highway 89 which requires a pole on the median strip; and

WHEREAS, transfer of the affected customers to PSNH will provide them with more reliable service eliminating NHEC maintenance difficulties of the line cited earlier; and

WHEREAS, the Commission finds that all affected customers have been advised of and have agreed to such transfer; and

WHEREAS, the Commission's investigation finds the requested transfer to be in the public good; and

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

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing in this matter before the

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Commission no later than September 8, 1986; and it is

FURTHER ORDERED, that NHEC and PSNH effect said notification by publication of this Order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than August 29, 1986 and designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI that NHEC and PSNH be authorized, pursuant to RSA 374:22-C IV to exchange subject service area as depicted on Drawing 231 on file with this Commission, and it is

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

By order of the Public Utilities Commission of New Hampshire this fifteenth day of August, 1986.

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NH.PUC*08/15/86*[60854]*71 NH PUC 492*Public Service Company of New Hampshire

[Go to End of 60854]

71 NH PUC 492

Re Public Service Company of New Hampshire

DR 86-172, Supplemental Order No. 18,371

New Hampshire Public Utilities Commission

August 15, 1986

ORDER temporarily reinstituting a previously terminated cost recovery agreement for an electric utility.

Expenses, § 120 — Electric — Plant conversion costs — Resurrection of superceded recovery agreement.

Where an agreement governing an electric utility's recovery of the costs incurred in converting a generating station from oil to coal had been superceded by provisions in a temporary rate schedule, but the temporary rate schedule was subsequently withdrawn, the previous agreement on cost recovery was resurrected on an interim basis until new rate schedule provisions could be formulated.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission, in its Order No. 15,943 (67 NH PUC 741), approved an agreement entitled Recommendations of the Parties Concerning the Schiller Agreement, which provided Public Service Company of New Hampshire with an opportunity to recover the costs of converting Schiller units 4, 5 and 6 from oil to coal fired units; and

WHEREAS, on July 7, 1986 the Commission issued Report and Order No. 18,329 approving the termination of said agreement; and

WHEREAS, the Commission's approval thereof was based on Public Service Company of New Hampshires petition in the instant docket, said petition having coordinated the termination of the agreement with the approval of temporary rates in Public Service Company of New Hampshire's filing in DR 86-122; and

WHEREAS, Public Service Company of New Hampshire has withdrawn its request for temporary rates in DR 86122; and

WHEREAS, On July 28, 1986, Public Service Company of New Hampshire has filed a Motion For Clarification And In The Alternative For Rehearing requesting that the commission confirm that it will continue to allow recovery of the Schiller conversion costs through the

reconciling adjustment of current ECRM until an opportunity to recover such costs through temporary or permanent rates is granted by this Commission; and

WHEREAS, in approving the

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termination of the agreement it was the Commission's desire to change the rate making treatment for the recovery of the Schiller conversion costs while keeping the intent of the agreement intact; and

WHEREAS, the withdrawal of Public Service Company of New Hampshire's petition for temporary rates creates a gap of at least a six month period (July 1,1986 through December 31, 1986), wherein the Schiller conversion costs will not be recovered through temporary rates or ECRM; it is hereby

ORDERED, that Public Service Company of New Hampshire be, and hereby is, allowed recovery of the Schiller conversion costs through ECRM in accordance with the aforementioned Recommendations of the Parties Concerning the Schiller Coal Conversion, until an opportunity to recover such costs through temporary or permanent rates is granted by this Commission.

By order of the New Hampshire Public Utilities Commission this fifteenth day of August, 1986.

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NH.PUC*08/20/86*[60855]*71 NH PUC 494*Public Service Company of New Hampshire

[Go to End of 60855]

71 NH PUC 494

Re Public Service Company of New Hampshire

Intervenors: Community Action Program Belknap-Merrimack Counties, Inc., Business and Industry Association of New Hampshire, Campaign for Ratepayers' Rights, Office of Consumer Advocate, and Department of Defense

DR 86-122, Supplemental Order No. 18,375

New Hampshire Public Utilities Commission

August 20, 1986

OPINION on the usefulness of informal consultative conferences as an alternative to formal hearings on all issues.

Procedure, § 21 — Hearings — Necessity of hearings — Informal conferences.

Informal consultative meetings between parties, intended as a means of narrowing issues upon which there is disagreement, are encouraged when a utility's filing is likely to be highly

contentious, but where a utility has filed for a rate increase without any concomitant rate structure change proposals, there is no absolute need to require a consultative conference.

APPEARANCES: Sulloway, Hollis & Soden by Martin Gross, Esquire on behalf of Public Service Company of New Hampshire; Gerald M. Eaton, Esquire on behalf of the Community Action Programs; Michael Holmes, Consumer Advocate; Ransmeier & Spellman by Dom S. D'Ambruoso, Esquire on behalf of the Business and Industry Association of New Hampshire; Mary Metcalf on behalf of the Campaign For Ratepayers Rights; Daniel J. Kalinski, Esquire, Staff Attorney, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On May 29, 1986, Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire, filed revised tariff pages (NHPUC No. 30Electricity) reflecting an increase in annual revenues of approximately $59 million to become effective on July 1, 1986. In addition, the tariff pages also provide for a step increase in annual revenues of approximately $35 million to become effective one year subsequent to the effective date of the initial increase. PSNH also filed a petition for temporary rates on May 29, 1986 requesting that it be granted temporary rates reflecting the initial

permanent rate increase amount if the Commission suspended the effective date of the revised tariff pages to allow for investigation.

On June 24, 1986, the Commission issued Order No. 18,316 which suspended the effective date of the tariff revisions pursuant to RSA 378:6 to allow for a full investigation and scheduled a hearing for July 18, 1986 to address PSNH's temporary rate petition and procedural matters regarding the proposed permanent rate increase, including, inter alia, intervention and a procedural schedule. Thereafter PSNH requested a continuance of the July 18, 1986 hearing because of the unavailability of its witnesses on that date. The Commission granted the request and rescheduled the hearing to August 4, 1986 in an Order of Notice issued on July 3, 1986.

Prior to the August 4 hearing, petitions to intervene were filed by the Campaign for Ratepayer's Rights (CRR), the Community Action Program Belknap-Merrimack Counties, Inc. (CAP), United States Department of Defense (DOD) and the Business & Industry Association of New Hampshire (BIA). On August 1, 1986 PSNH withdrew its petition for temporary rates.

At the August 4 hearing the Commission granted the above-stated petitions to intervene and recognized the participation of the Consumer Advocate and the Commission Staff. The parties proposed the following procedural schedule:

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

August 29, 1986 Staff and Intervenor Data
 Requests due
September 19, 1986 PSNH Responses to Staff
 and Intervenor Data Requests
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 due
October 10, 1986 Staff and Intervenor
 Testimony due
October 24, 1986 PSNH Data Requests on Staff
 and Intervenor Testimony due
November 7, 1986 Staff and Intervenor Responses
 to PSNH Data Requests due
December 1-5 and
 8-12, 1986 Hearings
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In addition, PSNH made an oral motion to bifurcate the rate structure portion and remit it to a consultative process involving the parties with a report to be filed with the Commission on December 1, 1986 detailing the status of the parties' discussions. In support thereof, PSNH argues that the consultative process has been successfully utilized in the past and is a more efficient method than contentious litigation in resolving complex rate structure issues. BIA supports the motion. It has concerns about how any increase should be allocated among customer classes and feels a consultative process is the proper method for having those concerns addressed. CAP and CRR do not object thereto, and DOD takes no position.

The Consumer Advocate objects to the motion. He argues that discussions among the parties regarding a new rate design for PSNH should await the Seabrook rate filing and not be included in this docket. Staff also objects. It points out that PSNH is not proposing any change in its rate design but rather, that any increase be apportioned among customer classes according to the allocations contained in its existing rate structure. Because there are no new or novel rate structure proposals, the Staff contends that a separate, formal consultative process is unnecessary. In Staff's view, the BIA's rate structure positions can be discussed by the parties in the issue-narrowing meetings customarily held prior to the hearings and, if necessary, be litigated within the proposed hearing schedule.

After review, we find the proposed

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schedule to be reasonable and therefore will adopt it as the schedule for the remainder of the proceedings. We next turn to PSNH's motion to bifurcate.

In most rate case proceedings, parties will meet informally prior to the hearings to discuss their respective positions on the issues and attempt to reach an agreement, or in the least, narrow their areas of disagreement. Any agreement is then presented to the Commission which, after due consideration, may accept or reject it. These meetings have come to be known as "conferences-to-narrow-issues." In certain cases the Commission has ordered parties to engage in issue-narrowing conferences. This occurs primarily in proceedings where complex issues such as a new or novel rate structure are involved. The rationale behind the Commission-ordered meetings, known as the "consultative process," is administrative economy. The conferences help parties understand other parties' positions thereby reducing the hearing time that would otherwise be devoted to that process. Moreover, any agreement between the parties eliminates lengthy litigation, and accordingly, helps to reduce time spent in the hearing room. The consultative process was employed for rate structure issues in PSNH's last rate proceeding (DR 82-333).

Unlike the past cases in which the consultative process has been employed, this proceeding

does not present new or novel rate structure issues. As stated above, PSNH proposes an "across-theboard" increase of whatever overall revenue increase the Commission may approve. We therefore will not order the parties to engage in a consultative process in this proceeding. However, we note that the parties have already expressed their intention to engage in issue-narrowing conferences on revenue requirement issues. We agree with Staff that the BIA's and other parties' rate structure concerns can be adequately addressed at those conferences.

It should be noted that by our refusal to grant PSNH's motion, we make no finding on the reasonableness of PSNH's proposal that any increase in revenues be recovered through its existing rate structure. We expect that this issue will be addressed by the parties. In any event, PSNH has the burden of proof in establishing that its proposed rate structure is reasonable.

One further matter merits discussion. According to PSNH, none of the proposed revenue increases are Seabrookrelated and that the exact timing of the Seabrook filing remains in doubt given the uncertainty involved in the ongoing licensing process. In response to Commission questions at the August 4 hearing, PSNH's counsel stated that PSNH intends to request that a major consultative process be initiated before the Seabrook rate case is filed. We cannot say whether we will grant such a request. However, it is important that the parties, all of which are likely parties to any future Seabrook rate case, be aware of our concerns regarding the consultative process.

As in any settlement, compromise is inherent in rate case settlement agreements. Parties accept positions they don't necessarily agree with in order to get another party's agreement on an issue. Moreover, when stipulations or settlement agreements are presented to the Commission, often little or no testimony is offered in conjunction therewith. In evaluating any proposed settlement therefore, the Commission is

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at times without the benefit of hearing all sides of a particular issue.

It is axiomatic that rate structure issues will play a central role in the Seabrook-related rate case. Thus, it is of the utmost importance that the Commission receive all information and positions on those issues. In the event we allow or order the parties to engage in a consultative process regarding rate structure in the Seabrook rate case, we will expect to receive extensive testimony detailing the parties' various proposals, the issues and arguments concerning those proposals and the underlying data and mechanics of any stipulation.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the procedural schedule set forth in the foregoing Report be, and hereby is, adopted; and it is

FURTHER ORDERED, that PSNH's Motion to Bifurcate be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentieth day of August, 1986.

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NH.PUC*08/21/86*[60856]*71 NH PUC 498*New England Alternate Fuels, Inc. - Swanzey

[Go to End of 60856]

71 NH PUC 498

Re New England Alternate Fuels, Inc. - Swanzey

DR 86-152, Third Supplemental Order No. 18,376

New Hampshire Public Utilities Commission

August 21, 1986

ORDER approving long-term rates for a wood-burning cogeneration project.

Cogeneration, § 24 — Rates — Long-term prices — Effect of moratorium restrictions.

Approval was given to a wood-burning cogeneration project's proposed 20-year rate, even though the rate was in excess of the amounts set as limitations in a recent moratorium order, because the proposed rate had been the subject of several years of hearings and the project owners had been attempting to conform to all previous commission rate directives.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on May 14, 1986, New England Alternate Fuels (NEAF) petitioned the Commission for a clarification of its long term rate granted in Re New England Alternate Fuels, Inc., Docket No. DR 84-74, Order Nos. 16,955 (69 NH PUC 197) and 16,986 (69 NH PUC 220) for its wood burning project in Swanzey; and

WHEREAS, on May 29, 1986 in Order No. 18,284 (71 NH PUC 334) the Commission clarified said orders by finding that absent NEAF's commercial operation prior to September 1, 1986 as represented in its original petition the approval of its long term rate was rescinded but allowed NEAF to file for a long term rate pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) and 70 NH PUC 753, 69 PUR4th 365 (1985) any time prior to June 21, 1986; and

WHEREAS, on June 18, 1986 NEAF filed a Motion for Rehearing with respect to the Commission's Order No. 18,284 and on June 20, 1986 filed a petition for a 30 year long term rate; and

WHEREAS, in Order No. 18,343 issued on July 23, 1986 (71 NH PUC 423) the Commission denied NEAF's Motion for Rehearing and thereby upheld its rescission of Order No. 16,955 and Order No. 16,986 and denied NEAF's petition for a 30 year rate, but allowed NEAF leave to

amend its petition to file for a 20 year long term rate any time prior to August 23, 1986; and

WHEREAS, NEAF filed its amended

petition for a 20 year rate on August 6, 1986; and

WHEREAS, on August 12, 1986 Public Service Company of New Hampshire (PSNH) filed a Motion for Rehearing on Order No. 18,343 asserting that NEAF's filing pursuant to Order No. 18,284 was after the moratorium established in Docket No. 86134, the rates for which NEAF filed were in excess of those found by the Commission in DR 86-134 and improperly imposed on PSNH's ratepayers higher cost rates, and NEAF-Swanzey has not been subject to the requisite scrutiny exercised in other on-going wood dockets; and

WHEREAS, NEAF's original petition was made prior to the moratorium while the rates found in DR 85-215 were still in effect and the Commission has been informed of the NEAFSwanzey project since 1983; and

WHEREAS, the Motion for Rehearing contains no assertion of fact and no argument that was not fully considered as part of Order No. 18,284 and Order No. 18,343; and

WHEREAS, the Commission finds that its Decisions are not unreasonable or unlawful; it is therefore

ORDERED, that NEAF's petition for a 20-year Rate Order for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that the August 12, 1986 Motion of PSNH for a rehearing on Order No. 18,343 be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this twentyfirst day of August, 1986.

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NH.PUC*08/21/86*[60857]*71 NH PUC 500*City of Concord

[Go to End of 60857]

71 NH PUC 500

Re City of Concord

DE 86-223, Order No. 18,378

New Hampshire Public Utilities Commission

August 21, 1986

PETITION by a municipality for authority to provide water service to certain residents of another town; granted.

Service, § 359.1 — Municipal plant — Extraterritorial service — Service in another municipality.

Expedited approval was given to a municipality's proposal that it serve through its public water system certain residents of another town who previously relied on individual well supplies, where a request for expedited approval had been submitted by the Environmental Protection Agency.

By the COMMISSION:

ORDER

WHEREAS, the City of Concord, New Hampshire Water Department filed a petition on July 30, 1986 requesting authority to provide water service to a limited area in the Town of Bow, New Hampshire; and

WHEREAS, by Order of Notice dated July 31, 1986 the Commission scheduled a hearing on the petition for August 27, 1986; and

WHEREAS, on August 11, 1986, the United States Environmental Protection Agency requested expedited treatment of the petition to allow all formalities to be completed by August 22, 1986 and to allow the conversion from the well supplies to the public water system to be made in a timely fashion; and

WHEREAS, there have been no objections filed to the Environmental Protection Agency's request; it is

ORDERED, that the City of Concord, New Hampshire Water Department is hereby granted temporary authority to provide water service pending hearing in the proposed limited area in the Town of Bow effective the date hereof.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of August, 1986.

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NH.PUC*08/22/86*[60858]*71 NH PUC 501*New England Telephone and Telegraph Company, Inc. et al.

[Go to End of 60858]

71 NH PUC 501

Re New England Telephone and Telegraph Company, Inc. et al.

Additional parties: New Hampshire Telephone Association, Office of Consumer Advocate, Bretton Woods Telephone Company, Chichester Telephone Company, Continental Telephone Company of New Hampshire, Continental Telephone Company of Maine, Dixville Telephone Company, Dunbarton Telephone Company, Granite State Telephone Company, Inc., Kearsarge Telephone Company, Meriden Telephone Company, Merrimack County Telephone Company,

Union Telephone Company, and Wilton Telephone Company

DE 85-422, Order No. 18,379

New Hampshire Public Utilities Commission

August 22, 1986

ORDER establishing formulas for the recovery of costs incurred in extending telephone plant to new customers.

Service, § 188 — Extensions — Telephone plant — Burden of cost.

Costs to be recovered from new customers, when telephone plant is installed in order to serve them, were restructured according to a formula which would allow each new customer 3/10 of a mile of new line free and one free pole, or if line was to be installed underground, 400 feet of free trenching.

APPEARANCES: For the New England Telephone & Telegraph Company, Inc., Phillip M. Huston, Jr., Esquire; for the New Hampshire Telephone Association, William R. Stafford; for Union Telephone Company, Wallase J. Flaherty; for the residential ratepayer, Michael W. Holmes, Esquire, Consumer Advocate; for the Commission Staff: W. Michael Burke, Mary C. M. Hain, Daniel D. Lanning and Edgar D. Stubbs, Jr.

By the COMMISSION:

REPORT

I. BACKGROUND

For many years, procedures for the construction of telephone line extensions have been standardized among New Hampshire's telephone utilities.

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The last update of these procedures was in 1975. At that time, highway construction within the base rate area was provided at no cost. Outside that base rate area, each customer was allowed 3/10 mile free, with costs of excesses prorated among the customers involved. For private property construction, each customer was allowed one free pole, paying the costs of any excesses. For private property, however, should there be two or more applicants, construction was provided as if it were on a public way.

In late 1980, mileage charges were eliminated from basic exchange rates. That move eliminated all mileage bands and the so-called base rate area became the entire exchange. The consequence was free highway construction within the exchange. Rising construction costs eventually led New England Telephone and other members of the New Hampshire Telephone Association to develop new construction procedures for both highway and private property. Concurrently, the New Hampshire Telephone Association filed a model tariff outlining its

proposed construction procedures. (Minor non-concurrence by three telephone utilities on underground construction will be addressed later.)

An Order of Notice was issued by the Commission on January 14, 1986 setting the matter for public hearing at the Commission's Concord offices on March 13, 1986 at 10:00 A.M. Order No. 18,079 was issued on January 16, 1986 suspending the New England Telephone filing pending investigation and decision. The hearing was convened as scheduled.

II. NEW ENGLAND TELEPHONE POSITION

Attorney Huston presented one witness, James T. McCracken, Jr., District Manager, rates and tariffs. Mr. McCracken's prefiled testimony was entered as Exhibit No. 1. He summarized that testimony and was made available for cross examination.

Mr. McCracken indicated that the proposals filed by New England Telephone and the New Hampshire Telephone Association modified tariff procedures for both highway and private property construction with the purpose of shifting more of these costs to the cost causer rather than the general ratepayer. Proposed by all parties was the return to the 3/10 mile allowance for highway construction. As cited earlier, this was the allowance formerly granted for construction granted outside the "base rate area." The proposal would apply this criterion to any highway construction within the exchange.

Also proposed was elimination of the one-pole allowance in private property construction as well as abolishing the policy of applying highway construction terms when two or more customers were served on private property. For private property underground construction, the proposal reduced the trench allowance from 400 feet to 200 feet. Also proposed was a reduction to one year the period during which a refund would be made when new customers were added to a line extension.

Considerable dialog was exchanged regarding Universal Service and its development over the past 50 some years. This goal of making telephone service available to all at an affordable price has been reached according to McCracken who stated his research indicated 95% development in New Hampshire (T-9). He testified he could see no reason today why the general body

of ratepayers should subsidize pole construction on private property for those seeking to build far from the main road.

In describing the impact of the proposed changes, Mr. McCracken indicated that only 4% of those customers requiring highway construction during his five-month study period would have been billed under the 3/10 mile policy. For private property construction during that same period, 35% of the poles set were billed to customers. Under the proposed terms, this would be 100% of the private poles.

In support of the one-year reimbursement period McCracken claimed the administrative burden on his company was excessive if greater than a year. He cited also the difficulty in keeping records which show who would receive reimbursement. He claimed most private construction would remain such with no other parties being served from those lines.

Revenues from the NET proposal were estimated by that company at $405,000 annually.

III. INDEPENDENT TELCO POSITIONS

Testifying on behalf of the New Hampshire Telephone Association was William R. Stafford, Assistant General Manager of Granite State Telephone, Inc. Mr. Stafford indicated the members of the Regulatory Committee of the association had met on several occasions to develop a model tariff for the independent telcos. The final version met the needs of all participants except for maintenance of underground trenches. Here, three of these telcos ... Dunbarton, Kearsarge and Union ... failed to agree with the others on the responsibility for trench work during maintenance. These companies feel underground work is not "normal" in any circumstance, so the cost burden should fall on the cost causer. All were in agreement on other portions of the model tariff revisions for independent companies.

Witness Flaherty of Union Telephone addressed the underground dissension, explaining that the three dissenters had policies of not constructing underground plant, but would do so if requested by the customer and associated costs were assumed by that customer. To do otherwise, would add costs to maintenance which would be a burden upon other ratepayers.

IV. COMMISSION ANALYSIS

Since 1975, tariffed procedures allowed free highway construction within the base rate area. For those seeking service beyond this, an allowance of 3/10 mile per customer was authorized, with costs of remaining construction shared among the customers served. Late 1980 saw an end to mileage charges, essentially extending the base rate area to the exchange bounds. The result was free highway construction for all. The instant filings seek to restore that 3/10 mile criterion anywhere within the exchange. NET Witness McCracken testified that a five-month study had been completed during which 639 customers had been served by 1,307 poles. Of these, McCracken claimed only six customers would have been billed because construction exceeded the 3/10 mile criterion. While this seems like a small percentage exceeding the allowance, it does indicate the possibility exists. To protect the telephone utilities from inordinate extensions along

highways, the commission will allow the 3/10 mile criterion reinstated.

The companies wish to remove the one pole allowance from private property construction and delete the provision that two or more customers on private property warrant treatment as if on a highway. The one pole allowance is small compared to poles required for the 3/10 mile of highway allowance. While the companies insist that there is little hope of others being served from a private property extension as there would be on the highway construction, the Commission finds some private property construction allowance equitable. Accordingly, it will deny the request to remove the one pole allowance.

The Commission does have some concerns about multiple subscribers on private property being considered as if they were on a highway. Two subscribers would be allowed 3/5 mile without incurring any construction costs. This would be far greater than the one-pole allowance for a single subscriber on private property and places a greater burden on the general ratepayer. Based upon this concern, the Commission will allow the same treatment of multiple customers

on private property as it does single customers. Each customer will be entitled to one pole allowance, and the remaining line extension costs will be borne by the customers.

New England Telephone also proposed a drop from 400 feet of free trenching to 200 feet. This, of course, applies when underground, private construction has been determined "normal." Witness McCracken indicated that the 200 feet was the equivalent of the service drop for aerial construction. (T66) Since the Commission has determined that the one-pole allowance for private construction should remain, the proposed reduction of free trenching allowance omits any allowance for the free pole the customer would get had the service been aerial. Fairness requires the 400 foot allowance to continue, representing both a counterpart of the free pole and the service drop. The customer will not, however, be entitled to both a one-pole aerial allowance and a 400 foot underground allowance.

The proposed construction terms for underground service on private property has surfaced some problems among the state's telephone utilities. Dunbarton, Kearsarge and Union Telephone Companies object to providing trenching for maintenance of underground services. They do agree, however, to the provision of company-paid trenching if that has been determined the "normal" method of construction. (If aerial is determined "normal," the customer pays such costs.) Taking administrative notice of written statements of Kearsarge (February 18, 1986), Dunbarton (March 6, 1986), the Commission gathers that none of these companies would ever determine that underground construction was "normal," so agreement with the trenching provision causes them no harm. If, however, these companies developed a capability for trenching of "normal" underground services, the Commission sees no problem with their assuming responsibility for maintenance trenching. One notes that some fears by these companies exist that installation of underground plant by the customer or his agent is improper leading to early maintenance requirements. These fears should be allayed by Sections IIIC1a or IIIC2c of the proposed tariff which indicate all work done by customers must be under Company

supervision and conform to its engineering specifications. The Commission denies the exceptions of Dunbarton, Kearsarge and Union Telephone Companies.

The companies have proposed a refund period reduction from three years to one year. Arguments for such a change are based upon administrative costs and difficulty in manually accounting for such contributions, particularly with our mobile society (T-22). The Commission accepts this proposal.

Our order will issue accordingly.

ORDER

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

ORDERED, that the following revisions of the New England Telephone and Telegraph Company's Tariff No. 75 be, and hereby are, rejected:

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

Part A - Section 1 - 2nd Revised Pages 24 and 28
Section 2 - 5th Revised Table of
Contents Page 1

- 3rd Revised Page 1
- Original Page 1.1
- 1st Revised Pages 2 - 5

and it is

FURTHER ORDERED, that New England Telephone and Telegraph Company file tariff revisions in lieu of those rejected herein, incorporating those decisions reflected in the attached report, said pages to become effective on September 15, 1986; and it is

FURTHER ORDERED, that Bretton Woods Telephone Company, Chichester Telephone Company, Continental Telephone Companies of New Hampshire and Maine, Dixville Telephone Company, Dunbarton Telephone Company, Granite State Telephone, Inc., Kearsarge Telephone Company, Meriden Telephone Company, Merrimack County Telephone Company, Union Telephone Company, and Wilton Telephone Company file revisions to the construction sections of their tariffs conforming to the model tariff for construction procedures as amended by this order, such filings to bear an effective date of September 15, 1986; and it is

FURTHER ORDERED, that public notice be given of this decision by onetime publication of a summary of its resulting construction procedures approved herein in a widely read newspaper in the areas served.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of August, 1986.

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NH.PUC*08/27/86*[60859]*71 NH PUC 506*Manchester Gas Company

[Go to End of 60859]

71 NH PUC 506

Re Manchester Gas Company

DR 85-214, Third Supplemental Order No. 18,382

New Hampshire Public Utilities Commission

August 27, 1986

PETITION for suspension of a commission order that was the subject of an appeal; denied.

Rates, § 248 — Schedules and procedure — Suspension — Amendment.

The commission declined to formally suspend an order granting a gas distribution utility a rate increase even though the utility was appealing the amount granted, but the order was amended so that the increase granted would not appear on billings until all matters had been resolved.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on August 11, 1986, the Commission issued Report and Second Supplemental Order No. 18,365 (71 NH PUC 446) which granted Manchester Gas Company (Company) an increase in annual gross revenues of $387,602; and

WHEREAS, in Order No. 18,365 the Commission ordered the Company to file the following by August 18, 1986:

a.) revised tariff pages reflecting the increase and bearing an effective date of all bills rendered on or after September 1, 1986;

b.) a detailed calculation of the amounts over-collected by the Company to permanent rate increase being smaller than the temporary rate increase granted by the Commission in Report and Order No. 17,972 issued on November 27, 1985 (70 NH PUC 999);

c.) an affidavit detailing and describing the rate case expenses the Company seeks to recover; and

d.) a mechanism that will allow the Company to refund the difference between the amounts overcollected and its rate case expenses;

and

WHEREAS, on August 18, 1986, the Company filed the above-described documents; and

WHEREAS, on August 5, 1986, the

Company filed a Motion For Stay requesting that the Commission suspend Report and Order No. 18,365 pending the Commission's consideration of the Company's motion for rehearing which it will file on August 29 or September 2, 1986, or alternatively, to amend Order No. 18,365 to provide that the tariff pages will become effective the first day of the month next following the Commission's order responding to the Company's motion for rehearing; and

WHEREAS, in support thereof, the Company stated in its motion as follows:

To the extent that the Commission amends its Order in any way in response to the motion for rehearing, the rates [to be] put into effect September 1 (both the permanent and the refund rates) will have to be changed once more. In the interest of limiting the number of rate changes to the advantage of both the Company and its customers, the Company submits that it is in the public interest for the Commission to suspend its Order ...,

and

WHEREAS, the Commission agrees that rate continuity is in the public interest; and

WHEREAS, the Commission finds the alternate relief requested by the Company to be appropriate; it is hereby

ORDERED, that the Company's request that the Commission suspend Order No. 18,365 be, and hereby is, denied; and it is

FURTHER ORDERED, that Order No. 18,365 be, and hereby is, amended to provide that the tariff pages filed by the Company on August 15, 1986 shall not take effect September 1, 1986, but shall instead take effect with all bills rendered on or after the first day of the month next following the Commission's report and order regarding the Company's motion for rehearing.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of August, 1986.

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NH.PUC*08/27/86*[60860]*71 NH PUC 508*Briar Hydro Associates

[Go to End of 60860]

71 NH PUC 508

Re Briar Hydro Associates

Intervenors: Hoyt Electrical Instrument Works, Inc., and Office of Consumer Advocate et al.

DE 86-209, Order No. 18,383

New Hampshire Public Utilities Commission

August 27, 1986

PETITION by a small power producer for authority to take by eminent domain certain property necessary for securing a site approval license; denied on jurisdictional grounds.

Public Utilities, § 50 — Public utility status — Small power producers — Ultimate consumer as a factor.

To the extent that a small power producer generates electricity to be used ultimately by the public, the small power producer should be considered to be a public utility, even if it makes no retail sales directly to the public. [1] p. 512.

Eminent Domain, § 3 — Jurisdiction — Commissions versus courts — Takings by small power producers.

Although a small power producer may be deemed to be a public utility, if the producer needs to take property by eminent domain in order to perfect its interest in a project site, the small power producer needs to proceed through a state or federal court, as the commission has no jurisdiction over the pursuit of takings by eminent domain for site licensing purposes. [2] p. 513.

APPEARANCES: Gallagher, Callahan and Gartrell by Donald E. Gartrell, Esquire on behalf of Briar Hydro Associates; Barto and Puffer by Mark H. Puffer, Esquire on behalf of Joseph V. and Audrey P. Waters, G. Peter and Donna L. Dodge, Robert A. and Sharon G. Bradford and Stanley J. and Helen L. Buczynski; Upton, Sanders and Smith by Russell Hilliard, Esquire on behalf of

Hoyt Electrical Instrument Works, Inc.; Joseph Rogers, Esquire, Assistant Consumer Advocate; and Daniel J. Kalinski, Esquire, Senior Hearings Examiner, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On July 3, 1986, Briar Hydro Associates (Briar), a New Hampshire limited partnership with offices at 99 North State Street, Concord, New Hampshire, filed a petition to acquire property located in Penacook, New Hampshire pursuant to RSA 371. An Order of Notice was issued July 9, 1986 setting a prehearing conference for August 1, 1986 to address the preliminary issues of Commission jurisdiction and the fixing of an appropriate procedural schedule. On July 31, 1986, the Consumer

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Advocate filed a Motion To Dismiss Briar's petition.

At the August 1 hearing the Commission granted intervention to several residential landowners (Landowners) affected by Briar's petition, a commercial landowner, Hoyt Electrical Instrument Works, Inc. (Hoyt) and the Consumer Advocate. The Commission Staff also participated in the hearing. In addition, the Commission directed the parties to file memoranda of law on the issue of whether the Commission has jurisdiction to consider Briar's petition by August 8, 1986.

Briar, the Landowners, Hoyt and the Consumer Advocate filed timely memoranda.[1(107)] On August 8, 1986, Briar filed an Objection to the Consumer Advocate's Motion To Dismiss.

II. POSITION OF THE PARTIES

On December 5, 1984, the Federal Energy Regulatory Commission (FERC) issued an order pursuant to the Federal Power Act (Act), 16 U.S.C. § 791 a et seq., granting Briar a license (License) to construct, operate and maintain the Rolfe Canal Project (Project), a hydro-electric facility consisting of a dam and other intake structures located on the Contoocook River. 29 FERC § 62,229. The License's project area includes land in Penacook, New Hampshire which is currently owned by the above-named parties. Under the Act, incorporated by reference as part of the License, a licensee who cannot acquire title to land necessary to the construction and operation of its operation of its facility [sic] may take that property by eminent domain. After unsuccessful negotiations with the Landowners and Hoyt, Briar filed "Declarations of Taking" with The State of New Hampshire Board of Tax and Land Appeals (Board) pursuant to RSA 498-A et seq. The Board dismissed the Declarations because of a "lack of jurisdiction," ruling that Briar is a "public utility" within the meaning of RSA 362:2. Briar thereafter filed the instant petition.

The right of a licensee to take property necessary to the construction and operation of its facility by eminent domain is granted by Section 21 of the Act, 16 U.S.C. §814, which provides as follows:

§814. Exercise by licensee of power of eminent domain.

When any licensee cannot acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others necessary to the construction, maintenance, or operation of any dam, reservoir, diversion structure, or the works appurtenant or accessory thereto, in conjunction with an improvement which in the judgment of the commission is desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such land or other property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated:

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Provided, that United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000. (emphasis added).

In its memorandum, Briar states that it reasonably believes that the amounts claimed by the Landowners and Hoyt do not exceed the threshold federal jurisdictional amount of $3,000.00. In support thereof, Briar argues that its belief has not been rebutted by written offers of compromise by the Landowners and Hoyt. Thus, Briar contends it must look to state law to determine the proper tribunal in which to exercise its power of eminent domain. According to Briar, in New Hampshire the right of eminent domain is exercised before the Board of Tax and Land Appeals pursuant to RSA 498-A or before the Commission pursuant to RSA 371.

RSA 371:1 provides in pertinent part that "[w]henever it is necessary that any public utility ... should acquire land, land for an electric generating station ... and it cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor, such public utility may petition the public utilities commission for such rights and easements or for permission to take such lands or rights as may be needed for said purposes" (emphasis added). Briar contends it is a "public utility" as that term is used therein. In support thereof, it cites the following definition of public utility in RSA 362:2.

Public Utility. The term "public utility" shall include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations operating within their corporate limits, owning, operating or managing any plant or equipment or any of the same for the conveyance of telephone or telegraph messages or for the manufacture or furnishing of light, heat, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public, or owning or operating any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of gas, crude petroleum, refined petroleum products, or combinations of petroleum products, cooperative marketing associations organized for purposes of rural electrification, any other business, except as hereinafter exempted, over which on September 1, 1951, the public utilities commission exercised jurisdiction.

Briar's Project will generate electricity which Public Service Company of New Hampshire (PSNH) will purchase pursuant to RSA 362-A, the Limited Electrical Energy Producers Act, for resale to its customers. Briar therefore argues it is a "corporation ... owning, operating or managing any plant ... in the generation, transmission or sale of electricity ultimately sold to the public ..." and is entitled to invoke the Commission's jurisdiction under RSA 371.

Moreover, Briar argues that the specific provisions of LEEPA support its contention that small power producers are public utilities. RSA 362-A:2 exempts such producers "from all rules and statutes relative to electric utility rates or relative to the financial or organizational regulation of electric utilities." Briar contends that this provision

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does not remove small power producers from other aspects of the Commission's regulatory oversight, specifically the Commission's eminent domain jurisdiction.

At the hearing, the Commission noted its concern regarding the role of the New Hampshire Water Resources Board (WRB) in the Project and questioned whether it should be a party to this proceeding. In response thereto, Briar argues in its memorandum that the WRB's status as a co-licensee with Briar under the License does not impair this Commission's jurisdiction. Briar states that WRB participation was a necessary precondition to obtaining the license. New Hampshire law gives the WRB authority over the Project's dam, the York Dam, but does not allow the WRB to transfer ownership of the dam. The WRB is restricted to leasing the dam for not more than 50 years. This conflicts with the License's requirement that Briar obtain "perpetual" rights in the dam. To overcome this problem, Briar states that "an accommodation was reached in which the WRB became a co-licensee of the Project, thus enabling (Briar) to acquire "perpetual" right to the York Dam through the WRB and thus satisfy the conditions of its FERC licensee." Memorandum of Briar, at p. 5.

Briar argues that the WRB is not a necessary party to this petition to acquire the necessary property rights to build the Project. In support thereof, Briar points to the provisions of its lease with WRB which provide that Briar is to perform all the obligations in the License, most notable among which is Briar's need to obtain property rights.

The Landowners agree that the Commission is the appropriate "state court" under 16 U.S.C. §814 to consider Briar's petition. They argue that the phrase, "the state courts," can, and should, be interpreted broadly to allow a licensee to condemn land before a state agency or tribunal, although not literally a state court. The Landowners also concur with Briar's argument that a small power producer is included in the definition of a public utility in RSA 362:2.

Hoyt adopts a literal interpretation of 16 U.S.C. §814 in support of its argument that this Commission is without jurisdiction to entertain Briar's petition. Hoyt argues that Briar is limited in its remedies by that provision to the federal district court or the state courts. "Congress having only authorized these particular proceedings, it is improper for Briar Hydro to seek to proceed before any state administrative body." Memorandum of Hoyt at p. 2.

The Consumer Advocate disagrees with Briar's interpretation of RSA 362:2. It argues that a reading of the statute as a whole does not support Briar's position that small power producers fall

within the definition of a public utility. Moreover, the Consumer Advocate points out that the Commission has never regulated the activities of a small power producer and that RSA 362-A:2 specifically exempts small power producers from the Commission's jurisdiction. If the legislature intended RSA 371 to apply to small power producers, the Consumer Advocate contends it could have amended the statute to do so. Like Hoyt, the Consumer Advocate advocates a literal interpretation of 16 U.S.C. §814 and takes the position that the appropriate forum for Briar is federal or state court.

Subsequent to the hearing the Commission received correspondence from Briar and Hoyt on the issue of federal

district court jurisdiction in this matter. By letter dated August 11, 1986, Hoyt states that paragraph 3 of Briar's Objection to Motion To Dismiss and paragraph 7 of its Memorandum of Law are "inaccurate." It further states as follows:

... with respect to Hoyt Electrical Instrument Works, Inc., a sum substantially in excess of $3,000.00 was offered by the petitioner in connection with the proceedings before the Board of Tax and Land Appeals. Thus, federal jurisdiction is appropriate in the circumstances.

On August 15, 1986, the Commission received Briar's response to the foregoing. It states in pertinent part as follows:

The threshhold amount for federal district court jurisdiction as specified in 16 U.S.C. §814 is the amount claimed by the condemnee, not the amount offered by the condemnor. At no time has Hoyt Electrical Instrument Works, Inc. claimed that the value of the property and rights sought by the petitioner exceeds $3,000.00. Rather, to the extent the parties' negotiations have any relevance, it has been the gist of Hoyt's position that it would resist any taking at any price or value.

Clearly, what the petitioner is willing to offer a potential condemnee to avoid eminent domain litigation has no relevance to the determination whether the amount in controversy exceeds the threshhold for federal court jurisdiction.

... the amount offered to Hoyt Electrical Instrument Works, Inc. in connection with the prior condemnation proceedings before the Board of Tax and Land Appeals pursuant to RSA 498-A's procedures (a total of $4,835.00), included a temporary building easement, valued at $2,500.00, that is no longer needed by the Petitioner and therefore is not at issue in this proceeding. The resultant present offer to Mr. Hilliard's client is thus $2,335.00, below the federal district court's threshhold amount.

III. COMMISSION ANALYSIS

[1] The issue of whether a small power producer is a public utility as defined in RSA 362:2 was previously addressed by the Commission in its December 6, 1985 decision in DE 85-262. That docket involved the petition of Bridgewater Steam Power Company, a small power producer, for an exemption from the Town of Bridgewater zoning ordinance pursuant to RSA 674:30 to allow it to construct, maintain and operate a 15 MW wood-burning facility.[2(108)] In response to arguments similar to those presented in this case, the Commission found that as an

SPP generating electricity for ultimate sale to the public, Bridgewater clearly fell within the definition in RSA 362:2. In Report and Order No. 17,976, the Commission stated at pages 3-4 as follows (70 NH PUC 1013, 1016):

The fact that all producers of

electrical energy are public utilities unless otherwise exempted was acknowledged in RSA Chapter 362-A (LEEPA). LEEPA as passed in 1978, specifically exempted the producers covered by its provisions from being public utilities: "The producers of electrical energy not involving the use of nuclear or fossil fuels with developed output capacity of not more than 5 megawatts shall not be considered public utilities and shall be exempt from all rules, regulations and statutes applying to public utilities." RSA 362-A:2. However, in 1983 the legislature replaced Section 2 by expanding the definition of facilities covered by LEEPA's provisions to include all facilities covered by the federal legislation (the Public Utilities Regulatory Policies Act or PURPA) and specifically eliminated the exemption from public utility status. The exemption was replaced by language that mirrored the language of PURPA and exempted qualifying facilities only from "rules and statutes related to electric utility rates or relative to the financial or organizational regulation of electric utilities." RSA 362-A:2, 1 TR 198-213.[1]

In footnote 1, the Commission stated as follows (70 NH PUC at p. 1016):

Squam Lakes Association has argued that the language in RSA 374C:2 which includes small energy producers within the definition of "public utilities" for the purpose of that Chapter should be read to reflect the legislature's intent to only confer public utility status by specific statutory language. We do not accept the Squam Lakes argument. The language in RSA 374-C:2 was adopted in 1981 at a time when RSA 362-A:2 exempted small power producers from all statutes and regulations governing public utilities. The current RSA 362-A:2 language, enacted in 1983, must be accepted by the Commission as best reflecting the intention of the legislature.

The Commission continued at pages 4-5 as follows (70 NH PUC at p. 1016):

... In amending Section 2, the Senate Committee had three options before it. First, it could respond to the specific concern of the Public Utilities Commission and subject qualifying facilities to the Commission's authority only for the purpose of overseeing safety. Second, it could adopt Representative Leonard Smith's proposed amendment and give the qualifying facility the choice of opting for exempt status. Third, it could eliminate the exemption in LEEPA which would automatically place the qualifying facilities within the definitions of RSA 362:2. These options were outlined in the Commission's testimony presented by its Staff Coordinator of Alternate Energy development (Exh. 7) who also noted in that testimony that one of the effects of making qualifying facilities public utilities was that they could be exempted by the Commission from local zoning decisions. The legislature chose option three and made qualified facilities public utilities.

Like Bridgewater Steam Power Company, Briar is a small power producer. In view of the above, we find that Briar falls within the definition of a public utility in RSA 362:2.

[2] Contrary to the arguments of Briar and the Landowners, it does not automatically follow

from confirmation

of Briar's status as a public utility that the Commission has jurisdiction to entertain its petition. Unlike Bridgewater Steam Power Company's right to obtain an exemption from a town zoning ordinance, Briar's eminent domain power has state and federal law as its source. The federal statute, 16 U.S.C. §814, set forth fully above, provides that a licensee may exercise such power in "the district court of the United States for the district in which such land or other property is located, or in State courts" (emphasis added). As Hoyt correctly points out, the statute's clear and unequivocal language gives the licensee a choice between federal or state court; it makes no mention of administrative bodies. We acknowledge that administrative bodies are vested with some judicial power; however, they are not "courts" in the common and ordinary usage of that word. If Congress had intended to include administrative bodies in §814, it would have so stated.

While state law entitles Briar to exercise its right of eminent domain before the Commision, federal law requires it to exercise its rights in federal or state court. As the parties acknowledge in their memoranda, under the Supremacy Clause of the United States Constitution, federal law prevails in conflicts between state and federal law. The Commission's jurisdiction over a small power producer federal licensee's right to take property by eminent domain has therefore been preempted by Congress. Accordingly, we will dismiss Briar's petition.

It should be emphasized that our decision herein does not result from our choosing between competing policy considerations. As the discussion above clearly indicates, our denial of Briar's petition is based solely on the clear and unambiguous language of §814. However, if exercising jurisdiction over Briar's petition was left to the Commission's discretion, our decision would be same. Given the dominant federal role in the licensing of hydroelectric facilities, we feel that, as a matter of public policy, federal court is the most appropriate forum for FERC licensees to exercise their §814 power of eminent domain.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Briar Hydro Associates' petition to acquire property pursuant to RSA 371 be, and hereby is, dismissed.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of August, 1986.

FOOTNOTES

[1]The Staff did not submit a memorandum.

[2]RSA 674:30 provides as follows:

Exemptions. Structures used or to be used by a public utility may be exempted from the operation of any regulation made under this subdivision if, upon petition of such utility, the

public utilities commission shall after a public hearing decide that the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public.

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NH.PUC*08/27/86*[60861]*71 NH PUC 515*Southern New Hampshire Water Company, Inc.

[Go to End of 60861]

71 NH PUC 515

Re Southern New Hampshire Water Company, Inc.

Intervenor: Town of Litchfield

DE 86-107, Order No. 18,384

New Hampshire Public Utilities Commission

August 27, 1986

PETITION by a water utility for an exemption from local municipal zoning ordinances so that it could construct a water treatment plant in an area zoned for residential purposes; granted.

Municipalities, § 12 — Ordinances — Zoning provisions — Exemptions — Public interest — Water treatment plant.

A water utility was granted an exemption from local municipal zoning and site plan ordinances so that it could purchase property and construct a new water treatment plant in an area zoned purely for residential uses, because exceptions to such ordinances are permissible if they are necessary for the public good, and because, in the instant proceeding, the public interest required that a new source for water be developed as an alternative to diminishing and polluted ground water supplies, as no other suitable site was available.

APPEARANCES: Edmund J. Boutin for the petitioner; Jay L. Hodes for the Town of Litchfield.

By the COMMISSION:

REPORT

On March 31, 1986, Southern New Hampshire Water Co., Inc. (Southern) filed a petition for exemption from the Town of Litchfield's Zoning and Site Plan Review Ordinances in accordance with the provisions of RSA 674:30, or from any other regulations the Town of Litchfield may have promulgated under RSA 672-677.

The proposed facility is a five million gallons per day (MGD) water plant for the treatment of water from the Merrimack River. Southern asserts that the facility is necessary to provide adequate water to its present and prospective customers in Hudson & Litchfield and the

surrounding service areas. The plant will have an initial nominal capacity of five MGD and a peak capacity of seven MGD. The New Hampshire Water Supply and Pollution Control Commission has granted conceptual approval for this plant.

By this petition, Southern seeks to construct a water treatment plant in a building of 33,800 square feet on Lot 134, Map 6 of the Litchfield Tax Map, and more particularly described as lots 7, 8 and 9 of the Broadview Farms Subdivision. The subject land is under option to Southern and is in a residentially zoned area which does not

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provide for facilities of the type which Southern proposes to construct.

Southern has the option to buy the proposed site, consisting of three lots, for $75,000. During the hearing, Southern indicated that if they are ultimately unable to use the proposed site, they could resell the lots at a substantial profit. Tr. 141-142. The option, which has already been extended several times pending resolution of this docket, expires shortly.

SOUTHERN'S POSITION

Southern testified to current and continuing growth within its service territory which includes Hudson, Litchfield, Windham and significant portions of Londonderry, and smaller areas in the Towns of Derry, and Pelham. The current needs of these systems or communities are being met exclusively with ground water with an approximate maximum demand of three million gallons per day (MGD) and average day of two MGD. Southern anticipates that by the year 2000 the maximum daily usage will be 14.2 MGD and the average daily usage 9.5 MGD. Southern believes as a result of extensive ground water exploration and evaluation that it cannot meet these demands from available ground water sources.

Southern takes the position that the site in question is the optimal location for access to its planned transmission mains that will eventually provide water service to its satellite systems in southern New Hampshire. Potential alternative sites in Litchfield and Hudson would require the installation of raw water pipe lines to bring water to the treatment plant since these sites do not front on the Merrimack River. An additional consideration in the site selection is the State of New Hampshire requirement that a water intake on the Merrimack River be upstream of the Town of Merrimack and the City of Nashua sewerage treatment plant outfalls. A site north of the Town of Litchfield would be in the proximity of the City of Manchester sewerage outfall.

Southern's witness further testified that landscaping i.e. the use of earthen mounds, or berms, combined with selective plantings and the design of visible structures would be such that a minimum will be visible from adjacent lots and that portion of the plant that is seen will be of a design consistent with a residential type of construction. The Southern witness also stated that plant and equipment have been designed such that operating noise levels would not be heard at a distance of 250 feet from the plant.

Southern concludes that the evidence presented demonstrates that the proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public. Southern's memorandum of law dated May 8, 1986, at 1. There is a singular public interest to be served by public utilities which overrides strict local considerations, particularly where a State

has an agency charged with assuring the availability of public utility services at reasonable costs to customers. 2 Anderson American Law Zoning 2d. (1976), Section 12.28 at 466.

TOWN OF LITCHFIELD'S POSITION

The Town of Litchfield is concerned that Southern did not adequately research the availability of other sites on which to locate the treatment plant rather than in a residential area soon to be developed. They questioned that

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Southern had sought to purchase land in Litchfield's industrial zoned area and if available, what additional costs would be incurred since the area would not front on the Merrimack River. The town also questioned why Southern's plant could not be located between the Nashua and Merrimack sewerage treatment plants which would also move the location out of a residential area.

By letter dated June 13, 1986 addressed to the Commission's Executive Director and Secretary, the Attorney for the Town of Litchfield summarized his client's position which in brief, is as follows:

A. Litchfield came away from negotiations between the various parties with the impression that Pennichuck Water Works would be amenable to a cooperative sharing of their water treatment plant with Southern, thereby eliminating the need for the proposed facilities. Pennichuck would insist on some return to its investors as a result. Litchfield believes that it would be reasonable and realistic that some consideration would have to be provided Pennichuck if they are going to share the fruits of their investment.

B. It is Litchfield's understanding that the Water Supply and Pollution Control Commission is not in favor of the location in the southern portion of Litchfield, "if land for a northern facility is available." This would mean that the Water Supply and Pollution Control Commission has not actually vetoed or opposed a southerly site, leaving open the possibility that a southerly location should be further explored and may be a preferable alternative to the present proposed site.

C. Although zoning exemption would still be necessary to construct the proposed facilities on a different northerly location, the town is willing to support Southern in terms of a special Town Meeting, zoning changes, variance, etc., if a mutually agreeable and suitable site were found.

D. For the above cited reasons, Litchfield believes that Southern's proposal is premature and inappropriate in that further investigation of possible alternatives should be conducted before a major capital expansion is undertaken by Southern.

At the hearing, Counsel representing the Town of Litchfield agreed that the plant is necessary. He recognized that the need for adequate water supplies is something that effects the whole community. Tr. 184. Litchfield position is simply that the proposed site is not the best site and that not "enough homework had been done in choosing a site." Id.

COMMISSION ANALYSIS

RSA 674:30 provides as follows:

674:30 Exemptions. Structures used or to be used by a public utility may be exempted from the operation of any regulation made under this subdivision if, upon petition of such utility, the public utilities commission shall after a public hearing decide that the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public.

To grant a petition under this authority, the Commission must find:

1. That the utility had done everything reasonable to find alternate water sources.

2. That the use of any alternate sources would impose unnecessary hardship on the utility or its customers.

Re Public Service Co. of New Hampshire, 66 NH PUC 223 (1981).

The New Hampshire Supreme Court also set forth the appropriate areas of inquiry as follows:

1. the suitability of the location chosen for the utility structure;

2. the physical character of the uses in the neighborhood;

3. the proximity of the site to residential development;

4. the effect on abutting owners;

5. its relative advantages and disadvantages from the standpoint of public convenience and welfare;

6. whether other and equally serviceable sites are reasonably available by purchase or condemnation which would have less impact on local zoning scheme; and

7. whether any reasonable injury to abutting or neighboring owners can be minimized by reasonable requirements relating to the physical appearance of the structure, adequate lot size, front and rear setback as well as appropriate sideline regulating, the positioning of the structure on the lot, and by proper screening of the facility by trees, evergreens, or other suitable means.

Re Milford Water Works, 126 N.H 127, 131, 489 A.2d 627 (1985).

All parties agree that the project is necessary. The issue here is simply whether the proposed site is the most appropriate site for the proposed project. From evidence presented in this docket and from the Commission's own knowledge and investigation, it seems apparent that water from the Merrimack River is of a quality that can be treated for potable human consumption as is done in New Hampshire for the city of Nashua and downstream for consumption by Massachusetts communities. It is also apparent that the further away from existing sewerage treatment plant outfalls, and storm water outfalls, the less treatment is necessary to produce potable water.

Southern's real estate planning consultant testified that to his knowledge there is no land on the Merrimack River, in the Town of Hudson, zoned for industrial use that meets the space requirements necessary for the planned treatment plant. His testimony also indicates that land within the Litchfield Industrial Park is not presently for sale and by definition cannot be used for

commercial or industrial use because of the lack of access to Route 102.

Industrial zoned land either adjacent to the Merrimack River, or in the area of Southern's operations, apparently is not available. Land further north in Litchfield, adjacent to the river, is also zoned residential and would require a variance. In proceeding northward the outfall of the City of Manchester's sewage treatment plant becomes a factor.

Southern asserted at the hearings that if they were to exercise their option to purchase the three lots in question, and were ultimately unable to proceed with the project at that site, they

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would probably be able to resell the property at a price of between $135,000 and $140,000, obviously a substantial profit. Tr. 141-142.

The Commission does not mandate where a water utility is to seek the supply necessary to accommodate the reasonable demands of its customers. We are required, however, to address the above cited issues in determining whether proposed exemption from zoning is reasonably necessary in the public good. Southern testified that it has discussed long term supply contracts with Pennichuck Water Works with what it considers to be unfavorable results. We are concerned, however, over whether sufficient analysis has been performed of the various possible supply options available to Southern. We are also mindful that Southern has purchased many small unconnected water systems throughout southern New Hampshire and that the capacity and quality of some of these sys

tems are marginal. We must also consider the rapid growth in the areas that Southern has already been enfranchised with, and other potential areas in southern New Hampshire.

The record is not fully developed relating to the areas of concern cited by Litchfield. We agree with Litchfield that additional study is required before a final determination is made as to whether the proposed site is indeed the most appropriate site for the project. However, we must also keep in mind that Southern's option on the land is about to expire.

We therefore will grant the exemption to the extent required to allow Southern to exercise its option to purchase the land at its presently available advantageous price. However, we condition this exemption by requiring that Southern provide further analysis of all options available, including wholesale supplies from Pennichuck Water Works or Manchester Water Works for review by this Commission prior to any further capital investments in a treatment plant at the proposed site. Southern will not be prejudiced by this condition because it can resell the land at a profit if the site is ultimately deemed inappropriate for the proposed facility. The public interest is also preserved in that additional time is hereby allowed to complete our investigation before unrecoverable funds are expended.

We agree with the parties that Southern must expand its capacity to supply water to its present and future customers. The Commission has long favored the development of regional water supplies and has encouraged larger and established water companies such as Southern to enlarge their franchise arreas to mitigate the problems New Hampshire is increasingly facing due to inadequate service and supply from many smaller water companies. With growing problems of ground water pollution, smaller companies find it difficult, if not impossible, to finance the

additional capacity required to provide adequate and reliable service to its customers.

The additional investigation mandated above, therefore, must proceed expeditiously to insure that the project proceeds without undue delay.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is hereby incorporated by reference; it is hereby

ORDERED, that the petition for exemption from the Town of Litchfield

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Zoning and Site Plan Review Ordinances in accordance with the provisions of RSA 674:30, or from any other regulations the Town of Litchfield has promulgated under RSA 672-377 is hereby granted subject to the conditions set forth in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of August, 1986.

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NH.PUC*08/28/86*[60862]*71 NH PUC 520*PRS (Derry), Inc.

[Go to End of 60862]

71 NH PUC 520

Re PRS (Derry), Inc.

Intervenor: Public Service Company of New Hampshire

DR 86-48, Third Supplemental Order No. 18,386

New Hampshire Public Utilities Commission

August 28, 1986

ORDER clarifying the requirements for amended petitions.

Rates, § 237 — Schedules and procedure — Filing of schedules — Withdrawal and amendments.

Just because the commission requires a utility to amend a filing or submit additional data before the commission will consider approving the filing does not mean that the utility must withdraw the filing and submit a whole new petition.

By the COMMISSION:

SUPPLMENTAL ORDER

WHEREAS, On February 12, 1986 PRS (Derry), Inc. (PRS) filed a longterm petition for its proposed 10.3 MW resource recovery project, pursuant to Re Small Energy Producers and Cogenerators, DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984) (DE 83-62) and 70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85-215); and

WHEREAS, Order No. 18,176 (71 NH PUC 181) in this docket approved the petition nisi on March 14, 1986, PSNH filed comments and exceptions and requested a hearing on the merits on April 3, 1986 and PRS filed its response on April 18, 1986; and

WHEREAS, the Commission staff issued data requests on May 8, 1986 and PRS responded on June 6, 1986; and

WHEREAS, on July 28, 1986 the Commission issued Order No. 18,352 (71 NH PUC 433) denying PRS' request for a thirty year rate but allowing PRS to apply for a twenty year rate pursuant to DR 85-215 supra, and implicitly denying PSNH's motion for a hearing on the merits; and

WHEREAS, on August 11, 1986, by Order No. 18,366 (71 NH PUC 481), the Commission granted a 20 year long term rate to PRS; and

WHEREAS, PSNH filed a Motion for Rehearing on Order No. 18,352 on August 18, 1986 asserting that

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PSNH had been denied meaningful participation in the process of determining PRS' ability to fulfill its representations, that the PRS filing was defective because it requested 30 year rates and it had not assured the Commission that it could be on-line no later than August 30, 1988 and it was improper for the Commission to allow PRS to cure those defects; and

WHEREAS, information regarding the issues raised by PSNH in its comments has been available at the Commission since June 6, 1986 for PSNH's review had PSNH wished to participate in the Commission analysis of the PRS project; and

WHEREAS, PSNH could have initiated discovery of its own any time following the PRS rate application in February under the practices and procedures established in the Settlement agreement signed by PSNH and adopted by the Commission in DE 83-62 (see also Re SES Concord Co., L.P., 71 NH PUC 437 [1986]); and

WHEREAS, the Commission addressed its concern vis a vis PRS' ability to achieve adequate milestones in order to reach commercial operation by August 30, 1988 by requiring that PRS complete its financing by January 1, 1987; and

WHEREAS, Commission practice and procedure does not customarily compel petitioners to withdraw and refile petitions deemed by the Commission to require amendment before approval; and

WHEREAS, the Motion for Rehearing contains no assertion of fact and no argument that was not fully considered by the Commission in reaching its Decision in Order No. 18,352; and

WHEREAS, the Commission finds that the Decision is not unlawful or unreasonable; it is therefore

ORDERED, that the August 18, 1986 PSNH Motion for Rehearing be, and hereby is, denied, and it is

FURTHER ORDERED, that Order No. 18,352 and Order No. 18,366 be, and hereby are, reaffirmed.

By Order of the Public Utilities Commission of New Hampshire this twentyeighth day of August, 1986.

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NH.PUC*08/28/86*[60863]*71 NH PUC 522*Gunstock Glen Water Company

[Go to End of 60863]

71 NH PUC 522

Re Gunstock Glen Water Company

DF 85-311, DF 86-187, Order No. 18,387

New Hampshire Public Utilities Commission

August 28, 1986

ORDER discussing the requirement of filing annual reports and the imposition of fines for failing to so file.

Fines and Penalties, § 8 — Failure to file annual reports — Defenses and excuses — Opportunity to explain — Continuing obligations.

The fact that a small water utility eventually did file annual reports with the commission, almost two years after first ordered to do so, did not automatically relieve the utility of its obligations to pay fines that had been imposed on it for its failure to file annual reports, but because the utility was very small and payment of the fines could seriously jeopardize its financial status, the utility was given an opportunity to explain its failure to file before the commission took steps to begin collecting the fines.

By the COMMISSION:

REPORT

On September 3, 1985, the Commission issued an Order of Notice opening docket number DF 85-311 for the purpose of determining whether Gunstock Glen Water Co. (Gunstock) should be fined pursuant to RSA 374:17 for failure to file an F-16 Annual Report for the year ended December 31, 1984 by March 31, 1985 as required by N.H. Admin. Rule Nos. Puc 607.06 and

609.05. The Order of Notice scheduled a hearing for September 23, 1985 to allow Gunstock an opportunity to show cause why it should not be fined $100 per day for failure to file the required annual report. Gunstock failed to appear at the September 23 hearing and accordingly the Commission issued Order No. 17,941 on November 12, 1985 (70 NH PUC 923) ordering Gunstock Glen to forfeit $100 to the Commission by December 12, 1985. The Order also provided that if payment was not received by that date, Gunstock was to forfeit to the Commission $100 each week thereafter until the report is filed and/or the Commission issues a further Order.

The Commission issued another Order of Notice on June 13, 1986 opening docket number DF 86-187 for the purpose of determining whether Gunstock should be fined pursuant to the above-stated statute for failure to file an F-16 Annual Report for the year ended December 31, 1985. As of that date, Gunstock had not responded to

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Order No. 17,941. The Order of Notice scheduled a hearing for September 9, 1986 to allow Gunstock an opportunity to show cause why it should not be fined for failure to file the required report.

On June 9, 1986, the Commission received a petition from Charles E. Carroll and Lakes Region Construction Company (Lakes Region) requesting a license to cross state-owned railroad tracks in Laconia, New Hampshire pursuant to RSA 374. The petition was signed by Bernice Paradise, Lakes Region's president, who along with her husband Maurice Paradise, are the owners of Gunstock. An Order of Notice was issued on July 1, 1986 setting a hearing for July 31, 1986. Appearing at the hearing in support of the petition was Maurice Paradise. After completing testimony on the petition, the presiding officer and Commission Staff questioned Mr. Paradise about Gunstock's failure to respond to the aforementioned dockets. Mr. Paradise testified that he had no knowledge of the pending dockets (and outstanding fine) and that all of Gunstock's affairs were handled by his wife. The presiding officer informed Mr. Paradise that the Commission would issue no license until the annual reports were filed and gave him until August 15, 1986 to do so. Both annual reports have recently been filed.

The filing of the 1984 annual report does not automatically relieve Gunstock of its obligation to pay the $100 per week fine established in Order No. 17,941. Given that Gunstock's filings were 34 weeks after the December 12, 1985 deadline established in Order No. 17,941, its fine now totals $3,400.00. In light of Gunstock's continued and, thus far, unjustified and unexplained failure to respond to this Commission's orders, we feel that all, or at least some portion, of the above-stated fine should be paid. However, we also recognize that such a fine could have a serious impact on a small company like Gunstock. We therefore will allow Gunstock an opportunity — which it has thus far ignored — to show cause why the above-stated fine should not be imposed for failure to file the 1984 annual report and why a similar fine should not be imposed for failure to file the 1985 annual report. Thus, the scope of the hearing currently scheduled for September 9, 1986 on Gunstock's failure to file its 1985 annual report will be expanded to include whether the above-stated fine should be imposed. Should Gunstock fail to appear the Commission will automatically impose the fine and take appropriate action to collect it.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the scope of the September 9, 1986 hearing be, and hereby is, expanded to include the issue of whether the $3,400.00 fine should be imposed on Gunstock Glen Water Co. for failure to file the 1985 annual report.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of August, 1986.

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NH.PUC*08/28/86*[60864]*71 NH PUC 524*Manchester Water Works

[Go to End of 60864]

71 NH PUC 524

Re Manchester Water Works

DE 86-189, Order No. 18,388

New Hampshire Public Utilities Commission

August 28, 1986

ORDER nisi authorizing a water utility to extend its service area.

Service, § 210 — Extensions — Water — New territory.

A water utility was authorized to extend its mains and service into an area outside its then existing service area where no other water utility had a franchise right in the area sought, the utility agreed that the new area would be served under its regularly filed tariff, and the town to be served was in accord with the service extension; however, a request by the utility that its extension be subject to customers consenting to pay for a proposed Merrimack river source development charge was rejected without prejudice.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed June 17, 1986, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Londonderry; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Londonderry, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will [sic] in the public good; and

WHEREAS, the Commission also finds that the public should be afforded an opportunity to file comments and/or request an opportunity to be heard on the petition; it is hereby

ORDERED NISI, that Manchester Water Works be, and hereby is, authorized pursuant to RSA 374:22 to extend its mains and service in the Town of Londonderry as shown on a map on file with the Commission and more particularly described as follows:

Beginning at the intersection of Auburn Road and Old Derry Road, Londonderry, New Hampshire, thence easterly along the path and contours of Auburn Road to the

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Auburn town line. Meaning and intending to supply water service to all lots fronting on Auburn Road between Old Derry Road and the Auburn town line.

and it is

FURTHER ORDERED, that Manchester Water Works effect said notification by publication of an attested copy of this Order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than ten (10) days after the date of this Order and designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, that the contingency, as specified by Manchester in the petition, that customers requesting water service from this extension be subject to the terms and conditions of the proposed Merrimack River Source Development Charge be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Manchester Water Works proposed that customers requesting water service in the above described franchise area be required to sign a written agreement stating their consent to pay the proposed Merrimack River Source Development Charge if and when it is approved by the Commission be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that any interested party may file written comments and or request an opportunity to be heard in this matter within twenty (20) days after the date of this Order; and it is

FURTHER ORDERED, that such authority shall be effective thirty (30) days from the date of this Order unless a request for hearing is filed with the Commission as provided above or unless the Commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of August, 1986.

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[Go to End of 60865]

71 NH PUC 526

Re Concord Electric Company

Intervenors: UNITIL Corporation, and Exeter and Hampton Electric Company

DE 86-228, Order No. 18,389

New Hampshire Public Utilities Commission

September 2, 1986

ORDER nisi granting a waiver of commission rules to allow an electric utility to implement a winter period electric service protection program designed to protect residential customers from termination.

Payment, § 33 — Termination of electric service — Winter period service protection program — Waiver of commission rules.

A waiver of commission rules was granted to allow an electric utility to implement a winter period electric service protection program designed to protect residential customers from termination for nonpayment; a sister utility had been previously permitted to implement a nearly identical program. [1] p. 527.

Rules and Regulations — Commission rules — Grounds for waiver.

Pursuant to New Hampshire Administrative Rule Nos. Puc 201.05 and 301.01 (b), the commission may waive the application of any commission rule where good cause appears and justice may so require. [2] p. 527.

By the COMMISSION:

ORDER

WHEREAS, on August 6, 1986, Concord Electric Company (Concord) filed a petition to waive the application of N.H. Admin. Rules Puc 303.08 (k) (2), (3) and (6) to Concord for the 19861987 winter period and to institute an Electric Service Protection (ESP) program; and

WHEREAS, the proposed ESP program is identical in all material respects (including waiver of the above-stated rules) to that of its sister company under the common ownership of UNITIL Corporation, Exeter and Hampton Electric Company, (Exeter and Hampton) initially approved by the Commission and implemented in the winter of 19831984 (Order No. 16,751 [68 NH PUC 660]) and extended on a yearly basis thereafter (1984-1985: Order No. 17,248 [69 NH PUC 603] and 1985-1986: Order No. 17,898 [70 NH PUC 844]); and

WHEREAS, by Order of even date, the Commission has allowed Exeter and Hampton to

continue its ESP program and accordingly waived the application of the above-stated rules for the 19861987 winter period; and

WHEREAS, according to the petition, Concord has reviewed the history of Exeter and Hampton's ESP program and determined that such a program can be appropriately implemented in

its service area on the same basis as it has been in effect for the past three winters in the Exeter and Hampton service area; and

WHEREAS, it appears that Concord should be allowed to institute an ESP program; and

[1, 2] WHEREAS, pursuant to N.H. Admin. Rule No. Puc 201.05 and 301. 01 (b), the Commission may waive the application of any Commission rule where good cause appears and justice may require; and

WHEREAS, it appears that good cause and justice requires that the application of the above-described Commission rules to Concord be waived for the 1986-1987 winter period; and

WHEREAS, the Commission also finds that Concord's ratepayers should be afforded an opportunity to file comments and/or request an opportunity to be heard on the ESP program; it is hereby

ORDERED NISI, that Concord be, and hereby is, authorized to implement the above-described ESP program for 1986-1987 winter period subject to the conditions set forth in Report and Order No. 17,248 dated October 12, 1984 (69 NH PUC 603 [1984]), wherein the Commission approved the initial waiver of the application above-stated rules to Exeter and Hampton and allowed Exeter and Hampton to implement the ESP program; and it is

FURTHER ORDERED NISI, that the application of N.H. Admin. Rule Nos. Puc 303.8 (K) (2), (3) and (6) to Concord be, and hereby is, waived for the 1986-1987 winter period; and it is

FURTHER ORDERED, that the Company shall prepare an evaluation of the 1986-1987 ESP Program and submit it to the Commission no later than August 1, 1987; and it is

FURTHER ORDERED, that Concord implement the same program as that approved for Exeter and Hampton and administer the program in the same fashion as Exeter and Hampton; and it is

FURTHER ORDERED, that Concord shall prepare and file an evaluation of the ESP program by August 1, 1987; and it is

FURTHER ORDERED, that Concord shall notify all persons desiring to be in this matter by causing an attested copy of this Order to be published once in a newspaper having general circulation in that portion of the State in which Concord provides service, said publication to be made no later than ten (10) days after the date of this Order and designated in an affidavit to be made on a copy of this Order and filed with the Commission within seven (7) days after said publication; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request

an opportunity to be heard in this matter within twenty (20) days after the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective thirty (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 second day of September, 1986.

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NH.PUC*09/02/86*[60866]*71 NH PUC 528*Exeter and Hampton Electric Company

[Go to End of 60866]

71 NH PUC 528

Re Exeter and Hampton Electric Company

DE 86-210, Order No. 18,390

New Hampshire Public Utilities Commission

September 2, 1986

ORDER nisi authorizing an electric utility to continue its winter period electric service protection program.

Payment, § 33 — Termination of electric service — Winter period service protection program — Waiver of commission rules.

An extension of a waiver of commission rules was granted to allow an electric utility to continue a winter period electric service protection program designed to protect residential customers from termination for nonpayment. [1] p. 528.

Rules and Regulations — Commission rules — Grounds for waiver.

Pursuant to New Hampshire Administrative Rule No. Puc 201.05 and 301.01 (b), the commission may waive the application of any commission rule where good cause appears and justice may so require. [2] p. 528.

By the COMMISSION:

ORDER

WHEREAS, on October 15, 1985, the Commission issued Order No. 17,898 in Docket No. DE 85-322 (70 NH PUC 844) which granted Exeter & Hampton Electric Company (Company) a one-year extension, until December 1, 1986, of a waiver from the application of the Commission's winter termination rules set forth in N.H. Admin. Rules Puc 303.08 (K) (2) (3) and

(6), conditioned upon the Company's continuation of its Electric Service Protection (ESP) Program; and

WHEREAS, in Order No. 17,898, the Commission also ordered the Company to prepare and submit an evaluation of the ESP Program for the period 1985 - 1986; and

WHEREAS, on July 7, 1986, the Company filed a petition to extend the above-mentioned waiver through the December 1986 to December 1987 pe- riod to allow the Company to continue its ESP Program; and

WHEREAS, on August 5, 1986, the Company submitted an evaluation of the ESP program for the December 1985 to December 1986 period; and

WHEREAS, after a complete review of the Company's August 5, 1986 filing, the Commission finds that the Company's efforts were constructive and continuation of the ESP program should be encouraged; and

[1, 2] WHEREAS, pursuant to N.H. Admin. Rule No. Puc 201.05 and

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301.01(b), the Commission may waive the application of any Commission rule where good cause appears and justice may require; and

WHEREAS, it appears that good cause and justice requires that the application of the above-described Commission rules to the Company be waived for another year; and

WHEREAS, the Commission finds that the Company's ratepayers should be afforded an opportunity to file comments and/or request an opportunity to be heard on the ESP program; it is hereby

ORDERED NISI, that the Company be, and hereby is, authorized to continue the ESP program for the December 1986 to December 1987 period subject to the conditions set forth in Report and Order No. 17,248 dated October 12, 1984 (69 NH PUC 603 [1984]), wherein the Commission approved the initial waiver of the application of the above-described rules to the Company; and it is

FURTHER ORDERED NISI that the application of N.H. Admin. Rules Nos. Puc 303.8 (K) (2), (3) and (6) to the Company, be, and hereby is waived until December 1, 1987; and it is

FURTHER ORDERED, that the Company shall prepare an evaluation of the 1986-1987 ESP Program and submit it to the Commission no later than August 1, 1987; and it is

FURTHER ORDERED, that the Company shall notify all persons desiring to be in this matter by causing an attested copy of this Order to be published once in a newspaper having general circulation in that portion of the State in which the Company provides service, said publication to be made no later than ten (10) days after the date of this Order and designated in an affidavit to be made on a copy of this Order and filed with the Commission within seven (7) days after said publication; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter within twenty (20) days after the date of this Order; and

it is

FURTHER ORDERED, that this Order Nisi shall be effective thirty (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 second day of September, 1986.

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NH.PUC*09/03/86*[60867]*71 NH PUC 530*Southern New Hampshire Water Company, Inc.

[Go to End of 60867]

71 NH PUC 530

Re Southern New Hampshire Water Company, Inc.

DR 86-131, Second Supplemental Order No. 18,391

New Hampshire Public Utilities Commission

September 3, 1986

ORDER authorizing a water utility to implement temporary rates.

Rates, § 630 — Temporary rates — Statutory authority.

Pursuant to state statute RSA 328:27, the commission has discretionary power to set temporary rates for utility service when such rates are in the public interest. [1] p. 530.

Rates, § 630 — Temporary rates — Overand underrecoveries — Recoupment.

Any overrecovery or underrecovery resulting from temporary rates is subject to recoupment. [2] p. 530.

Rates, § 630 — Temporary rates — Water service — Regulatory lag.

A water utility's request for temporary rates at the level of their current permanent rates was granted; temporary rates were found to be in the public interest in that they would protect both the utility and its ratepayers from any possible adverse effects resulting from the regulatory lag between the filing of the rate request and the implementation of permanent rates. [3] p. 531.

Rates, § 630 — Temporary rates — Effective date.

Absent extraordinary circumstances warranting an earlier effective date, temporary rates should become effective on the date of the order implementing the temporary rates. [4] p. 531.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

AUTHORIZATION OF TEMPORARY RATES - September 3, 1986

On July 7, 1986, Southern New Hampshire Water Company, Inc. (Company) requested implementation of temporary rates at the level of their current permanent rates. The Company requested that these temporary rates become effective on June 16, 1986. The Commission, via Order attached hereto, grants the requested temporary rate request for service rendered on and after the effective date of the attached order.

[1, 2] The Commission's power to set temporary rates is explicitly authorized by statute. N.H. Rev. Stat. Ann. §328:27. The Commission's power to set such rates is discretionary and shall be exercised only when such rates are in the public interest. Id. The Commission's duty to investigate temporary rate requests are less than is required in setting permanent rates. Public Service Co.

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of New Hampshire v. New Hampshire, 102 N.H. 66, 28 PUR3d 404, 150 A.2d 810 (1959). Any overrecovery or underrecovery resulting from the temporary rates will be addressed by allowing the customers or company recoupment of such overrecovery or underrecovery, respectively. See New England Teleph. & Teleg. Co. v. New Hampshire, 103 N.H. 394, 40 PUR3d 525, 173 A.2d 728 (1961).

[3] In the instant case, the Commission finds that the evidence before it does not conclusively show that the Company's current rates are deficient or excessive. Full investigation in the permanent rate case may result in a rate increase or a rate reduction. Nevertheless, the Company seeks temporary rates to protect itself from regulatory lag between its filing of the rate request and the implementation of permanent rates.

It is unclear in this instance that the Company needs such protection, or that merely protecting the Company in this manner is in the public interest. However, since such temporary rates protect both the public and the Company, in this instance the Commission finds that temporary rates at current levels are in the public interest.

[4] The Commission believes that temporary rates should become effective on the effective date of the attached order. Such action is consistent with past Commission practice on this issue as described in Docket No. DR 85-304, Re Concord Steam Corp., 71 NH PUC 104 (1986) (Order No. 18,095). In Re Concord Steam Corp., the Commission stated that (71 NH PUC at p. 108):

... absent extraordinary circumstances warranting an earlier effective date, the Commission will generally exercise its discretion by establishing the issuance date of the Commission's order as an effective date for temporary rates.

The Commission finds no evidence showing extraordinary circumstances exist in this case. Thus, the Commission finds the issuance date of the attached order is the appropriate date for the implementation of temporary rates.

Our Order will issue accordingly on this date of September 3, 1986.

SUPPLEMENTAL ORDER

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

ORDERED, that Southern New Hampshire Water Company, Inc. is hereby authorized to implement temporary rates for service rendered on and after September 3 , 1986.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1986.

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NH.PUC*09/03/86*[60868]*71 NH PUC 532*Claremont Gas Light Company

[Go to End of 60868]

71 NH PUC 532

Re Claremont Gas Light Company

DR 86-190, Second Supplemental Order No. 18,392

New Hampshire Public Utilities Commission

September 3, 1986

ORDER closing a docket on proposed gas service tariff revisions.

Rates, § 245 — Rejection by commission — Docket closing — Natural gas utility.

A docket opened for the purpose of considering a proposed increase in gas rates was closed following rejection of the proposed increase and denial of a motion for rehearing of that rejection.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on June 17, 1986, Claremont Gas Light Company (Claremont) filed certain revisions to its tariff proposing to increase its annual revenues in the amount of $119,669 effective June 20, 1986; and

WHEREAS, after due consideration, the Commission issued Order No. 18,307 on June 20, 1986 rejecting said tariff changes pursuant to RSA 378:3; and

WHEREAS, on July 2, 1986, Claremont filed a motion for rehearing pursuant to RSA 541:3; and

WHEREAS, on July 22, 1986, the Commission issued Supplemental Order No. 18,342 which set a hearing for August 8, 1986 to consider Claremont's argument on whether the motion for rehearing should be granted; and

WHEREAS, at the August 8, 1986 hearing the Commission heard Claremont's arguments in support of its motion and thereafter unanimously denied the motion; it is hereby

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

By order of the Public Utilities Commission of New Hampshire this third day of September, 1986.

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NH.PUC*09/03/86*[60869]*71 NH PUC 533*Lakes Region Construction Company, Inc. et al.

[Go to End of 60869]

71 NH PUC 533

Re Lakes Region Construction Company, Inc. et al.

Intervenor: Department of Transportation

DE 86-184, Order No. 18,393

New Hampshire Public Utilities Commission

September 3, 1986

ORDER granting a license to install a sewer line under state-owned land.

Certificates, § 76 — License to install a sewer line under state-owned land — Grounds for granting.

A license to install a sewer line under railroad tracks on state-owned land was granted to an individual in order to enable him to connect his residence to the municipal sewer line; the license was approved based on a finding that the individual (1) had received or would receive approval to install the line from all other state and municipal regulatory bodies, (2) had obtained a permit from the municipality to tie into its sewer line, (3) had entered a license agreement with the Department of Transportation's Bureau of Railroads, and (4) had complied with the requirements of state statute RSA 371:17.

APPEARANCES: Maurice J. Paradise, President, Lakes Region Construction Co. on behalf of Charles Carroll; John Clement, Railroad Administrator, Bureau of Railroads, Department of Transportation on behalf of the Department; Robert Lessels, Water Engineer, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On June 12, 1986, Lakes Region Construction Co., Inc. (Lakes Region) and Charles Carroll filed a petition seeking a license to cross railroad tracks owned by the State of New Hampshire in Laconia, New Hampshire. An Order of Notice was issued on July 1, 1986 setting a hearing for July 31, 1986, at which time no one appeared in opposition to the petition. Offering testimony and exhibits on behalf of Lakes Region and Charles Carroll was Maurice J. Paradise, Lakes Region's President. John Clement, Railroad Administrator for the Department of Transportation's (DOT) Bureau of Railroads testified on the DOT's behalf.

II. APPLICABLE LAW

371:17 Petition. Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or

conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, "public waters" are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility.

III. FINDINGS

Mr. Carroll seeks a license to install a sewer line under state-owned railroad tracks which will enable him to connect his residence in the Birch Haven development on Paugus Bay in Laconia, New Hampshire to the Laconia sewer line. The location of the crossing is set forth in detail in Exhibit 1, the site location plan of the sewer plan. The line, a 10 inch ductile line covering an 8 inch p.v.c. sanitary line, will be installed by Lakes Region, an excavation contracting company located in Laconia. It's principal, Mr. Paradise, a certified operator of the horizontal boring machine that will be used to excavate the area under the tracks, has performed many similar excavations over the past 15 years. Lakes Region plans to commence installation as soon as all regulatory approvals have been obtained.

Mr. Carroll has received or will receive approval from the requisite state and municipal regulatory bodies to perform the sewer line installation. In addition to obtaining a permit from Laconia to tie into its sewer line, he entered into a license agreement with the DOT's Bureau of Railroads which, according to Mr. Clement, has been reviewed and approved by the Attorney General's office and will be submitted for Governor and Executive Council approval once Mr. Carroll has obtained a Commission license.

At the hearing, Mr. Paradise testified that as a result of recent discussions with the city, Mr. Carroll wanted to expand the size of the line to 14 inches to tie in four other Birch Haven residences. Mr. Clement pointed out that any such changes would require a new license agreement which, like the existing one, would have to be reviewed and approved by the Attorney General's office prior to submission to the Governor and Council. In light of those developments, the hearing examiner suspended the hearing to allow Mr. Carroll and Lakes Region to obtain a

new license and notified the parties that a further hearing would be scheduled once the new license agreement was executed. Thereafter, by letter dated August 15, 1986, Mr. Paradise informed the Commission that Mr. Carroll had decided to install the line as per the original plan and requested that the Commission issue its decision on the basis of the record at the July 31 hearing.

Upon review of the record, we find the proposed crossing to be in the public interest. Accordingly, we will grant Mr. Carroll's petition. This Report and Order shall constitute a license in the context of RSA 371:17. This license grants Mr. Carroll permission to install only the above-described sewer line at the above-described location. Should

the line be enlarged to accommodate additional residences in the future, a new license agreement with the DOT and, accordingly, a new Commission license would have to be obtained.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition of Charles Carroll and Lakes Region Construction Co., Inc. be, and hereby is, granted; and it is

FURTHER ORDERED, that this Order shall be considered a license for purposes of RSA 371:17.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1986.

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NH.PUC*09/04/86*[60870]*71 NH PUC 536*Department of Defense et al.

[Go to End of 60870]

71 NH PUC 536

Re Department of Defense et al.

Intervenor: New England Telephone and Telegraph Company

DF 86-211, Order No. 18,394

New Hampshire Public Utilities Commission

September 4, 1986

ORDER denying a petition for an investigation of the reasonableness of the rate of return of New England Telephone and Telegraph Company.

Return, § 15 — Reasonableness — Dominant local exchange telephone carrier.

A petition for an investigation of the reasonableness of the rate of return of the dominant local exchange telephone carrier was denied based on a finding that the carrier's current earned rate of return was not unreasonably above the current estimates by the commission staff or the petitioner and appeared to be declining.

By the COMMISSION:

ORDER

WHEREAS, on July 7, 1986, the Department of the Army petitioned on behalf of the Department of Defense, the General Services Administration and all other Federal Executive Agencies of the United States (DOD) that the Commission investigate the reasonableness of the authorized return on equity, rate of return and current charges and rates for intrastate communications services offered by New England Telephone and Telegraph Company (NET); and

WHEREAS, DOD alleges that the allowed cost of equity of 14.40 percent and rate of return of 12.11 percent found in Re New England Teleph. & Teleg. Co., 70 NH PUC 496 (1985) no longer reflects current market conditions; and

WHEREAS, DOD has presented testimony that supports a current cost of equity of 11.7 percent; and

WHEREAS, upon investigation the Commission has found that as of June 30, 1986, NET's cost of short term debt was 8 percent and cost of long term debt was 8.5 percent and that the cost of equity that the Commission Staff would currently recommend as reasonable would be approximately 12.5 percent; and

WHEREAS, the twelve month rolling average of NET's earned rate of return is as follows:

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

Ending Month	Overall Rate of Return
January 1986	11.97
February 1986	11.86
March 1986	11.81
April 1986	11.67

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and these rates of return compare to the overall rates of return assuming current debt costs and various estimations of the cost equity as follows:

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

Cost of Equity	Overall Rate of Return
last found (14.4)	11.95
current staff estimate (12.5)	10.83
DOD (11.7)	10.36;

and

WHEREAS, NET's current earned rate of return is not unreasonably above either the current estimates by Staff or DOD and appears to be declining; it is therefore

ORDERED, that DOD's petition that the Commission further investigate the reasonableness of NET's allowed rate of return be, and hereby is, denied; and it is

FURTHER ORDERED, that Docket No. DF 86-211 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this fourth day of September, 1986.

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NH.PUC*09/04/86*[60871]*71 NH PUC 538*New Hampshire Electric Cooperative

[Go to End of 60871]

71 NH PUC 538

Re New Hampshire Electric Cooperative

Additional petitioner: Public Service Company of New Hampshire

DE 86-222, Order No. 18,395

New Hampshire Public Utilities Commission

September 4, 1986

ORDER nisi authorizing the transfer of a portion of the service territory of an electric cooperative utility.

Service, § 320 — Electric — Service territories — Transfer.

An electric cooperative utility was authorized to transfer a portion of its service territory to another electric utility for the purpose of allowing that other utility to provide service to an industrial customer that operated as a generator of electric power; all parties had consented to the transfer and the latter utility had transmission lines that would enable it to interconnect with and sell the generated power of the industrial customer at minimal cost and inconvenience.

By the COMMISSION:

ORDER

WHEREAS, on July 30, 1986, the New Hampshire Electric Cooperative, Inc. (NHEC) and Public Service Company of New Hampshire (PSNH), electric utilities operating under the jurisdiction of this Commission, filed a joint petition for authority to transfer a portion of

NHEC's service territory to PSNH pursuant to RSA 374:22-a et seq. to allow PSNH to service one customer, Bridgewater Steam Power Company, as long as it is in existence and operating as a generator of electric power; and

WHEREAS, by agreement with PSNH, Bridgewater shall sell its generated power to PSNH pursuant to the provisions of RSA 362-A; and

WHEREAS, Bridgewater's proposed location is currently within the NHEC franchise area, however, PSNH transmission lines are in close proximity to Bridgewater and station service power and energy can be made available over the same interconnection required between Bridgewater and PSNH for sale of Bridgewater's generated power at minimal cost and inconvenience to each and all of the parties; and

WHEREAS, this transfer of service franchise is desired by Bridgewater and NHEC, and is acceptable to PSNH; and

WHEREAS, Bridgewater Steam Power Company consents to the proposed transfer; and

WHEREAS, the requested transfer appears to be in the public good; and

WHEREAS, the Commission finds the public should be allowed to file comments and/or request an

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opportunity to be heard on this matter; it is hereby

ORDERED NISI, that NHEC be, and hereby is, authorized to transfer to PSNH that portion of its service territory which will enable PSNH to provide service to Bridgewater Steam Power Company; and it is

FURTHER ORDERED, that NHEC and PSNH shall notify all persons desiring to be heard in this matter by causing an attested copy of this Order to be published once in a newspaper having general circulation in that portion of the State in which the Company provides service, said publication to be made no later than ten (10) days after the date of this Order and designated in an affidavit to be made on a copy of this Order and filed with the Commission within seven (7) days after said publication; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter within twenty (20) days after the date of this Order; and it is

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

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1986.

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71 NH PUC 540

Re Public Service Company of New Hampshire

DR 86-41, Supplemental Order No. 18,398

New Hampshire Public Utilities Commission

September 11, 1986

ORDER instituting a moratorium on cogeneration and small power production long-term rate filings pending the completion of an investigation into the avoided cost rates of the interconnecting utility.

Cogeneration, § 25 — Rates — Avoided costs — Moratorium.

The commission instituted a moratorium on qualifying cogeneration and small power production facility long-term rate filings pending the completion of a comprehensive avoided cost rate proceeding; the moratorium was found to be necessary due to the fact that the existing methodology for calculating the avoided cost rates available to qualifying facilities did not contemplate the possibility that the cumulative effect of capacity additions by qualifying facilities and the interconnecting utility's loss of a major full requirements customer would create the potential necessity of backing down baseload units to accommodate qualifying facility generation.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Public Service Company of New Hampshire (PSNH) filed on February 7, 1986 a Petition for Comprehensive Avoided Cost Rate Proceeding; and

WHEREAS, said petition requested, inter alia, that the Commission open a proceeding to review the terms, conditions and rates established in Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (DE 83-62); and

WHEREAS, the Commission has approved long term rates for 55 Qualified Facilities (QFs) with 176 MW of installed capacity, has pending before it pursuant to Re Small Energy Producers and Cogenerators, 70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85-215) and 71 NH PUC 408 (1986) (DR 86-134) rate petitions for 30 QFs with 506 MW of installed capacity and is aware that a further 62 QFs with 550 MW of installed capacity have filed site data sheets with PSNH but not yet petitioned the Commission for a long term rate; and

WHEREAS, the methodology underlying the calculations of rates in DR 86-134 was the same as that established in DE 83-62 and such methodology assumed the inclusion of UNITIL as a full requirements customer of PSNH; and

WHEREAS, the cumulative effect of the capacity additions by QFs, the loss

of the UNITIL load and the nondispatchibility of QFs has created a potential necessity of backing down economic PSNH baseload units in order to accommodate QF generation, a problem not envisaged by DE 83-62, DR 85-215 or DR 86-134; and

WHEREAS, the aforementioned problem is under investigation in the instant docket; and

WHEREAS, additional filings under DR 86-134 may exacerbate the problem and interfere with the investigation into a methodology that will address it; and

WHEREAS, the continual addition of QF capacity under DR 86-134 makes it difficult to adopt a QF capacity assumption for the modeling in the instant docket; and

WHEREAS, the technical discussions on the modeling are proceeding expeditiously and a hearing schedule has been adopted for litigation on the policy issues; it is therefore

ORDERED, that, pending completion of this investigation, no long term rate filings filed after the date of this Order based on the avoided cost rate set forth in DR 86-134 will be accepted or approved by the Commission.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of September, 1986.

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NH.PUC*09/16/86*[60873]*71 NH PUC 542*New England Telephone and Telegraph Company

[Go to End of 60873]

71 NH PUC 542

Re New England Telephone and Telegraph Company

DR 86-241, Order No. 18,401

New Hampshire Public Utilities Commission

September 16, 1986

ORDER authorizing a local exchange telephone carrier to implement a promotional and market trial program.

Public Utilities, § 135 — Promotional and market trial program — Commission authorization — Local exchange telephone carrier.

A local exchange telephone carrier was authorized to implement a promotional and market trial program for its call waiting service where the program would (1) have a minimal effect on revenues, (2) increase the efficiency of the existing network, and (3) allow the carrier to learn

how to more efficiently market its services.

By the COMMISSION:

ORDER

WHEREAS, on August 25, 1986 New England Telephone and Telegraph Co., Inc. (hereinafter NET) filed with this Commission, pursuant to its Promotional and Market Trial Programs Tariff - NHPUC No. 75, Part A, Section 1.3.5, a promotional program of call waiting service in Bedford, Derry, Littleton, Merrimack, and Manchester; and

WHEREAS, this program will have only a two month duration and a minimal effect on revenues; and

WHEREAS, call waiting serves to increase the efficiency of the existing network; and

WHEREAS, NET proposes to study the efficacy of telemarketing compared to direct mail marketing in promoting the call waiting program; and

WHEREAS, such marketing studies will allow NET to learn how to more effectively market services; and

WHEREAS, the Commission is interested in monitoring this marketing approach; it is therefore

ORDERED, that the Call Waiting Promotional Program, pursuant to Part A, Section 1.3.5 of New England Telephone and Telegraph Co., Inc. Tariff No. 75 be, and hereby is, approved for effect on September 24, 1986; and it is

FURTHER ORDERED, that New England Telephone & Telegraph Co., Inc. provide a tracking report by the end of the first quarter of 1987 of the customer development of these offerings; and it is

FURTHER ORDERED, that New England Telephone and Telegraph Co. Inc. provide an analysis by the end of the

first quarter of 1987 of the costs and benefits of telemarketing versus the direct mail marketing approach, along with a list of any related customer complaints.

By Order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1986.

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NH.PUC*09/16/86*[60874]*71 NH PUC 543*New England Telephone and Telegraph Company

[Go to End of 60874]

Re New England Telephone and Telegraph Company

DR 86-244, Order No. 18,403

New Hampshire Public Utilities Commission

September 16, 1986

ORDER granting a request for proprietary treatment of a special contract for telephone service.

Procedure, § 16 — Proprietary treatment — Exemption from public review — Special contract.

A special contract for the provision of telephone service, and the supporting materials explaining the reasons for entry into a special contract arrangement, were held to be confidential commercial information and exempt from public review without the consent of the telephone company.

By the COMMISSION:

ORDER

WHEREAS, on September 5, 1986, in accordance with New Hampshire RSA 378:18 New England Telephone (NET) filed a special contract between New England Telephone and The State of New Hampshire for the provision of Centrex service from the Concord electronic central office; and

WHEREAS, NET also filed supporting materials explaining the reasons why a contractual arrangement is being pursued, the terms and conditions of the contract, and its cost basis; and

WHEREAS, NET requests that the Commission treat the special contract and supporting material as proprietary and not release them for public review without Company consent; and

WHEREAS, the Right to Know Law, RSA 91-A:5 IV exempts from public disclosure, "... confidential, commercial, or financial information ..."; it is hereby

ORDERED, that the request by New England Telephone for proprietary treatment regarding the above cited information is hereby granted pursuant to RSA 91-A:5 IV, unless and until otherwise ordered.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1986.

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NH.PUC*09/16/86*[60875]*71 NH PUC 544*Southern New Hampshire Water Company, Inc.

[Go to End of 60875]

Re Southern New Hampshire Water Company, Inc.

DF 86-242, Order No. 18,404

New Hampshire Public Utilities Commission

September 16, 1986

ORDER increasing the short-term debt authorization of a water utility.

Security Issues, § 98 — Short-term debt authorization — Water utility.

A water utility that was experiencing increased construction costs and expansion of its service area was permitted to increase its short-term debt authorization.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc. having its principal place of business at Hudson, New Hampshire is presently authorized to issue its short-term notes and notes payable in the amount of $2,000,000 until December 2, 1986 pursuant to Order No. 17,975, issued in Docket No. DF 85-295 on December 2, 1985 (70 NH PUC 1009); and

WHEREAS, Southern New Hampshire Water Company, Inc., by letter to the Public Utilities Commission dated August 22, 1986, requested authority to increase the amount of its short-term debt to $3,000,000; and

WHEREAS, Southern New Hampshire Water Company, Inc. has represented that it is experiencing increased construction costs and expansion of their service area, including capital improvements to their newly acquired Policy Division; and

WHEREAS, Southern New Hampshire Water Company, Inc. has represented that it has an outstanding short term debt balance of $1,890,000 as of August 22, 1986 and a projected addition of $1,652,664 in budgeted capital expenditures through December 31, 1986; it is

ORDERED, that Southern New Hampshire Water Company, Inc. is hereby authorized to issue and sell for cash its notes and notes payable to Southern New Hampshire Water Company, Inc. in an aggregate amount of $3,000,000 until September 1, 1987; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall file timely requests for shortterm debt levels in excess of statutory requirements or authorized levels in accordance with regulations; and it is

FURTHER ORDERED, that on or

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before January 1st and July 1st of each succeeding year to this agreement, Southern New Hampshire Water Company, Inc. shall file with this Commission a detailed statement, duly

sworn to by its Treasurer, showing the disposition of proceeds of the notes or notes payable herein authorized, until the whole of said proceeds have been accounted for to the full satisfaction of said Commission.

By Order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1986.

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NH.PUC*09/19/86*[60880]*71 NH PUC 563*Gas Service, Inc.

[Go to End of 60880]

71 NH PUC 563

Re Gas Service, Inc.

Additional party: Anheuser Busch, Inc.

DR 86-237, Order No. 18,413

New Hampshire Public Utilities Commission

September 19, 1986

ORDER approving a special service contract entered into by a natural gas distributor and an industrial customer.

Contracts, § 12 — Approval by commission — Special gas sales contracts.

A natural gas distributor's special sales contract with an industrial customer was approved.

By the COMMISSION:

ORDER

WHEREAS, on August 12, 1986, Gas Service, Inc. filed with this Commission its Special Contract No. 46, said contract outlining the terms and conditions under which that company would sell natural gas to Anheuser Busch, Inc.; and

WHEREAS, the Commission finds that issue of said contract is in the public good; it is

ORDERED, that Special Contract No. 46 be, and hereby is, approved for effect on the date of this order.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 1986.

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NH.PUC*09/23/86*[60876]*71 NH PUC 545*Detariffing Telephone Utilities' Inside Wire

[Go to End of 60876]

71 NH PUC 545

Re Detariffing Telephone Utilities' Inside Wire

DE 86-154, Order No. 18,406

New Hampshire Public Utilities Commission

September 23, 1986

ORDER requiring telephone companies to inform their customers of the Federal Communications Commission's mandated changes regarding the installation and maintenance of inside wire.

Service, § 435 — Telephone — Inside wire — Detariffing.

Telephone companies were required to inform their customers that, pursuant to the Federal Communications Commission's requirements, installation and maintenance of inside wire would be detariffed and offered on a competitive basis.

By the COMMISSION:

ORDER

WHEREAS, The Federal Communications Commission (FCC) in Re Detariffing the Installation and Maintenance of Inside Wiring, (Second Report and Order) CC Docket No. 79-105, FCC 86-63, 51 FR 84-98 (February 24, 1986); required the relinquishment of ownership of inside wiring that has been expensed to account 605 effective no later than January 1, 1987 and furthermore, as it pertains to inside wiring which has been capitalized and recorded in Account 232, telephone companies were required to relinquish ownership at the time the investment in this account is fully amortized; and

WHEREAS, the FCC has deregulated and detariffed the installation of inside wire and deregulated and detariffed the maintenance of both inside wire and complex wire; and

WHEREAS, many of the independent telephone companies have proposed to notify customers of these changes; and

WHEREAS, customer understanding will be important to carry out the intent of the FCC order; and

WHEREAS, in Re Telephone Utilities Deregulation of Inside Wiring, DE 84-67 Order No. 18,270 (May 22, 1986) the New Hampshire Public Utilties Commission established docket DE 86-154 to investigate, inter alia, the following issues:

1. Standard operating practices concerning the network interface or demarcation point and

2. The financial impact of the changes resulting from the FCC's order; and

WHEREAS, the rate case filing requirements under N.H. Admin. Code PUC §1603 are not necessary or relevant for a determination of the issues involved in this case; it is hereby

ORDERED, that all companies prepare a mailing designed to inform customers of the FCC mandated changes and to inform them that these services will henceforth be provided on a competitive basis; and it is

FURTHER ORDERED, that each company should file a copy of this mailing with the Public Utilities Commission ten (10) days prior to the hearing; and it is

FURTHER ORDERED, that the public hearing to be held in DR 86-154 at 10:00 a.m. on October 8, 1986 will investigate the customer notifications to determine if they are in the public interest; and it is

FURTHER ORDERED, that the telephone companies shall mail such notification to customers at least thirty days before the effective date of the detariffing and deregulation; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Code PUC §203.01, the petitioner notify all persons desiring to be heard that they should appear at said hearing, when and where they may be heard on the question of whether the requested petition is in the public good, by causing an attested copy of this Order to be published once in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted, such publication to be no later than September 26, 1986, said publication to be designated in an affidavit to be made on a copy of this Order and filed with this office on or before October 8, 1986; and it is

FURTHER ORDERED, that the requirements of N.H. Admin. Code PUC §1603 except 1603.03 (a) (1)-(4) be, and hereby are, waived; and it is

FURTHER ORDERED, that all prepared testimony and exhibits must be filed with the Commission, with copies to other parties of record, at least ten (10) days prior to the hearing, pursuant to N.H. Admin. Code PUC 202.08.

By Order of the Public Utilities Commission of New Hampshire this twentythird day of September, 1986.

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NH.PUC*09/23/86*[60877]*71 NH PUC 547*Public Service Company of New Hampshire

[Go to End of 60877]

71 NH PUC 547

Re Public Service Company of New Hampshire

DR 86-41

Re UNITIL Service Corporation

DR 86-69

Re New Hampshire Electric Cooperative

DR 86-70

Re Granite State Electric Company

DR 86-71

Re Connecticut Valley Electric Company

DR 86-72

Order No. 18,407

New Hampshire Public Utilities Commission

September 23, 1986

REPORT and order consolidating and rescheduling dockets, setting procedures for filing of direct testimony, and setting time and guidelines for a prehearing conference.

Cogeneration, § 25 — Rates — Avoided costs — Statewide policy.

Policies governing avoided costs for qualifying cogeneration and small power production facilities should be consistent statewide, among various utilities and qualifying facilities.

By the COMMISSION:

REPORT REGARDING RESCHEDULING AND CONSOLIDATION OF DOCKETS

On August 27, 1986 the Commission issued Order No. 18,385 which scheduled a multi-docket prehearing conference in this matter for the purpose of defining, limiting, and settling issues. The Commission has been advised by its staff that most of the parties to these dockets, on a voluntary basis, have continued to meet since the original prehearing conference to work toward defining, limiting, and settling issues and that this work is not yet complete.

The Commission considers it of utmost importance that the policies set by these avoided cost proceedings be consistent in their statewide, multi-utility,

and multi-qualified facility application. The Commission is particularly concerned that under the current arrangement certain evidence important to setting such statewide policy may exist in one of the above dockets and not in other dockets. The Commission is also concerned that the work of the original prehearing conference is not yet complete. To remedy these concerns, the Commission is hereby consolidating all of these dockets, continuing all hearings and other due dates currently set in them, setting an additional prehearing conference, and setting additional

procedural dates for the consolidated dockets.

These fundamental changes in the administration of these dockets may require the utilization of additional resources by various parties to these dockets. Nevertheless, due the importance of these dockets and the quantity of investment related to the resultant policy determination, the Commission considers those costs relatively small with regard to the potential benefits of this approach. In addition, the Commission shall provide the following safeguards to avoid problems for parties to these dockets. First, the Commission shall, in the attached Order, provide parties with the opportunity to file additional direct testimony. Second, the Commission will consider motions from any utility with regard to any particular issues for a docket which the party alleges should be considered on an individual, as opposed to a consolidated basis. Any such motion should be filed no later than October 3, 1986 and responses thereto filed no later than October 10, 1986. The Commission, however, anticipates that it may need to make utility specific findings in this consolidated docket from utility specific evidence.

The Commission shall, via the attached Order, set an additional prehearing conference in these dockets for the purposes of defining, limiting and settling issues. The Commission expects that the parties will commit the results of this process to writing in a joint document to be filed well in advance of the hearing in this matter.

In addition, the Commission will also schedule an on the record proceeding on October 3, 1986 at 10 a.m. for the parties to this proceeding to present either the results of the prehearing conference or, at a minimum, to report on the status of the prehearing conference and make suggestions with regard to additional scheduling matters.

The Commission further schedules, via the attached Order, hearings in this new consolidated docket for January 12 through 30, 1987. The Commission shall receive evidence from parties in the following order: Public Service of New Hampshire, Granite State Electric Company, Connecticut Valley Electric Company, UNITIL Power Corporation, New Hampshire Electric Cooperative, Intervening Qualifying Facilities, and Staff. If parties desire to be absent from certain portions of the proceeding due to limited interest therein, they should appear at the first day of hearings and arrangements for that desired absence will be dealt with that morning. Similarly, the Intervenor Qualifying Facilities should identify their order of witnesses on the first day of hearing. If they cannot agree on an order, the Commission will provide one.

Witnesses will be cross-examined on their prefiled testimony at the time they take the witness stand. Pursuant to Puc 202.08, all direct testimony and

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exhibits must be prefiled on or before November 14, 1986. Rebuttal testimony may be filed on or before December 19, 1986. Direct testimony beyond identification of the witnesses and the witnesses' prefiled testimony will not be allowed except by leave of the Commission granted for a good cause pursuant to a motion. Redirect examination shall be limited to the scope of the cross-examination and questions from the bench.

For purposes of this proceeding, rebuttal testimony is testimony which responds to matters raised by direct testimony. Direct testimony constitutes a party's case in chief. The Commission will not countenance a party's attempt to present its entire case in rebuttal.

The Commission assumes that discovery on major substantive portions of these matters has been completed and encourages informal cooperation on such matters. Nevertheless, to the extent additional formal discovery is needed, the Commission believes that five working days should provide adequate time for turnaround of data requests. The need for additional time should be made known to the requesting party within two days of any data requests. All discovery requests should be submitted by December 1, 1986.

The Commission shall not, at this time, require prehearing briefs.

The Commission hopes that this Report and Order is clear and does not impose any unreasonable burdens on any party. However, to the extent this Order needs to be either clarified or altered, the Commission would encourage parties to make motions to that regard as soon as possible.

Our Order will issue accordingly.

ORDER

Based on the foregoing Report, which is incorporated hereby by reference, the Commission orders that:

1. docket numbers DR 86-41, DR 86-69, DR 86-70, DR 86-71 and DR 86-72 are consolidated;

2. all material filed in any one of the individual dockets is now a filing in the consolidated dockets;

3. the parties to any of the individual dockets are now parties to the consolidated dockets;

4. parties to any individual dockets shall, within 10 days of the issuance of this order, serve copies of anything they have filed in any individual docket to parties not previously served;

5. motions requesting consideration of particular issues in an individual docket, rather than this consolidated proceeding, shall be filed on or before October 3, 1986 and responses to such motions shall be filed on or before October 10, 1986;

6. a prehearing conference in these consolidated dockets shall be set for October 2-3, 1986;

7. parties to this proceeding shall, during the prehearing conference, develop a joint document attesting in good faith to define, limit, and settle the issues to this proceeding;

8. on October 3, 1986 at 1:00 p.m. there shall be an on the record proceeding for parties to report

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on the progress of the prehearing conference and, if necessary, to make recommendations for scheduling additional dates for the prehearing conference;

9. a hearing in this consolidated docket shall occur from 10:00 a.m. January 12, 1987 through January 30, 1987, as necessary, except that no hearings shall be held on Saturday or Sunday;

10. parties may file additional direct testimony in this consolidated docket on or before November 14, 1986;

11. parties may file rebuttal testimony on or before December 19, 1986;

12. prefiled testimony, order of witnesses and presentation of testimony shall be governed by the discussion in the foregoing Report;

13. discovery by data requests shall be governed by the discussion in the foregoing Report; and

14. parties shall file motions regarding the need to clarify or alter this order as soon as possible.

By order of the Public Utilities Commission of New Hampshire this twentythird day of September, 1986.

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NH.PUC*09/23/86*[60878]*71 NH PUC 551*New England Telephone and Telegraph Company

[Go to End of 60878]

71 NH PUC 551

Re New England Telephone and Telegraph Company

DR 86-244, Order No. 18,411

New Hampshire Public Utilities Commission

September 23, 1986

ORDER authorizing implementation of Special Contract] 86-1, pertaining to Centrex telephone service provided to the state of New Hampshire.

Rates, § 566 — Telephone rate design — Private branch exchange — Centrex service.

A local exchange telephone carrier was authorized to implement Special Contract] 86-1, a ten-year contract setting special rates for Centrex service provided to the state of New Hampshire, where the contract would cover cost of service, avoid the loss of the state of New Hampshire as a Centrex subscriber, avoid loss of revenue and stranded investment, and avoid forfeiture of the user common line charge, which would occur should the state choose to rely upon a customer-owned private branch exchange.

By the COMMISSION:

ORDER

WHEREAS, on September 5, 1986 New England Telephone and Telegraph Co. (hereinafter NET) filed a petition seeking approval of Special Contract] 86-1 by which it proposed to supply Centrex service to the State of N.H.; and

WHEREAS, the Commission has authority under N.H. R.S.A. §378:18 (1984) to approve special contracts for service at rates other than those fixed in a public utility's schedules if special circumstances exist which render departure from the general schedules just and consistent with the public interest; and

WHEREAS, the proposed contract addresses the Commission's requirements with respect to special contracts as enumerated in Re New England Teleph. & Teleg. Co., 71 NH PUC 234 (1986) (DR 85-425), to wit, the contract price covers the cost of providing service, it avoids the loss of the State of New Hampshire as a Centrex subscriber which would mean loss of revenue and accompanying stranded investment to New England Telephone, it preserves the portion of the end user common line charge which would be forfeited should the customer choose to substitute a customer-owned private branch exchange; and

WHEREAS, in DR 85-425 the Commission stated its reservations about the risk involved in a ten year contract and the present contract has only a seven year life; and

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WHEREAS, the Commission also finds that NET's ratepayers should be afforded an opportunity to file comments and/or request an opportunity to be heard on the NET/State of New Hampshire contract; it is hereby

ORDERED NISI, that New England Telephone Company be, and hereby is, authorized to implement the above described contract; and it is

FURTHER ORDERED, that NET shall notify all persons desiring to be heard in this matter by causing an attested copy of this Order to be published once in a newspaper having general circulation in that portion of the State in which New England Telephone provides service, such publication to be made no later than ten (10) days after the date of this Order and designated in an affidavit to be made on a copy of this Order and filed with the Commission within seven (7) days after said publication; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter within twenty (20) days after the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi will be effective thirty (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 twentythird day of September, 1986.

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NH.PUC*09/24/86*[60879]*71 NH PUC 553*Manchester Gas Company

[Go to End of 60879]

Re Manchester Gas Company

DR 85-214, Third Supplemental Order No. 18,412

New Hampshire Public Utilities Commission

September 24, 1986

MOTION for rehearing of a prior decision granting an increase in gross annual revenues for natural gas service, directing filing of revised tariff pages, and directing refund of excess revenues collected under interim rates; denied.

Rates, § 120.1 — Test year — Adjustments.

The practice of allowing adjustments to a utility's historical test-year figures is well established in New Hampshire. [1] p. 554.

Rates, § 120.1 — Test year — Adjustments.

To the extent that test-year figures can be accurately pro formed to reflect established and current changes in revenues or expenses, modification of test-year figures is considered appropriate; the extent to which such modification is permitted is a matter calling for the "enlightened judgement" of the regulatory agency. [2] p. 554.

Expenses, § 9 — Test-year adjustments — 12-month limitation.

Adjustments to test-year expenses for known and measurable changes occurring more than 12 months beyond the end of the test year should be disallowed for ratemaking purposes. [3] p. 554

Expenses, § 9 — Test-year adjustments — Depreciation — Post-test-year plant additions.

It is inappropriate for rate-making purposes to generate a pro forma adjustment to depreciation by using plant balances beyond the end of the test year, because such an adjustment produces a substantial mismatch of revenue and expenses, in that the revenue associated with the post-testyear plant additions is not included in operating revenue. [4] p. 558.

Valuation, § 25 — Rate base determination date — 13-month average.

Under commission policy, rate base components, including plant in service, are calculated for rate-making purposes on the basis of a 13-month test-year average, as opposed to a year-end balance. [5] p. 558.

Apportionment, § 15 — Expenses — General and administrative accounts — Regulated and nonregulated items.

Where regulated utilities maintain consolidated accounting systems, common offices, and employees for both utility and nonutility operations, there must be a proper allocation of salaries, wages, and administrative expenses to nonutility operations. [6] p. 559.

Expenses, § 19 — Reasonableness — Company vehicles — Personal use.

Expenditures related to the personal use of utility vehicles was disallowed for ratemaking

purposes. [7] p. 559.

Expenses, § 17 — Reasonableness — Managerial efficiency — Disallowance.

In order for the commission to disallow an expense for rate-making purposes, it must find that the expense represents inefficiency, improvidence, economic waste, abuse of managerial discretion, or other arbitrary action inimical to the public interest. [8] p. 559.

Valuation, § 290 — Working capital — Noncash items — Taxes — Depreciation.

Noncash items, such as taxes, depreciation, and deferred taxes, should be

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excluded for rate-making purposes from an allowance for working capital. [9] p. 561.

Valuation, § 290 — Working capital — Accrued interest — Accrued dividends.

The rate of return portion of rates, including interest obligations accrued on debt and dividend obligations accrued on common stock, should be excluded for ratemaking purposes from an allowance for working capital. [10] p. 561.

Valuation, § 299.1 — Working capital — Investment tax credits — Normalization requirements.

The exclusion from working capital of accumulated deferred investment tax credits would not jeopardize eligibility for income tax normalization under the Internal Revenue Code, provided no adjustments were made to reduce rate base by post-1969 investment tax credits. [11] p. 561.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On August 11, 1986, the Commission issued Report and Second Supplemental Order No. 18,365 (71 NH PUC 446) (Order) which approved an increase in gross annual revenues of $387,602 for Manchester Gas Company (Company). In the Order, the Commission directed the Company to file revised tariff pages reflecting the increase, a calculation of the amount overcollected under temporary rates, an affidavit detailing and describing the Company's rate case expenses and a mechanism to refund the difference between the amount overcollected and rate case expenses by August 18, 1986, all of which were timely filed. On August 5, 1986, the Company filed a Motion For Stay requesting that the Commission suspend Report and Order No. 18,365 pending the Commission's consideration of the Company's forthcoming motion for rehearing, or alternatively, amend the Order to provide that the effective date of the tariff pages shall be the first day of the month following the Commission's order responding to the Company's motion for rehearing. The Commission granted the alternative relief in Third Supplemental Order No. 18,382 issued on August 27, 1986 (71 NH PUC 506).

On August 29, 1986, the Company filed a Motion For Rehearing and Other Relief (Motion) pursuant to RSA 541 in which it alleges that several of the Commission's findings and rulings in

the Report and Order are unjust, unlawful and unreasonable. After a complete review, we will deny the Company's Motion.

A. OPERATING EXPENSES

1. Pro Forma Adjustments for Changes Occurring 12 Months Beyond the End of the Test Year

[1-3] The Commission disallowed the Company's proforma adjustments to test year expenses for known and measureable changes occurring more than 12 months beyond the end of the test year. It stated at pages 12-13 as follows (71 NH PUC at pp. 453, 454):

Allowing adjustments for expenses incurred beyond 12 months after the end of a test year is contrary to the well-established regulatory principle of "matching" test year expenses and revenues. This matching is necessary to obtain an accurate determination of a utility's operating income. To the extent post-test year expenses are allowed without recognizing post-test year revenues, a mismatch takes place.

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While there is a slight mismatch in allowing known and measurable changes to expenses which occur up to 12 months beyond the end of the test year without a corresponding revenue adjustment, those adjustments are necessary to insure that rates reflect expenses that will be incurred while they are in effect. Moreover, allowing proforma adjustments up to 12 months beyond the end of the test year will help to mitigate whatever attrition the Company may experience. However, to go beyond that time period without a corresponding revenue recognition significantly compromises the matching principle.

The Company strongly disputes this finding, the net result of which is to exclude annual expenses of more than $280,000 from rates. It argues that the Commission decisions cited in the Report do not evidence a Commission policy to truncate known and measureable changes at any particular time period. Moreover, the Company cites past decisions which have allowed proforma adjustments for expenses incurred more than 12 months after the end of the test year.

Additionally, the Company argues that the Commission's discussion of the "matching concept" does not support the 12 month expense truncation. While it agrees that post-test year adjustments for known and measurable changes occurring within 12 months after the end of the test year "are necessary to insure that rates reflect expenses that will be incurred while they are in effect", the Company contends that this is equally true for known and measureable expenses incurred beyond that point. The Company acknowledges the necessity of "matching" investment in plant with the additional revenue that such investment will yield. However, it argues that rationale is not operative with revenues and expenses. In support thereof, the Company states at pages 6 and 7 as follows:

The Company concedes that there may be a slight theoretical mismatch between revenues and expense resulting from pro forma adjustments to certain test year expenses, but does not believe that any such mismatch would be significant. Operating expenses can (and do) change quite independently of revenue changes; for example, neither a negotiated pay increase for union employees nor an insurance premium increase has any impact on revenues whatsoever.

Therefore, while it is appropriate in many circumstances to measure rate base and revenue over the same period, it is not appropriate in these proceedings to restrict operating expenses to the period over which revenue is calculated.

Lastly, the Company states that the Commission's holding in this regard may have been influenced by the Commission's "frustration" with the "numerous updates" filed by the Company, the discussion of which is set forth at pages 13 and 14 of the Report.

The practice of allowing adjustments to a utility's historical test year figures is well-established in this jurisdiction.[1](109) In Public Service Co. of New Hampshire v. New Hampshire, 102 N.H. 150, 163, 30 PUR3d 61, 72, 153 A.2d 801 (1959), the Supreme Court stated as follows:

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... The test year is designed to produce an index to the deficiencies in earnings which the Company will probably encounter in the immediate future, as indicated by actual operations in the known and recent past. To the extent that test-year figures can be accurately pro-formed to reflect established and current changes in revenues or expenses, modification of test-year figures is considered appropriate. How far beyond this point modification should be permitted is a matter calling for the exercise of "enlightened judgment" (Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 U.S. 679, 692, PUR1923D 11, 20, 67 L.Ed. 1176, 43 S.Ct. 675 [1923], where errors are not readily demonstrable by clear preponderance. "If the Commission adjusts the results of the test year to meet facts i.e., the wage increase ... it is on firm ground. To do more ... would destroy or seriously weaken the effectiveness of the test year, a valued and respected tool in rate making." Central Maine Power Co. v. Maine Pub. Utilities Commission, 153 Me. 228, 242, 243, 21 PUR3d 321, 330, 136 A.2d 726, 735 (1957). See City of Pittsburgh v. Pennsylvania Pub. Utility Commission, 187 Pa.Super.Ct. 341, 25 PUR3d 273, 144 A.2d 648, 660 (1958) and cases cited.

Consistent with the Court's directive, the Commission has routinely allowed pro-forma adjustments to test year figures for known and measureable changes.

In recent rate cases, Staff has taken the position that adjustments reflecting changes occurring more than 12 months beyond the end of the test year should be disallowed. As discussed in the Report, we have accepted this limitation. Therefore, to the extent that past decisions have allowed such adjustments, the limitation constitutes a departure from past Commission policy.

We agree with the Company that the decisions cited in the Report contain no explicit discussion of this limitation. Because most recent rate cases have involved settlement agreements in which the utility has accepted Staff's recommendation, there are no Commission written decisions which specifically address this issue. However, the lack of written precedent does not prohibit the Commission from adopting the limitation in the context of this proceeding. By statute, the choice of a particular methodology is left to the Commission's discretion.

The statutory scheme for public utility regulation mandated by the legislature in RSA ch. 378 clearly expresses an intent that the commission be afforded wide parameters within which to exercise its judgment. RSA ch. 378 is conspicuously devoid of any prescribed methodologies.

"Financial, accounting, and economic experts can and do regularly disagree; ... and rate regulation is more art than it is a procedure susceptible of expression in precise mathematical terms." Amyot, supra at p. 247. Because of the inexactness inherent in the process of public utility ratemaking, the legislature has provided a system requiring that the commission's order be "just and reasonable." RSA ch. 378. The statutory system allowing the commission wide latitude in the choice of methodologies has long been upheld by this court. E.g., Chicopee Mfg. Co. v.

Public Service Co. of New Hampshire, 98 N.H. 5, 98 PUR NS 187, 93 A.2d 820 (1953). ... We therefore uphold the Commission's choice of test year methodology.

Legislative Utility Consumers' Counsel v. Public Service Co. of New Hampshire, 119 N.H. 332, 352, 31 PUR4th 333, 347, 348, 402 A.2d 626 (1979). While the Commission has "wide latitude" in choosing a methodology, it also has an "obligation to set forth its methodology and findings fully and accurately in order that [the] court may undertake meaningful judicial review of its methods, findings, and order". Id., 119 N.H. at p. 341, 31 PUR4th at p. 338 (citations omitted). We note that the Commission's methodology is discussed in detail in the Report and will be addressed further below.

We disagree with the Company's assertion that the "matching principle" will not be compromised by allowing adjustments for known and measureable changes occurring more than 12 months beyond the end of the test year. The rationale underlying the use of a test year is the principle that "revenue and expenses must be matched". Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire, supra, 119 N.H. at p. 347, 31 PUR4th at p. 344. The matching principle reflects the fundamental relationship that exists between revenue and expenses in determining a utility's net operating income. To recognize out-of-period changes for expenses without taking into account the relevant revenue picture during the same period leads to an inaccurate determination of a utility's operating income and, accordingly, its revenue deficiency. Contrary to the Company's argument, whether and why the revenue level changed in the post-test year period is not a relevant consideration. Rather, the proper concern is reflecting what the revenue level was during that period.

As stated in the Report, we acknowledge that a slight mismatch occurs by allowing adjustments for known and measureable changes in expenses occurring up to 12 months after the end of the test year without a revenue adjustment. This is because the importance of having rates reflect known expenses outweighs what we have determined to be the insignificant impact of the slight mismatch. However, to go beyond that point results in a significant compromising of the matching principle and seriously weakens the test year concept. Moreover, it gives rise to the possibility that rates could reflect expenses prior to their being incurred thereby resulting in an earning's windfall. Such a result is contrary to fundamental ratemaking principles. Adjusting test year figures to reflect established and current changes in revenue and expenses are clearly permitted by New Hampshire law. "How far beyond this point modification should be permitted is a matter calling for the exercise of `enlightened judgment.'" Public Service Co. of New Hampshire v. New Hampshire, 102 N.H. at p. 150, 30 PUR3d at p. 72. In our judgment, for the reasons cited above, adjustments for changes occurring more than 12 months beyond the end of the test year are inappropriate. The above discussion clearly establishes that the Commission's

"frustration" with the Company's "numerous updates" played no role in our decision herein.

2. Depreciation Expense Pro Forma Adjustment

[4, 5] In the Report at pages 14-15 the Commission stated as follows (71 NH PUC at p. 454):

The Company seeks to include a proforma adjustment to the test year depreciation expense in the amount of $63,434. This was computed by utilizing the plant in service balances as of December 31, 1985. Those balances were depreciated at their appropriate rate and totaled to arrive at an annual depreciation expense of $564,063 which is $63,434 above the test year depreciation expense. Staff declined to make this adjustment. We agree. Utilizing plant balances beyond the end of the test year to generate a proforma adjustment to depreciation is inappropriate. It results in a substantial mismatch of revenue and expenses in that the revenue associated with the post-testyear plant additions is not included in operating revenue. This yields an inaccurate and incomplete calculation of the Company's operating income and contravenes the fundamental matching principle discussed above. We therefore will disallow the adjustment requested by the Company.

The Company argues that any mismatch is more than compensated for by the use a 13 month test year average in calculating net plant. It therefore contends that the Commission should reconsider this adjustment and adopt an approach which it states was accepted by the Commission in Re Public Service Co. of New Hampshire, 69 NH PUC 67, 71, 57 PUR4th 563 (1984), whereby the Company would be permitted to include the proposed adjustment provided that its rate base be reduced by the accumulated deferred taxes associated with the additional depreciation expense.

The test year adopted by the Company in this proceeding is the year ending March 31, 1985. Consistent with Commission policy, the Company's various rate base components, including plant in service, are calculated on the basis of a 13 month test year average as opposed to a year end balance. By the adjustment, the Company seeks to reflect the depreciation expense related to the plant in service balances as of December 31, 1985. These higher bal- ances reflect new plant added in the 9 month period between the end of the test year and December 31, 1985.

The plant added in the 9 months after the end of the test year was necessitated by a growth in customers which resulted in the Company receiving additional revenue. To include the depreciation expense related to this new plant without accounting for the revenue it generated significantly compromises the fundamental principle that test year revenues and expenses be matched; it results in a distorted view of the Company's net operating income. There is simply no evidence in the record to support the Company's contention that use of a 13 month test year average for net plant "compensates" for the mismatch. We therefore decline to reconsider our original decision in this regard.

Lastly, it should be noted that the Company's description of the approach followed by the Commission in Re Public Service Co. of New Hampshire, 69 NH PUC at p. 71, 57 PUR4th 563, is, at best, incomplete. The Company correctly describes the adjustment, but fails to point out that it was included in a settlement agreement which the Commission approved, and was to be

applied as part of a future step adjustment; it was not included in initial rate increase approved by the Commission. Moreover, no step adjustment was ever sought by Public Service Company of New Hampshire because it was earning in excess of its allowed rate of return. The Commission has never accepted this approach in the context of an initial rate case.

3. Allocation of Computer Conversion Costs

[6] The Company argues that the Commission's allocation of 10.73% of the computer conversion costs and operating expenses to non-utility operations is not supported by the record and is therefore unreasonable and unlawful.

We disagree. As discussed in the Report, we are simply adopting the testimony and allocation proposed in its original filing. Those establish that the computer is to be used for nonutility operations and that 10.73% of the computer costs are to be allocated to nonutility operations. The Commission's findings are therefore clearly supported by the evidence in the record. During the hearings the Company changed its position and argued that the computer will not be utilized for non-utility operations because the Company's parent corporation, EnergyNorth, Inc. (ENI) intends to separate its non-utility operations into a separate affiliate at some point in the future. Other than its stated intention, however, the Company presented no testimony as to what planning or actions it has accomplished in this regard. Moreover, we note that no requests for regulatory approval have been filed for transfer of the Company's assets. Given the uncertainty surrounding this project, we find that it is not at this point a known and measureable change. We therefore see no reason to change our original finding. In the event non-utility operations are in fact separated in the future, we will initiate an investigation to determine the proper separation of assets, personnel, etc.

This Commission has consistently taken the position that where utilities have consolidated accounting systems and common offices and employees for both utility and non-utility operations, there must be a proper allocation of salaries, wages, administrative expenses, etc. to non-utility operations. In addition to the evidence in this record, we are aware from a number of sources that there currently exists a "sharing" of computer activities. These include monthly reports, documentation and testimony submitted in the Commission docket which approved the formation of ENI, staff audits and the 1983 report by Arthur Andersen and Company which was submitted by the Company in response to a data request from the Commission during the hearings. The latter clearly indicates that the computer was to be used for non-utility operations and that common costs should be allocated proportionately.

4. Company Vehicle Expense

[7, 8] In the Report, the Commission disallowed $13,052 in expenses related to the personal use of Company vehicles. The Commission found that the Company had not met its burden of establishing that the expense was necessary to providing service and that it benefited ratepayers. The Company argues the Commission's finding is unlawful and unreasonable on the grounds

that the wrong legal standard was applied. According to the Company, the well-established principle of utility regulation regarding disapproval of operating expenses was recently reaffirmed by the Commission in Re Public Service Co. of New Hampshire, supra. Therein the Commission stated as follows:

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 public interest. Public Service Co. of New Hampshire v. New Hampshire, 113 N.H. 497, 510, 2 PUR4th 59, 311 A.2d 513 (1973); Re Public Service Co. of New Hampshire, 62 NH PUC 83, 92 (1977).

Applying this standard, the Company argues that there should be no disallowance because 1.) much of the expense relates to business use by persons required to take vehicles home to enable them to perform safety and repair related duties during non-office hours; and 2.) the remaining portion of the expense relates to personal use as part of an overall compensation package, the reasonableness of which was not disputed in the proceedings.

We agree with the Company that the above-stated standard should be applied. However, we disagree with the results of the Company's application. Other than mere assertions in the oral testimony of a rebuttal witness who did not prefile written testimony, there is simply no evidence in the record to support the Company's position. We are therefore left with an expenditure which is unsupportable by the evidence of record. We find that the mere provision of vehicles to employees, absent some after hours service-related necessity or other justification, represents waste and inefficiency, constitutes an abuse of managerial discretion and is inimical to the public interest.

It is important to note that on the basis of its records, the Commission could have disallowed a much higher figure. As part of the Staff's audit of the Company conducted in conjunction with this proceeding, a copy of one of the officer's contracts was obtained. Contrary to the Company's assertions, that contract does not include a company vehicle as part of the officer's compensation package. In addition, a list of vehicles and the employees using those vehicles was also obtained from which it appears that the Company is providing personal vehicles without service-related justification.

Through audits and rate cases the Commission is aware of other utilities' policies in this regard. No other utility of comparable or even larger size in this state provides vehicles to its employees. Moreover, the compensation of the Company employees who have been provided vehicles is not low compared to other utilities and, in most instances, officers of similar sized electric companies compensate the utility for their personal use of vehicles. In general, most utilities reimburse the employee for business use of their personal vehicle or provide "pool" vehicles for business use.

It is axiomatic that utilities should endeavor to keep costs as low as possible. From our examination of the Commission's records, it appears that the Company has not met that obligation with regard to company vehicles.

B. RATE BASE

[9-11] The Company submits that the Commission erred in its calculation of rate base in two ways. First, the Company argues that the Commission's rejection of the Company's adjustment of $352,770 to rate base for the socalled "non- revenue producing" additions is unreasonable and unlawful.[2(110)] The arguments presented by the Company in support of the adjustment were fully considered and addressed in the Report and need not be repeated here. The Motion did not present any additional information or new arguments which warrant reconsideration of that analysis.

As it did with the depreciation adjustment, the Company argues that the Commission approach in Re Public Service Co. of New Hampshire, 69 NH PUC at p. 71, 57 PUR4th 563, should be adopted whereby the plant additions adjustment would be allowed so long as rate base was reduced by the deferred taxes related to accelerated depreciation. While the Company has again correctly described the adjustment, it has only provided part of the story. Like the depreciation adjustment it requested, this adjustment was part of a step adjustment which, as discussed above, never was implemented.

Secondly, the Company disputes the Commission's exclusion of depreciation, investment tax credits; deferred taxes and operating income from the computation of the Company's cash working capital component of the working capital calculation. It argues that the Commission's acceptance of Staff's approach deprives the Company's investors of the right to earn a return on the whole of their investment thereby leading to an unconstitutional confiscation of the Company's property. The Company further argues that the exclusion of investment tax credits contravenes federal tax law thus places in jeopardy $473,000 in investment tax credits utilized for the open tax years of 1983-1985. Lastly, the Company contends that Staff's methodology differs from that used by New England Telephone (NET) in the case cited by the Commission in that, unlike NET, Staff did not include an average cash balance in its calculation.

The above arguments were adequately considered and addressed in the Report. While the Motion contains no new arguments which warrant a reconsideration of our original finding, we feel it necessary to provide further comment.

The methodology recommended by Staff and adopted by the Commission results in a cash working capital figure which as part of rate base, will adequately compensate the Company's investors for their investment in the dayto-day cash needs of the Company. Contrary to the Company's argument, the methodology approved in the NET case (Docket No. DR 84-95) and adopted herein utilizes adjusted operating and maintenance expenses and does not include an allowance for the return portion (interest and dividends) of the rates. As we stated on page 40 of the report, to include the return portion would result in a return on a return. Nor does the methodology allow for the inclusion of non-cash items (taxes, depreciation and deferred taxes). It is also instructive to note that the formula formerly utilized by the Federal Energy Regulatory Commission (FERC), the so-called "45-day method", calculated cash working capital based upon 45 days of operation and maintenance expense less purchased power;

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return, taxes, depreciation and deferred taxes were not included.

The Company cites no authority in support of its argument that excluding tax credits from cash working capital will jeopardize its ability to use those credits; nor are we aware of any. As we stated in the Report, the Commission has made no adjustment to rate base which would jeopardize its investment tax credits; no adjustments have been made to reduce rate base by post1969 investment tax credits. All of the investment tax credits accumulated through the end of the test year have been included in rate base to be normalized over the lives of the appropriate assets.

C. COST OF CAPITAL, ATTRITION AND CUSTOMER CHARGE

In the Motion, the Company argues that the Commission's acceptance of Staff's cost of capital recommendation, denial of the Company's requested attrition adjustment and refusal to increase the customer charge are unlawful and unreasonable. The arguments presented by the Company in support thereof, like most of those in the Motion, were adequately considered and addressed in the Report. There are no new arguments which warrant a reconsideration of our original findings.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Manchester Gas Company's Motion for Rehearing be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of September, 1986.

FOOTNOTES

[1]The Commission has heretofore refused to accept a future (or projected) test year.

[2]The Commission found that the additions were in fact revenue producing.

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NH.PUC*09/24/86*[60881]*71 NH PUC 564*Junior Sports League

[Go to End of 60881]

71 NH PUC 564

Re Junior Sports League

DE 86-249, Order No. 18,414

New Hampshire Public Utilities Commission

September 24, 1986

APPLICATION for authorization to install customer-owned, coin-operated telephone equipment; granted.

Service, § 456 — Telephone — Customerowned, coin-operated telephones — Conditions.

Customer-owned, coin-operated telephone equipment was permitted to be installed and placed in service provided that measured business rates were used to serve the telephone, both local and toll access was available, the equipment would be hearing aid compatible, and the equipment would clearly identify the owner, rates, and service policies.

By the COMMISSION:

ORDER

WHEREAS, on September 4, 1986 the Junior Sports League filed a petition to install a coin operated telephone at their School St., Claremont address; and

WHEREAS, the Federal Communications Commission Registration number was filed with this Commission; and

WHEREAS, in Re Coin Operated Telephone Policies, 70 NH PUC 89 (1985), this Commission found that it was in the public interest to certify competitive providers of public pay telephone service; it is hereby

ORDERED, that the Junior Sports League is certified, pursuant to N.H. Rev. Stat. Ann. §374:22 (1984), as a public utility for the limited purpose of providing public pay telephone service on their premises subject to the following conditions:

1. They shall be served by measured business service at applicable tariffed rate,

2. Their telephone must be hearing-aid compatible,

3. They shall provide dial tone first,

4. They shall provide for local and toll access,

5. They shall allow access to other common carriers,

6. They shall be clearly marked as to ownership and maintenance responsibility,

7. Their local rates shall be the same as those which apply to the New England Telephone system,

8. They shall provide toll-free calling within municipalities,

9. They shall be responsible for adherence to all applicable laws, rules and tariff provisions,

10. Surcharges for toll calls are authorized, pricing policies shall be clearly marked at the coin phone location.

11. They shall comply with all rules hereafter made applicable to customer owned coin-operated telephones.

By Order of the Public Utilities Commission of New Hampshire this twentyfourth day of September, 1986.

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[Go to End of 60882]

71 NH PUC 565

Re Vicon Recovery Systems, Inc.

DR 86-130, Order No. 18,415

New Hampshire Public Utilities Commission

September 24, 1986

PETITION for rehearing of an earlier decision establishing long-term levelized rates for the developer of a solid waste cogeneration project; denied.

Cogeneration, § 24 — Rates — Long-term prices — When they can be established.

Long-term levelized rates for a cogeneration project may be established at any point once the project is sufficiently under way to allow the developer to be able to finalize its financing and make reasonable projections as to its in-service date.

By the COMMISSION:

ORDER

WHEREAS, on April 11, 1986 Vicon Recovery Systems, Inc. (Vicon) filed a petition for a long term rate for its 13 MW municipal solid waste project, located on the Dunbarton Road in Manchester, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 353, 61 PUR4th 132 (1984) (DE 83-62) and 70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85-215); and

WHEREAS, the petition requested, inter alia, twenty-year (20) energy and capacity rates with a 1989 commercial operation date; and

WHEREAS, the Commission Staff issued data requests on May 8, 1986 and Vicon responded on June 18, 1986 and provided a copy of its data responses on the same date to Public Service

Company of New Hampshire (PSNH); and

WHEREAS, on August 1, 1986 the Commission issued Order No. 18,356 (71 NH PUC 435),

which granted Vicon a 20 year long term rate conditional on Vicon's finalization of its financing, construction permits and agreements with participating municipalities by January 1, 1987; and

WHEREAS, on August 19, 1986, PSNH petitioned the Commission for a hearing, alleging that Vicon must prove that the full levelized rate is necessary for the development of the site, that the approved on-line date of September 1, 1988 - August 30, 1989 is too expansive, that in allowing Vicon to achieve its milestones prospectively the Commission is applying a different and lighter standard than one used previously in Re SES Concord Co., L.P., 71 NH PUC 437 (1986), and that PSNH has insufficient information available to it to challenge the financial and technical feasibility of the project and that discovery and hearing are required to enable PSNH to present its position; and

WHEREAS, Vicon filed its Reply to the Motion for Hearing on September 9, 1986; and

WHEREAS, a project developer is not required under DE 83-62 to demonstrate that a levelized rate is necessary for the development of his site except when requesting an exemption from the 90 percent ceiling provision for the first three years of a levelized rate, which exemption Vicon is not requesting in the instant filing; and

WHEREAS, the Commission has consistently interpreted the on-line date specified in a long term rate filing pursuant to DE 83-62 as the power year in which the project will begin operation, so that Vicon's on-line date for purposes of the rate filing of 1989 encompasses the period September 1, 1988 through August 30, 1989 and conforms to the provisions of the Settlement agreement and Commission Order No. 17,104 in DE 83-62 (69 NH PUC 353, 61 PUR4th 132); and

WHEREAS, the Commission's standard of maturity is satisfied as long as Vicon was sufficiently mature at the time of the filing to be able to finalize its financing, construction permits and agreements with participating municipalities before January 1, 1987 as set forth in Order No. 18,356; and

WHEREAS, PSNH could have initiated discovery regarding the Vicon project any time following Vicon's application in April under the practices and procedures established in the Settlement agreement signed by PSNH and adopted by the Commission in DE 83-62 (see also Re SES Concord Co., L.P., 71 NH PUC 437 [1986]) and could have pursued its inquiry by means of data requests following its receipt of Vicon's responses to Staff data requests; and

WHEREAS, the Motion for Hearing contains no assertion of fact and no argument that was not fully considered by the Commission in reaching its Decision in Order No. 18,356; and

WHEREAS, the Commission finds that the Decision is not unlawful or unreasonable; it is therefore

ORDERED, that the August 19, 1986 PSNH Motion for Hearing be, and hereby is, denied; and it is

FURTHER ORDERED, that Order No. 18,356 be, and hereby is, reaffirmed.

By Order of the Public Utilities Commission of New Hampshire this twentyfourth day of September, 1986.

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NH.PUC*09/29/86*[60883]*71 NH PUC 567*UNITIL Power Corporation

[Go to End of 60883]

71 NH PUC 567

Re UNITIL Power Corporation

DF 86-227, Order No. 18,416

New Hampshire Public Utilities Commission

September 29, 1986

ORDER authorizing an electric utility to issue additional short-term debt.

Security Issues, § 98 — Short-term notes — Methods — Limits.

An electric utility was authorized to issue additional short-term debt, either through a system cash pooling agreement or through an external lending institution, but the utility was not allowed to issue up to the limit it had requested, as a $6 million ceiling was imposed instead.

By the COMMISSION:

ORDER

WHEREAS, on July 31, 1986, UNITIL Power Corp. ("UNITIL Power") filed its petition for authority to issue securities; and

WHEREAS, by said petition, UNITIL Power proposes to issue and sell, and from time to time renew, up to eight million dollars ($8,000,000) of notes, bonds and other evidences of indebtedness, in accordance with RSA 369:7, and

WHEREAS, this Commission, in Supplemental Order No. 17,373 dated December 31, 1984 in Docket DE 84- 263 (69 NH PUC 701) and accompanying Report at page 13, denied without prejudice UNITIL Power's request that it be authorized to issue and sell for cash, or to renew notes or other evidences of short term indebtedness in amounts not to exceed Ten Million Dollars ($10,000,000); and

WHEREAS, the Cash Pooling and Loan Agreement among the several UNITIL system companies authorizes loans from the Pool to various system affiliates upon appropriate terms and conditions; and

WHEREAS, this Commission, in Order No. 18,107 dated February 27, 1986 in DF 86-24 (71 NH PUC 121) expressly approved UNITIL Power's request to receive cash advances from UNITIL System's "Cash Pooling and Loan Agreement" and approved UNITIL Power's initial request for short term borrowing in an amount not to exceed Five Hundred Thousand Dollars ($500,000); and

WHEREAS, the petition filed in this proceeding, requests access to cash for working capital up to an additional amount of Seven Million Five Hundred

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Thousand Dollars ($7,500,000) which is primarily needed for working capital so that UNITIL Power can satisfy its contractual obligations to meet the power needs of Concord Electric Company and Exeter & Hampton Electric Company, and also to cover customer accounting, administration and other general expenses incurred by UNITIL Power; and

WHEREAS, UNITIL Power requests access to working capital expeditiously to meet timing differences between payments to suppliers and receipt of payment from UNITIL Power customers, and to reduce costs to customers through short-term purchases which entail expeditious payments; and

WHEREAS, the Staff has investigated this matter and has recommended that the level of approval for short-term debt be set at a maximum of $6,000,000; and

WHEREAS, this authorization is not to be considered as any decision or statement on the investigation and proceedings in Docket No. DE 86-196; it is hereby

ORDERED, that UNITIL Power is authorized to issue securities by issuing and selling, and from time to time renewing, up to Six Million Dollars ($6,000,000) of notes, bonds or other evidences of indebtedness payable less than twelve months from the date thereof at current interest rates either to the UNITIL Cash Pool as approved by Commission Order No. 18,107 or to external lending institutions; and it is

FURTHER ORDERED, that on January 1 and July 1 of each year, said UNITIL Power shall file with this Commission a detailed statement, duly sworn to by its treasurer, showing the disposition of proceeds of said notes, bonds or other evidences of indebtedness.

By order of the Public Utilities Commission of New Hampshire this twentyninth day of September, 1986.

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NH.PUC*09/29/86*[60884]*71 NH PUC 569*Gunstock Glen Water Company

[Go to End of 60884]

71 NH PUC 569

Re Gunstock Glen Water Company

DF 85-311, DF 86-187, Order No. 18,417

New Hampshire Public Utilities Commission

September 29, 1986

ORDER declining to assess a fine against a small water utility for its failure to file annual reports.

Fines and Penalties, § 8 — Mitigating circumstances — Personal problems of utility owners.

No fine was imposed on a small water utility that had failed to timely file two annual reports where it was demonstrated that personal problems between the owners of the utility had interfered with their managerial duties and where a fine could have created a serious financial problem for a utility of its small size.

By the COMMISSION:

REPORT

On September 3, 1985, the Commission issued an Order of Notice opening docket DF 85-311 for the purpose of determining whether Gunstock Glen Water Co. (Gunstock) should be fined pursuant to RSA 374:17 for failure to file an F-16 Annual Report for the year ended December, 31, 1984 by March 31, 1985 as required by N.H. Admin. Rule Nos. Puc 607.06 and 609.05. The Order of Notice scheduled a hearing for September 23, 1985 to allow Gunstock an opportunity to show cause why it should not be fined $100 per day for failure to file the annual report. Gunstock failed to appear at the September 23 hearing and, accordingly, the Commission issued Order No. 17,941 on November 12, 1985 (70 NH PUC 923) ordering Gunstock Glen to forfeit $100 to the Commission by December 12, 1985. The Order also provided that if payment was not received by that date, Gunstock was to forfeit to the Commission $100 each week thereafter until the Report was filed and/or the Commission issued a further Order.

The Commission issued another Order of Notice on June 13, 1986 opening docket number DF 86-187 for the purpose of determining whether Gunstock should be fined pursuant to the above-stated statute for failure to file an F-16 Annual Report for the year ended December 31, 1985. As of that date, Gunstock had not responded to Order No. 17,941. The Order of Notice scheduled a hearing for September 9, 1986 to allow Gunstock an opportunity to show cause why it should not be fined for failure to file the required report.

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On June 9, 1986, the Commission received a petition from Charles E. Carroll and Lakes Region Construction Company (Lakes Region) requesting a license to cross state-owned railroad tracks in Laconia, New Hampshire pursuant to RSA 374. The petition was signed by Bernice Paradise who, along with her husband Maurice Paradise, are the owners of Gunstock. An Order of Notice was issued on July 1, 1986 setting a hearing for July 31, 1986. Appearing at the hearing in support of the petition was Maurice Paradise. After completing testimony on the petition, the presiding officer and Commission Staff questioned Mr. Paradise about Gunstock's failure to respond to the above-described dockets. Mr. Paradise testified that he had no knowledge of the pending dockets (and outstanding fine) and that all of Gunstock's affairs were handled by his wife. The presiding officer informed Mr. Paradise that the Commission would issue no license until the annual reports were filed and gave him until August 15, 1986 to do so.

Both annual reports were filed by that date.

Thereafter, on August 28, 1986, the Commission issued Report and Order No. 18,387 (71 NH PUC 522) which expanded the scope of the September 9, 1986 hearing to include the issue of whether a $3,400.00 fine should be imposed on Gunstock for failure to file the 1985 annual report.[1(111)] Therein the Commission stated at page 3 as follows (71 NH PUC at p. 523):

In light of Gunstock's continued and, thus far, unjustified and unexplained failure to respond to this Commission's orders, we feel that all, or at least some portion, of the abovestated fine should be paid. However, we also recognize that such a fine could have a serious impact on a small company like Gunstock. We therefore will allow Gunstock an opportunity — which it has thus far ignored — to show cause why the above-stated fine should not be imposed for failure to file the 1984 annual report and why a similar fine should not be imposed for failure to file the 1985 annual report.

Bernice and Maurice Paradise, coowners of Gunstock, offered testimony at the September 9, 1986 hearing on the reasons for their failure to file the annual reports. Both stated that serious personal problems, which they described in detail, were in part the reason for their neglect of Gunstock's business. In addition, they pointed to a misunderstanding with their accountant over the filing of the reports. The Paradises further testified that their problems had been resolved and that henceforth all the Commission's filing requirements would be met. They also stated that a new accounting firm had been retained to assist them in preparing and filing Gunstock's financial reports. The Paradises therefore request that the Commission impose no fine.

After a complete review, we have determined that no fine should be imposed. We accept the Paradises' testimony that their personal problems have interfered with their management of Gunstock. The resolution of those problems coupled with the Paradises' stated intentions to comply with the Commission rules from this point on lead us to conclude that a fine is not warranted at this time. However, should the

Paradises fail to make timely filings in the future, the Commission will not hesitate to impose an appropriate fine. The Commission will not tolerate the willful neglect of its regulations, reports and orders.

At the hearing the Staff asked the Paradises whether they had taken any action to address customer pressure complaints which the Staff brought to Mr. Paradise's attention at the July 31, 1986 Carroll/Lakes Region hearing. Mr. Paradise testified that Water Industries, Inc. had recently inspected the entire system and recommended improvements to remedy the pressure problems. With the improvements, which were accomplished by Walker Electric, Water Industries, Inc. is of the opinion that the system is now operating at the pressure intended by the original design. Mr. Lessels, the Commission's Water Engineer, discussed in detail the nature of the complaints he had received and the tests he performed. Mr. Lessels stated that he would perform further pressure tests to see if the problem has been resolved and would report his findings to the Commission. The Commission, through the Staff, will continue to monitor Gunstock's efforts to resolve the pressure complaints.

Our Order will issue accordingly.

ORDER

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

ORDERED, that no fine shall be imposed on Gunstock Glen Water Company for failure to file its 1984 and 1985 annual reports; and it is

FURTHER ORDERED, that docket numbers DF 85-311 and DF 86-187 be, and hereby are, closed.

By order of the Public Utilities Commission of New Hampshire this twentyninth day of September, 1986.

FOOTNOTE

[1]The 1985 annual report was filed 34 weeks after the December 12, 1985 deadline established in Order No. 17,941. Thus, Gunstock's potential fine is 34 x 100 = $3,400.

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NH.PUC*09/29/86*[60885]*71 NH PUC 572*Penacook Hydro Associates

[Go to End of 60885]

71 NH PUC 572

Re Penacook Hydro Associates

DE 86-240, Order No. 18,420

New Hampshire Public Utilities Commission

September 29, 1986

PETITION by a hydroelectric site developer to acquire property through eminent domain; dismissed on jurisdictional grounds.

Eminent Domain, § 3 — Jurisdiction — Commissions versus courts — Federal preemption.

Although a small power producer, as a public utility, is entitled under state law to exercise its right of eminent domain through the commission, if the producer is involved in a federal project, licensed by the Federal Energy Regulatory Commission, federal law preempts state law, and federal law requires actions of eminent domain to be pursued through state or federal courts, not the commission.

By the COMMISSION:

REPORT

On August 22, 1986, Penacook Hydro Associates (Penacook), a New Hampshire limited partnership, filed a petition to acquire property located in Penacook, New Hampshire pursuant to RSA 371.[1(112)] After a complete review, we find that the Commission has no

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jurisdiction to consider Penacook's petition. Accordingly, it shall be dismissed. Our reasons are set forth below.

On December 5, 1984, the Federal Energy Regulatory Commission (FERC) issued an order pursuant to the Federal Power Act (Act), 16 U.S.C. § 791 a et seq., granting Penacook a license (License) to construct, operate and maintain the Penacook Upper Falls Project (Project), a hydro-electric facility consisting of a dam and other intake structures located on the Contoocook River. 29 FERC 62,229 (1984). Penacook's project area includes three parcels of land in Penacook, New Hampshire which are currently owned by different persons.[2(113)] Under the Act, incorporated by reference as part of the License, a licensee who cannot acquire title to land necessary to the construction and operation of its facility may take that property by eminent domain. Section 21 of the Act, 16 U.S.C. § 814, provides as follows:

§814. Exercise by licensee of power of eminent domain.

When any licensee cannot acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others necessary to the construction, maintenance, or operation of any dam, reservoir, diversion structure, or the works appurtenant or accessory thereto, in conjunction with an improvement which in the judgment of the commission is desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such land or other property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: Provided, that United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000. (emphasis added).

Pursuant thereto, Penacook initially sought to take the subject properties by filing "Declarations of Taking" with the State of New Hampshire Board of Tax and Land Appeals (Board) pursuant to RSA 498-A et seq. The Board dismissed Penacook's filing because of a lack of jurisdiction, ruling that Penacook was a "public utility" within the meaning of RSA 362:2. Penacook thereafter filed the instant petition.

The issue of whether a FERC small power producer (SPP) hydroelectric licensee may avail itself of this Commission's RSA 371 eminent domain jurisdiction was previously decided by the Commission in Report and Order No. 18,383 issued on August 27, 1986 in Docket No. DE 86-209 (71 NH PUC 508), Re Briar Hydro Associates. Therein the Commission held that although an SPP FERC license is a public utility under RSA 362, it does not automatically follow that a licensee can invoke

the provisions of RSA 371.[3(114)] The Commission stated at page 12 as follows (71 NH PUC at p. 514):

The federal statute, 16 U.S.C. § 814, set forth fully above provides that a licensee may exercise such power in "the district court of the United States for the district in which such land or other property is located, or in State courts" (emphasis added). As Hoyt correctly points out, the statute's clear and unequivocal language gives the licensee a choice between federal or state court; it makes no mention of administrative bodies. We acknowledge that administrative bodies are vested with some judicial power; however, they are not "courts" in the common and ordinary usage of that word. If Congress had intended to include administrative bodies in §814, it would have so stated.

While state law entitles Briar to exercise its right of eminent domain before the Commission, federal law requires it to exercise its rights in federal or state court. As the parties acknowledge in their memoranda, under the Supremacy Clause of the United States Constitution, federal law prevails in conflicts between state and federal law. The Commission's jurisdiction over a small power producer federal licensee's right to take property by eminent domain has therefore been preempted by Congress. Accordingly, we will dismiss Briar's petition.

As stated above, Penacook, like Briar, is a FERC licensee. Therefore, pursuant to 16 U.S.C. § 814, it can only exercise the power of eminent domain in a state or federal court, not before an administrative body such as the Public Utilities Commission. Accordingly, we will dismiss its petition.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Penacook Hydro Associates' petition to acquire property pursuant to RSA 371 be, and hereby is, dismissed.

By order of the Public Utilities Commission of New Hampshire this twentyninth day of September, 1986.

FOOTNOTES

[1]RSA 371:1 provides as follows:

Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a line, branch line, extension, or a pipeline, conduit, line of poles, towers or wires across the land of another, or should acquire land, land for an electric generating station or electric substation, land for a dam site, or flowage, drainage or other rights for the necessary construction, extension or improvement of any plant, water power, or other works owned or operated by such public utility, and it cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor, such public utility may petition the public utilities commission for such rights and easements or for permission to take

such lands or rights as may be needed for said purposes.

[2]Appendix A to the Penacook's petition contains a listing of the affected landowners and the legal descriptions and deed references of their parcels.

[3]RSA 362:2 states as follows:

The term "public utility" shall include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations operating within their corporate limits, owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages or for the manufacture or furnishing of light, heat, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public, or owning or operating any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of gas, crude petroleum, refined petroleum products, or combinations of petroleum products,

cooperative marketing associations organized for purposes of rural electrification, any other business, except as hereinafter exempted, over which on September 1, 1951, the pubic utilities commission exercised jurisdiction.

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NH.PUC*10/01/86*[60887]*71 NH PUC 576*River Bend Mill d/b/a Forsters' Mill Hydro

[Go to End of 60887]

71 NH PUC 576

Re River Bend Mill d/b/a Forsters' Mill Hydro

DR 86-246, Order No. 18,430

New Hampshire Public Utilities Commission

October 1, 1986

OPINION and order discussing the need for long-term levelized rates for cogeneration project developers.

Cogeneration, § 20 — Contracts — Longterm rates — Levelized rates — Rationale.

The approval of long-term rates for the developer of a cogeneration project, without provisions for levelized rates in the last years of the rate term, would expose future ratepayers to unnecessary risks and would deny the developer needed support for stemming cash flow problems, and therefore, levelized rates are appropriate whenever a rate term of greater than 20 years is being considered.

By the COMMISSION:

ORDER

WHEREAS, on September 3, 1986 River Bend Mill d/b/a Forsters' Mill Hydro (RBM) filed a petition for its hydroelectric project located at the Sutton Mills Dam in Sutton, New Hampshire; and

WHEREAS, the Petition requested inter alia a rate order levelized for the first twenty (20) years and tracking the avoided costs thereafter; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (DE 83-62) the purpose of allowing long term rates longer than 20 years was to enable small power producers that must incur heavy capital expenditures to use the levelized value of the rates after the 20th year to offset the cash flow requirements of the early years of the project, and the added risk of the uncertainty of projections in the future is mitigated by the high discount rate applied to the rate in general; and

WHEREAS, RBM does not require and does not intend to make use of the levelized value of its rate after the 20th year to offset near-term cash flow problems; and

WHEREAS, approval of rates longer

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than 20 years with the last years unlevelized exposes future ratepayers (i.e., those in the years 2007-2019) to the risk of paying a small power producer an undiscounted rate based on a projection made in 1986; and

WHEREAS, the added risk to future ratepayers, not balanced by either the intended benefit of providing necessary support for a small power producer's cash flow problems or the mitigating effect of a high discount rate, is contrary to the Commission's intent in DE 83-62 when it made long-term rates available to small power producers; and

WHEREAS, RBM requests the long term rates as set forth in their petition to become effective as of September 1, 1986; and

WHEREAS, PSNH did not receive notice of the request until the September 3, 1986 filing and could not have notice of the Commission's ruling on the request until the issuance of this Order; and

WHEREAS, the Commission finds that in this instance the rates should not be retroactive beyond the date of this Order; and

WHEREAS, the Commission will allow PSNH the opportunity to respond to RBM's Petitions for a long-term rate order; and

WHEREAS, RBM's Petition appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, supra, and Docket No. DR 86-134, Report and Order No. 18,334 (71 NH PUC 408) in all other respects; it is therefore

ORDERED NISI, that RBM's Petition for a rate order for approval of its interconnection agreements with PSNH and for approval of rates set forth on the long term rate worksheets for its

hydroelectric project for the years 19872006 is approved; and it is

FURTHER ORDERED, that RBM's petition for a rate order for the years beyond 2006 is denied; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petitions as they deem 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 first day of October, 1986.

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NH.PUC*10/02/86*[60886]*71 NH PUC 575*Gas Service, Inc.

[Go to End of 60886]

71 NH PUC 575

Re Gas Service, Inc.

DE 86-268, Order No. 18,423

New Hampshire Public Utilities Commission

October 2, 1986

ORDER requiring a natural gas utility to conduct a gas leakage survey following an explosion caused by ill-fitting pipes.

Gas, § 5.1 — Safety considerations — Leakage surveys and inspections.

Although it had been determined that a gas explosion had been the result of leakage at a pipe fitting faultily installed by a subcontractor, the supplying gas utility was ordered to undertake a safety inspection program of the entire project and to retrain all of its personnel involved in the installation of pipes and mains.

By the COMMISSION:

ORDER

WHEREAS, on September 29, 1986 an incident occurred at 152 Indian Rock Road, Merrimack, N.H. that involved natural gas leaking from an underground piping and resulted in the ignition and explosion causing substantial property damage; and

WHEREAS, Commission's Gas Safety Engineer has investigated this incident and has determined that the source of the leaking gas was at a plastic pipe fitting; and

WHEREAS, further examination of such fitting showed that it was improperly installed; and

WHEREAS, it was determined that an outside contractor for the gas company had installed the piping; and

WHEREAS, reasonable doubt exists that other plastic pipe fittings installed by the contractor at the same site location could be defective; and

WHEREAS, Gas Service Inc. is one of several gas distribution companies which are subsidiaries of EnergyNorth, Inc.; and

WHEREAS, the same personnel i.e.: employees, outside contractors etc. of Gas Service, Inc. and the other subsidiaries of EnergyNorth, Inc. are involved in the safe installation of mains and services; it is

ORDERED, that Gas Service, Inc. immediately complete a gas leakage survey of the entire project where the incident occurred; and it is

FURTHER ORDERED, that Gas Service, Inc. immediately examine by x-ray inspection on a random sample other similar fittings located at such project; and it is

FURTHER ORDERED, that Gas

Service, Inc. and the other gas company subsidiaries of EnergyNorth, Inc. immediately retrain and instruct all personnel i.e.: employees, outside contractors etc. involved in the installation of mains and services as to the proper procedures required to assure a safe distribution system; and it is

FURTHER ORDERED, that Gas Service, Inc. notify the Gas Safety Engineer of their findings, corrective measures, and steps that will be taken to train personnel.

By order of the Public Utilities Commission of New Hampshire this second day of October, 1986.

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NH.PUC*10/06/86*[60888]*71 NH PUC 578*Public Service Company of New Hampshire

[Go to End of 60888]

71 NH PUC 578

Re Public Service Company of New Hampshire

DR 86-122, Second Supplemental Order No. 18,431

New Hampshire Public Utilities Commission

October 6, 1986

MOTION for adjustments to an electric utility's procedural schedule to provide an extension of time for data request filings; granted in part and denied in part.

Procedure, § 16 — Production of evidence — Data requests — Extensions of time.

Although an electric utility had not yet responded to a data request made by a trade association in preparation for the utility's rate hearing, the association was not given an extension of time for filing all of its testimony, but it was granted an extension for those filings contingent upon the data response, and the utility was ordered to make a timely response, with the hearing's procedural schedule adjusted accordingly.

By the COMMISSION:

Report on BIA's Motion to Compel A Response to BIA Data Request No. 36

This Report deals with a Motion filed with the Commission on September 26, 1986 by the Business and Industry Association of New Hampshire (BIA) entitled "Motion to Compel PSNH To Respond To Data Request No. 36 and To Extend Time For the Filing of Direct Testimony in Exhibits of the BIA." In that motion BIA requests that the Commission order Public Service Company of New Hampshire (PSNH) to respond to BIA Data Request No. 36 on or before November 10, 1986, that BIA receive three weeks between the filing of the response to Data Request No. 36 and the filing of BIA testimony and exhibits, and that the procedural aspects of this docket schedule be adjusted accordingly.

On September 26, 1986, the Commission also received a copy of a letter from PSNH indicating that it would provide a response to Data Request No. 36 by November 10, 1986. On October 3, 1986 PSNH provided a formal response to the BIA Motion to Compel. Therein, PSNH indicated that the Motion to Compel a Response was moot due to the Company's September 26, 1986 letter. In addition, PSNH opposes any extension of time for BIA to file its testimony. In opposing this extension, PSNH supports it on the basis that "it was unreasonable for BIA to expect that such a study could be produced" in the time period provided for discovery responses. PSNH further asserts that it "believes that BIA is able to prepare and submit its testimony in this case in advance of receipt of a new

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marginal cost of service study" but fails to provide an evidentiary or factual basis for that belief.

The Commission hopes that the PSNH letter of September 26 was the result of informal contact among the parties before the due date based upon PSNH's good faith attempts in contacting BIA and informing them of their difficulties of complying with the data requests on time, rather than merely a PSNH response to the Motion. In any event, the Commission will at this point view the letter as suggesting a resolution. The Commission is uninformed of why PSNH has not yet responded or why it should have until November 10, 1986. Thus the

Commission orders PSNH to respond to Data Request No. 36 by November 3, 1986. If for some reason PSNH is unable to meet the November 3, 1986 deadline, the Com- mission would anticipate a timely motion, presumably with testimony under affidavit, which thoroughly explains reasons why November 3, 1986 date cannot be met.

With regard to the extension of time to file testimony, BIA's request for an extension of time with respect to all testimony it might file in this rate case is, on its face, inappropriate. From its expertise in ratemaking matters, the Commission is unaware of any reason that any testimony relevant to developing a revenue requirement for PSNH cannot be filed without the response to BIA Data Request No. 36. Similarly, any other testimony and exhibits which can be developed and reasonably provided without this study should be provided in a timely manner. However, testimony and exhibits that BIA could not reasonably be expected to prepare and provide prior to the receipt of a response to BIA Data Request No. 36 may be filed 18 days after the filing of the response to BIA Data Request No. 36. Along with that testimony, the Commission will require testimony which specifically explains why said testimony could not be prepared until the receipt response to Data Request No. 36.

Since PSNH may speed up this process by filing the response to BIA due to Request No. 36 well in advance of the November 3, 1986 deadline, the Commission will not, at this time, rule on the BIA Motion to adjust the entire procedural schedule in this docket. The Commission will, however, order that PSNH's initial data requests to BIA shall be due three (3) days after the filing of any BIA testimony which was delayed due to the late response to Data Request No. 36. BIA responses to those and any follow up data requests shall be due five (5) days after receipt thereof. An Order addressing further adjustments to the procedural schedule shall be issued if necessary.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is incorporated herein by reference, the following is ORDERED; 1. PSNH shall submit its response to BIA Data Request No. 36 by November 3, 1986. 2. BIA may file its testimony which can not reasonably be prepared prior to receipt of the response to Data Request No. 36 eighteen (18) days after the receipt of the response to Data Request No. 36. 3. Discovery related to the BIA testimony filed under ORDERED, section 2 via data requests will be governed by the due dates listed above.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 1986.

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NH.PUC*10/06/86*[60889]*71 NH PUC 580*UNITIL Power Corporation

[Go to End of 60889]

Intervenors: Concord Electric Company and Exeter and Hampton Electric Company

DE 86-196, Supplemental Order No. 18,432

New Hampshire Public Utilities Commission

October 6, 1986

ORDER approving temporary rates for two electric utilities identical to their proposed permanent rates.

Rates, § 633 — Temporary rates — Parallel to permanent rates — Reduction in fuel adjustment charge.

Two electric utilities were allowed to implement temporary fuel adjustment rates that were identical to the permanent fuel adjustment rates that they had proposed, where the temporary rates would result in a reduction for ratepayers from the existing fuel adjustment rates.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on September 30, 1986, the Commission suspended certain tariffs filed in this docket; and

WHEREAS, on October 3, 1986 the Commission received a Motion of Concord Electric Company and Exeter and Hampton Electric Company for interim approval of purchased power adjustment and fuel adjustment charge tariff revisions; and

WHEREAS, the Commission interprets the above mentioned motion to request temporary rates pursuant to N.H. Rev. Stat. Ann. § 378:27; and

WHEREAS, the Commission understands the Motion to request that said temporary rates be equivalent to the permanent rates requested under the proposed tariffs which the Commission has suspended in this docket; and

WHEREAS, a transcript in this docket indicates that the effect of the rate change is a reduction in rates; and

WHEREAS, pursuant to informal inquiry, the Consumer Advocate has no objection to the temporary rates discussed in the above mentioned Order; and

WHEREAS, the Commission has held a hearing on the above mentioned rates and is currently considering them; and

WHEREAS, the Commission is still waiting for certain late filed exhibits and briefs related to its consideration of the above mentioned rates; wherefore it is

ORDERED, that Exeter & Hampton Electric Company, and Concord Electric Company are authorized to file tariffs which are identical to the permanent proposed rates, but which indicate

that they are temporary in nature and thus subject to refund based upon the Commission's decision on permanent rates; and it is

FURTHER ORDERED, that the above authorized tariff filings for Concord Electric Company and Exeter and Hampton Electric Company shall bear the effective dates as requested in the Motion of October 3, 1986; and it is

FURTHER ORDERED, that tariffs filed pursuant to this Order shall not be effective until a further order of the Commission.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 1986.

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NH.PUC*10/07/86*[60890]*71 NH PUC 581*Public Service Company of New Hampshire

[Go to End of 60890]

71 NH PUC 581

Re Public Service Company of New Hampshire

Intervenors: Office of Consumer Advocate, Conservation Law Foundation of New England, Inc., Community Action Program, Seacoast Anti-Pollution League, and Campaign for Ratepayers' Rights et al.

DR 83-398, Fourth Supplemental Order No. 18,433

New Hampshire Public Utilities Commission

October 7, 1986

MOTION for rehearing of a commission order denying an electric utility recovery of its investments in an abandoned nuclear power plant project; denied.

Valuation, § 224 — Construction work in progress — State statutes — Commission powers.

The commission is not empowered to determine the constitutionality of state legislative acts, and until a court overturns a state statute prohibiting construction work in progress accounts for abandoned or cancelled power plant projects, the commission cannot allow a utility to recover its investment in a cancelled project, even if its investment had been prudent and the decision to cancel had not been the utility's to make.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On June 23, 1986, the Commission issued Report and Order No. 18,309 (71 NH PUC 371) (Order) which denied Public Service Company of New Hampshire's (PSNH) December 30, 1983 Petition regarding recovery of its investment in the abandoned Pilgrim 2 nuclear plant. The Petition requested that the Commission investigate, determine and fix an appropriate ratemaking methodology to enable PSNH to recover costs associated with PSNH's

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investment in Pilgrim 2.[1(115)] In the Order the Commission addressed the following issues regarding PSNH's investment in Pilgrim 2 nuclear plant: 1.) the level of investment; 2.) the timing of the investment; 3.) the purpose of the investment; and 4.) the result of the investment (i.e., whether construction was completed or cancelled). The Commission made the following findings:

1. PSNH invested a total of $15,008,217.23 in the Pilgrim 2 nuclear plant in which it owned a 3.47% interest;

2. PSNH invested $10,402,395.17 between October, 1972 and April 30, 1979 in the Pilgrim 2 nuclear plant, and between April 30, 1979 and October 26, 1981, PSNH invested an additional sum of $4,605,922.06 therein;

3. The purpose of PSNH's investment in Pilgrim 2 was to provide capacity in order to meet PSNH's obligation to serve anticipated new customers and customer load, and that in their opinion the additional capacity and investment in Pilgrim 2 had significant advantages over other capacity alternatives; and

4. The Pilgrim 2 nuclear plant was cancelled by its lead owner, Boston Edison, on October 26, 1981.

The Commission applied RSA 378:30-a, as interpreted by the Supreme Court of New Hampshire in Re Public Service Co. of New Hampshire, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984), to these findings and concluded that the relief requested by PSNH in its petition must be denied.

Thereafter, on July 11, 1986, PSNH filed a Motion for Rehearing pursuant to RSA 541:3. Therein it argues that the Order is unlawful and unreasonable on the following grounds:

1. Denial of PSNH's petition, based solely on the prohibition of the anti-CWIP statute, RSA 378:30-a, and without regard to whether the investment was reasonably requisite to fulfilling PSNH's statutory obligations, deprives PSNH of property without due process of law and other rights secured to it under Part 1, Article 12 of the Constitution of New Hampshire, and the Fourteenth Amendment of the Constitution of the United States;

2. Denial of the petition, based solely on the prohibition contained in RSA 378:30-a, and without regard to whether all or a portion of PSNH's investment in Pilgrim Unit No. 2 was contracted for or made prior to the effective date of the statute, gives retrospective effect to the statute by attaching new disabilities in respect to transactions already passed, in violation of the

rights secured to PSNH under Part 1, Article 23 of the New Hampshire Constitution and Article 1, section 10 of the United States Constitution; and

3. Excluding the issue of prudency from the scope of the proceedings was unreasonable, because factual findings on that issue may

be required to adjudicate the constitutional issues set forth above.

After due consideration, we will deny PSNH's Motion.

In Nos. 1 and 2 above, PSNH argues that the Order is unlawful because the anti-CWIP statute, RSA 378: 30-a, is unconstitutional. As we stated in the Order, the Commission has no jurisdiction to judge such an argument. Thus, until a contrary holding is rendered by an appropriate appellate court, we must presume that RSA 378:30-a is constitutional.

Regarding No. 3 above, the Commission stated at page 3 of the Order as follows (71 NH PUC at p. 372):

RSA 378:30-a, as construed in Re Public Service Co. of New Hampshire, supra, provides that if the investment falls within the terms of the statute, it may not be recovered through rates, even if it was prudent. Since any prudency findings can have no effect on any of the remaining issues before us, evidence of prudency or imprudency is irrelevant and outside the scope of this proceeding. See, RSA 541-A:18 II; N.H. Admin. Rules PUC 203.09(b); N.H. Rules of Evidence, 401 and 402.

Nothing presented in PSNH's Motion for Rehearing convinces us that our original finding is unlawful. Its arguments in this regard are fully addressed by the above-cited section of the Order.

Given that this Commission has no jurisdiction to determine the constitutionality of legislative acts and that, in light of RSA 378:30-a, a prudency determination of PSNH's investment in the Pilgrim Unit 2 nuclear plant is irrelevant and outside the scope of this proceeding, PSNH's Motion for Rehearing shall 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 the Public Service Company of New Hampshire's Motion for Rehearing be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this seventh day of October, 1986.

FOOTNOTE

[1]The procedural history of this docket is set forth in detail in the Report accompanying Order No. 18,309 and need not be repeated here.

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NH.PUC*10/08/86*[60891]*71 NH PUC 584*George Fisher

[Go to End of 60891]

71 NH PUC 584

Re George Fisher

DE 86-256, Order No. 18,437

New Hampshire Public Utilities Commission

October 8, 1986

PETITION for authority to provide customer-owned, coin-operated telephone service; granted.

Service, § 456 — Telephone — Customerowned, coin-operated telephones — Conditions.

Customer-owned, coin-operated telephone service was authorized to be provided at a market as long as the rates would be comparable to local rates, the telephone would be served by measured business rates, the telephone would be hearing aid compatible, the telephone would access both local and toll service, and the owner, maintenance information, and rate policies would all be clearly posted.

By the COMMISSION:

ORDER

WHEREAS, on September 15, 1986 George Fisher filed a petition to install a coin operated telephone at Canobie Market, No. Main St. Salem, N.H.; and

WHEREAS, the Federal Communications Commission Registration number was filed with this Commission; and

WHEREAS, in Re Coin Operated Telephone Policies, 70 NH PUC 89 (1985), this Commission found that it was in the public interest to certify competitive providers of public pay telephone service; it is hereby

ORDERED, that the George Fisher is certified, pursuant to N.H. Rev. Stat. Ann. § 374:22 (1984), as a public utility for the limited purpose of providing public pay telephone service on the premises subject to the following conditions:

1. The telephone shall be served by measured business service at applicable tariffed rate,

2. The telephone must be hearingaid compatible,

3. The telephone shall provide dial tone first,

4. The telephone shall provide for local and toll access,

5. The telephone shall allow access to other common carriers,

6. The telephone shall be clearly marked as to ownership, and maintenance responsibility,

7. The local rates shall be the same as those which apply to the New England Telephone system,

8. The telephone shall provide tollfree calling within municipalities,

9. Mr. Fisher shall be responsible for adherence to all applicable laws, rules and tariff provisions,

10. Surcharges for toll calls are authorized, pricing policies shall be clearly marked at the coin phone location.

11. Mr. Fisher shall comply with all rules hereafter made applicable to customer owned coin-operated telephones.

By Order of the Public Utilities Commission of New Hampshire this eighth day of October, 1986.

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NH.PUC*10/09/86*[60892]*71 NH PUC 586*Continental Telephone Company of New Hampshire

[Go to End of 60892]

71 NH PUC 586

Re Continental Telephone Company of New Hampshire

DR 86-255, Order No. 18,439

New Hampshire Public Utilities Commission

October 9, 1986

APPLICATION by a local exchange telephone carrier for approval of its promotional plans for its custom calling services; granted.

Service, § 433 — Telephone — Special calling features — Promotional activities.

A local exchange telephone carrier was authorized to engage in a promotional program for its custom calling features being offered to customers at special rates during a limited trial period.

By the COMMISSION:

ORDER

WHEREAS, on September 22, 1986, Continental Telephone Company of New Hampshire

(hereinafter Contel) filed certain revisions to its Tariff No. 11 proposing competitive promotions of its custom calling and touch calling services upon approval of the Public Utilities Commission; and

WHEREAS, the Commission finds that such promotions are useful to inform the customer of his opportunities for varied telecommunications services at special trial period rates, charges, or discounts; and

WHEREAS, such consumer education is in the public interest; it is

ORDERED, that Section 2, Fourth Revised Sheet 1; Contents and General Subject-Index, Third Revised Sheet 4; and Section 2, Fifth Revised Sheet 15 of N.H.P.U.C. Tariff No. 11 be, and hereby are, approved for effect on October 19, 1986; and it is

FURTHER ORDERED, that any such trial program be filed with this Commission no less than 30 days prior to the proposed implementation for review and decision thereon; and it is

FURTHER ORDERED, that ConTel advise this Commission of the manner in which public notice is to be given for each trial program.

By order of the Public Utilities Commission of New Hampshire this ninth day of October, 1986.

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NH.PUC*10/09/86*[60893]*71 NH PUC 587*New England Telephone and Telegraph Company, Inc.

[Go to End of 60893]

71 NH PUC 587

Re New England Telephone and Telegraph Company, Inc.

DR 86-229, Order No. 18,440

New Hampshire Public Utilities Commission

October 9, 1986

ORDER approving revision to a tariff providing for a flexible pricing plan for Quickway SM.

Rates, § 532 — Telephone rate design — Flexible pricing.

Revisions to telephone tariffs were accepted to provide for flexible pricing for "Quickway SM," provided that any revenue shortfalls produced by the flexible pricing would not be shifted automatically to the general class of ratepayers.

By the COMMISSION:

ORDER

WHEREAS, on August 8, 1986 New England Telephone and Telegraph Company, Inc. (hereinafter NET) filed a tariff proposing the introduction of the Flexible Pricing Plan for Quickway SM; and

WHEREAS, the minimum price in the proposed price range is not confiscatory since according to NET's cost study it covers the cost of providing the service and adds a contribution; and

WHEREAS, the company is driven by competitive market forces to not charge an excessive or extortionate rate for this service, and the maximum price is not extortionate; and

WHEREAS, this flexible rate pricing plan will provide the commission with a vehicle to study competitive local services; and

WHEREAS, New England Telephone Company's Cost of Service study is still ongoing in Docket DR 85-182; it is hereby

ORDERED, that Part B-Section 4-First Revision of NHPUC Tariff No. 75 be, and hereby is, approved; and it is

FURTHER ORDERED, that approval of this flexible pricing plan does not automatically allocate to ratepayers revenue shortfalls which may result from this type of pricing and that management must bear the risk that any adverse consequences resulting from this decision may be allocated all or in part to the investors; and it is

FURTHER ORDERED, that NET will keep complete records of this service to allow the commission to evaluate, among other things, the efficacy of competitive services, the revenue allocation, and the ability of competitive service to promote universal service.

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FURTHER ORDERED, that the finding that the prices for this service cover the costs may be revisited pending the outcome of Docket DR 85-182.

By order of the Public Utilities Commission of New Hampshire this ninth day of October, 1986.

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NH.PUC*10/21/86*[60894]*71 NH PUC 588*Southern New Hampshire Water Company

[Go to End of 60894]

71 NH PUC 588

Re Southern New Hampshire Water Company

Intervenors: Office of Consumer Advocate, Town of Hudson, Manchester Water Works, and Consumers Water Company et al.

DR 85-245, Supplemental Order No. 18,444

New Hampshire Public Utilities Commission

October 21, 1986

APPLICATION for authority to modify tariff policies for extension of water main pipes and to institute a "system development contribution" to recover costs related to an existing water transmission and distribution system; denied.

Valuation, § 224 — Construction work in progress — Rate base disallowance — Anti-CWIP law.

Under New Hampshire state law, R.S.A. 378:30-a, the so-called "anti-CWIP" law, public utility rates are not allowed in any manner to be based upon the cost of construction work in progress; all costs of construction work in progress may not be included in rate base or allowed as an expense for rate-making purposes until, and not before, the construction project is actually providing service to customers. [1] p. 592.

Service, § 210 — Extensions — Water utilities.

A proposal by a water distribution utility to revise its tariff policies for extension of water main pipes was rejected; under the proposal, the utility would have ceased its practice of providing free footage allowances of 50 feet to individual customers and of refunding a portion of customer deposits (required for extensions of greater than 50 feet) if and when additional customers are added to a main extension; instead, under the proposal, the utility would have made refunds of main extension costs only upon a showing of an unreasonable cost burden upon the customer, and the utility would have instituted a "system development contribution" (SDC) program, whereby residential, commercial, and industrial customers would have been asked to pay a one-time charge, varying from $750 to $9,360, depending upon meter size and customer class, to offset maintenance and capital costs attributable to existing water transmission and distribution plant. [2] p. 594.

Rates, § 595 — Water rate design — Capital charges — "System development contribution."

A proposal by a water distribution utility to revise it tariff policies for extension of water main pipes was rejected where the proposal, which would have required customers to pay a one-time "system development contribution" (SDC) charge, varying from $750 to $9,360, depending upon meter size and customer class, to offset costs associated with existing water transmission and distribution plant, represented a fundamental change in conventional ratemaking methodology and was not supported by adequate proof that, absent the new program, it would be necessary to increase water rates substantially to support the cost of capital expansion anticipated over the next 10 years. [3] p. 594.

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Service, § 188 — Extensions — Cost allocation — Customer contributions — Fairness — Water mains.

The commission rejected a proposal by a water distribution utility to revise it tariff policies for extension of water main pipes whereby the utility would have ceased its practice of providing

free footage allowances of 50 feet to individual customers and of refunding a portion of customer deposits (required for extensions of greater than 50 feet) if and when additional customers are added to a main extension and, instead, would have treated individual customers and real estate developers in a like manner by making refunds of main extension costs available only upon a showing of an unreasonable cost burden upon the customer; it was held improper to treat individual customers in the same manner as real estate developers because developers can recover the cost of their contribution for a main extension in a development project by including the cost in home prices, while an individual residential customer has no such recourse. [4] p. 596.

Service, § 210 — Extensions — Water utilities.

Discussion of policy of a water utility regarding extensions of water main pipes to individuals and to real estate developers. p. 590.

Apportionment, § 41 — Expenses — Water utilities — Base-extra capacity method.

Discussion of the "base-extra capacity" method of cost allocation customarily utilized in performing cost-of-service studies for water utilities. p. 592.

APPEARANCES: McLane, Graf, Raulerson and Middleton by James C. Hood, Esquire and Steven V. Camerino, Esquire on behalf of Southern New Hampshire Water Company; Michael Holmes, Esquire, Consumer Advocate; Dr. Sarah Voll, Chief Economist, Robert Lessels, Water Engineer, James Lenihan, Rate Analyst ano Daniel Lanning, Assistant Finance Director on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On June 28, 1985, Southern New Hampshire Water Company (Southern) filed revised tariff pages reflecting several modifications to its main pipe extension policies and the establishment of a "system development contribution" (SDC) to take effect on July 15, 1985. By Order No. 17,730 issued on July 9, 1985, the Commission suspended the revised pages to allow for an investigation. An Order of Notice was issued on December 6, 1985 scheduling a prehearing conference for January 10, 1986 to address the issues of intervention and a procedural schedule to govern the remainder of the proceedings.

At the January 10 hearing the Commission recognized the participation of the Consumer Advocate and the Commission Staff and granted full party intervenor status to Leonard Smith on his own behalf as a Southern ratepayer and on behalf of the Town of Hudson, New Hampshire Board of Selectmen of which he is a member. The parties conferred informally and thereafter proposed a procedural schedule consisting of data requests and responses thereto during February to May, 1986 with hearings to follow on May 20, 21 and 22, 1986. The procedural schedule was approved by the Commission in Report and Order No. 18,164 issued on March 11, 1986.

A Motion To Permit Filing of Memorandum of Law was filed by Manchester Water Works on April 16, 1986. The Commission granted the motion by letter of the Commission's Executive Director and Secretary dated April

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18, 1986.[1(116)]

On May 19, 1986, Southern filed a motion to continue the May hearings to July 14 and 15, 1986 and to modify the procedural schedule accordingly. In conjunction therewith, Southern filed revised tariff pages identical to those initially filed on June 28, 1985 except that the effective date was changed from July 15, 1985 to September 15, 1985. By Supplemental Order No. 18, 288 issued on June 3, 1986, the Commission granted the motion, revised the procedural schedule and suspended the amended tariff pages pursuant to RSA 378:6.

Hearings were held on July 14, 15 and 18, 1986.[2(117)] Offering testimony in support of the tariff revisions were Robert Phelps, Assistant Treasurer of Southern and Vice President and Treasurer of Consumers Water Company (Consumers) Southern's parent corporation, Bruce Lewis, Southern's Vice President of Operations and Brian Bisson, Senior Engineer for Consumers. James Lenihan, Commission Rate Analyst, testified on behalf of the Commission Staff in opposition to certain of the proposed tariff revisions.

II. DESCRIPTION OF PROPOSED TARIFF REVISIONS

Under its current tariff, Southern's main extension policies differ depending upon whether the customer requesting service is an individual or a developer. Where a main pipe extension is necessary to provide service to an individual or group of individuals, Southern will extend its mains up to 50 feet at its own expense; the cost of extending beyond that point is the responsibility of the customer or group of customers. For an extension beyond fifty feet, a customer must submit a deposit to Southern for the estimated cost of the construction.[3(118)] If during the 10 year period after the extension additional customers are connected thereto, the deposit will be recomputed and the new customers will be required to deposit their proportional part of the total deposit which Southern will refund to the original depositor(s) on a pro rata basis.[4(119)] The allowance for fifty feet, refund provisions and fire protection adjustments are not available to developers seeking an extension.[5(120)]

In addition to the individual and developer provisions, Southern's main extension tariff pages contain a section regarding the installation of booster stations. It provides that Southern will construct, operate and maintain booster pumping stations in areas above elevation 250 U.S.G.S. base (mean sea level) when there is a potential of at least 50 customers. Where less than 50 customers are to be immediately connected, a refundable deposit of $400 times the difference between 50 and the number of customers initially connected is

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required. Like the main extension refund provision, as additional customers are connected within a 10 year period, a refund of $400 per customer added will be pro rated among the

original depositor or depositors, provided, however, that the total amount refunded shall not exceed the original deposit. The tariff also contains a provision regarding refunds for the second fifty customers.

The proposed tariff revisions eliminate the distinction between individuals and developers. The allowance for fifty feet and refund provisions for individuals have been effectively eliminated. Refunds will only be made if "it can be clearly demonstrated that an unreasonable burden is being placed on a customer, in which case the company will use a special extension contract allowing for refunds over a specified period of time". In addition, the booster station refund provisions and the fire protection adjustment have been eliminated from the tariff pages.

The most significant proposed revision is the implementation of a "system development contribution" (SDC), a one-time charge to be levied on all new customers which Southern will utilize as "contribution in aid of construction" for the following facilities:

1. source of supply facilities

2. pumping and/or treatment facilities

3. storage facilities

4. transmission facilities (12" diameter or larger mains and appurtenances

5. oversizing of mains and facilities The proposed charges are as follows:

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

METER SIZE

	5/8D	3/4D	1.0D	1.5D	2.0D
CUSTOMER CLASS					
RESIDENTIAL	$1170	$1760	$2930	$5850	$9360
COMMERCIAL	$1080	$1620	$2700	$5400	$8640
INDUSTRIAL	$750	$1130	$1880	$3750	$6000
S.P.A.	$1040	$1560	$2690	$5200	$8320
CONDOS.	$940	$1410	$2350	$4700	$7520

III. POSITION OF THE PARTIES

A. System Development Contribution

For most of the 55-plus years after its acquisition by Consumer's Water Company in 1930, Southern was a small, parochial water utility whose operations were confined to the center of Hudson, New Hampshire. Beginning in the mid-1970s, Southern began a period of expansion which continues unabated to this day. In addition to expanding its core system into Litchfield and other parts of Hudson, Southern acquired many developer-built, community water systems. This expansion resulted in an increase in Southern's customer base from approximately 2,000

to over 6,000, 75% of which are served by the Hudson-Litchfield core. 450 and 876 customers were added in 1984 and 1985, respectively.

The majority of Southern's growth over the last decade has occurred in the Hudson-Litchfield

core which Southern plans to enlarge within the next two years to include a portion of Londonderry. While its witnesses' estimates vary, Southern expects substantial customer growth in its core system for the forseeable future.[6](121) It estimates that $4.3 million in capital improvements will be necessary to accommodate the expected growth, including, inter alia, additional sources of supply, pumping and treatment facilities, transmission mains and main over-sizing.

Southern contends that the inclusion of the additional plant in rate base will result in substantial rate increases. To help reduce the expected increases, Southern seeks to implement the abovedescribed SDC schedule to recover approximately one-half of the $4.3 million capital improvements, the remainder of which will be financed both internally and by conventional financing mechanisms. Like customer contributions for main pipe extensions, Southern will treat SDC payments as "contributions in-aid-of construction", which, pursuant to standard ratemaking practice, are excluded from rate base. Southern therefore argues that, all other things being equal, a lower rate base will result in lower rates.

In addition to smaller rate increases for all customers, Southern's purpose in proposing the SDC is to relieve existing customers of the obligation to pay for new plant. Because new and not existing customers are contributing to the customer growth and the resulting need for substantial plant investments, Southern contends that existing customers' should not be burdened with at least part of the cost of additional investment.[7](122) Southern argues that with the SDC, the customers that are causing additional investment will pay for a major part of it.

The methodology used to develop the SDC tariff schedule is set forth in great detail on pages 3-8 of Mr. Bisson's testimony (Exhibit 4) and the attachments thereto; it need not be repeated here. In short, it is based on the socalled "base-extra capacity" method of cost

allocation customarily utilized in performing cost of service studies for water companies. While not originally designed for calculating an SDC, Southern has applied the "base-extra capacity" method to allocate approximately onehalf of the estimated $4.3 million among the various customer classes. It argues that this methodology, recommended by the American Water Works Association Water Rate Manual for cost of service studies, "provides a good method of cost allocation and recovers costs from each user class in proportion to the cost of service to that class" (Testimony of Mr. Bisson, Exhibit 2, Page 4).

[1] According to Southern, funds collected through the SDC will only be applied toward primary facilities, including source of supply facilities, pumping and/or treatment facilities, storage facilities, transmission facilities (12" diameter or larger mains and appurtenances) and the oversizing of mains and facilities; they will not be allocated towards distribution facilities (less than 12" pipe), meters and related parties, service lines, garage facilities,

distribution equipment or the like.[8](123) Moreover, Southern contends that SDC funds will only be applied toward facilities already constructed and in service. "There will never be a time when money collected as SDC will be applied towards construction that is in progress but not used and useful" (Testimony of Mr. Phelps, Transcript Volume I, p. 35). Southern contends that this would be ensured in two ways as follows:

First, the SDC will actually represent only about 50 percent of the actual capital cost of extending service to a new customer. Thus, it is remote that SDC would be applied to more than 50 percent of SDC-qualified facilities that are in service, let alone any facilities that have not yet been completed. Second, if the amount of SDC funds collected ever did begin to outpace the cost of SDC-qualified facilities in service, the Commission could simply order a reduction or temporary elimination (i.e., a "zero dollar SDC") of the SDC. Alternatively, an automatic cessation of SDC collections could be made a part of the Commission's order in this docket if and when collections reach or exceed a specified percentage of the cost of SDC-qualified facilities in service. Brief of Southern, pp. 4-5.

Because the SDC will be applied to projects already in the ground and being utilized, Southern therefore argues that the SDC will not violate RSA 378:30-a, the so-called "anti-CWIP" law, which prohibits rates being based on the cost of construction work in progress.[9](124)

In response to concerns expressed by the Commission Staff, Southern contends that the imposition of an SDC on new customers only will not result in existing customers receiving "any undue or unreasonable preference or advantage" in violation of RSA 378:10. Southern argues that treating old and new customers differently regarding the SDC is reasonable given their differing relationship to the plant additions. According to Southern, the new capacity and transmission lines will be necessitated by the influx of new customers to its franchise area. Given that the new plant will be used almost exclusively to serve the new customers, Southern contends fairness and equity requires that only new customers pay for that plant. Accordingly, because existing customers will derive no benefit from the new plant, Southern takes the position that existing customers should be relieved of the obligation of paying for it.

Staff and the Consumer Advocate both argue that the Commission should reject the SDC on the grounds that it is an unwarranted departure from the well-established ratemaking principle of systemwide averaging of a utility's costs. In addition, the Consumer Advocate argues that if the Commission decides that existing customers should be

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insulated from future rate increases, one method would be to divide Southern's franchise area thereby resulting in two rate bases and two sets of rates, one for the old customers and another for the new customers.

B. Elimination of Refund and Footage Allowance Provisions

The prefiled testimony of Southern's witnesses contains no substantive discussion as to the rationale for eliminating the refund and footage allowance provisions for residential customers. At the hearings, Southern's witnesses testified that those provisions were eliminated so that residential customers would be treated the same as developers who are not entitled to refunds or footage allowances under Southern's current tariffs. Southern's witnesses characterized the revisions as "housekeeping" items.

The Consumer Advocate argues that the elimination of the refund and footage allowance constitutes a radical departure from the conventional manner of handling main extensions and

should not be adopted without sufficient justification which he argues, has not been provided. The Staff took no position in this regard.

IV. COMMISSION ANALYSIS

[2, 3] The underlying rationale of the SDC is that existing customers should be shielded from rate increases resulting from plant additions designed primarily to provide service to new customers. While seemingly fair on its face, adoption of this rationale would require the abandonment of this jurisdiction's well-established ratemaking principle that a utility's systemwide costs should be recovered from all of its customers. Thus, contrary to Southern's argument, the SDC concept represents a significant departure from conventional ratemaking methodology. Southern therefore has the burden of establishing that such a change in policy is warranted.

In order to meet this burden of proof Southern must show first that a substantial problem exists relative to present or future rate levels. Assuming the Company has demonstrated a significant rate problem, it must then present an analysis of the various capital contribution methodologies or other ratemaking techniques (such as phaseins) and the appropriateness of each to the Company's situation.

The Company's presentation relative to prospective rates supports the conclusion that a rate problem(s) exists, but it does not support the findings the Company requests the Commission to make. In its request for findings of fact the Company requests that the Commission make the following findings among others:

(1) The capital expansion necessary to serve new customers coming on line will greatly increase SNHWC's rate base over the next decade.

(2) It will be necessary for SNHWC's rates to increase substantially in order to support the cost of the capital expansion anticipated over the next decade.

While the first finding is supported by the record, the second is not.

Mr. Phelps testimony (Exhibit 2) sets forth the rate increases Southern expects will be necessary over the next ten years to support the plant expansion. Taking into account only capital

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charges (return and depreciation), Southern estimates that in 1985 dollars operating revenue per customer will increase from $446 in 1985 to $467 in 1995 without the SDC; with the SDC it will decrease from $446 to $356. If the total change in revenue requirement from the plant additions are included in the calculation, operating revenue per customer decreases from $446 in 1985 to $428 in 1995 without the SDC; with the SDC the decrease is greater, $446 to $318.[10(125)] These estimates clearly do not support Southern's position that rates will increase substantially in order to support the cost of capital expansion anticipated over the next decade.

The rate analysis presented in Mr. Phelps testimony and the post-hearing exhibit does show that there are significant changes in anticipated rate levels within this period. Traditional ratemaking will result in declining rates in real dollars until 1992 when a sharp jump occurs due

to the addition of a new treatment facility to the system. Thus, the rate problem is a rate shock problem due to the addition of the new treatment plant, and not a problem of continuous rate increases.

The Company also asks the Commission to find that "[T]he rate increases which SNHWC customers will incur without implementation of a System Development Contribution will likely be oppressive in light of the existing level of SNHWC rates". Whether rate levels are or will be oppressive requires some analysis of the level of the rates. The Company has not presented any analysis of the level of rates over the study period. Of course, the Commission has some expertise and knowledge of its own regarding the relative rate levels of the various water companies it regulates as well as companies outside of this jurisdiction. From this knowledge, the Commission recognizes that Southern's rate levels are relatively high and that a means of lowering rates in real terms over time may be very desirable. However, the Company has not done adequate analysis of rate levels to support this position, and has not proposed the SDC as a means of lowering rates in real terms over time.

Similarly, the inadequacy of the Company's analysis is demonstrated by the submission following the hearing of information relative to capital contribution methodologies from the 1986 American Water Works Association's 1986 Manual (AWWM). The Company's case should have included this information along with an analysis of the various methodologies and the appropriateness of each to the Company's situation. Among other methodologies the AWWM discusses are two system contribution charge methodologies that have thus far been utilized primarily by government-owned utilities, the "system buy-in" and "incremental-cost pricing" methods. Apparently, these methods were not considered by Southern. Moreover, neither method is based on the base-extra capacity cost allocation method proposed by Southern, which, as stated above, is designed for cost of service studies.

Southern has also presented some information relative to the adoption of SDC's or SDC-like charges by other jurisdictions to support its petition. Documentation submitted in response to the Commission's hearing requests reveals that Florida, Ohio and several New England states currently have in

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place some form of capital contribution charge. However, apart from a mere listing of the actual charges, most of the material contains no in-depth analysis regarding the manner in which they were calculated or the rationale for their implementation.

From this analysis, the Commission concludes that Southern has failed to provide sufficient evidence to convince the Commission that a capital contribution charge in general, and the SDC in particular, should be adopted at this time.[11](126) However, the Commission does not wish the Company to conclude from this decision that the Commission is not receptive to innovative approaches given a more thorough study of the alternatives as they relate to the particular problems of the Company. If the Company undertakes the analysis suggested and believes it can support a new capital contribution or other ratemaking methodology, it should file a new petition.

[4] We likewise will reject Southern's proposed main extension policies. Contrary to Mr.

Lewis' testimony, they are not mere housekeeping revisions but are in fact a radical departure from the current provisions. Southern's only reason for proposing the elimination of refunds and footage allowances for individuals is that individuals should be treated the same as developers. We disagree. Developers can recover the cost of their contribution for a development's main extension by including it in the price of the individual homes. However, an individual who builds the first home in an area has no such recourse. By eliminating the refund and footage allowance provisions, that individual alone will be required to bear the total cost of the main extension even if other customers tie into the extension at some future date. We find this to be an inequitable result. All customers who receive service from a main should be responsible for their pro rata share of its cost. Given that there is no evidence these provisions impose an unreasonable burden on Southern, we find they should be continued.

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 revised tariff pages filed by Southern New Hampshire Water Company on June 28, 1985, including Third Revised Page 13, Fifth Revised Page 14, Fourth Revised Page 15, Fifth Revised Page 15A, Fourth Revised Page 15B, Fifth Revised Page 15C, be and hereby are, rejected.

By order of the Public Utilities Commission of New. Hampshire this twentyfirst day of October, 1986.

FOOTNOTES

[1]Manchester Water Works filed a memorandum of law on July 15, 1986.

[2]At the July 14, 1986 hearing, Mr. Smith withdrew his full party intervention in lieu of being allowed to give a public statement as a limited intervenor at the close of the evidentiary portion of the proceedings.

[3]The tariff provides that an adjustment shall be made to the estimated cost to reflect any costs associated with public fire protection.

[4]Southern will also undertake a recalculation where a subsequent main extension is made from the original extension upon which a deposit is still refundable. If the further extension results in an increased customer density, it will be combined with the original extension and pro rata and equitable refunds will be made to the original depositors; if the customer density is decreased, then the extension will be considered a new and separate extension.

[5]A "developer" is defined in the tariff as "any real estate developer, development company, building contractor, or ... any other person, business, firm or corporation, or agent thereof ... "

[6]In his testimony, Mr. Bisson utilized customer growth of 350 per year. Mr. Phelp's projections assumes 500 new customers per year.

[7]As stated above, the SDC is not designed to recover all of the expected $4.3 million cost of the plant expansion.

[8]Southern proposes to have the Commission approve in advance the projects that qualify for the SDC.

[9]RSA 378:30-a provides as follows:

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.

[10]The change in Southern's overall revenue requirement is contained in a post-hearing filing submitted in a response to a request by the Commission at the hearing.

[11]Because of the generic nature of holding herein, it is not necessary to address the SDCspecific issues such as whether it can properly be construed as a contribution-in-aid, whether it violates RSA 378:10, whether it contravenes RSA 378: 30-a, etc.

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NH.PUC*10/22/86*[60895]*71 NH PUC 597*Pennichuck Water Works, Inc.

[Go to End of 60895]

71 NH PUC 597

Re Pennichuck Water Works, Inc.

DF 86-234, Order No. 18,445

New Hampshire Public Utilities Commission

October 22, 1986

APPLICATION for authority to issue and sell unsecured long-term debt for the purpose of retiring short-term debt; granted.

Security Issues, § 38 — Authorization — Necessity.

Under New Hampshire state law, N.H. Rev.Stat.Ann. § 369:1, a public utility may issue and sell its stock, bonds, notes, and other evidences of indebtedness of a term longer than one year, only upon approval by the commission. [1] p. 598.

Security Issues, § 44 — Authorization — Factors considered.

Under New Hampshire state law, N.H. Rev.Stat.Ann. § 369:1, the state public utilities commission will approve a proposal by a public utility to issue and sell its stock, bonds, notes, and other evidences of indebtedness if the issue is found to be consistent with the public good. [2] p. 598.

Security Issues, § 57 — Purposes — Construction financing — Retirement of short-term debt.

A proposal by a water utility to issue $4 million in unsecured long-term debt, with a 10-year maturity and a fixed rate of interest of 8.95%, was granted, where the purpose of the issue was to prefinance certain construction costs and to retire $2.5 million of outstanding short-term debt that had been incurred primarily for the construction of plant additions. [3] p. 598.

Security Issues, § 44 — Authorization — Factors considered — Debt-equity ratio.

A proposal by a water utility to issue $4 million in unsecured long-term debt was granted even though it would increase the utility's debt equity ratio from 55:45 to 60:40. [4] p. 598.

Security Issues, § 7 — Effect of authorization — Rate making.

Approval of a security issue does not carry with it a finding that the financing costs are reasonable for rate-making purposes. [5] p. 599.

APPEARANCES: Gallagher, Callahan and Gartrell by John B. Pendleton, Esquire and Mary Ellen Kiley, Esquire on behalf of Pennichuck Water Works, Inc.; Daniel J. Kalinski, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On August 14, 1986, Pennichuck Water Works, Inc. (Pennichuck), a public utility engaged in distributing water to the public in Nashua and Merrimack, New Hampshire, filed a petition seeking authority pursuant to the

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provisions of RSA 369 to issue and sell $4,000,000 of unsecured debt. An Order of Notice was issued on September 4, 1986 scheduling a hearing for October 6, 1986. Charles Staab, Pennichuck's Treasurer, offered testimony and exhibits at the October 6 hearing in support of the petition. The Commission Staff did not present any witnesses.

II. APPLICABLE LAW

[1, 2] RSA 369:1, entitled Authority to Issue Securities, provides as follows:

A public utility engaged in business in this state may, with the approval of the commission but not otherwise, issue and sell its stock, bonds, notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes. The proposed issue and sale of securities will be approved by the commission where it finds that the same is consistent with the public good. Such approval shall extend to the amount of the issue authorized and the purpose or purposes to which the securities or the proceeds thereof are to be applied, and shall be subject to such reasonable terms and conditions as the commission may find to be necessary in the public interest; provided, however, that the provisions of RSA 293-A shall be observed by corporations organized under the laws of this state in respect of the corporate

authorization required and of other formalities to be observed.

III. COMMISSION FINDINGS

[3, 4] By this petition, Pennichuck seeks authority to issue a $4,000,000 unsecured note to The Mutual Benefit Life Insurance Company (Mutual Benefit) of Newark, New Jersey. The proposed terms of the note include a 10 year maturity with no sinking fund requirement and an 8.95% fixed rate of interest. In addition, the notes will be non-callable for six years and, for the remainder of the term, callable at par, or at a premium if the rate for Treasury bonds due October 15, 1996 has dropped below a specified level as of the date of prepayment. According to Pennichuck, the remainder of the terms will generally parallel those contained in Pennichuck's existing notes. Of the several insurance companies and two banks who expressed an interest in providing the financing, the terms offered by Mutual Benefit were the most favorable.

The proceeds from the financing will be used to immediately retire $2,500,000 of outstanding short term debt, incurred primarily for the construction of plant additions, and to prefinance additional construction costs through June 30, 1987. Mr. Staab's prefiled testimony contained a capital budget for the January 1, 1986 to June 30, 1987 period totalling $4,425,000 and described in detail the various projects included therein.

Pennichuck's capital structure will be significantly impacted by this long term debt issuance; its debt-to-equity ratio will increase from 55:45 to 60:40. However, despite the increase, the ratio will still meet the requirements of Pennichuck's other long term debt agreements. In addition, this note will result in a decrease in Pennichuck's pre-tax interest coverage ratios from 3.02 to 2.13 times which is also within the limits imposed in its other outstanding

debt agreements. According to Pennichuck, both ratios should improve as earnings accrue over the next several months.

Pennichuck estimates the costs of the financing to be approximately $75,000, consisting of a $50,000 broker fee (1.25% of total loan proceeds) for Advest, Inc., the underwriter, and $25,000 in legal fees. Pennichuck will amortize these costs over the 10 year term of the note.

In this proceeding, Pennichuck formally presented for the first time a new cash management system involving its parent corporation, Pennichuck Corporation, and its sister subsidiary, The Southwood Corporation. Mr. Staab's prefiled testimony (Exhibit 7) describes that system as follows:

Up until August 1, 1986, the Company maintained a line of credit facility with the Indian Head National Bank of Nashua. Under a consolidated cash management system ... which has now been implemented, the line of credit facility is now in the name of the parent company. Receipts by the Bank and checks presented to the Bank for payment are summarized daily on a statement delivered to the Company by the Bank. These statements are the basis for determining the amount of funds to be borrowed or repaid daily by the subsidiary to the parent. The amount of intercompany short term debt outstanding as of the closing of the proposed long term debt issue by the Company will be repaid by the Company to the parent from the proceeds of this financing. The intercompany loan agreement and terms under the cash management system

mirror the line of credit agreement that the parent has with the Indian Head National Bank.

After a complete review, we find the proposed issuance to be consistent with the public good subject to the following condition which we find to be "necessary in the public interest" pursuant to RSA 369:1. As stated above, part of the proceeds will be used to finance construction projects, certain of which will not be completed until some time in 1987. In the interim, the unused funds will be invested in a liquid investment. If a project's construction time is of a sufficient duration, Pennichuck will have to accrue AFUDC, that is, capitalize the interest associated with the portion of the financing used for that project. In the event AFUDC is accrued on a project, Pennichuck shall reduce the capitalized interest by the amount interest earned on the funds used for that project. This adjustment, utilized by the Federal Energy Regulatory Commission and other Commissions, will insure that the income from the invested funds will flow to the ratepayers who will ultimately be responsible for the costs of the financings.

[5] Lastly we note that approval of Pennichuck's financing does not carry with it a finding that the financing costs are reasonable for ratemaking purposes. That determination must be left to the time when Pennichuck seeks to pass the costs of the financings to its ratepayers. Re Public Service Co. of New Hampshire, 69 NH PUC 415, 419 (1984). This ruling is consistent with the holding of the New Hampshire Supreme Court in Re Seacoast Anti-Pollution League, 125 N.H. 708, 273, 490 A.2d 1329 (1985), wherein it stated as follows:

Our holding does not assure that the costs of securities will ultimately be recovered through rates charged to customers. When a utility has exhibited inefficiency, improvidence, economic waste, abuse of discretion, or action inimical to the public interest, the costs may not be passed on to ratepayers. See Re Public Service Co. of New Hampshire, supra, at p. 1076, 454 A.2d at p. 443.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Pennichuck Water Works, Inc. be, and hereby is, authorized to issue and sell for cash, upon the terms proposed, four million dollars ($4,000,000) of its unsecured debt, subject to the condition described in the foregoing Report; and it is

FURTHER ORDERED, that the proceeds from the sale of this debt shall be used to pay the costs of the issue, to pay off short term debt of the Company and, after being invested on a short term basis, to permanently finance the construction of additions to plant; and it is

FURTHER ORDERED, that on or before June 30, 1987 Pennichuck Water Works, Inc. shall file with this Commission a detailed statement, duly sworn to by its President or its Treasurer, showing the complete disposition of the proceeds of said debt being authorized so that said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of October, 1986.

71 NH PUC 601

Re Pennichuck Water Works, Inc.

DF 86-270, Order No. 18,446

New Hampshire Public Utilities Commission

October 22, 1986

APPLICATION for authority to issue short-term debt in excess of 10% of net fixed capital; granted.

Security Issues, § 98 — Kinds and proportions — Short-term debt — Ceiling.

A proposal by a water utility to issue short-term debt in an amount that would exceed its authorized ceiling for short-term debt — 10% of its net fixed capital — was granted, where it was found that the shortterm borrowing would be retired with the proceeds of an issue of unsecured longterm debt.

By the COMMISSION:

ORDER

WHEREAS, Pennichuck Water Works is presently authorized to issue shortterm debt in an amount not to exceed 10 percent of its net fixed capital, as authorized by the NH Public Utilities Commission per Supplemental Order No. 7,446 [sic]; and

WHEREAS, Pennichuck Water Works, by letter to the Public Utilities Commission dated July 29, 1986, requested authority to increase the amount of its short-term debt to $3,300,000, which is in excess of that allowed in Commission Order No. 7,446 [sic]; and

WHEREAS, Pennichuck Water Works has filed with the New Hampshire Public Utilities Commission a petition for authorization to issue and sell $4 million of unsecured debt per pending Docket DF 86-234; and

WHEREAS, Pennichuck Water Works has represented that their short-term borrowing will be retired utilizing the proceeds of their proposed $4 million financing; it is

ORDERED, that Pennichuck Water Works is hereby authorized to issue and sell for cash its notes and notes payable to Pennichuck Water Works in an aggregate amount of $3,300,000 until such time as a Report and Order is issued by the N.H. PUC on Docket DF 86-234; and it is

FURTHER ORDERED, that Pennichuck Water Works shall file timely requests for short-term debt levels in excess of statutory requirements or authorized levels in accordance with regulations; and it is

FURTHER ORDERED, that on or before January 1st and July 1st of each

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succeeding year to this agreement, Pennichuck Water Works shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of the notes or notes payable herein authorized, until the whole of said proceeds have been accounted for to the full satisfaction of said Commission.

By Order of the Public Utilities Commission of New Hampshire this twentysecond day of October, 1986.

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NH.PUC*10/22/86*[60897]*71 NH PUC 602*EUA Power Corporation

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71 NH PUC 602

Re EUA Power Corporation

DF 85-338

Re Maine Public Service Company
Re Central Maine Power Company
Re Bangor Hydro-Electric Company
Re Central Vermont Public Service Corporation

DF 85-351

Re Fitchburg Gas and Electric Light Company

DF 86-150

Supplemental Order No. 18,448

New Hampshire Public Utilities Commission

October 22, 1986

APPLICATION for authority to modify proposed terms for issue of securities in connection with transfer of ownership interests in the Seabrook nuclear electric generating station; granted.

Nuclear Plant Decommissioning, § 33 — Financing — Contingencies — Escrow fund.

In connection with the transfer of ownership interests in the Seabrook nuclear electric generating station, from five investor-owned electric utilities to a newly formed holding

company, a proposal was approved to modify agreements for security issues to eliminate a requirement for one of the transferors to supply an escrow deposit for decommissioning expenses, because it was held by the Massachusetts Attorney General that the transferor in any event would remain secondarily liable for decommissioning costs and costs of cancellation.

By the COMMISSION:

REPORT

On October 2, 1986, EUA Power Corporation filed a request for further modification of the existing orders in this docket and the proposed terms for the issuance of securities. On October 7, 1986 EUA Power Corporation submitted revisions to the Proposed Terms for the Issuance of Securities. The latest proposed terms are as follows:

PROPOSED TERMS FOR THE ISSUANCE OF SECURITIES

I. COMMON STOCK

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EUA Power proposes to issue 10,000 shares of its Common Stock, $.01 par value ("Common Stock") to EUA at a purchase price of one dollar ($1.00) per share. EUA Power also proposes to issue up to 449,900 shares of Common Stock to EUA upon conversion of shares of preferred stock as set forth below.

II. PREFERRED STOCK

EUA Power proposes to issue 449,900 shares of Class A Preferred Shares, $100 par value ("Class A Preferred") to EUA upon the following terms (determined in accordance with the settlement agreements reached in the FERC wholesale ratemaking proceedings):

Price: $100 per share.

Dividends: Cumulative dividends at the rate of 25% of the par value per annum.

Conversion: Each share of Class A Preferred shall be converted into one share of Common Stock as follows:

(i) If EUA Power effects an authorized refinancing of a percentage (up to and including 100%) of its initial debt within four (4) years of the commercial operation date of Unit No. 1, an equivalent percentage of Class A Preferred Shares then outstanding shall be converted into shares of Common Stock on the date twelve (12) years from the commercial operation date of Unit No. 1.

(ii) If EUA Power effects an authorized refinancing of a percentage (up to and including 100%) of its initial debt at any time during the fifth (5th) year after the commercial operation date of Unit No. 1, an equivalent percentage shall be converted into shares of Common Stock on the date ten (10) years from the commercial operation-date of Unit No. 1.

(iii) If EUA Power effects an authorized refinancing of a percentage (up to and including 100%) of its initial debt at any time during the sixth (6th) year after the commercial operation

date of Unit No. 1, an equivalent percentage of Class A Preferred shares then outstanding shall be converted into shares of Common Stock on the date eight (8) years from the commercial operation date of Unit No. 1.

(iv) If EUA Power has not effected an authorized refinancing of all of its initial debt by the end of the sixth (6th) year after the commercial operation date of Unit No. 1, the percentage (up to and including 100%) of Class A

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Preferred shares equivalent to the percentage of initial debt that has not been so refinanced shall be converted into shares of Common Stock on the date seven (7) years from the date of commercial operation of Unit No. 1.

(v) Upon conversion Holders of Class A Preferred shares shall have no claim for accumulated but unpaid dividends upon shares at the time of conversion into common stock.

(vi) For purposes of the foregoing, EUA Power is using the following definitions: "Unit No. 1" means Unit No. 1 of the Seabrook Nuclear Electric Generating station located in Seabrook, New Hampshire; "commercial operation date of Unit No. 1" means the date on which Seabrook Unit No. 1 is released to the New England Power Pool (or successor entity) for dispatch (which in the event of dispute may be resolved by determination of the Federal Energy Regulatory Commission or its successor agency); "initial debt" means EUA Power's outstanding long term debt at the commercial operation date of Unit No. 1; and "authorized refinancing" means a refinancing of EUA Power's initial debt, or any part thereof, at a cost of capital to EUA Power of no more than 175% of the prime rate as set by The First National Bank of Boston, or its successor on a date not more than twenty-one days prior to such authorized refinancing.

III. SERIES A NOTES EUA

Power proposes to issue $180,000,000 in aggregate principal amount of Series A Secured Notes due November 15, 1991 (Series A Notes") upon the following terms:

Purchasers: Institutional and other private investors purchasing for investment. EUA Power has agreed that after the Closing it will use its best efforts to cause a registration statement to become effective under the Securities Act of 1933 so as to permit subsequent sales, if any, by the purchasers.

Price to Pur- 100% of the principal chasers: amount.

Underwriting $1,500,000 plus an amount Fees: to be determined equal to not more than 4% of the principal amount.

Interest To be determined; the rate Rate: per annum will not exceed 20% per annum and is not anticipated to be less than 15% per annum;

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interest will be payable semi-annually.

Redemption: Not more than $9,000,000 in aggregate principal amount of the Series A Notes

will be redeemable at 100% of their principal amount at the option of EUA Power from proceeds of the Series A Notes which remain unused at the commercial operation date of Unit 1. Otherwise the Series A Notes will not be redeemable until the end of three years following the commercial operation date of Unit 1. Thereafter, the Series A Notes will be redeemable at redemption prices to be determined but not exceeding 106% of the principal amount.

Security: Mortgage indenture to State Street Bank and Trust Company of Boston, Massachusetts, Trustee covering EUA Power's utility properties (exclusive of nuclear fuel), tangible and intangible including franchises.

Cancellation Term: Eliminated.

Closings: The Closing on the issuance of not less than $145,000,000 of the Series A Notes will be held as soon as is practicable; The Closing on the remaining principal amount will be held during 1987.

IV. NOTES AND DECOMMISSIONING COSTS SECURITY AGREEMENT

Principal $10,000,000 (To be reduced proportionately if any of the five transfers are not completed).

Maturity Date: December 31, 2031.

Collateral Cash and marketable securities having a value of not less than $10,000,000, or, if less, equal to the then outstanding principal amount of the note.

Changes in Principal In the event that Eastern Amount: Utilities Associates guarantees $10,000,000 of EUA Power's liability for the payment of Seabrook decommissioning and cancellation obligations, the note will be discharged and the collateral security returned.

In the event that an acceptable buyer enters into a life-of-the-unit power purchase contract for a percentage of the output from Seabrook Unit 1 attributable to EUA Power's Seabrook Ownership Share, with take-or-pay obligations that include decommissioning and cancellation costs, the principal

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amount will be reduced by such percentage.

Whenever as of the end of any month the sum of (i) the value of the collateral security then held plus (ii) the amount credited to EUA Power under the decommissioning fund established pursuant to RSA 162-F:19 plus (iii) the amount for which the Sellers remain contingently liable is more or less than the then estimated present value of EUA Power's share of the cost to decommission Unit 1, the principal amount will be correspondingly increased or decreased, as the case may be, but in no event will the principal amount exceed $10,000,000. The principal amount owing will be reduced by the amount of decomissioning and cancellation payments made by EUA Power.

Replacement Upon each change in the Notes: principal obligation of EUA Power, EUA Power will deliver a new note in the appropriate principal amount, and the outstanding note will be cancelled.

Fitchburg Gas and Electric (Fitchburg) petitioned on October 10, 1986 for the elimination of the decommissioning escrow provision. Fitchburg states that the $713,623 escrow provision was included into an Addendum to the Agreement of Purchase and Sale between the Company and EUA, dated April 8, 1986 because of concern on the part of the parties that such an escrow provision might be appropriate in view of agreements between Fitchburg and the Attorney General of the Commonwealth of Massachusetts and approved by the Massachusetts Department of Public Utilities. Upon the request of Fitchburg, the Massachusetts Attorney General and the Massachusetts Department of Public Utilities has rendered advice that the escrow provision is unnecessary. Fitchburg has agreed that they will remain secondarily liable for decommissioning costs and costs of cancellation and that the share thereof will be in an amount not exceeding $713,123. Therefore, Fitchburg requests the Commission to find that an Amendment to the "Addendum" which eliminates the $713,123 escrow provision contained in paragraph 1 thereof, will be consistent with the public good, provided that the Company will remain secondarily liable for certain defined decommissioning and cancellation expenses, as referred to in Order No. 18,349 (71 NH PUC 430) in an amount not to exceed $713,123.

Upon consideration of the foregoing terms, we find that the proposed changes are approved.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

WHEREAS, our Order No. 18,058 dated January 15, 1986 (71 NH PUC 73), as amended by Order No. 18,275 dated May 23, 1986 (71 NH PUC 321), and Order No. 18,349 dated July 24, 1986 (71 NH PUC 430), issued in the above-docketed consolidated proceeding authorized EUA Power Corporation ("EUA Power") among other things, to

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issue and sell not more than 10,000 shares of Common Stock $.01 par value, to Eastern Utilities Associates ("EUA"), not more than 500,000 shares of Preferred Stock, $100 par value, to EUA and not more than $200,000,000 in aggregate principal amount of notes (the "Series A Notes") and to issue not more than $10,000,000 in aggregate principal amount of notes secured by pledges of cash and marketable securities to fund certain decommissioning and cancellation obligations; and

WHEREAS, in compliance with said Order, as amended, EUA Power has submitted to this Commission details concerning the proposed issuance of securities, including the amount to be issued and the term, purchase price, dividends and maximum interest rate thereof; and

WHEREAS, EUA Power's submittal containing such details is available for inspection at the offices of this Commission at 8 Old Suncook Road, Concord, New Hampshire 03301; and

WHEREAS, in order to satisfy the requirements of the purchasers of the Series A Notes and to avoid adverse Federal income tax consequences to EUA Power and the purchasers of the Series A Notes, EUA Power has requested that this Commission further modify its Order in this proceeding to permit EUA Power to eliminate a provision that would have permitted EUA Power to cancel its obligations under the Series A Notes in the event of the cancellation of Seabrook Unit No. 1 and to authorize EUA Power to secure its obligations under the Series A

Notes with a mortgage of substantially all of its utility properties (exclusive of nuclear fuel), tangible. and intangible, including franchises; and

WHEREAS, the parties to this proceeding have advised this Commission that they have no objection to the granting of the modification request and the approval of the proposed terms of the securities to be issued by EUA Power; and

WHEREAS, based on an examination of the Orders of the Federal Energy Regulatory Commission ("FERC") dated May 6, 1986 in Docket No. EL 85-46-000, September 11, 1986 in Docket No. EL 85-46-001, July 2, 1986 in Docket No. 86-33-000 and September 11, 1986 in Docket No. EL 86-33-001, this Commission finds that the condition set forth in said Order No. 18,058 regarding FERC approval of the resulting capital structure for cost based wholesale ratemaking purposes has been satisfied; and

WHEREAS, after due consideration it appears that the issuance by EUA Power of such securities upon the terms submitted, including the requested modification regarding the Series A Notes, and the mortgaging of EUA Power's utility properties as security for the Series A Notes will be consistent with the public good; and

WHEREAS, the Commission's Order No. 18,349 recognized, among other things, that EUA Power and the sellers have agreed in principle for the apportionment of certain decommissioning expenses and costs of cancellation, that, under the agreement between the sellers and EUA Power, the sellers (with the exception of Fitchburg) will remain secondarily liable in amounts not exceeding certain specified sums; and that, for Fitchburg, $713,123 would be paid directly into an escrow fund for these purposes; and

WHEREAS, Fitchburg has represented to this Commission that it will agree to remain secondarily liable in

an amount not to exceed $713,123 for said decommissioning expenses and costs of cancellation, in the same manner as the other utilities, and

WHEREAS, Fitchburg has requested that the Commission therefore modify its outstanding orders so as to provide for the elimination of the escrow provision applicable to Fitchburg, so that Fitchburg's agreement as to secondary liability will be similar to that of the other sellers; and

WHEREAS, after due consideration it appears that the modification of the Commission's orders as requested by Fitchburg will be consistent with the public good; it is

ORDERED NISI, that EUA Power be, and hereby is, authorized to issue its securities upon the terms submitted and to mortgage its utility properties (exclusive of nuclear fuel), tangible and intangible including franchises, to secure the Series A Notes; and it is

FURTHER ORDERED NISI, that Fitchburg be and hereby is authorized to transfer its ownership interest in Seabrook Station upon the terms approved in Order No. 18,349, but the elimination of the escrow provisions referred to in said order, provided that Fitchburg remains secondarily liable for decommissioning expenses and costs of cancellation, as provided for in said order, in an amount not to exceed $713,123; and it is

FURTHER ORDERED, that said petitioners give notification by publication of this Order once in a newspaper having general circulation in that portion of the State in which operations are conducted, such publication to be no later than October 25,1986, and said publication is 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, that any person proposing to intervene as a party to this proceeding pursuant to RSA 541-A:17 and N.H. Admin. Rules, Puc 203.02, and to object to this Order becoming final must do so, with a copy of the Petition to Intervene to all parties, no later than October 31, 1986; and it is

FURTHER ORDERED, that this Order Nisi shall become effective on November 3, 1986 unless the Commission provides otherwise in a supplemental Order issued prior to such effective date.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of October, 1986.

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NH.PUC*10/23/86*[60898]*71 NH PUC 609*Walnut Ridge Water Company, Inc.

[Go to End of 60898]

71 NH PUC 609

Re Walnut Ridge Water Company, Inc.

Additional party: Office of Consumer Advocate

DR 86-194, Order No. 18,454

New Hampshire Public Utilities Commission

October 23, 1986

MOTION requesting an interim rate increase pending a decision upon a general rate application; temporary rates implemented at current levels.

Rates, § 630 — Temporary rates — Jurisdiction and powers — State commission.

Under New Hampshire state law, N.H. Rev.Stat.Ann. § 328:27, the state public utilities commission has discretionary authority to approve an interim increase in rates pending a decision upon a general rate application. [1] p. 609.

Rates, § 630 — Temporary rates — Jurisdiction and powers — State commission.

The duty of the state public utilities commission to investigate a request for a temporary rate increase is less than is required in setting permanent rates. [2] p. 609.

Rates, § 630 — Temporary rates — Overor underrecovery — Recoupment.

Any overrecovery or underrecovery that results from a temporary increase in rates is

addressed by allowing the customers or the company to recoup such overrecovery or underrecovery. [3] p. 609.

Rates, § 630 — Temporary rates.

Pending a decision upon a general rate application filed by a water utility, the utility was authorized to implement temporary rates at current levels. [4] p. 609.

By the COMMISSION:

Report Regarding Authorization of Temporary Rates and Development of Procedural Schedule

[1-4] On June 24, 1986 Walnut Ridge Water Company, Inc. (Walnut Ridge) filed tariffs proposing an increase in its permanent rates. According to materials filed by Walnut Ridge, the proposed tariffs would increase its revenues by $24,800 or 63% over the level that its current rates would provide on an annual basis. On October 9, 1986, a prehearing conference to address procedural matters was held pursuant to Commission Order No. 18,357 (August 1, 1986). During the on the record portion of that prehearing conference, Walnut Ridge Water Company, Inc., via counsel, presented a motion requesting a temporary rate increase. As a result of the prehearing conference, the parties to the prehearing conference (the Company, the Staff, and the Consumer Advocate) recommended that the Company receive temporary rates at the level of their current permanent rates. The parties also

jointly recommended a procedural schedule.

The Commission takes note of its records which indicate that this Company is a small one. Its annual report for year 1985 filed under affidavit with the Commission on March 24, 1986 indicates that it has 307 customers. Filings submitted by the Company in this rate case indicate that it has 310 customers.

The Commission's power to set temporary rates is explicitly authorized by statute. N.H. Rev. Stat. Ann. § 328:27. The Commission's power to set such rates is discretionary and shall be exercised only when such rates are in the public interest. Id. The Commission's duty to investigate temporary rate requests is less than is required in setting permanent rates. Public Service Co. of New Hampshire v. New Hampshire, 102 N.H. 66, 70, 28 PUR3d 404, 105 A.2d 810 (1959). Any overrecovery or underrecovery resulting from the temporary rates is addressed by allowing the customers or Company recoupment of such overrecovery or underrecovery, respectively. See New Hampshire v. New England Teleph. & Teleg. Co., Inc., 103 N.H. 394, 40 PUR3d 525, 173 A.2d 728 (1961).

In the instant case, the Commission is unable to find that the Company's current rates are either deficient or excessive. A full investigation in the permanent rate case may result in a rate increase or rate reduction. The two sided nature of such rate action and the small size of this Company leads the Commission to the conclusion that the provision of temporary rates at current levels is in the public interest. The Commission notes that allowing such rates at this time will avoid the cost of a separate hearing for temporary rates.

The temporary rates should be effective on the effective date of the attached Order. Such action is consistent with past Commission practice on this issue as described in docket no. DR 85-304, Re Concord Steam Corp., 71 NH PUC 104 (1986).

The parties also presented the Commission with a settlement on procedural matters. First, the parties agreed that all direct testimony and exhibits in this case should be prefiled. They further agreed to the following procedural dates as indicated below:

October 17, 1986 - the Company shall file all direct testimony and exhibits in support of its case

October 24, 1986 - Staff, the Consumer Advocate, and all intervenors shall submit all data requests to the Company

October 31, 1986 - the Company shall provide responses to all data requests filed on or before October 24, 1986

December 5, 1986 - Staff, Consumer Advocate and all intervenors shall file all direct testimony and exhibits in support of their cases

December 12, 1986 - the Company shall file all data requests related to testimony related to December 5, 1986

December 19, 1986 - deadline for Staff to respond to all data requests filed on or before December 12, 1986.

January 5, 1987 - a prehearing conference will occur at 9:00 a.m. and a hearing on permanent rates will

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begin at 10:00 a.m. or at the conclusion of the prehearing conference, whichever is later.

The Commission finds that the above proposed procedures and procedural dates are reasonable and shall order them via the attached Order.

Our order shall issue accordingly.

ORDER

Based on the foregoing Report, which we incorporate herein by reference, the following is hereby ORDERED: 1. Walnut Ridge Water Company, Inc. is granted temporary rates at current rate levels effective upon the issuance of this Order. 2. Walnut Ridge Water Company, Inc. shall file tariffs reflecting such temporary rates and indicating on or before October 17, 1986 that such rates are temporary and subject to recoupment or refund to the extent that the temporary rates are greater or less than the ultimately approved permanent rate levels. 3. The procedural aspects of the consideration of the Company's permanent rates shall be as described in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this twentythird day of October, 1986.

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NH.PUC*10/23/86*[60899]*71 NH PUC 612*Detariffing Telephone Utilities' Inside Wire

[Go to End of 60899]

71 NH PUC 612

Re Detariffing Telephone Utilities' Inside Wire

Intervenor: Chichester Telephone Company

DE 86-154, Interim Order No. 18,455

New Hampshire Public Utilities Commission

October 23, 1986

ORDER disapproving a tariff revision outside of the scope of a docketed proceeding.

Rates, § 645 — Procedure — Scope of proceedings.

A tariff revision filed by a telephone utility that would have changed the rate per terminal loop from $3.00 to $6.65 was rejected as outside the scope of a docketed proceeding governing deregulation in inside wire. p. 612.

By the COMMISSION:

INTERIM ORDER

WHEREAS, on September 30, 1986 Chichester Telephone Company filed several tariff revisions in an attempt to comply with Order No. 18,270 issued in Re Telephone Utilities Deregulation of Inside Wiring, DE 84-64 (May 22, 1986); and

WHEREAS, Section 1, Sheet 1A, Second Revision, G. contains regulations concerning Automatic Dialing Announcing Devices (hereinafter ADADs); and

WHEREAS, the Commission will be opening a generic docket in which it will require the filing of ADADs tariffs and conduct an investigation thereof, and

WHEREAS, in Section 3, Sheet 6, Second Revision the company proposes to change the rate per terminal loop from $3.00 to $6.65; and

WHEREAS, terminal loop rates are not within the scope of this proceeding (as established in Re Telephone Utilities Deregulation of Inside Wire, Order No. 18,270 at 2, and as further distinguished in Re Detarrifing Telephone Utilities' Inside Wire, 71 NH PUC 545, 546 (1986); and

WHEREAS, Section 3, Sheet 10, First Revision changes the rates and conditions applicable to temporary suspension of service; and

WHEREAS, such rates and conditions are not within the ambit of this proceeding; and

WHEREAS, the Commission is addressing general tariff revisions of Chichester Telephone in Docket DE 86-260; and

WHEREAS, Chichester's rights to Commission procedures will not be abridged by considering its proposed rate changes in a different docket; and

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WHEREAS, Section 3, Sheet 6, Second Revision and Sheet 10, First Revision require investigation to determine if they are in the public interest; it is hereby

ORDERED, that Section 1, Sheet lA, Second Revision of Chichester Telephone Company tariff NHPUC-No. 3 is disapproved without prejudice, and Part G. of Sheet lA may be refiled at such time as the ADADs investigation is opened; and it is

FURTHER ORDERED, that Section 1, Sheet 1A, should be refiled, deleting part G., and it is

FURTHER ORDERED, that Section 3, Sheet 6, Second Revision and Section 3, Sheet 10, First Revision will be investigated in DE 86-260 instead of this docket; and it is

FURTHER ORDERED, that Section 3, Sheet 6, Second Revision and Section 3, Sheet 10, First Revision of Chichester Telephone Company tariff NHPUC-No. 3 be, and hereby are, suspended pending investigation and decision.

By order of the Public Utilities Commission of New Hampshire this twentythird day of October, 1986

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NH.PUC*10/24/86*[60900]*71 NH PUC 614*Bedford Water Company

[Go to End of 60900]

71 NH PUC 614

Re Bedford Water Company

DF 86-182, Order No. 18,456

New Hampshire Public Utilities Commission

October 24, 1986

SHOW cause order for failure to file an annual report; order issued suspending fine.

Fines and Penalties, § 8 — Defenses — Mitigating circumstance — Health problems.

A water utility that had failed to file an annual report, as required by state law, administrative rule Nos. PUC 607.06 and 609.05, was excused from payment of a fine of $100 for each day of noncompliance, where it was shown that noncompliance was due to a health problem of the utility's owner.

APPEARANCES: Henry R. Bieque, owner, on behalf of Bedford Water Company; James C. Nicholson, PUC Examiner, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On June 12, 1986, the Commission issued an Order of Notice opening docket DF 86-182. for the purpose of determining whether Bedford Water Company (Company) should be fined pursuant to RSA 374:17 for failure to file an F-16 Annual Report for the year ended December 31, 1985 by March 31, 1985 as required by N.H. Admin. Rule Nos. Puc 607.06 and 609.05. The Order of Notice scheduled a hearing for September 16, 1986 to allow the Company an opportunity to show cause why it should not be fined $100 per day for failure to file the annual report. Testifying at the hearing on the Company's behalf was its owner, Henry R. Bieque.

Mr. Bieque testified that a serious health problem which he described in detail, was the reason for his failure to file the annual report. Mr. Bieque further testified that his health problem has been resolved and that he would file the annual report as soon as his accountant finished preparing it.[1](127) He therefore requested that the Commission impose no fine.

After a complete review, we have determined that no fine should be imposed. We accept Mr. Bieque's testimony that health problems have prevented him from filing the annual report. The resolution of those problems

coupled with his stated intentions to comply with the Commission's rules from this point forward lead us to conclude that a fine is not warranted at this time. However, should the Company fail to make timely filings in the future, the Commission will not hesitate to impose an appropriate fine. The Commission will not tolerate the willful neglect of its regulations, reports and orders.

Our Order will issue accordingly.

ORDER

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

ORDERED, that no fine shall be imposed on Bedford Water Company for failure to file its 1985 annual report; and it is

FURTHER ORDERED, that docket number DF 86-182 be, and hereby is, closed.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of October, 1986.

FOOTNOTE

[1]The 1985 annual report was filed October 15, 1986.

71 NH PUC 615

Re Blodgett Landing Water Company

DF 86-181, Order No. 18,458

New Hampshire Public Utilities Commission

October 28, 1986

SHOW cause order for failure to file an annual report; order issued suspending fine.

Fines and Penalties, § 8 — Defenses — Mitigating circumstance — Health problems.

A water utility that had failed to file an annual report, as required by state law, administrative rule Nos. PUC 607.06 and 609.05, was excused from payment of a fine of $100 for each day of noncompliance, where it was shown that noncompliance was due to personal problems of the owner and his inability to understand the accounting complexities of the report.

APPEARANCES: Richard C. Butterfield, owner, on behalf of Blodgett Landing Water Company; James C. Nicholson, PUC Examiner, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On June 12, 1986, the Commission issued an Order of Notice opening docket DF 86-181 for the purpose of determining whether Blodgett Landing Water Company (Company) should be fined pursuant to RSA 374:17 for failure to file an F-16 Annual Report for the year ended December 31, 1985 by March 31, 1985 as required by N.H.

Admin. Rule Nos. Puc 607.06 and 609.05. The Order of Notice scheduled a hearing for September 16, 1986 to allow the Company an opportunity to show cause why it should not be fined $100 per day for failure to file the annual report. Testifying at the hearing on the Company's behalf was its owner, Richard Butterfield.

Mr. Butterfield testified that both significant personal problems, which he described in detail, and his inability as a layman to understand the accounting complexities of the report were the reasons for his failure to file the annual report. Mr. Butterfield further testified that his personal problems had been resolved and that he would seek the assistance of the Commission Staff to

insure that the 1985 and all future annual reports will be filed.[1](128) He therefore requested that the Commission impose no fine.

After a complete review, we have determined that no fine should be imposed. We accept Mr. Butterfield's testimony that personal problems have interfered with some aspects of his management of the Company. The resolution of those problems, coupled with his stated intentions to comply with the Commission's rules from this point forward, lead us to conclude that a fine is not warranted at this time. However, should the Company fail to make timely filings in the future, the Commission will not hesitate to impose an appropriate fine. The Commission will not tolerate the willful neglect of its regulations, reports and orders.

Our order will issue accordingly.

ORDER

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

ORDERED, that no fine shall be imposed on Blodgett Landing Water Company for failure to file its 1985 annual report; and it is

FURTHER ORDERED, that docket number DF 86-181 be, and hereby is, closed.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of October, 1986.

FOOTNOTE

[1]The 1985 annual report was filed October 10, 1986.

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NH.PUC*10/29/86*[60902]*71 NH PUC 617*Wormser Engineering, Inc.

[Go to End of 60902]

71 NH PUC 617

Re Wormser Engineering, Inc.

Additional petitioner: Martin Energy, Inc.

Intervenors: Public Service Company of New Hampshire, A. Johnson Cogeneration, Inc., Industrial Cogenerators Corporation, and New Hampshire Electric Company et al.

DR 86-1, Second Supplemental Order No. 18,460

New Hampshire Public Utilities Commission

October 29, 1986

PETITION for authority to implement a front-end loaded, levelized, twentyyear avoided cost rate for a proposed fossil fuel based cogeneration project.

Cogeneration, § 24 — Rates — Front-end loading — Levelization — Eligibility — Project development.

The commission does not require that all developmental problems must be solved before a long-term, levelized, avoided cost rate can be assigned to a qualifying cogeneration facility; instead, the developer of a cogeneration project must show that there is a reasonable expectation that the project will be developed as proposed; whether a project is sufficiently developed to receive a longterm rate is a question of commission judgment. [1] p. 623.

Cogeneration, § 24 — Rates — Front-end loading — Levelization — Eligibility — Project development.

In deciding whether a qualifying cogeneration facility is sufficiently developed to qualify for the issuance by the commission of a long-term, levelized, avoided cost rate, the fact that the project developer has acquired critical federal, state, and local permits for the project's construction and operation provides evidence that the project can be constructed as scheduled and that the project's technical design is essentially complete. [2] p. 623.

Cogeneration, § 24 — Rates — Front-end loading — Levelization — Eligibility — Economic viability.

In order to be eligible for front-end loaded or levelized rates for a twenty-year rate term, a cogeneration project must be shown to be viable over the life of the rate obligation; such a demonstration necessarily encompasses technical and operational questions, as well as economic viability. [3] p. 623.

Cogeneration, § 24 — Rates — Front-end loading — Levelization — Eligibility — Economic viability.

In reviewing the economic viability of fossil fuel fired projects for the cogeneration of steam and electricity, the commission favors projects in which the electrical output is sized more closely to the steam output. [4] p. 624.

Cogeneration, § 24 — Rates — Front-end loading.

Because one of the purposes of the Public Utility Regulatory Policies Act of 1978 is the development of new and more efficient technologies, the commission, in setting long-term avoided cost rates for qualifying cogeneration projects, should approve a degree of front-end loading to achieve the benefits of developing such new technologies. [5] p. 625.

Cogeneration, § 24 — Rates — Front-end loading — Levelization — Eligibility.

Page 617

A planned, fossil fuel fired (fluidized-bed combustion system), qualifying cogeneration facility was held eligible for front-end loaded, levelized, long-term avoided cost rates, such that the front-end loading would be limited to the amount consistent with full levelization for a smaller sized plant. [6] p. 625.

Cogeneration, § 1 — Generating plants — Technology — Fluidized-bed combustion.

Discussion of advantages of use of fluidized-bed combustion technology in a fossil fuel fired

cogeneration project and its impact upon projections of long-term coal prices, avoided cost calculations, and economic viability. p. 623.

APPEARANCES: Brown, Olson & Wilson by Robert A. Olson, Esq. for Wormser Engineering, Inc., and Martin Energy, Inc.; Sulloway, Hollis, & Soden by Margaret Nelson, Esq., and Thomas B. Getz, Esq., for Public Service Company of New Hampshire; Skadden, Arps, Slate, Meagher & Flom by Mark S. Laufman, Esq. for A. Johnson Cogeneration, Inc.; Orr & Reno by Howard Moffett, Esq. for Industrial Cogenerators Corporation; Jeffery Zellers, Esq. for the New Hampshire Electric Company; Dr. Sarah P. Voll, James Lenihan, Nadeen Gazaway and Mark Collins for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On January 6, 1986 Wormser Engineering, Inc. and Martin Energy, Inc. (Wormser) filed a long term rate petition pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 353, 61 PUR4th 132 (1984) (DE 83-62) and 70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85-215). Wormser requested, inter alia, a front-end loaded twenty year rate order for its proposed third party fossil fuel based cogeneration project located in North Rochester, New Hampshire near the Spaulding Fibre Company. The project will produce steam for sale to Spaulding Fibre Company and sell its entire electrical output to Public Service Company of New Hampshire (PSNH). The N.H. Public Utilities Commission (Commission) held hearings on March 12, April 18, June 2 and June 20, 1986 to investigate the issue of the eligibility of third party fossil fuel based facilities for front-end loaded rates under the provisions of DE 83-62. Briefs were filed by Wormser and PSNH on July 16, 1986 and A. Johnson Cogeneration, Inc. (Johnson) on July 11, 1986.

POSITION OF PARTIES

Wormser

Wormser alleges that it has met the standards required for the issuance of a long term avoided cost rate pursuant to DR 85-215. It lists the standards as follows and provides a discussion of each:

A. The Facility must be a qualifying facility.

B. The Facility must adhere to the 45 day prefiling request.

C. The Facility must have a reasonable expectation of fulfilling the rate filing representations.

1. The on-line date representation must be met.

2. Service termination protection must be demonstrated.

D. The Facility must demonstrate a reasonable expectation that it is viable over the life of the

rate obligation.

In its discussion of service termination protection, Wormser notes the specific criteria adopted by the Commission in DE 83-62:

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. 69 NH PUC at pp. 366, 367, 61 PUR4th at p. 146.

Wormser argues that projects applying for rates less than 20 years need meet only the first two criteria. Therefore, a developer applying for 20 year rates need not provide additional security as long as he has satisfied the Commission that his project's life is greater than 20 years and the level of annual output will be maintained over the twenty years.

Wormser states, and PSNH did not dispute, that Wormser is a qualified facility (QF) in that it will initially burn coal and supply cogenerated steam to Spaulding but has the capability of switching to waste or renewable fuels should its arrangement with Spaulding cease. Wormser also states, and PSNH did not dispute, that Wormser had complied with the 45 day prefiling requirement. The areas disputed by the parties relate to Wormser's ability to fulfill its representation that it will begin commercial operation in the power year specified in its rate filing (i.e., the timeliness of the rate filing) and to maintain its level of output over the 20 years of its rate.

Wormser argues that the acquisition of critical state, federal and local permits is evidence of project maturity in part because the project technical design must be essentially complete before the permits are granted. Wormser identifies two permits, the Air Quality Permit and the Site Development Permit, as being on the critical path for a coal generation project and notes that Wormser obtained the former on January 8, 1986 and the latter on May 6, 1985. Application for the non-critical path permits has been initiated; cost proposals have been obtained from Dravo, Inc. and Fluor Corporation; the steam sales contract was signed with Spaulding in March 1985; an option had been obtained on the proposed site and was exercised during the course of the proceedings; and PSNH was authorized to proceed with the interconnection study on October 10, 1985. Wormser also asserts that sufficient progress has been made in arranging financing that the process of

acquisition of financing will not delay the project. Finally, Wormser argues that the joint venture between Wormser and Martin was valid by oral agreement and the intention of the parties, even though no formal agreement had been executed.

In respect to Wormser's ability to represent that its project will be able to maintain its level of output over the term of the rate (20 years), Wormser alleges that it is inappropriate to evaluate

the issue only with reference to its pre-operational balance sheet. Wormser states that fluidized bed combustion is a well established technology and there are currently four Wormser grate facilities in operation. All other components are standard to the plants of utilities and QFs. Wormser represents that the assumed escalation rates of the operational costs are reasonable. The most important of these, that relating to fuel, is capped by the five and ten percent escalation rate in the coal contract; the Wormser grate's ability to use other fuels such as culm and wood provides additional dampers to increases in fuel costs. Wormser argues that it is inappropriate to use the seven percent coal escalation rate assumed in the DR 85215 rates because Wormser and PSNH do not face the same markets (chiefly because of size of purchase) or use the same type of fuel. Wormser also asserts that it has made adequate arrangements for the disposal of ash (at the Sawyer Waste Disposal Site in Hampton, Maine) and waste water (with Spaulding's waste water treatment plant.)

Wormser argues that three financial tests should be applied to analyze project feasibility. The first test, of whether the project will produce sufficient resources to raise capital to build the project, determines whether the project will be built. The second, whether the project experiences positive cash flows throughout its operation, tests whether the project is viable in each year of its operation. The third, a net present value analysis, tests whether the project has sufficient net present value in any given year to justify continuing operation to the end of the rate term. Wormser submits that it meets all three of these tests. It argues that while passage of the first test will not be assured until Wormser secures its financing, financing institutions require reasonable safety margins and the probable length of the financing will be only five years less than the rate term. In any case, the ratepayer is not at risk until this first test is passed, the project is built and begins commercial operation.

For the positive cash flow and net present value tests, Wormser maintains that it has used very conservative cost assumptions. Assuming coal as the fuel, the results of the cash flow analysis are positive, up to 5% cost escalation rates under the levelized rate and up to 6.5% under the escalating rates. Using the escalation rates proposed by PSNH (coal at PSNH's escalation of 7.63% and general costs at 5.7%) a negative cash flow of $43,000 and $885,000 appear in years 19 and 20 in the escalating rate pattern. Wormser submits that it would have no difficulty offsetting these negative cash values through prepayments or reserve fund contributions in previous years. The project always demonstrates a positive net present value considering the potential value of the project after the period of the rate order. Wormser therefore submits that even during years of negative cash flow the developers have an incentive to continue operation in order to reap

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the benefits of the later years of the project's operation.

Finally, while maintaining that the project itself provides adequate assurance that the project will be able to maintain its level of output over the period of the rate, Wormser offers two additional security mechanisms. Wormser offers a junior lien, which becomes the first lien on the project when the financing is paid off. The lien assures that PSNH will be able to challenge any disposition of the assets by the first lienholder that PSNH considers commercially unreasonable while debt is outstanding on the project. Once the project is free of debt, PSNH

would have priority access to project assets, including any reserve fund. Secondly, Wormser has offered to establish a reserve fund to cover unexpected deficiencies and provide additional incentive to continue operation until the end of the rate obligation.

PSNH

PSNH argues that the Wormser petition is untimely because many of the steps necessary for development had not been completed either at the time of the filings or by the close of hearings. Among those steps are finalization of the Wormser/Martin partnership agreement, final selection of an architect engineer or general contractor, a decision or contract for the operation of the project, commitment for financing the project, completed fuel contract, arrangements for a secure fuel supply in excess of the six day supply permitted by its operating permit, finalization of an ash disposal contract, a contract for limestone, guaranteed access to a waste water treatment plant, and ownership of the land. PSNH argues that the applicant's late filed submissions should be given little weight as the Commission has clearly stated that it is insufficient to repair subsequently a rate petition that was premature when filed.

PSNH advances two arguments, one technical and one financial, with respect to Wormser's ability to maintain its level of output over the period of the 20 year rate. PSNH notes that the Wormser grate fluidized bed technology is relatively new. No one has had long term experience with the Wormser grate and neither Martin or Wormser, nor Fluor or Dravo (being considered for the architect engineer/general contractor) have direct experience in operating a commercial solid fuel fired cogeneration facility.

In regard to the project's financial feasibility, PSNH notes that under the Petitioner's analysis, assuming lease financing, levelized rates and coal, the project shows negative cash flows in years 15, 19 and 20 at 5% escalation and in all years after year 13 at 6% escalation. Assuming either debt or lease financing, escalating rates and coal, negative cash flows appear at 7% escalation of costs. The project's financial performance is weaker if it uses fuels other than coal. PSNH further contests the assumptions on which the financial analysis is based. In particular, PSNH asserts that, given the Force Majuere clause, the proposed coal contracts do not provide sufficient guarantees concerning fuel escalation rates and the analysis did not model the effect of switching to no more than 25% coal at an increased price of $11 per ton. PSNH also claims that the financial analysis is deficient because there is no allowance for a contingency fund for repairs and that the analysis, by

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assuming a 20% equity contribution, understates the debt costs the developers actually intend to incur.

PSNH does not consider the additional security offered by Wormser sufficient protection against the risk for the ratepayer. The proposed escalation rate only escalates by 2.5% rather than the minimally expected escalation in costs of 4%. A junior lien could prove worthless in the event of technical problems at the facility. PSNH terms the proposed reserve fund "paltry" in comparison to ratepayer exposure, and doubts that Wormser would be able to generate sufficient cash to generate such a fund at the proposed level.

Finally, PSNH argues that since the Commission has now approved new lower avoided cost

rates in DR 86-134, the Wormser petition is in excess of current avoided costs estimates. Therefore, the Wormser project should not be granted any rates in excess of those found in DR 86-134.

A. Johnson Corporation

Johnson argues that the eligibility criteria adopted in DE 83-62 Report and Supplemental Order No. 16,619, 68 NH PUC 531 (1983) establishing interim long term rates for small power producer and the requirements for application for levelized rates adopted in the final order adequately protect ratepayers from undue risk. Johnson asserts PSNH's presumption that the Wormser project may discontinue service before the end of the rate term and therefore poses undue risks to ratepayers ignores the QF's legal obligations, its economic incentives beyond the rate term, and the proven physical reliability of most of its technology. To the extent that Wormser represents a new application of old technology or an entirely new technology, it fulfills the mandates of RSA 362-A Limited Electrical Energy Producers Act (LEEPA) and the Public Utilities Regulatory Policies Act of 1978 (PURPA) §210 to encourage the development of new and more efficient energy resources. Third, Johnson argues that the risk and cost of front end loading QF rates must be weighed against reliance on large utility owned generative units and the ratemaking treatment accorded them.

Johnson further states that a developer should not be required to complete all agreements necessary for project development prior to applying for a rate order. It asserts that it would be "irresponsible" for a developer to finalize all other aspects of its project before determining whether there were adequate revenues to support the project and such determination requires a power sales arrangement. Johnson concludes that "notwithstanding the Commission's intention that projects receiving rate orders complete development in the designated time frame ... there can be no absolute assurance that a project receiving a rate order will be completed in every case." At 15. However, "there can be no risk at all to ratepayers until a project commences operation and begins to receive a frontend loaded rate. Prior to that time, a rate order is but a contingent entitlement. It 'vests' only when the project begins generating power." At 16.

COMMISSION ANALYSIS

The issues identified by the parties relate to the timeliness of the rate filing and to the eligibility of the project for front-end loaded or levelized rates.

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Since a finding that a rate filing is not timely makes consideration of the levelization issues moot, the Commission will turn first to the question of the readiness of the Wormser project to receive a long term rate.

Timeliness of the Rate Filing

[1, 2] The Commission finds that Wormser has demonstrated that its project has reached the development stage where it qualifies for a long term rate order under DR 85-215. Wormser is correct in indicating that the standard for timeliness is one of "reasonable expectation" based upon a demonstration that most of the developmental problems have been resolved. Although PSNH questions the maturity of the Wormser project by indicating that a number of milestones

remain to be completed, the Commission has not required that all developmental problems be resolved before a rate filing. Since the Settlement and Order in DE 83-62 allowed developers to file for rates up to four years before commercial operation, clearly it was not anticipated that all developmental problems needed to be resolved before filing. Rather a developer must show that there is a reasonable expectation that the project will be developed as proposed. While certain milestones provide indications of project maturity, the methodology and criteria of DR 83-62 do not require the achievement of specific milestones. Whether a project is ready to receive a long term rate is a question of Commission judgment.

The Commission agrees with Wormser that the acquisition of critical federal, state and local permits for the project's construction and operation provides evidence that the project can be constructed as scheduled and that the project's technical design is essentially complete. We note particularly that Wormser has obtained site development approval from the City of Rochester and has received an Air Quality Permit.

Wormser has also demonstrated that the project design and construction planning is advanced to the stage where "not to exceed" construction quotes have been provided by reliable project design and construction firms. The property rights have been secured and a steam sales contract with Spaulding Fibre has been executed. Wormser has also made sufficient progress in arranging financing to warrant the granting of a rate order.

Eligibility for Levelized Rates

[3] In order to be eligible for frontend loaded or levelized rates for a twenty year rate term, a project must demonstrate that it is viable over the life of the rate obligation. Such a demonstration necessarily encompasses technical and operational questions as well as economic viability.

In its order of notice in this docket, the Commission raised the issue of whether third party, fossil fuel based cogenerators could satisfy the eligibility criteria. The Commission's concerns about the economic viability under front end loaded rates related both to the escalation of fuel costs and consequently project costs above the levelized rate in the later years, and to the potential loss of the steam sale. Wormser has provided sufficient assurances that the project is economically viable if it operates at the availability projected. (The technical and operational aspects are discussed below.)

The fluidized bed combustion (FBC)

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technology employed by Wormser gives the project an economic flexibility that is not characteristic of other fossil fuel technologies and that provides significant assurance of economic viability. The FBC technology has significant advantages in terms of coal prices and supply availability which may justify a lower escalation in coal prices than assumed for PSNH in DR 85-215. These advantages include the range of coals that can be burned, the relatively small size of the supply required, and the reduced sulfur emissions problem. The uncertainty relative to fuel costs and supply is also significantly reduced by the twenty year fuel contract offer provided by New England Agencies, Inc. (NEA).

The FBC technology also provides assurance relative to project viability if the steam sale is lost. Since Wormser has multi-fuel capability, it has SPP status as well as cogenerator status. As an SPP it can still burn 25% coal, and this is provided for in the NEA contract. The Wormser contract with Spaulding is binding on Spaulding's successors if the Company is sold. If it goes out of business, Wormser could continue to qualify as a cogenerator by providing space heat to a new tenant. These and other factors give Wormser substantial flexibility to meet a number of adverse contingencies.

[4] Wormser also indicates that the economics of the project do not depend upon the steam sale. The Commission acknowledges this fact, but this point raises other concerns about efficiency. The primary fuel efficiency assumed to be achieved by cogeneration comes from the cogeneration of steam and electricity. Although the FERC rules allow for steam sales to be as small as 5% of the total energy output, lower steam output means less efficiency gain. Consequently, substantial steam sale revenues normally would help provide the assurance of economic viability. Thus, the Commission would tend to favor projects which are sized more closely to the steam requirement. We have recognized previously that in the case of the Wormser project there are other technological factors which favor economic viability and lessen the importance of steam revenues.

Although the Commission is satisfied with the economic viability of the project at the operating availability assumed, the Commission does have concerns about the 88% assumed availability factor. The Commission recognizes that Wormser and particularly its proposed engineering firms Fluor and Dravo have experience in operating fluidized bed technology. Nevertheless, the particular Wormser technology and its use to generate electricity for a utility are new. Wormser has had operational experience with a pilot project in Massachusetts and with the Iowa Beef Plant in Texas, which has been operational for three years. The only other plant where construction has been completed and where Wormser has been personally involved is the Anderson Clayton plant in Illinois which has recently been completed and is undergoing a shakedown period.

We recognize that the Iowa Beef Plant has achieved a 90% availability factor after some initial difficulties with the coal feed system and tube overheating. The plant in Illinois which is in the early operational stages is sized similarly to the Iowa Beef Plant, 85,000 1b/hr and 70,000 lb/hr respectively. (Exhibit 1, Att. 3). The Spaulding Project is designed to produce 185,000 lbs./hr to 200,000 lbs./hr. (Tr. I-64, Exhibit 1,

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Att. 3). The Commission cannot assume that more than doubling the size will not create some performance problems. Obviously, not all performance problems were resolved when the small pilot size was enlarged to the size of the Iowa Beef Plant. The 88% availability assumed in the financial analysis does not leave a lot of room for problems. In addition, Wormser's operating experience is even more limited in the use of alternate fuels should the project convert to SPP status.

[5, 6] The Commission agrees with A. Johnson Cogeneration that one of the purposes of PURPA was to encourage the development of new and more efficient technologies. The

Commission also agrees that the methodology of DE 83-62 envisioned that the risk associated with new technologies would be evaluated on a case-by-case basis and that is precisely the question facing the Commission in the instant case. The Commission must balance the risks posed to ratepayers by the degree of front-end load with the benefits of developing the project. The Commission believes the appropriate balancing in this case calls for a degree of frontend loading, but more limited than requested by the applicant.

If Wormser was proposing a facility sized similarly to the Iowa Beef Plant and the Anderson Clayton Plant, we could conclude that the operating experience would have resolved initial problems with the technology. Accordingly, the Commission believes that Wormser has demonstrated its eligibility for a fully levelized rate if it wishes to size the project consistent with its operating experience. Wormser would also be eligible for a non-levelized rate for the proposed 20 MW plant.

The Commission recognizes that rate design plays an important role for total project planning. While the Commission has determined that front-end loading should be limited to the amount consistent with full levelization for a smaller sized plant, the Commission will allow Wormser to make alternative rate design proposals for a larger facility that do not exceed the front-end loading limitation for the smaller plant. The Commission would expect such proposals to provide the ratepayers some benefit through a lower total net present value than that assumed in the DR 85-215 level of rates.

The Commission will also condition its approval on the additional security mechanisms offered by the petitioner, namely a junior lien on the project and a reserve fund to be used to meet any cash deficiencies in project operation and to provide for extraordinary repairs.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Wormser's petition for a 20 year long term levelized or escalating rate for its proposed 20 MW cogeneration project in North Rochester is denied; and it is

FURTHER ORDERED, that Wormser may amend its petition to file for (1.) a 20 year long term levelized rate for a 9 MW project, or (2.) a nonlevelized rate for a 20 MW project, or (3.) a 20 year long term rate for a 20 MW project incorporating an amount of front-end loading not to exceed the dollar amount of front-end loading represented by a 9 MW project and a

net present value less than that available pursuant to DR 85-215; and it is

FURTHER ORDERED, that approval of any such rate for the Wormser project shall be conditional on the security mechanisms offered by the petitioner.

By order of the Public Utilities Commission of New Hampshire this twentyninth day of October, 1986.

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[Go to End of 60903]

71 NH PUC 626

Re Salmon Falls Hydro Company, Inc.

DR 86-247, Order No. 18,461

New Hampshire Public Utilities Commission

October 30, 1986

PETITION for authority for a front-end loaded, long-term, thirty-year rate order for a qualifying small power production facility; denied.

Cogeneration, § 24 — Rates — Front-end loading — Levelization.

A petition by a qualifying small power production facility for a rate order authorizing front-end loaded, long-term, thirtyyear levelized rates, was denied.

By the COMMISSION:

ORDER

WHEREAS, on September 3, 1986 Consolidated Hydro Co., Inc. filed a long term rate petition for the Rollinsford Manufacturing Hydroelectric Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (DE 83-62), and 71 NH PUC 408 (1986) (DR 86-134); and

WHEREAS, on September 11 and 24, 1986 amendments to the petition were filed to reflect a name change from Consolidated Hydro Co., Inc. to Salmon Falls Hydro Co., Inc. (Salmon Falls), a revision of the rate pages, and a change in the facility's address; and

WHEREAS, the petition requested inter alia a thirty-year front-end loaded rate order; and

WHEREAS, the facility is currently on line and selling energy to PSNH under a contracted dated August 21, 1986; and

WHEREAS, pursuant to DE 83-62 it states "The provisions adopted in this section for front-end loading and levelizing are intended to stimulate SPP site development ... " (69 NH PUC at p. 367, 61 PUR4th at p. 146); and

WHEREAS, this petition is requesting front-end loaded rates to "finance its purchase of the facility from the present owner."; and

WHEREAS, front-end loaded rates for the purpose of financing the purchase of a commercially operating facility do not fulfill the intent of stimulating SPP site development under DE 83-62, it is therefore

ORDERED, that Salmon Falls petition for a thirty-year rate order is denied.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1986.

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NH.PUC*11/03/86*[60904]*71 NH PUC 627*Manchester Gas Company

[Go to End of 60904]

71 NH PUC 627

Re Manchester Gas Company

Intervenor: Office of Consumer Advocate

DR 86-264, Order No. 18,463

New Hampshire Public Utilities Commission

November 3, 1986

ORDER approving revisions in cost of gas adjustment in tariffs for natural gas distribution service.

Automatic Adjustment Clauses, § 7 — Energy cost clauses — Natural gas.

A natural gas distribution utility was authorized to revise its cost of gas adjustment from $0.0052 per therm, net of franchise tax, to $0.0077 per therm, net of franchise tax.

APPEARANCES: For Manchester Gas Company, David Marshall, Esquire; Consumer Advocate by Michael Holmes, Esquire; Commission Staff by Martin C. Rothfelder, Esquire.

By the COMMISSION:

REPORT

On October 1, 1986, Manchester Gas Company (Manchester Gas or 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 a 1986-1987 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1986. This cost of gas ad- justment is $0.0077/therm net of franchise tax. The revised rate is an increase of $0.0025 from the prior winter period of $0.0052/therm, net of franchise tax.

An Order of Notice was issued setting the date of the hearing as of October 28, 1986 at the Commission offices in Concord, New Hampshire.

During the hearings on October 28, 1986, the following issues were discussed: a) pricing of LNG inventory; b) sales forecast; c) the computation of company use and unaccounted for gas

supply; d) the Company's efforts to maintain reasonably priced supply mix and; e) interruptible sales margin.

A few of these issues merit further discussion.

A witness described the efforts made by the Company in attempting to acquire gas from alternate sources. The Company has persuaded Tennessee Gas Pipeline (TGP), its supplier of natural gas, to file a 7C application with the Federal Energy Regulatory Commission (FERC) on the Company's behalf. Approval of this filing would allow the Company to purchase released gas from TGP. This would relieve the Take or Pay

obligations at a reduced price. The Commission encourages the Company to continue its effort to obtain this favorably priced gas.

During the hearings Staff questions an apparent inconsistency between the sales to Manchester's interruptible customers reported in the CGA filing and those sales that are reported monthly by Manchester[1](129) . Manchester could not respond to this inconsistency, however, it offered to provide an answer following their own investigation after the hearing. Manchester has subsequently provided a reconciliation of the monthly report to the CGA filing and disclosed an error in the monthly report. Thus, it is not necessary to adjust the CGA filing.

Upon examination of the evidence provided the Commission finds the revised CGA rate of $0.0077/therm to be just and reasonable and, therefore, shall approve such.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 22nd Revised Page 26, superseding 21st Revised Page 26 of Manchester Gas Company, tariff NHPUC No. 13 - Gas, providing for a Cost of Gas Adjustment of $0.0077/ therm for the period November 1, 1986 through April 30, 1987, become effective with all bills issued on or after November 1, 1986; 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.

The above CGA rate may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order 15,624.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1986.

FOOTNOTE

[1]In accordance with a Commission mandate Manchester provides the Commission with monthly reports reconciling the CGA. One of the supporting Schedules in this report provides detail of the interruptible sales.

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NH.PUC*11/03/86*[60905]*71 NH PUC 629*Concord Natural Gas Company

[Go to End of 60905]

71 NH PUC 629

Re Concord Natural Gas Company

Intervenor: Office of Consumer Advocate

DR 86-263, Order No. 18,464

New Hampshire Public Utilities Commission

November 3, 1986

ORDER approving revisions in a cost of gas adjustment in tariffs for natural gas distribution service.

Automatic Adjustment Clauses, § 7 — Energy cost clauses — Natural gas.

A natural gas distribution utility was authorized to revise its cost of gas adjustment from $0.0078 per therm, net of franchise tax, to $0.0293 per therm, net of franchise tax.

APPEARANCES: For Concord Natural Gas Company, David Marshall, Esquire; Consumer Advocate by Michael Holmes, Esquire; Commission Staff by Martin C. Rothfelder, Esquire.

By the COMMISSION:

REPORT

On October 1, 1986, Concord Natural Gas Company (Concord or 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 a 1986-1987 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1986. That cost of gas adjustment was to be $0.0268/therm net of franchise tax.

An Order of Notice was issued setting the date of the hearing as of October 28, 1986 at the Commission offices in Concord, New Hampshire.

On October 27, 1986 the Company submitted a revised cost of gas adjustment of $0.0293/therm net of franchise tax. The revised rate is an increase of $0.0371 [sic] from the prior winter period of ($0.0078)/therm.

The Company stated that the reason for the revision to its filing was a correction of an error in the recorded purchases in the Loudon service area.

During the hearings on October 28, 1986, the following issues were discussed: a) pricing of LNG inventory; b) sales forecast; c) the computation of Company use and unaccounted for gas

supply; d) the Company's efforts to maintain a reasonably priced supply mix and; e) franchise tax tariff. Several of these issues merit further discussion.

A witness described the efforts made by the Company's parent corporation, EnergyNorth, Inc., to acquire gas from

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alternate sources. The Company has persuaded Tennessee Gas Pipeline (TGP), its supplier of natural gas, to file a 7C application with the Federal Energy Regulatory Commission (FERC) on the company's behalf. Approval of this filing would allow the Company to purchase released gas from TGP. This would relieve the Take or Pay obligations at a reduced price. The Commission encourages the Company to continue its effort to obtain this favorably priced gas.

Concord is purchasing gas under TGP's FERC approved GS-6 rate. A Company witness stated that at this time it would not be economically prudent for Concord to seek TGP's CD rate that its sister companies, Manchester Gas Company and Gas Service, Inc., are utilizing. The Commission agrees with the Company's assertion, however, we will have Staff monitor these rates to verify that the economic benefits continue.

Through cross-examination it was disclosed that Concord has not updated their mechanism for Recovery of Franchise Tax - Supplement No. 6 to NHPUC No. 13 - Gas since the summer of 1985. This supplement should be revised at each CGA. Accordingly, the current filing should be revised and future CGA filings are to include a revision to said supplement.

Upon examination of the evidence provided the Commission finds the revised CGA rate of $0.0293/therm to be just and reasonable and therefore, shall approve such.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 51st Revised Page 21, superseding 50th Revised Page 21 of Concord Natural Gas Company, tariff NHPUC No. 13 - Gas, providing for a Cost of Gas Adjustment of $0.0293/therm for the period November 1, 1986 through April 30, 1987, become effective with all bills issued on or after November 1, 1986; and it is

FURTHER ORDERED, that Concord Natural Gas Company file a revised Page 1 of Supplement No. 6 to NHPUC No. 13 - Gas; 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 third day of November, 1986.

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NH.PUC*11/03/86*[60906]*71 NH PUC 631*Gas Service, Inc.

[Go to End of 60906]

71 NH PUC 631

Re Gas Service, Inc.

Intervenor: Office of Consumer Advocate

DR 86-265, Order No. 18,465

New Hampshire Public Utilities Commission

November 3, 1986

ORDER approving revisions in a cost of gas adjustment in tariffs for natural gas distribution service.

Automatic Adjustment Clauses, § 7 — Energy cost clauses — Natural gas.

A natural gas distribution utility was authorized to revise its cost of gas adjustment from a surcharge credit of $0.0153 per therm, net of franchise tax, to a surcharge credit of $0.0043 per therm, net of franchise tax, representing an increase in rates of $0.011 per therm.

APPEARANCES: For Gas Service, Inc., David Marshall, Esquire; Consumer Advocate by Michael Holmes, Esquire; Commission Staff by Martin C. Rothfelder, Esquire.

By the COMMISSION:

REPORT

On October 1, 1986, Gas Service, Inc. (Gas Service, or 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 a 1986-1987 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1986. That cost of gas adjustment was to be a surcharge credit of ($0.0037)/therm net of franchise tax.

An Order of Notice was issued setting the date of the hearing as of October 28, 1986 at the Commission offices in Concord, New Hampshire.

On October 27, 1986 Gas Service submitted a revised cost of gas adjustment of ($0.0043)/therm net of franchise tax. The revised rate is an increase of $0.011 from the prior winter period of ($0.0153)/therm.

The Company stated that the reasons for the revision to its filing was: 1) a correction of an error in the recorded sales to the Loudon service area, said area operated by Concord Natural Gas Company and 2) a reduction in the seasonal sales due to the availability of the August and September, 1986 actual figures.

During the hearings on October 28, 1986, the following issues were discussed: a) pricing of LNG inventory; b) Gas Services' sales forecast; c) the computation of company use and lost and unaccounted for gas supply and; d) the Company's efforts to maintain a

reasonably priced supply mix. At least one of these issues merit further discussion.

A witness described the efforts made by the Company in attempting to acquire gas from alternate sources. The Company has persuaded Tennessee Gas Pipeline (TGP), its supplier of natural gas, to file a 7C application with the Federal Energy Regulatory Commission (FERC) on the Company's behalf. Approval of this filing would allow the Company to purchase released gas from TGP. This would relieve the Take or Pay obligations at a reduced price. The Commission encourages the Company to continue its effort to obtain this favorably priced gas.

Upon examination of the evidence provided the Commission finds the revised CGA rate of ($0.0043)/therm (a surcharge credit) to be just and reasonable and therefore, shall approve such.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 18th Revised Page 1, superseding 17th Revised Page 1 of Gas Service, Inc. tariff NHPUC No. 6 - Gas, providing for a Cost of Gas AdAdjustment of ($0.0043)/therm for the period November 1, 1986 through April 30, 1987, become effective with all bills issued on or after November 1, 1986; 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.

The above CGA rate may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order 15,624.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1986.

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NH.PUC*11/03/86*[60907]*71 NH PUC 633*Northern Utilities, Inc.

[Go to End of 60907]

71 NH PUC 633

Re Northern Utilities, Inc.

Intervenor: Office of Consumer Advocate

DR 86-262, Order No. 18,466

New Hampshire Public Utilities Commission

November 3, 1986

ORDER approving revisions in a cost of gas adjustment in tariffs for natural gas distribution service.

Automatic Adjustment Clauses, § 7 — Energy cost clauses — Natural gas.

A natural gas distribution utility was authorized to revise its cost of gas adjustment from a surcharge credit of $0.0927 per therm, net of franchise tax, to a surcharge credit of $0.0897 per therm, net of franchise tax, representing an increase in rates of $0.003 per therm.

APPEARANCES: For Northern Utilities, Inc., Elias G. Farrah, Esquire; Consumer Advocate by Michael Holmes, Esquire; Commission Staff by Martin C. Rothfelder, Esquire.

By the COMMISSION:

REPORT

On October 1, 1986, Northern Utilities, Inc. (Northern, or the Company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this Commission certain revisions to its tariff providing a 1986-1987 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1986. That cost of gas adjustment was to be a surcharge credit of ($0.0890)/therm.

An Order of Notice was issued setting the date of the hearing as of October 28, 1986 at the Commission offices in Concord, New Hampshire.

On October 24, 1986 Northern revised its proposed CGA rate to a credit of ($0.0897)/therm. This reduction was caused by a decrease in the cost of supplemental gas from Northern's supplier, Bay State Gas Company, and additional refunds from its natural gas supplier, Granite State Transmission.

The revised rate is an increase of $0.003 per therm from the prior winter period rate of ($0.0927)/therm.

During the hearings on October 28, 1986, the following issues were discussed: a) Northern's sales forecast for the 1986-1987 winter period; b) "Off system" sales by Bay State Gas Company to Northern; c) the Federal Energy Regulatory Commission (FERC) Order No. 94 surcharge; d) purchases of gas on the spot market; and e) a penalty paid by Northern for failure to withdraw from storage the minimum

required volume of gas during the 1985-1986 winter period.

At least one of these issues merit further discussion.

Our Report and Order No. 17,930 (70 NH PUC 875) required that Northern notify this Commission when a proposal to revise Bay State Gas Company's (Bay State) "off system sales" price is filed with the Massachusetts Department of Public Utilities (DPU). As mentioned previously in this report, Northern has filed an updated CGA rate in part due to Bay State's decrease in its "off system sales" price. Through crossexamination and testimony it was

determined that this price change relates to an automatic adjustment which reconciles the actual gas costs of Bay State to the estimates. Northern did not inform the Commission of this filing because it lacked a formal proceeding. The Commission restates its desire to be informed when Bay State files an off system sale rates change. If the rate change is an automatic adjustment, Northern is to file a summary of the adjustment with the Commission Staff.

Based on the evidence provided the Commission finds the revised CGA rate of ($0.0897)/therm is just and reasonable.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 59th Revised Page 22A, superseding 58th Revised Page 22A of Northern Utilities, Inc. tariff NHPUC No. 6 - Gas, providing for a Cost of Gas Adjustment of ($0.0890)/therm for the period November 1, 1986 through April 30, 1987, be, and hereby is, rejected; and it is

FURTHER ORDERED, that 60th Revised Page 22A of Northern Utilities, Inc. tariff NHPUC No. 6 - Gas, providing for a Cost of Gas Adjustment of ($0.0897)/therm for the period November 1, 1986 through April 30, 1987 be, and hereby is, accepted effective on all bills issued on or after November 1, 1986; 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.

The above CGA rate may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83205, Order 15,624.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1986.

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NH.PUC*11/03/86*[60908]*71 NH PUC 635*Petrolane-Southern New Hampshire Gas Company

[Go to End of 60908]

71 NH PUC 635

Re Petrolane-Southern New Hampshire Gas Company

Intervenor: Office of Consumer Advocate

DR 86-273, Order No. 18,467

New Hampshire Public Utilities Commission

November 3, 1986

ORDER establishing an interim winter cost of gas adjustment rate for a propane air gas distribution company.

Automatic Adjustment Clauses, § 63 — Evidence — Winter cost of gas adjustment clause — Temporary rate.

A proceeding to revise the winter cost of gas adjustment clause of a propane air gas distribution utility was continued pending the production by the utility of a witness to address commission concerns regarding (1) discrepancies between sales reported to the commission and sales recorded in the cost of gas adjustment filing, (2) the winter period sales forecast, and (3) whether propane purchases by the utility from a sister subsidiary were the result of "arms length" bargaining; in the interim, the utility was permitted to provide service under a temporary cost of gas adjustment rate with the revenues collected thereunder subject to refund or recoupment depending on the finally approved rate.

APPEARANCES: For Petrolane-Southern New Hampshire Gas Company, Dom S. D'Ambruoso, Esquire; Consumer Advocate by Michael Holmes, Esquire; Commission Staff by Martin C. Rothfelder, Esquire.

By the COMMISSION:

REPORT

On October 15, 1986, the Commission issued an Order of Notice requiring that Petrolane-Southern New Hampshire Gas Company (Southern or the Company) file certain revisions to its tariff providing a 1986-1987 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1986. Said tariff pages were to be filed on or before October 22, 1986. In compliance there- with Southern filed a revised tariff page reflecting a CGA of $0.1597/therm, net of franchise tax.

On October 28, 1986 the Commission held a duly noticed hearing. During this hearing the Company presented one witness.

Through testimony and cross-examination numerous issues were discussed. Among these issues were: a) a discrepancy between sales reported monthly by Southern to the Commission and the sales recorded in the CGA filing; b) the sales forecast for the 1986-1987 Winter period; c) lost and unaccounted for gas; and d) the projected price of propane for the winter period.

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The Company was unable to reconcile the discrepancy between the sales reported in its 1985-1986 winter period CGA reconciliation with the sales in the financial reports issued to the Commission on a monthly basis. At staff's request Southern has agreed to research this problem and provide an answer. If this discrepancy effects the CGA filing the Company is to notify this Commission immediately so appropriate corrections can be made.

In evaluating the evidence provided by the Company we find the testimony supporting the projected price of propane to be deficient. The witness produced by Southern during the CGA proceedings could not adequately respond to the Commission's inquiries regarding the propane

price and the potential for securing a lower price. This clearly does not fulfill the Company's burden of proof in this proceeding RSA 378:8.

The Commission has two concerns. The first is that Southern is a propane air gas distribution company, as such propane is the sole product purchased. Therefore, the price paid by Southern for propane is paramount when determining the CGA. We have noted that Southern has projected paying a premium price for its product when compared to other gas distribution companies in New Hampshire (this includes other propane air distribution companies). The Commission will require further review of the company's purchasing policies.

This leads to the Commission's second concern. The relationship between Petrolane and Southern result in a potential conflict. Southern's propane supplier is Petrolane Gas Service, Inc., a sister subsidiary of Petrolane. In addition, it appears that various officers and employees of Southern are common with Petrolane Gas Service, Inc. This Commission must be assured that transactions between Southern and other Petrolane subsidiaries are completely "arms length" in nature.

In DR 83-200 Re Connecticut Valley Electric Co., Inc., 71 NH PUC 145 (1986), the Commission described similar concerns with Connecticut Valley Electric Company, Inc.'s (CVEC) relationship to its parent corporation Central Vermont Public Service Corporation (CVPS).

[I]t is the identity of CVEC and CVPS management that will raise the most serious questions in future proceedings. The record establishes that CVEC in fact does not have any management that is separate and distinct from the management of CVPS. See e.g., Transcript of January 16, 1984 at 76-77. Management therefore has equal fiduciary responsibilities to the interests of CVPS and CVEC. The result of this is a potential conflict situation; all other things being equal, management will favor the interests of CVPS. 71 NH PUC at p. 148.

The context of the foregoing decision is a review by the Commission of CVEC's purchase power cost paid to CVPS. This review was mandated by the New Hampshire Supreme Court in Re Sinclair Machine Products, Inc., 126 N.H. 822, 498 A.2d 696 (1985). The scope of this review was limited by the Supreme Court to verification that the wholesale contract among CVEC and CVPS was a "product of reasonable efforts to secure the lowest cost in light of the appropriate alternatives available to the company (CVEC)." 126 N.H. at p. 834 (parenthesis added).

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In the instant proceeding the Commission is not preempted by a federal authority. Our review can encompass the product cost. It is, therefore, appropriate to continue the instant proceedings. Accordingly, we will require that Southern produce a witness which can respond to our inquiries concerning the cost of propane.

In the interim, the Commission will issue a temporary CGA rate order pursuant to RSA 378:27. Said temporary CGA rate is to be in effect until the Commission provides a decision concerning the company's filing. Revenues obtained from this rate will be subject to refund or recoupment depending on the final rate fixed by this Commission.

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 378:27, 136 Revised Page 15 of Petrolane-Southern New Hampshire Gas Company, tariff NHPUC No. 1 - Gas, providing for a temporary Cost of Gas Adjustment rate of $0.1597/therm for the period November 1, 1986 through April 30, 1987 be, and hereby is, accepted; and it is

FURTHER ORDERED, that a public notice of this cost of gas adjustment be given by one time publication in a newspaper having general circulation in the territories served.

FURTHER ORDERED, that the hearing held to review the merits of Petrolane-Southern New Hampshire Gas Company's proposed 1986-1987 Winter Cost of Gas Adjustment be continued, and that Petrolane-Southern New Hampshire Gas Company provide a witness able to respond to the Commission's concerns put forth in the foregoing report.

The above CGA rate may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83205, Order 15,624.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1986.

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NH.PUC*11/03/86*[60909]*71 NH PUC 638*Pinetree Power-North

[Go to End of 60909]

71 NH PUC 638

Re Pinetree Power-North

DR 86-100

Re Pinetree Power-Berlin

DR 86-101

Re Pinetree Power-Winchester

DR 86-103

Re Pinetree Power Energy Corporation

DR 86-104

Re Pinetree Power-Hinsdale

DR 86-105

Re Pinetree PowerLancaster

DR 86-109

Intervenors: Public Service Company of New Hampshire, and
Office of Consumer Advocate

Order No. 18,468

New Hampshire Public Utilities Commission

November 3, 1986

ORDER granting a motion to dismiss long-term small power production rate filings.

Procedure, § 29 — Disposal of issues — Motions to dismiss — Evidentiary standard.

In disposing of a motion to dismiss longterm rate filings for proposed small power production projects the traditional standard for consideration of such motions, which requires that the evidence be viewed in the light most favorable to the non-moving party, was applied; the commission expressed its view that such a standard seemed inappropriate for its decisions, but was unable to identify any precedent for abandoning the traditional standard. [1] p. 643.

Cogeneration, § 19 — Small power production — Long-term rate filing — Grounds for dismissal.

Long-term rate filings for certain proposed small power production projects were dismissed where the overall project planning and design had failed to identify potential site specific problems, and the evidence could not support a conclusion that a project developer could obtain a commitment for project financing. [2] p. 644.

Cogeneration, § 24 — Rates — Qualifying facilities — Commission duty to set rates — Statutory authority.

Although the Public Utility Regulatory Policies Act and the Limited Electric Energy Producers Act (RSA 362-A) require the commission to set rates for qualifying cogeneration and small power production facilities, there exists no such duty or authority to set rates for mere proposals for qualifying facilities. [3] p. 645.

Cogeneration, § 24 — Rates — Qualifying facilities — Statutory criteria.

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The Public Utility Regulatory Policies Act, the Limited Electric Energy Producers Act, and general commission statutes require that any rate set by the commission for a qualifying facility meet certain basic criteria: (1) the rate set for a utility to pay a qualifying facility must be equal to the avoided cost of the utility, (2) the rate must be just and reasonable to the electric consumers and in the public interest, and (3) the rate may not provide preferential or discriminatory treatment for any qualifying facility. [4] p. 645.

Cogeneration, § 24 — Rates — Qualifying facilities — Premature filing — Statutory criteria.

Where the long-term rate filings of a small power producer were deemed to be premature because of a lack of project specific data, the commission denied rates to the producer but did not foreclose the producer from applying for rates at some later point in time; the prematurity of

the rate filing was found to create an unacceptable risk that the projects would receive rates that would not equal the avoided costs of the interconnecting utility or otherwise fail to meet statutory objectives governing longterm rates for small power production. [5] p. 646.

APPEARANCES: Brown, Olson & Wilson, by Robert A. Olson, Esq. and William H. Wilson for the Pinetree Power Companies; Sulloway, Hollis & Soden by Margaret H. Nelson and Eaton W. Tarbell, Jr., Esq. and Thomas B. Getz, Esq. for Public Service Company of New Hampshire; Joseph Rogers, Esq. for the Consumer Advocate; Mark Collin, Sarah Voll, Nadeen Gazaway and Martin C. Rothfelder, Esq. for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

Procedural History

On March 31, 1986, Pinetree Power (Pinetree) petitioned the Commission for long term rates pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 353, 61 PUR4th 132 (1984) (DE 83-62) and Re Small Energy Producers and Cogenerators, 70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85-215) for woodburning projects in North Stratford, Berlin, Winchester, Raymond and Hinsdale; on April 1, 1986 Pinetree petitioned for a long term rate for a woodburning project in Lancaster. The Commission held hearings on July 25, and August 1, 4, 6, 8 and 15, 1986 to investigate the Commission's concerns in regard to the ability of Pinetree to fulfill the representations in its filings, including but not limited to the operational and financial viability of each project over the period of the rate, and Pinetree's ability to bring the projects on-line by the power years specified in their filings. At the conclusion of Pinetree's direct case on August 15, 1986, the Commission Staff moved to dismiss the Pinetree petitions (Motion). The Consumer Advocate filed an Objection to Staff's Motion to Dismiss (Objection) on August 29, 1986, Pinetree submitted an Objection and Response of Pinetree Power to Staff's Motion to Dismiss (Response) on September 9, 1986, and Public Service Company of New Hampshire (PSNH) filed a Memorandum of Law in Support of the NHPUC Staff's Motion to Dismiss (Memorandum) on September 10, 1986.

Position of Parties

Staff based its Motion to Dismiss on the Commission findings in Re Concord Regional Waste/Energy Co., 70 NH PUC 736 (1985) (Re Concord) in which the Commission addressed the question of

the timeliness of a rate filing in relation to other aspects of project development in regard to the 45 day requirement. It cites the Commission's Order on Interim Rates in Re Public Service Co. of New Hampshire, 71 NH PUC 288 (1986) (Re PSNH) in which the Commission stated that it expected a developer to have resolved such development uncertainties as technical design, firm cost proposals, property rights acquisition and interconnection constraints "before filing for a rate, not after" and warned developers that filings for projects which had not satisfied the

Commission that its development uncertainties had been resolved would be rejected without prejudice as untimely. Re PSNH, 71 NH PUC at p. 293. Finally, Staff cites Re New England Alternate Fuels, Inc.-Swanzey, 71 NH PUC 423 (1986) (Re NEAF) where the Commission stated that it expected that "the project planning is sufficiently mature at the time of the filing that the representations made by developers regarding the essential characteristics of their projects will continue to obtain when the projects achieve commercial operation." Re NEAF, 71 NH PUC at p. 426.

Staff argues that Pinetree has not met its burden that its projects were sufficiently mature to apply for a rate, alleging that Pinetree has no firm arrangement in place for the wood supply for its projects, it has done neither a geological nor a hydrological study of its sites, has not performed any formal study of traffic patterns, has not received its air quality permits or applied for its building permits. Therefore, Staff claims that "Pinetree has not even identified, let alone resolved, the potential problems that could characterize the development of its proposed facilities" and thus cannot assure the Commission that it has resolved most of its projects' development uncertainties, that the essential characteristics of its projects will not change or that "its filings represent projects that Pinetree will develop rather than projects it might want to or be able to develop." Motion at 3-4 emphasis in original.

The Consumer Advocate argues in his Objection that the relevant eligibility criteria for a long term rate are those set forth in DE 83-62 (69 NH PUC at pp. 366, 367, 61 PUR4th at p. 146):

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 the 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 Consumer Advocate states that Pinetree has established a prima facie case that it meets these criteria at least for the purposes of a motion to dismiss. Further he argues that additional conditions or milestones are to be considered in Re PSNH and it is not appropriate or fair to raise them in the instant docket.

Pinetree argues that in determining whether to grant a motion to dismiss, "the Commission must construe the evidence and all inferences reasonably drawn from it in Pinetree's favor." Response at 4. In establishing whether

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Pinetree has met its requisite burden, Pinetree states that it is not a simple matter to determine the required elements of the Pinetree case. It notes the three criteria listed in DE 83-62 cited above and that the Commission interpreted the first two criteria in Re PSNH to require an assessment of the projects' economic viability and probable on-line date. Response at 11. After citing the Order of Notice of the Pinetree projects and a summary of the areas of concern presented following the prehearing conference, Pinetree argues that the issues on which it was required to provide evidence "can be reduced to two questions ...":

1) Whether Pinetree has provided reasonable assurances that its projects will operate viably over the full term of their rate orders so that PSNH's ratepayers may recoup the full net present value of their payments to Pinetree; and

2) Whether there is a reasonable expectation that Pinetree's projects will be on-line as specified in their rate filing.

While not conceding that Pinetree is required to provide evidence on the second point, Pinetree "submits that the evidence it has presented in this case clearly supports a finding in its favor." Response at 6.

Pinetree argues that it has sufficiently addressed the development concerns raised by the Commission in Re PSNH and Re NEAF. Pinetree asserts that Staff's contention that Pinetree "has not begun to analyze project specific wood supply and price" (Motion at 3) disregards the evidence that Pinetree has developed a "wood fuel procurement program which will adequately provide for the long term fuel needs of each of its projects." Response at 8. While the price analysis was not site specific, Pinetree experts expect the statewide analysis to be applicable "absent some evidence of special demand or supply constraints" that Pinetree and Westinghouse have no reason to expect. Response at 11.

Pinetree asserts that it has presented substantial evidence to show "that Pinetree's potential site locations were carefully screened to avoid the potential problems Staff seems to anticipate" and that there is a "reasonable likelihood that its projects will be built as described." Response at 14. It cites its selection criteria including a review of highways, abutting residences, characteristics of the town, location of interactive sources of emission, zoning, and transmission. It notes that of 15 sites initially identified, nine had been eliminated based on "its site selection criteria, on-site research and investigation processes." Response at 16. Pinetree had confirmed the availability of the six sites prior to filing for its rates and has executed options for three of them. Pinetree has testified that it has performed informal traffic studies and obtained information from the Highway Department regarding traffic flow and has confirmed that FAA review is unnecessary for five of the six projects. It also asserts that its testimony shows that all of its sites have multiple water potential and that the soil of each site has been evaluated, and that its staff and principals are well qualified to make such judgments. Finally, Pinetree asserts that the testimony demonstrates that based on its proposed cost estimates "Westinghouse believes all six projects are viable and is prepared to

go forward with the necessary financing" and that "Pinetree is confident that it will be able to raise the equity contribution." Response at 20-22.

Pinetree further asserts that its lack of final permits are not evidence of immaturity of the Pinetree projects. Rather its evidence shows that Pinetree "has carefully considered the permitting requirements for each of its projects and determined that it can meet any of the conditions or requirements reasonably expected as necessary to obtaining the required approvals for projects." Response at 23.

Pinetree's Response also addresses the issue of whether its projects, once constructed, will

operate for the full term of its rate obligation, and offers additional security to insure that the projects will remain in operation. However, that issue was not the subject of the Staff Motion.

Finally, Pinetree asserts that "the Staff Motion seeks to substantially change the filing and eligibility requirements of DE 83-62 by the introduction of new filing requirements" and that it is unreasonable to apply the findings of Re PSNH and Re NEAF to Pinetree because those orders were subsequent to the Pinetree filings." Response at 42. Pinetree contends that the orders in Re PSNH and Re NEAF established new policies without allowing interested parties an opportunity to participate in the issue of revising or adding to the policy requirements for rate filings under DE 83-62 and DR 85-215. Response at 48. It recommends that rather than creating new filing requirements that preclude Pinetree's filings, the Commission should either initiate a rulemaking or generic adjudication, such as the currently open docket DR 86-41; or that the Commission issue the Pinetree Projects conditional rates setting forth milestones for development.

PSNH in its Memorandum supports the Staff Motion to Dismiss the Pinetree filings, asserting that the undisputed facts demonstrate their prematurity. PSNH notes that at the time of the filings Pinetree had not acquired options or legal interest in three of the sites it intended to develop and had not completed a title search on any of them. PSNH asserts that Pinetree had not done any geological or hydrological studies on the proposed sites or any analysis of the traffic patterns and the impact of truck traffic in and out of the facilities. Memorandum at 2-3. PSNH contends that while Pinetree has proposed that Westinghouse would design, finance, build and operate the proposed facilities, no agreements had been reached and in testimony the Westinghouse representative "made it plain that only after Pinetree received rate orders satisfactory to Westinghouse would Westinghouse engage in the site specific analysis necessary to determine the feasibility of each project." Memorandum at 4. PSNH further argues that while Pinetree has presented testimony on conceptual plans for fuel procurement and ash disposal, it has made no specific arrangements for any of its sites. PSNH states that neither at the time of its filings nor subsequently had Pinetree received any of its state or local permits and had applied for only its Air Quality permits (in June) and the FAA permit. PSNH states that Pinetree has testified that "it did not even want to approach the communities where its sites would be located until it receives final rate orders from the Commission." Memorandum at 6.

PSNH cites DE 83-62 as establishing the criteria for levelized rates and the

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Commission orders in Re Concord, Re PSNH, and Re NEAF as illuminating the burden that the SPP must satisfy in order to obtain approval of its rate petition. That burden included the requirement that the developer resolve most of its development uncertainties before filing for a rate (Re PSNH) and that project planning is sufficiently mature at the time of filing that the Commission can be assured that essential characteristics will continue to obtain when the projects achieve commercial operation. Re NEAF. PSNH then argues that Pinetree has not satisfied Commission requirements in that Pinetree cannot assure the Commission that its project characteristics will not change or that problems will not arise that would critically affect any project's ability to come on-line and remain on-line as planned. Memorandum at 10. PSNH contends that the application of the legal standards enunciated in Re Concord, Re PSNH and Re NEAF is appropriate since QFs have been on notice since DE 83-62 of the representations they

will have to prove if they seek levelized rates. It argues that under Commission orders and New Hampshire law, a QF does not have a vested right in a particular rate but only the opportunity to apply for rates. Commission approval of rates depends on the developer's ability to satisfy the Commission that it is able to meet the eligibility requirements of DE 83-62 and fulfill the representations in his petition.

Commission Analysis

1. Consideration of Motion.

[1] At the close of the evidence introduced by the party that has the burden of proof, motions for disposition of the case based upon the evidence introduced are appropriate. See e.g., Hadler v. Great Eastern Life Insurance Co., 109 N.H. 453, 454 (1969). Such motions are appropriately framed as motions to dismiss. Id. The focus of an inquiry based upon such a motion is the evidence that has been presented. Id.

The standard for how the evidence is viewed in disposing of such a motion to dismiss is, in our opinion, not as obvious. The traditional rule in considering such motions in the New Hampshire Courts is that the evidence should be viewed in the light most favorable to the non-moving party who, of course, is generally also the party with the burden of proof. See e.g., Foss v. Byrnes Chevrolet, Inc., 119 N.H. 808, 809 (1979). However, the development of the cases and this policy is in cases where there were jury trials. Thus, the motion to dismiss in those situations involved the policy concern of the judge taking the disposition of the case from the jury. This high standard of viewing evidence as favorable to the non-moving party met the desirable goal of limiting situations where a judge took a decision away from a jury. See e.g., Id. See generally: Stevens v. Mutual Protection Fire Insurance Co., 84 N.H. 275 (1930).

In contrast, the case at bar involves a trier of fact that is identical to the body considering the motion. The only other evidence that will be introduced is that of an intervenor. It seems inappropriate to erect a standard which makes it impossible to consider the case on its merits, i.e., without giving it a special pro-applicant view, prior to receipt of the remainder of the evidence.

While the standard for considering the motion to dismiss is developed with the jury in mind, the Commission has

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located three cases in which this traditional rule was applied in cases tried before a judge with no jury. Couture v. Marquis, 107 N.H. 47 (1966); Blanchard v. Arlen, 102 N.H. 210 (1959); and Langdon v. Sibley, 100 N.H. 373 (1956). Each of these cases seem to routinely apply the standard discussed above that was developed with jury cases in mind. None of them address the different situation of a non-jury trial or discuss the policy reasons for the standard. In light of these cases, the Commission will, for purposes of this case, apply the traditional standard. Thus, the Commission shall consider the evidence presented in the light most favorable to Pinetree.

2. Findings of Fact

Viewing the evidence in the light most favorable to Pinetree, Pinetree has generally presented the Commission with a concept of the development of wood electric projects in New

Hampshire but not with specifications of well defined, developed individual projects. Tierney prefiled testimony at 16, 19, 27. Although the developer has expertise and experience to draw on, project specific work and development is generally very limited. These general findings apply to specific areas as detailed below.

Turning first to site selection, Pinetree's evidence indicates that preliminary work and planning has occurred with regard to particular sites, but that many steps must be implemented before one can find that Pinetree has or is close to having firm viable sites in hand. Pinetree's site selection process was an elimination process that began with a utility map that indicated the location of transmission lines. Pinetree then contacted real estate agents to determine if commercial land was available near the 34.5 Kv lines. 5 Tr. 16. Of sixteen sites initially identified, nine were eliminated due to the lack of available industrially zoned land. Ex. 5 at 23-26, 5 Tr. 17. Pinetree testified that further evaluation of the site performed prior to filing for a rate entailed an examination of its topography, the nature of the soil, road access and obvious environmental issues like wetlands. According to the witness, he can now perform this evaluation "in perhaps a day". 5 Tr. 20. The witness, however, is an accountant and has no professional training in engineering, hydrology or geology. (5 Tr. 24, 19) Pinetree has not commissioned any formal hydraulic, geologic or traffic studies. Pinetree has not formally applied for local permits to construct their facilities. In fact, Pinetree testified that "we believe [that] until we have a rate order we should not put those local communities through the process on a speculative basis for those issues". 4 Tr. 98.

With regard to the wood fuel for the plants, Pinetree's wood procurement strategy is a state-wide plan formulated according to an analysis of the state's wood resource. "Pinetree Fuel Procurement Strategy" Exhibit 9 at 15-20. However, Pinetree has not secured specific wood sources for its projects or performed project specific analysis that would identify the wood sources for each individual project and quantify the prices at which the fuel would be supplied at each facility. The evidence further indicates that both the base price and its escalation will vary from one site to another. 2 Tr. 68-72.

[2] Various other aspects of planning and design are generic, rather than site specific. This statement applies to

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conceptual engineering design, ash disposal strategy, noise control, permitting and other operational and environmental problems. On these topics, its witness Mr. Tierny discusses generic rather than site specific approaches and expresses the belief that experience with the Tamworth and Bethlehem wood burning projects is applicable. In viewing the evidence most favorable to Pinetree, we must find that Pinetree has reason for such optimism for success. However, due to the generic approach, the evidence indicates that the site specific problems have not yet been identified. Thus, evidence is lacking on those potential hurdles and on the solutions for them.

The Commission further finds that Westinghouse is committed to devoting significant resources to considering financing the Pinetree projects. However, Pinetree must carry out many steps before that Westinghouse decision process will take place. While Westinghouse and

Pinetree show optimism, the evidence cannot in any way support a conclusion that Pinetree has, or surely will have, a commitment from Westinghouse to finance the projects. The most favorable view of the evidence would indicate that the optimism is due to the potential viability of the projects.

In making the above findings on financing, the Commission notes that the most favorable evidence on financing is the Westinghouse statement that Westinghouse is "prepared to go forward financing the six projects which have been identified" (1 Tr. 56). To understand what "go forward financing" means, the Commission must necessarily look at the overall Westinghouse presentation. Specifically, the Westinghouse witness noted that the consideration of Pinetree financing within Westinghouse involves two series of presentations within Westinghouse—one preliminary and verbal at the conceptual stage and a second one entailing a detailed written statement before any contracts are signed. The Pinetree projects have only undergone the first. 1 Tr. 100. Westinghouse testimony indicates that each plant must be viable to obtain Westinghouse support and that Westinghouse will evaluate each site's interconnection, transport, wood availability, permits, relationship to the community (1 Tr. 126127), local zoning, availability of water, and geology (1 Tr. 173, 175) before finally committing to finance each project. Westinghouse further testified that it "will not disperse significant funds until we have assured ourselves that all of the key underpinnings of the project are there to support a long term commitment and a long term operation and a successful project". 1 Tr. 133. Westinghouse is relying on Pinetree to provide information on those issues, but Pinetree testified that thus far it has not done the type of formal analysis (e.g., soil borings) that Westinghouse will require.

3. Standard for a Small Power Producer to Receive a Rate from PSNH

[3] PURPA and LEEPA require this Commission to set rates for qualifying facilities. General Commission statutes, in addition to PURPA and LEEPA, govern this Commission's setting of such rates. PURPA, LEEPA and general Commission statutes, taken together, indicate that while this Commission has the duty and authority to set rates for QF's, there exists no such duty or authority to set rates for mere proposals for QF's.

[4] PURPA, LEEPA, and general

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Commission statutes require any rate set by this Commission for a qualifying facility (QF) to meet certain basic criteria. First, the statutes require that the rate the Commission sets for a utility to pay a QF shall be equal to the avoided costs of the utility. 16 USC § 824a-3; N.H. Rev. Stat. Ann. § 362-A:4. PURPA expands on this by stating that such rates may not "provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy". 16 USC § 824a-3. PURPA further provides that such rates shall be just and reasonable to the electric consumers and in the public interest. Id. The statutes also require that any such rates for QF's not provide preferential or discriminatory treatment to any QF. 16 U.S.C. § 824a-3(b)(2), N.H. Rev. Stat. Ann § 378:10.

PURPA, LEEPA, New Hampshire statutes and FERC rules (18 CFR § 292) also provide no specific guidance for the timing of providing such rates to QF's. Thus, the Commission has discretion to administer the timing thereof in a manner designed to bring about the goals of the

statute. See generally: Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742, 751, 759-771, 47 PUR4th 1, 72 L.Ed.2d 532, 102 S.Ct. 2126 (1982).

Pursuant to PURPA and LEEPA, the Commission set short and long term rates for PSNH to pay to QFs in DE 83-62. While still relying on basic aspects developed in DE 83-62, the Commission has revised the rates set in that docket via subsequent proceedings. DE 85-215, NHPUC Docket No. DR 86134, Re Small Energy Producers and Cogenerators, 71 NH PUC 408 (1986). Under this process developed under DE 83-62, a QF must petition the Commission to receive rates from PSNH. Historically the rates that are in effect at the time the application is made are the rates that the applicant applies for and that the Commission considers providing to an applicant. In deciding whether to provide such an applicant with those rates, the Commission, in rendering its decision, must necessarily consider whether its provision of the applied for rates to an applicant will meet the statutory criteria outlined above.

[5] In rendering a decision on whether to provide the rates in effect to an applicant, the prematurity of the filing is relevant to the extent it may result in a project receiving rates that do not equal the avoided costs of the utility or which otherwise do not meet the statutory objectives outlined above. For example, if the prematurity of a rate filing and provision of rates to an applicant risked a result of the current rates not equalling the utilities avoided costs due to anticipated changes in those costs over time, the Commission should, in such a situation, deny rates to the applicant at that time, but not foreclose the projects opportunity to apply for rates at some later point in time. Similarly, if the prematurity of such a filing would result in the potential for providing preferential or discriminatory treatment for a project when compared with other existing or potential projects, the Commission should take the same action. In such situations the Commission may provide rates at that later time pursuant to an appropriate application. In at least some cases of premature rate filings, delaying rate action in this manner provides the only way for the Commission to carry out its statutory duties.

The Commission finds that it is faced with such a situation in the case at bar.

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In coming to this conclusion, the Commission in part relies upon its knowledge of the volatility of energy prices and particularly oil prices and the importance of such prices to setting avoided cost based rates under LEEPA and PURPA. In addition, the Commission notes that under the timing of this filing, the applicant would receive rates under DR 85-215. The Commission further notes that the revisions of the rates since DR 85-215 in DR 86-134 was downward due in large part to the downward movement of oil prices. The Commission anticipates additional rate changes due to NHPUC docket nos. DR 86-41 et al.[1(130)] That docket will revisit all aspects of avoided costs rates rather than merely again revise the DR 83-62 rates. Thus, if the Pinetree filing is untimely, the risk of applying inappropriate rates — i.e. rates which do not meet statutory criteria such as equaling avoided costs — is significant.[2(131)]

With these concerns in mind, the Commission considers it inappropriate to, at this time, provide the Pinetree projects with a rate. As the facts discussed above indicate, the Pinetree projects are generic in nature and lack site specificity. The lack of project specific fuel data and procurement; the lack of project specific hydraulic, geological and traffic studies; the lack of any

formal commitment to finance; the lack of project specific engineering, and the lack of pursuit of local permits, taken together, makes the Commission unable to conclude that the projects will necessarily be on line at a specific time or that they will even surely be built. The Commission comes to this conclusion even while assuming a relatively high level of expertise and experience of people involved in the project and that those people have a justifiably high level of optimism over the likely completion of the proposed Pinetree projects. These positive facts are simply insufficient to overcome the lack of project and cite specific work and the lack of a formal commitment to financing. This situation makes the Commission unable to find that it can currently set rates which meet the statutory criteria of equaling avoided costs, being nondiscriminatory and being in the public interest.

While the foregoing is sufficient to dispose of this case, Commission is also unable to conclude that the Pinetree presentation constitutes qualifying facilities as contemplated by LEEPA, PURPA and PURPA regulations. The matter before us seems to involve proposals for QF's, not actual QFs. In any event, the Commission is unaware of any reason why Pinetree cannot, at a further stage of development, apply for rates.

For these reasons, the Commission grants the Motion to Dismiss without prejudice. Under this disposition of the case, Pinetree is free to apply again for rates. The Commission is unaware of any other route to comply with the requirements of PURPA and LEEPA in this case. Our Order will issue accordingly.

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ORDER

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

ORDERED, that the Staff Motion to Dismiss the Pinetree petitions for long term rates is granted; and it is

FURTHER ORDERED, that dockets DR 86-100 Pinetree Power-North, DR 86-101 Pinetree Power-Berlin, DR 86103 Pinetree Power-Winchester, DR 86-104 Pinetree Power Energy Corp, DR 86-105 Pinetree Power-Hinsdale, and DR 86-109 Pinetree Power-Lancaster be, and hereby are, closed.

By Order of the Public Utilities Commission of New Hampshire this third day of November, 1986.

FOOTNOTES

[1]Docket No. DR 86-41, Re Public Service Co. of New Hampshire; Docket No. DR 86-69, Re Concord Electric Co.; Docket No. DR 86-70, Re New Hampshire Electric Co-op., Inc.; Docket No. DR 86-71, Re Granite State Electric Co.; and Docket No. DR 86-72, Re Connecticut Valley Electric Co., Inc.

[2]In administering the provision of rates to QF's, the Commission is cognizant of the fact that the anticipated downward changes in rates may lead QF's or proposed QF's to file earlier than they otherwise might to receive higher rates prior to the reductions. The Commission must make

sure that such action does not result in providing rates which exceed the utility's avoided costs or which otherwise do not meet the statutory criteria.

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[Go to End of 60910]

71 NH PUC 648

Re Keene Gas Corporation

Intervenor: Office of Consumer Advocate

DR 86-261, Order No. 18,469

New Hampshire Public Utilities Commission

November 3, 1986

APPLICATION for approval of a purchased cost of gas adjustment; granted.

Automatic Adjustment Clauses, § 32 — Fuel costs — Gas — Procurement practices.

A natural gas distributor's proposed cost of gas adjustment was accepted, and the distributor was commended for its efficient procurement policies which had resulted in the distributor obtaining propane supplies at a very low and reasonable price.

APPEARANCES: John DiBernardo, Kenneth W. Wood and Virginia Mattson for Keene Gas Corporation; Michael Holmes, Esquire, Consumer Advocate; Martin C. Rothfelder, Esquire for Com- mission Staff.

By the COMMISSION:

On October 1, 1986, Keene Gas Corporation (Keene) filed its winter period 1986-1987 Cost of Gas Adjustment (CGA) for effect November 1, 1986. The request was for a rate of ($.0606) /therm, excluding the State Franchise Tax, which is a decrease from the rate of $0.1367/therm allowed by the Commission for the 1985-1986 winter period. In addition to this amount, $0. 4214/therm 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 28, 1986.

During said hearing Mr. John DiBernardo, the Company witness, stated that the estimated sales for the 19861987 winter period will remain constant compared to the previous period.

According to said witness, Keene is not expecting an increase in customers for the upcoming winter period, nor does the company believe it is necessary to adjust its forecast for weather. The Company avers that the previous winter period was not unusually warm, thus, an adjustment is unnecessary.

During the hearing Keene also provided testimony supporting its projected cost of gas. The Commission would like to commend Keene Gas Corporation on the extra efforts in searching for and purchasing propane at the least cost. In particular, the purchase of 500,000 gallons at 22 cents plus transportation from Petrolane Gas Service, Inc. demonstrates Keene's aggressive procurement policies and its commitment to providing customers with service at it's least cost. We would expect this example to be followed by other utilities.

The Commission finds that Keene Gas Corporation CGA rate of ($.0606) /therm is just and reasonable and therefore accepts such as filed.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby ORDERED, that 8th Revised Page 26 of Keene Gas Corporation, Tariff, NHPUC No. 1 - Gas, providing for a Cost of Gas Adjustment of ($0.0606) /therm for the period November 1, 1986 through April 30, 1987 be, and hereby is, approved; and it is

FURTHER ORDERED, that the Revised Tariff Pages approved by this Order become effective with all billings issued on or before November 1, 1986; 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.

The above factor may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this third day of November, 1986.

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NH.PUC*11/03/86*[60911]*71 NH PUC 650*Claremont Gas Light Company

[Go to End of 60911]

71 NH PUC 650

Re Claremont Gas Light Company

Intervenor: Office of Consumer Advocate

DR 86-274, Order No. 18,470

New Hampshire Public Utilities Commission

November 3, 1986

QRDER continuing a cost of gas adjustment hearing until the petitioning distributor could

produce more competent witnesses.

Procedure, § 25 — Hearing — Continuance — Unresponsive witness.

Where, in the course of a natural gas distributor's cost of gas adjustment proceeding, a company witness was unable to adequately respond to questions on cross-examination because of her unfamiliarity with the company's books, figures, and suppliers, the proceeding was ordered to be continued and the distributor was directed to produce another witness, while the distributor's proposal that it submit written answers to the questions after the close of hearings was rejected.

APPEARANCES: For Claremont Gas light Company, Dom S. D'Ambruoso, Esquire; Consumer Advocate by Michael Holmes, Esquire; Commission Staff by Martin C. Rothfelder, Esquire.

By the COMMISSION:

REPORT

On October 15, 1986 the Commission issued an Order of Notice requiring that Claremont Gas Light Company (Claremont, or the Company), a public utility engaged in the business of supplying gas in the State of New Hampshire, file certain revisions to its tariff, providing a 1986-1987 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1986. Said tariff pages were to be filed on or before October 22, 1986. In compliance therewith Claremont filed a revised tariff page reflecting a cost of gas adjustment of $.0462 per therm, net of franchise tax.

On October 28, 1986 the Commission held a duly noticed hearing.

During this hearing Staff and the Commission attempted to cross-examine the company witness on issues relating to the figures used to calculate Claremont's CGA. The witness was unable to adequately respond to these inquiries due to her unfamiliarity with the CGA figures and supporting documents. The witness was also unfamiliar with the Company's suppliers and efforts to obtain supplies.

The Company offered to reply to the unanswered questions in writing sometime after the close of the hearings. Staff objected to this proposal because it did not provide staff or the

intervenor with an adequate opportunity for cross-examination or to further investigate the company's responses.

The Commission finds that Claremont has not complied with its statutory obligation put forth in RSA 378:8. We, therefore, will require that Claremont provide a witness who can support the proposed CGA revision. In the interim the Commission will approve a temporary CGA rate pursuant to RSA 378:27.

Further, the witness for Claremont has acknowledged an error in the filing. The conversion factor filed in Attachment A of Exhibit 1 was filed as .91. Commission's Report and Order No.

18,280 mandated that a conversion factor of .915 be utilized by Claremont. Thus, Claremont has proposed an adjustment to its filing reflecting the .915 conversion factor. We will accept this adjustment and fix the temporary CGA rate at $.0444/therm net of franchise tax.

Said temporary CGA rate is to be in effect until the Commission provides a decision concerning the company's filing. Revenues obtained from this rate will be subject to refund or recoupment depending on the final rate fixed by this Commission.

Notice of an additional hearing date on this issue will be provided by the Commission by November 24, 1986.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 121st Revised Page 12-2 of Claremont Gas Light Company NHPUC No. 9 Gas be, and hereby is rejected; and it is

FURTHER ORDERED, that Claremont Gas Light Company submit a revised tariff page 12-2 in accordance with the foregoing Report; and it is

FURTHER ORDERED, that the hearing held to review the merits of Claremont Gas Light Company's proposed 1986-1987 Cost of Gas Adjustment be continued, and that Claremont Gas Light Company provide a witness able to respond to the Commission's concerns put forth in the foregoing report.

The above CGA rate may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83205, Order 15,624.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1986.

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NH.PUC*11/04/86*[60912]*71 NH PUC 652*New England Alternate Fuels, Inc.

[Go to End of 60912]

71 NH PUC 652

Re New England Alternate Fuels, Inc.

Additional petitioner: Energy Tactics, Inc.

DR 86-87, Supplemental Order No. 18,471

New Hampshire Public Utilities Commission

November 4, 1986

ORDER extending the deadline for responses to comments filed in a long-term cogeneration rate proceeding.

Procedure, § 16 — Discovery — Responses — Extensions of time.

Where additional time for discovery had been authorized in a proceeding on longterm cogeneration rates, an extension for filing responses to comments on the additional discovery time was allowed.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on March 10, 1986, New England Alternate Fuels, Inc. (NEAF) and Energy Tactics, Inc. (ET) filed a long term rate petition pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) and 70 NH PUC 753, 69 PUR 4th 365 (1985); and

WHEREAS, pursuant to Order No. 18,205 (71 NH PUC 228) a hearing was held on May 7, 1986 and subsequently it was adjourned to give the parties additional time for discovery; and

WHEREAS, on October 1, 1986 Public Service Company of New Hampshire (PSNH) filed its comments on the additional discovery; and

WHEREAS, the Commission will give NEAF the opportunity to respond to PSNH's comments; it is therefore

ORDERED, that NEAF may file comments on or before November 21, 1986.

By Order of the Public Utilities Commission of New Hampshire this fourth day of November, 1986.

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NH.PUC*11/04/86*[60913]*71 NH PUC 653*New England Telephone and Telegraph Company

[Go to End of 60913]

71 NH PUC 653

Re New England Telephone and Telegraph Company

DR 86-229, Supplemental Order No. 18,472

New Hampshire Public Utilities Commission

November 4, 1986

ORDER canceling redundant provisions in a local exchange carrier's tariffs.

Rates, § 251 — Schedules and formalities — Cancellation — Mistakes in tariff pages.

Where tariff provisions relating to a local exchange carrier's flexible pricing plan had been

erroneously included in Part B of the carrier's tariffs rather than Part C, the previously approved tariff pages in Part B were canceled.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on October 9, 1986, the Commission approved Part B-Section 4-Pages 5 and 6, First Revisions of New England Telephone and Telegraph Co., Inc. (NET) Tariff No. 75 which embodied a flexible pricing plan for Quickway SM, Re New England Teleph. & Teleg. Co., Inc., 71 NH PUC 587 (1986); and

WHEREAS, on October 17, 1986 NET filed Part C-Section 1, Pages 5 and 6, First Revisions which contain the same provisions as the originally approved Part B-Section 4-Pages 5 and 6 first revision; and

WHEREAS, the originally approved pages were included in Part B due to an administrative oversight; it is hereby

ORDERED, that Part B-Section 4Pages 5 and 6, First Revisions be, and hereby are, cancelled; and it is

FURTHER ORDERED, that Part CSection 1, Pages 5 and 6 First Revisions be, and hereby are, approved for effect October 9, 1986.

By Order of the Public Utilities Commission of New Hampshire this fourth day of November, 1986.

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NH.PUC*11/07/86*[60914]*71 NH PUC 654*Northern Utilities, Inc.

[Go to End of 60914]

71 NH PUC 654

Re Northern Utilities, Inc.

DR 85-426, Supplemental Order No. 18,476

New Hampshire Public Utilities Commission

November 7, 1986

PETITION by a natural gas distributor for authority to update its tariffs and modify certain billing clauses; granted in part and denied in part.

Rates, § 304 — Connection and reconnection charges — Gas — Tariff up-dates.

A natural gas distributor was authorized to amend its tariffs to (1) introduce a fee for

reconnecting service after disconnection for nonpayment of bills; (2) assert the right to refuse service to anyone who still has amounts outstanding or is in a household with amounts still owing; (3) require a 25% net investment from commercial customers for extensions of service; and (4) require temporary customers to pay for the installation and removal of any equipment needed for serving them. [1] p. 655.

Rates, § 384 — Gas — Classes of service — Master metering.

Although expressing reservations about the value of master metering, the commission allowed a natural gas distributor to continue billing multi-family dwellings through master metering, although the rates to be charged were commercial, not residential, rates. [2] p. 656.

Rates, § 380 — Gas — Special factors — Shortages in supply — Standby service.

Because shortages in gas supplies could occur at any time, even though none was projected for the near future, a natural gas distributor was not allowed to delete from its tariffs special provisions on allocation procedures and standby service in the event of supply problems. [3] p. 657.

APPEARANCES: Sulloway, Hollis and Soden by Martin L. Gross, Esq., Richard P. Cencini for the Company; James Lenihan for the Commission Staff

By the COMMISSION:

REPORT

On December 24, 1985, Northern Utilities, Inc. (Northern or Company), a public utility providing gas service in the state of New Hampshire, filed NHPUC Tariff No. 7 which contained Proposed Revisions intended to update the currently effective NHPUC Tariff No. 6. Since the proposed changes by the Company involved 50% of the pages of Tariff No. 6, portions of which have been in effect since 1956, a complete new tariff was filed for effect of February 1, 1986.

On January 23, 1986, the Commission issued Order No. 18,084 suspending Tariff No. 7 pending investigation and decision thereon.

On July 9, 1986, the Commission issued an order of notice which established a prehearing conference on

August 7, 1986 to make inquiry regarding the changes proposed in Tariff No. 7 and determine the manner in which the Commission would proceed in this docket. During the investigation, Staff noted that the Company had omitted sections addressing the area of liability. The Company agreed that this omission was inadvertent and on July 25, 1986 submitted a revised Original Page 10 to address liability and a corresponding new Tariff page 10A to address the issues originally included on page 10, and the revised index page. Following the hearing on September 9, 1986, the Company requested a revision to NHPUC No. 6, nineteenth Revised Page 30 Rate AC-1 to change the availability provision from:

Service hereunder is available to any regular residential, commercial or industrial space

heating customer for summer air conditioning and/or summer swimming pool water heating service through a separate meter for the sole purpose of air conditioning and/or summer swimming pool water heating.

to

Service hereunder is available to any regular residential, commercial or industrial space heating customer for summer air conditioning and/or summer swimming pool water heating service. A separate meter to register the summer air conditioning and/or summer swimming pool water heating use may be required.

COMMISSION ANALYSIS

The Company's proposed tariff incorporates two types of revisions. First, Northern proposes to revise the format of its tariff. The Commission finds that the Company's proposed tariff has been filed in compliance with all the provisions of PUC 1601.04 regarding format and content. The only exception is that the Company has included supplements to the proposed Tariff that specifically cancel Supplements 11 and 16 of Tariff No. 6. As Tariff No. 6 is being superceded in its entirety, these supplements are not necessary under PUC 1601.05(m)(1)a, and we therefore reject them as redundant. All other changes in format revise the Company's tariffs to reflect more accurately the Commission's current rules and regulations and the Company's approved operating procedures, and we will therefore accept them.

[1] In addition to the changes in format, the proposed tariff also incorporates a number of substantive changes. The only changes that affect the Company's revenues are the introduction of a charge for the reconnection of service after disconnection due to nonpayment of bills and a fee for returned checks. Section II-5. The Commission finds that the impact on revenues is de minimus and the charges in agreement with current Commission Rules and Regulations, and will therefore allow them.

The Company has inserted on Page 7, Section II-5 the following paragraph:

The Company reserves the right to reject any application for service made by, or for the benefit of, a former Customer who is indebted to the Company for gas service previously furnished him. The Company may refuse to transfer a residential account from one member of a

household to another unless all amounts due for service previously rendered have been paid.

The Commission finds this provision to be reasonable and in accord with similar provisions approved for other utilities under our jurisdiction.

Section III-lB Service and Main Extensions-Commercial and Industrial Service Lines has been revised to apply the 25% net investment test on the basis of the combined cost of the service line and main extension. The Company argues that unlike residential customers, service lines for commercial and industrial customers are not standard, and may be quite lengthy and therefore costly. The Commission concurs and will allow the 25% net investment test to be applied to the service lines for industrial and commercial customers.

The Company has introduced in Section II-3 the statement that:

Where service under the rate schedules is to be used for temporary purposes only, the customer may be required to pay the cost of installation and removal of equipment required to render service in addition to payments for gas consumed.

In response to the Commission's request for greater specificity in how the charge for installation and removal of equipment would be calculated, the Company responded by letter on August 28, 1986 in part as follows:

... at the time the potential customer (typically a contractor) applies for service, the customer is given an estimate of the costs of installation and removal of equipment required to provide the temporary service. The charges are based upon the actual cost of labor at current wage rates and benefit levels and current material costs.

We find charges for installation and removal of equipment for the provision of temporary service equal to actual labor and materials cost to be reasonable, and recognize that the proposed tariff provision is a continuation of past Company practice. Therefore we will allow its inclusion in the tariff as revised.

[2] The Company has also proposed replacing its tariff provision (Original page 5) that allowed the Company to classify multiple billed, master metered, multi-family dwellings as residential service, with a provision reflecting the current practice of billing master metered multi-family dwellings on the commercial rate. Currently, the customer is the landlord, who is provided with a single bill. The Commission acknowledges that the proposed tariff provision reflects current practice, that master metering for gas is not contrary to the New Hampshire Energy Code (which specifically applies only to electric) and that billing these dwellings as individual residential customers rather than as a single commercial customer would increase their rates. However, the Commission will also note that rate design is properly based on usage patterns, and that logically the usage pattern of a multi-family residential dwelling should merely sum the usage patterns of each family within the dwelling. However, the Commission anticipates that the issue of the proper classification of multi-family dwellings will be addressed in the on-going Gas Rate Design Investigation in docket DR 86-208. We will therefore defer the rate design issue to that docket, and approve the instant change for the purposes of this

docket as reflecting current Company practice.

[3] Finally the Company's proposed tariff eliminates Article XVII.1 and XVII.2 Limitation of Supply and Gas Allocation Policy from the current tariff. The Company argues that these standby provisions can be deleted because the circumstances of shortages of pipeline gas that led to their inclusion in the tariff no longer exist. The Company states that should circumstances change and pipeline restrictions again emerge, it will request the Commission to reinstate these sections in its tariff. However, the Company has offered no evidence that future conditions will not require swift implementation of allocation procedures either because of general national shortages or an emergency interruption specific to the Company's supplier. In fact, as long as the Powerplant and Industrial Fuel Use Act of 1978 (P.L. 95-620, Nov. 9, 1978, as amended by P.L. 97-35, August 13, 1981) remains in effect, there would appear to be a continuing concern at the

national level that standby provisions for restrictions on the use of natural gas should be retained because shortages are possible. In light of the potentiality of such conditions, neither the Company, its ratepayers nor the Commission would be best served by the delays entailed by a need to revise the Company Tariff in order to institute allocation procedures. The Commission notes that these articles are not unique to the Northern tariff: they are identical to the provisions in the other natural gas companies under our jurisdiction and similar in nature to the NEPOOL Operational Procedures in the electric utility industry.

Therefore, we will deny the Company's proposal to delete the standby articles on the Limitation of Supply and Gas Allocation Policy, and require that they be retained in Tariff No. 7.

In regard to the Company's petition following the hearing to change the Availability provision for its air conditioning rate, we recognize that the intent of the change is to allow customers to install high efficiency equipment that both heats and cools without requiring the Company to install a separate meter to measure consumption when the equipment is operating as an air conditioner. The usage of customers who install the combination heating/ cooling equipment can be measured by a single meter and the customer billed on the appropriate space heating rate October 15 through April 15, and on Rate AC-1 April 15 to October 15. The Commission finds this added flexibility in the Company's tariff to accommodate changes in available equipment to be appropriate and will therefore allow this modification in Tariff No. 7 page 22. Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that with the exception of the proposed inclusion of Supplements 1 and 2 and the proposed deletion of Article XVII Limitation of Supply and Gas Allocation Policy, the proposed revisions contained in the NHPUC Tariff No. 7 Gas be and hereby are approved; and it is

FURTHER ORDERED, that Supplements 1 and 2 be rejected as redundant; and it is

FURTHER ORDERED, that the provisions of Article XVII be incorporated into NHPUC Tariff No. 7 Gas; and it is

FURTHER ORDERED, that the proposed revision to Rate AC-1 submitted under the letter of transmittal dated September 9, 1986 be incorporated into NHPUC Tariff No. 7 Gas, p. 22; and it is

FURTHER ORDERED, that the Company submit revised tariff pages reflecting the provisions of this Order for effect on November 15, 1986.

By Order of the Public Utilities Commission of New Hampshire this seventh day of November, 1986.

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71 NH PUC 658

Re Public Service Company of New Hampshire

Intervenors: Business and Industry Association of New Hampshire, Public Service Company of New Hampshire, and Office of Consumer Advocate

DR 86-122, Third Supplemental Order No. 18,477

New Hampshire Public Utilities Commission

November 12, 1986

ORDER affirming a previous order that had granted an intervenor additional time to file its testimony when the petitioning utility had not responded timely to the intervenor's data requests.

Procedure, § 16 — Discovery and evidence — Data requests — Untimely responses — Filing extensions.

When an intervenor files timely data requests with a petitioning utility, but the utility offers no timely response to the requests, it is only just and fair that the intervenor be given an extension of time for filing whatever testimony it intended to submit as a result of the information received in response to the data requests.

By the COMMISSION:

Report Regarding Denial of Motion for Rehearing by Consumer Advocate on

Second Supplemental Order No. 18,431

On October 15, 1986, the Commission received a Motion for Rehearing filed by the Consumer Advocate regarding the Commission's Second Supplemental Order No. 18,431 dated October 6, 1986 (71 NH PUC 578). In that Order the Commission authorized the Business and Industry Association of New Hampshire (BIA), an intervenor herein, to file testimony which could not be developed and filed prior to the receipt of an answer to its Data

Request No. 36 to be filed 18 days after the receipt of the response to Data Request No. 36. By ordering such an extension, the Commission provided a remedy other than that which BIA had requested. On October 21, 1986, BIA filed its Response of BIA to the Consumer Advocate's Motion for Rehearing, which contended that the Consumer Advocate's Motion for Rehearing should be denied. In the Commission's October 6 Report and Order, the Commission noted that based on its expertise, the BIA should not be provided any extension for any testimony related to revenue requirements. The Report further indicates that there is a potential for other testimony

which BIA may be anticipating filing which requires such information as the response to Data Request No. 36.

The original Motion to compel of BIA, filed on September 26, 1986 discussed the use of information such as that requested by BIA's Request No. 36 in prior PSNH rate cases. It referred the Commission to PSNH's data request response in which PSNH itself indicated that it might use information such as that requested by Data Request No. 36 in this rate case. It further developed factual material related to the need to get this information from PSNH and also contended that it desired to utilize this information for specific purposes - the development of evidence on class revenue allocation.

All of the above factual material developed by BIA, except for its intention to use the material, is uncontroversial fact upon which the Commission needed no additional evidence or information. From those facts, the Commission concluded that there is a potential for BIA to develop evidence which depends upon that information. All that the Commission has allowed is for BIA to wait for such information and to file the testimony which must necessarily wait for it at a reasonable time thereafter.

In contrast, in the PSNH response to the BIA Motion to Compel and in the Consumer Advocate's Motion for Rehearing, PSNH and the Consumer Advocate assert that they believe that BIA is able to prepare and submit its testimony in this case in advance of receipt of a new marginal cost of service study. In light of the prior use of PSNH and others of such studies in PSNH rate cases, and in light of PSNH's own assertion in the initial data request response that it might introduce such a study in this rate case, the Commission is unaware of the basis for that assertion by counsel for PSNH and counsel for the Consumer Advocate. Since both assertions are clearly controversial in light of the foregoing and were not supported by any testimony under affidavit or other development of factual matter which would make them credible assertions, the Commission simply cannot rely on such assertions of fact by counsel. More specifically, the Commission could not find this assertion by PSNH counsel appropriate in resolving the Motion to Compel before it on October 6, 1986. Similarly, the Commission cannot rely on such assertions by the Consumer Advocate in dealing with the Motion for Rehearing.

The Commission was concerned that whatever testimony BIA did file later related to its October 6, 1986 Order might not, on its face, make apparent why the information in Data Request No. 36 was necessary to file such testimony. Rather than requiring parties to find out that information via data request, deposition, or cross-examination, the Commission decided that it was

Page 659

prudent to require a brief explanation thereof in BIA's prefiled testimony. If the testimony filed by BIA at a later date did not necessarily require the answer to BIA Data Request No. 36, PSNH or the Consumer Advocate or any other party may obviously propound appropriate objections or motions.

In summary the BIA Motion to Compel, by developing undisputed factual material related to prior uses and PSNH's statements on intended future uses of the kind of information requested by BIA Data Request No. 36 and the also undisputed fact of PSNH's untimely response to BIA Data

Request No. 36 provided good cause for the extension of time granted to BIA in the Commission's Order of October 6, 1986. The additional requirement which the Commission opposed on BIA was for the benefit of parties like the Consumer Advocate in making sure that BIA did not belatedly file more testimony than the Data Request No. 36 situation justified. 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 filed by the Consumer Advocate on October 15, 1986, is denied.

By order of the Public Utilities Commission of New Hampshire this twelfth day of November, 1986.

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NH.PUC*11/12/86*[60916]*71 NH PUC 661*New England Telephone and Telegraph Company

[Go to End of 60916]

71 NH PUC 661

Re New England Telephone and Telegraph Company

DR 86-236, Order No. 18,478

New Hampshire Public Utilities Commission

November 12, 1986

ORDER designating the issues to be addressed in a future hearing on Centrex telecommunications services.

Service, § 463 — Telephone — Centrex service — Issues to be addressed.

In examining the provision of Centrex telecommunications services, the following topics should be addressed: (1) competition between Centrex and private branch exchange services; (2) the interests of resellers; (3) costs and methods of cost recovery; (4) equipment and technology; and (5) service contract provisions and protection.

By the COMMISSION:

ORDER

WHEREAS, on August 15, 1986 New England Telephone and Telegraph Co., Inc. filed tariffs proposing to introduce Nova Centrex Service and Intellipath SM Digital Centrex Service; and

WHEREAS, on September 12, 1986 the Commission issued Order No. 18, 409 which suspended such tariffs and set a hearing for December 16, 1986; and

WHEREAS, investigation has led to the definition of issues relevant to the case, inter alia, as follows:

1. Given the recent NET cases in which the company has asked for reduced rates for Centrex services to wit, Re New England Teleph. & Teleg. Co., 69 NH PUC 268 (1984), Re New England Teleph. & Teleg. Co., 71 NH PUC 234 (1986), and Re New England Teleph. & Teleg. Co., 71 NH PUC 551 (1986), particularly Re New England Teleph. & Teleg. Co., 71 NH PUC 551, in which the company alleged on page 1 of the tariff support document that " ... the company's base of large Centrex systems is extremely vulnerable to competitive PBX vehicles," and further that "Large Centrex losses result in the stranding of large amounts of investment the cost of which will have to be recovered from other ratepayers," why is the company interested in investing in such competitive, and potentially risky, markets?

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2. Will this service further the interests of resale vendors?

3. How will the company cope with any increases in the end user common line charge?

4. Is there proof that NET will be able to compete with major PBX vendors who provide similar services?

5. Should the company conduct a study to show the marketplace prices compared to the tariff filing prices?

6. What types of equipment are involved in the provision of Centrex services?

7. Does the price really cover all of the costs of the service?

8. Will the service contract protections guarantee cost recovery? Do these protections address the Commissioners' concerns about Centrex cost recovery, as delineated in Re New England Teleph. & Teleg. Co., 69 NH PUC 268 (1984)? it is hereby

ORDERED, that the above issues will be addressed at the December hearing; and it is

FURTHER ORDERED, that the delineation of issues above does not limit the scope of this proceeding to these issues or change the burden of proof of the company with respect to the relevant issues.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of November, 1986.

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NH.PUC*11/12/86*[60917]*71 NH PUC 663*Vicon Recovery Systems, Inc.

[Go to End of 60917]

Re Vicon Recovery Systems, Inc.

Intervenor: Public Service Company of New Hampshire

DR 86-130, Supplemental Order No. 18,481

New Hampshire Public Utilities Commission

November 12, 1986

MOTION for rehearing of a commission order setting long-term rates for a small power producer; denied.

Procedure, § 33 — Rehearings — Grounds for granting — Issues not addressed previously.

A motion for rehearing of an order establishing long-term cogeneration rates was denied where all issues raised in the motion had been previously considered and dismissed.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on October 14, 1986, the Public Service Company of New Hampshire (PSNH) filed a Motion for Rehearing of Commission Order No. 18,415 (71 NH PUC 565) alleging that said Order is unjust, unlawful and unreasonable because:

1. The Order fails to acknowledge the ratepayer subsidy of waste disposal and the hidden tax that occurs when electric rates for all customers are used to keep tipping fees for a particular community artificially low; and

2. The Order unreasonably finds that the Vicon Recovery Systems, Inc. (Vicon) project was sufficiently mature to be able to finalize its financing, construction permits and agreements with participating municipalities before January 1, 1986.

3. The Order presumes a burden for PSNH that is inconsistent with the Order Nisi process by placing the burden to go forward on PSNH.

4. The Order approves Vicon's rates without a hearing, in violation of PSNH's statutory and constitutional due process rights.

5. The Order approves Vicon's long term rates even though Vicon has not completed all critical milestones, including financing, established in Order No. 17,104 in DE 83-62 (69 NH PUC 352, 61 PUR4th 132); and

WHEREAS, on October 21, 1986, Vicon filed a memorandum in opposition to the PSNH motion for a rehearing asserting that:

1. The Commission applied the correct standards in approving the Vicon rate filing.

2. PSNH had the burden of identifying some reasonable basis for

challenging the rate filing and PSNH failed to meet this burden.

3. The provision of the Commission's Order requiring Vicon to obtain financing, construction permits and agreements with participating municipalities before January 1, 1987 is clearly reasonable and within the Commission's discretion.

4. The Commission fully complied with all statutory and due process requirements in approving the Vicon rate filing; and

WHEREAS, the assertions made by PSNH in its Motion for Rehearing were previously fully considered by the Commission in this docket and were generally addressed in Order No. 18,356, dated August 1, 1986 (71 NH PUC 435), which granted a twenty year long term rate conditional on Vicon's finalization of its financing, construction permits and agreements with participating municipalities by January 1, 1987; and in Order No. 18,415 dated September 24, 1986 in which the Commission denied PSNH's motion for a hearing; and

WHEREAS, the Commission's findings relating to the maturity of the Vicon project and required milestones are in accordance with Commission practice in other cases;[1(132)] and

WHEREAS, the question of PSNH's statutory and due process rights to a hearing were previously addressed in this docket in Order No. 18,415 (September 24, 1986) and in previous small power producer dockets such as Re SES Concord Co., L.P., 71 NH PUC 437 (1986); it is

ORDERED, that the PSNH Motion for Rehearing dated October 14, 1986, is denied.

By order of the Public Utilities Commission of New Hampshire this twelfth day of November, 1986.

FOOTNOTE

[1]Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 365, 61 PUR4th 132 (1984) obligations of five to thirty years will be permitted. The initial year of the long-term rate obligation may not be more than four years from the time of filing); Re Wormser Engineering, Inc., 71 NH PUC 617 (1986) (Since the Settlement and Order in DE 83-62 allowed developers to file for rates up to four years before commercial operation, clearly it was not anticipated that all developmental problems needed to be resolved before filing. Rather the developer must show that there is a reasonable expectation that the project will be developed as proposed. While certain milestones provide indications of project maturity, the methodology and criteria of DR 83-62 do not require the achievement of specific milestones. Whether a project is ready to receive a long term rate is a question of Commission judgment.).

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NH.PUC*11/13/86*[60918]*71 NH PUC 665*Thurstons Marina

[Go to End of 60918]

71 NH PUC 665

Re Thurstons Marina

Intervenor: Department of Transportation

DE 86-204, Order No. 18,482

New Hampshire Public Utilities Commission

November 13, 1986

APPLICATION for a license to construct a sewer line under state-owned land; granted.

Certificates, § 88 — Grant or refusal — Factors — Public need — State-owned land.

A marina was authorized to commence construction to install a sanitary sewer line, crossing under state-owned railroad tracks, where the line would be connected to an existing central sewer system and was necessary because the marina's existing septic system was no longer sufficient for handling the marina's customers.

APPEARANCES: David Thurston, Vice President and Treasurer, Thurstons Marina and Lyn Newell, Roche & Newell, Inc., Center Sanders, Operations Engineer, Bureau of Railroads, Department of Transportation; Robert Lessels, Commission Engineering Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On July 2, 1986, Thurstons Marina filed a petition seeking license to cross railroad property owned by the State of New Hampshire in Laconia, New Hampshire. An Order of Notice was issued on July 11, 1986 setting a hearing for October 9, 1986 which was adjourned because of failure to provide public notice. A rescheduled hearing was held, after proper notice, on October 30, 1986. Offering testimony and exhibits on behalf of Thurstons Marina were David Thurston, Vice President and Treasurer and Lyn Newell, President of Roche & Newell, Inc. Contractors. Center Sanders, Operations Engineer for the Department of Transportation's Bureau of Railroads testified on the DOT's behalf.

II. APPLICABLE LAW

371:17 Petition. Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this

state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, "public waters" are defined to be all ponds of more than 10 acres,

tidewater bodies, and such streams or portions thereof as the commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility.

III. FlNDlNGS

Mr. Thurston seeks a license to install a sewer line under state-owned railroad tracks which will enable him to connect his marina at Weirs Beach to the Paugus Bay Intercepter Sewer. The location of the crossing is set forth in detail in Exhibit 1, the site location plan. The line, an 8 inch p.v.c. sanitary sewer line, will be set in a 12" ductile iron sleeve and installed by Roche & Newell, Inc., Contractors. Construction will commence as soon as all regulatory approvals have been obtained.

Thurstons Marina has submitted its construction plans to the DOT's Bureau of Railroads, which, according to Mr. Sanders, has reviewed and approved them. A DOT license for this crossing is being prepared now and it will be submitted for Governor and Executive Council approval once this Commission's authority, or license, has been issued.

Witnesses for Thurstons Marina testified that the existing septic system does not provide the level of sanitary services that they wish to provide their customers and in addition the absence of sufficient land area for leaching fields prevents further expansion.

Upon consideration and review of the record, we find the proposed crossing to be in the public interest in that it will allow the petitioner to use an existing central sewer system and will eliminate the danger of any possible contamination from septic system leachate into Lake Winnipesaukee. Accordingly we will grant the authority sought by Thurstons Marina and this Report and Order shall constitute a license in the context of RSA 371:17. This license grants Thurstons Marina authority to install only the sewer line crossing as described in the proceeding and exhibit.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition of Thurstons Marina be, and hereby is, granted; and it is

FURTHER ORDERED, that this Order shall be considered a license for purposes of RSA 371:17.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of November, 1986.

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NH.PUC*11/18/86*[60919]*71 NH PUC 667*Concord Steam Corporation

[Go to End of 60919]

Re Concord Steam Corporation

Intervenors: New Hampshire Hospital and Concord Hospital

DR 85-304, Third Supplemental Order No. 18,484

New Hampshire Public Utilities Commission

November 18, 1986

PETITION by a company seeking increased rates for its provision of steam heating service; granted as modified.

Valuation, § 246 — Property included or excluded — Leased property — Terms of lease as a factor.

Where a utility selling steam energy had entered into a multiyear lease for a diesel generator, with the terms of the lease stating that title to the equipment would pass to the steam company upon the expiration of the lease, the commission treated the lease as a form of long-term debt financing, thus making it appropriate to capitalize the lease payments and include the generator in rate base rather than treat the annual lease payments as expenses. [1] p. 674.

Revenues, § 2 — Estimates for the future — Weather normalization.

In determining a steam company's revenue requirement, the company's test-year sales were normalized to account for the warmer than normal winter last experienced, but the revenue requirement and weather adjustment were based only on the company's eight-month winter heating season operations, not its entire test-year experience. [2] p. 679.

Expenses, § 61 — Officer life insurance — Requirement for financing — Effect on the provision of service.

Because commission approval of a utility's financing does not mean that all related costs of the financing will be approved automatically for rate-making purposes, a steam company's costs in securing life insurance for its officers were disallowed where, although the insurance was required before the company could obtain financing, the insurance was shown to be for the benefit of stockholders, not ratepayers, and was shown not to be absolutely necessary to the provision of service. [3] p. 681.

Expenses, § 119.1 — Research — Required air quality study — Nonrecurring nature of item as a factor.

Although nonrecurring expenses are usually not includable in a utility's cost of service, a steam company was allowed to amortize its costs in investigating its emissions and air quality where the study had been mandated, but the utility was not allowed to directly reflect the expenses in its cost of service. [4] p. 682.

Expenses, § 89 — Rate case expense — Reasonableness — Methods of recovery.

A utility's rate case expenses are legitimate, recoverable expenses if they are reasonable and within the average parameters of cases before the commission, but a utility may be ordered to

recover its rate case expenses through use of a surcharge mechanism rather than through straight amortization. [5] p. 683.

Expenses, § 114 — Federal income taxes — Responsibility for taxes — Subchapter S status.

Where a steam company had elected to be treated as a "subchapter S" company,

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thus paying no federal income taxes because its revenue was taxed through its shareholders, the company was denied a federal income tax expense adjustment upon its declaration to give up its subchapter S status, with the commission saying that no income tax expense adjustment would be appropriate until termination of its S status was complete. [6] p. 684.

Expenses, § 86 — Payments to affiliates — Supply costs — Supply price versus royalties.

A steam company's expenses were reduced to reflect an unreasonable and unapproved transaction the company had entered into which had required the company to pay a normal supply price to its wood supplier while also paying royalties to a subsidiary of the supplier, with the steam company's president having an interest in the subsidiaries and profiting from the transaction; the result of the arrangement was that the company had essentially been paying twice for the same supply of wood and that the company had not been insulated from the risks of the venture if anything went wrong in the supply flow. [7] p. 685.

Expenses, § 19 — Late payment charges — Unpaid fuel bills — Ratepayer versus shareholder responsibility.

Ratepayers should not have to bear the burden of late payment charges imposed on a utility by virtue of its failure to timely pay its own fuel supply bills, as such failure reflects inefficiency and economic waste which should not be charged to ratepayers but borne by shareholders instead. [8] p. 689.

Expenses, § 70 — Maintenance costs — Replaceable equipment — Capitalizing versus expensing.

Although it had been recommended that a steam company replace certain of its older equipment rather than invest in repair work, the maintenance costs incurred by the company in making repairs were not totally disallowed, but were ordered to be capitalized rather than expensed. [9] p. 690.

Return, § 96 — Steam heating company — Comparative factors — Gas versus water utilities.

In setting a reasonable rate of return on common equity for a steam company, the commission used the discounted cash flow method and gas rather than water utilities as the standard for industry comparisons, because although a steam company certainly uses water to generate its steam, it also produces heat and competes with alternate fuels and other sources of heating service, and thus its overall operations and risks are more appropriately associated with gas than with water utilities. [10] p. 694.

APPEARANCES: Orr and Reno by Charles F. Leahy, Esquire and David Marshall, Esquire on

behalf of Concord Steam Corporation; New Hampshire Attorney General by Peter C. Scott, Esquire, Assistant Attorney General, on behalf of New Hampshire Hospital; Wadleigh, Starr, Peters, Dunn and Chiesa by Theodore Wadleigh, Esquire on behalf of Concord Hospital; Daniel Lanning, Assistant Finance Director, Robert Lessels, Water Engineer and James Lenihan, Rate Analyst, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket emanates from the Commission's decision in Concord Steam Corporation's (Company) last rate case (DR 82-239). In Report and Order No. 16,408 issued on May 5, 1983, 68 NH PUC 334 (1983), the Commission accepted a settlement agreement (Agreement) of the parties which recommended a rate design consisting of a base rate of $8.20 per M pounds of steam and an energy cost adjustment

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(ECA).[1](133) Paragraph 3(d) of the Agreement provides that if the Company's future steam sales exceed or fall short of 491,000,000 pounds by 10,000,000 pounds or more, any party to the Agreement or the Commission may, upon motion, request that the base rate and ECA be re-opened. In addition, paragraph 3(d) also states as follows:

That a re-opening of that component of the Meter Rate which includes all charges to CSC other than energy costs will reconsider only those elements of income and expense which have been subject to material changes from the projections contained in Exhibit A and Schedules 7 and 8 attached hereto and incorporated herein by reference.

On May 10, 1985, the Company filed a Motion To Reopen (Motion) in which it represented that its annual steam sales had fallen by over 100,000,000 pounds annually and that it had experienced a material change in those income and expense items referred to in paragraph 3(d). The Company requested that the Commission adjust its meter rate pursuant to paragraph 3(d) by increasing it by $.85 (or 10.4%) from $8.20 to $9.05. The calculation of the increase and supporting documentation were set forth in the written testimony of Roger Bloomfield, the Company's president, which, along with revised tariff pages reflecting the increase, were submitted with the Motion.[2](134) The tariff pages entitled "6th Revised Page No. 11, superceding 5th Revised Page No. 11", bore an issued date of May 10, 1985 and an effective date of July 1, 1985.

On May 27, 1985, the Commission issued Order No. 17,617 (70 NH PUC 403) suspending the proposed tariff pages pursuant to RSA 378:6 to allow for an investigation. Thereafter, the Commission issued an Order of Notice on September 4, 1985 reopening docket number DR 82-239 but assigning it a new docket number, DR 85304, and scheduling a prehearing conference for September 24, 1985. Prior to the hearing, the Company filed a petition requesting that the Commission set temporary rates pursuant to RSA 378:27 at $9.05 per M pounds of steam, the level requested by the May 10, 1985 filing, to take effect as of July 10, 1986.

At the September 24 procedural hearing, the Company moved to have the Commission

consider the temporary rate petition. The Commission's hearing examiner denied the motion because that issue had not been included in the Order of Notice scheduling the hearing. By Order of Notice of even date, the Commission scheduled a hearing on temporary rates for October 2, 1985.

The October 2, 1985 hearing was held as scheduled. Offering testimony in support of the petition were Mr. Bloomfield and Richard LeClair, CPA, of Nathan Wechsler and Company. Also on October 2, the Commission issued Report and Order No. 17,884 (70 NH PUC 835) in which it accepted the procedural schedule proposed by

parties at the September 24 hearing. The schedule provided for a hearing on the merits on November 14, 1985. On October 9, 1985, the Commission issued Report and Supplemental Order No. 17,893 (70 NH PUC 840) fixing temporary rates at the $9.05 level requested, but established October 1, 1985 as the effective date instead of July 1, 1985.[3(135)]

On October 31, 1985, the Company filed a "revised" 6th Revised Page No. 11 and a Report of Proposed Rate Adjustment reflecting a base rate of $10.00 per M pounds of steam and proposed that they be substituted for the 6th Revised Page No. 11 and the Report of Proposed Rate Adjustments filed on May 5, 1986. The Company also filed written direct testimony of Mr. Bloomfield in support of the $10.00 rate.

In response thereto, on November 7, 1985, the Staff filed a Motion To Continue the November 14 hearing to allow sufficient time to evaluate the amended tariff filing. In addition, by letter of even date, New Hampshire Hospital (NHH) filed an Objection to the amended filing and a Motion To Extend Procedural Schedule. By letter dated November 8, 1985, the Company objected to any postponement of the November 14 hearing. By letter of the Executive Director dated November 7, 1985, the Commission granted Staff's motion to continue and stated that the hearing would be rescheduled on motion of the parties.

On November 13, 1986, the Company filed a Motion to reschedule the November 14 hearing to December 5. NHH's Objection thereto, filed on November 18, 1985, stated that its counsel would be unavailable on that date. By letter dated December 2, 1985, the Commission scheduled a hearing on December 10, 1985 on the Company's Motion and notified the parties that they should "be prepared to address the questions as to whether Concord Steam Corporation's [October 31, 1985] request exceeds the scope of the contemplated step increase and whether the Commission should entertain a new rate case to address the issues in this docket".

On December 9, 1985, one day before the hearing, the Company filed 7th Revised Page No. 11. The tariff page was identical to the 6th Revised Page No. 11 included in the October 31 filing except that the identifying caption was changed from 6th to 7th. In the transmittal letter accompanying the tariff page the Company stated that the change was made on the advice of the Commission Staff and that 7th Revised Page No. 11 was intended to supercede and replace the 6th Revised Page No. 11. On December 18, 1985, the Commission issued Order No. 18,008 (70 NH PUC 1068) rejecting the 6th Revised Page No. 11 filed on October 31, 1985 and suspending 7th Revised Page No. 11 pending investigation thereon.[4(136)]

At the December 10 hearing, the Commission determined that the October 31 filing was beyond the scope of the step-adjustment proceedings. The Commission found that the increase

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requested in the October 31 filing could only be considered in the context of a full rate case. Accordingly, the Commission directed the Company to make a new rate filing in accordance with the Commission's tariff filing requirements set forth in (N.H. Admin. Rules No. Puc Chapter 1600). The Commission also indicated it would give due consideration to a request from the Company to waive certain of the filing requirements.

On December 17, 1985, the Company filed a Notice of Intent to File Rate Schedules and a Request For Waiver of Certain Tariff Filing Requirements (Request). In the Request, the Company requested that the Commission allow the tariff page filed on October 31, 1985 ($10 per M pounds of steam) to become effective on January 1, 1986. In addition it requested that the Commission:

1. waive the 30-day delay between filing the Notice of Intent and the filing of proposed new rate schedules (PUC Rule 1603.01);

2. waive any requirement that CSC refile a proposed new tariff page or report of proposed rate changes which would duplicate those already filed with the Commission on October 31, 1985, the effective date of which was never suspended.

3. waive any and all other rules which would have the effect of preventing CSC's temporary rate of $9.05 per M pounds of steam from not being effective from October 1, 1985 and CSC's proposed rate change to $10.00 per M pounds from becoming effective on a permanent, or in the alternative, on a temporary basis, January 1, 1985.

The Company's rationale for requesting such a comprehensive waiver was that all interested parties had received adequate notice by virtue of their involvement in the proceedings thus far. Thereafter, on December 26, 1985, the Company filed a Motion For Modification and Other Relief (Motion) in which it requested, inter alia, the following:

1. that Order No. 18,008 be withdrawn or modified and clarified in a manner consistent with the foregoing motion;

2. that a temporary rate of $10.00 per M pounds of steam sold be fixed and determined effective January 1, 1986; and

3. that a procedural hearing be held as soon as practicable to establish a schedule for fixing and determining a permanent rate in the within proceeding.[5(137)]

In response to the Notice, Request and Motion, the Commission issued an Order of Notice on January 6, 1986,

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scheduling a hearing on January 23, 1986 for the purpose of determining whether to grant the requested temporary rates effective January 1, 1986, or thereafter, and to determine a procedural

schedule for adjudicating the remaining issues in this docket. The January 23, 1986 hearing was held as scheduled and was concluded on January 24, 1986.

On January 29, 1986, the Commission issued Report and Second Supplemental Order No. 18,095 (71 NH PUC 104) in which it set temporary rates at $9.38 per M pounds of steam for all service rendered on or after January 1, 1986. In addition, it established a procedural schedule requiring the Company to file tariff filing data by February 14, 1986, hearings on June 3 and 4, 1986 and appropriate discovery between those dates. Hearings were held on June 3, 4 and 16. Offering testimony and exhibits on behalf of the Company were Roger Bloomfield, the Company's president and William D. Biser, CPA, Nathan Wechsler & Company. Daniel D. Lanning, Assistant Finance Director, and Mark Collin, Economist II, testified on behalf of Staff.[6](138) Briefs were submitted by the Company and NHH.

II. RATE BASE

A. Position of the Parties

The Company's proposed rate of $10.00 per M pounds is based on a rate base of $4,208,808. This rate base was computed using an average of five quarterly balances of plant in service, accumulated depreciation, contributions in aid of construction and materials and supplies. The working capital was calculated utilizing the balance sheet approach based on five quarterly balances.

During the hearings, the Company revised its filing and updated its test year to December 31, 1985, as recommended by Staff. The revised rate base, $3,883,309 (Exhibit 7), was also calculated by using an average of five quarterly balances for the various components. The only difference between the original and revised filing was the calculation of working capital. In calculating the cash working capital component, the Company abandoned the balance sheet approach in favor of the formula utilized by the Federal Energy Regulatory Commission (FERC) which Staff recommended. The FERC approach computes the cash working capital component by taking forty-five days (12.5%) of all operation and maintenance expenses.

In its Brief, the Company stated it would accept Staff's Prepayment Calculation. Thus, the Company's proposed rate base is as follows:

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

Plant in Service	$4,284,357.40
Less: Accum. Depr.	586,609.20
Net Utility Plant	3,697,748.20
Less: Def. Fed. Income Taxes	163,106.00
Def. State Taxes	33,601.00
Contributed Capital	62,921.00
	3,438,120.20
Add: Working Capital:	
Cash Working Capital	312,555.00
Prepayments	35,597.00
M & S Inventory	93,353.80
RATE BASE	3,879,621.00

Staff's initial rate base calculation, $3,784,942.68 (Exhibit 4), was also calculated utilizing five quarterly balances of the various components to obtain an average test year ending December 31, 1985. Additionally, Staff reduced rate base by the December 31, 1984 year end balance of deferred federal income taxes and deferred state taxes. Staff calculated cash working

capital using the FERC formula.

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During the hearings Staff submitted a revised calculation of $3,774,755.80 which resulted from a reduction in the operation and maintenance costs used to derive cash working capital. Staff's calculation is as follows:

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

Plant in Service	4,184,357.40
Less: Accum. Depr.	575,085.20
Net Utility Plant	3,609,272.20
Working Capital:	
Contributed Capital	(62,921.00)
Def. Federal Income Tax	(163,106.00)
Def. State Tax	(33,601.00)
Cash Working Capital	
[45 Days O&M Expense]	296,161.00
Materials & Supplies	93,353.80
Prepayments	35,596.80
Total Working Capital	165,483.60
RATE BASE	3,774,755.80

Staff and the Company differ with respect to two items: the appropriate level of cash working capital and the proper treatment of the Company's lease of a diesel fired generator.

In 1981, the Company entered into a lease agreement with E.F. Hutton whereby the Company received the right to use a diesel fired generator to help meet demand during emergency situations. The lease provides that at the end of its term (5 years) title in the generator will pass to the Company. Given the automatic transfer of title, the company "capitalized" the lease prior to its last rate case and the balance was included in the rate base approved by the Commission in Report and Order No. 16,408 issued on May 5, 1983. 68 NH PUC 334 (1983). Consistent with that decision, the Company included the lease ($100,000) in its plant in service in this proceeding. In addition, it included corresponding depreciation of $11,524.00 in the calculation of the depreciation reserve figure.

Staff argues that rate base treatment of the lease is inappropriate. It contends that the generator is rented equipment, and as such, the annual lease payments should be recovered through rates as an expense.

The Company strongly disagrees with Staff's position. It argues the proper ratemaking treatment of the lease was determined by the Commission in the 1983 decision, wherein, as stated above, the Commission approved the capitalization of the lease and included it in rate base. It further points out that the Company has included the equipment in utility plant and has depreciated it accordingly for the years 1982, 1983, 1984 and 1985 without objection from the Commission or its Staff. According to the Company, the capitalized lease is functionally a purchase with a fiveyear term financing. Moreover, the Company points out that capitalization is permitted by Generally Accepted Accounting Principles (GAAP) where, as in this instance, the lease substantially transfers the risks and benefits of ownership of the property.

Staff disputes the Company's contention that the lease is essentially a financing mechanism. It cites the Company's handwritten statement on Exhibit 10, an excerpt from the Company's 1982 annual report, in which the Company states that "[a]uthorization for this lease was not sought from the Commission pursuant to RSA 369 because the legal obligation between the parties is a lease, not a debt obligation". Staff argues that the Company cannot have it both ways. If the lease is a financing, the Staff contends that Commission authorization pursuant to RSA 369 must be obtained before the lease can be

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included in rate base; if it is not, then the lease payments should be treated as an expense and the generator should not be included either in rate base or the capital structure.

Staff and the Company also disagree on the amount of cash working capital to be included in the working capital computation. As stated above, while both parties utilize the FERC method, they cannot agree on what level of operation and maintenance expenses should be recovered through rates and used in the calculation. Their respective positions in this regard are discussed below in the section dealing with operating income.

NHH supports Staff's position regarding the disputed issues in this proceeding with the exception of the capitalized lease. NHH agrees with the Company that the lease was properly capitalized and should be included in rate base. It takes the position that the lease was in effect a financing arrangement requiring Commission approval under RSA 369. Because that approval was not obtained, NHH argues that the Commission should impose a penalty on the Company which could be either elimination of the lease from the capital structure or exclusion of the value of the generator from rate base.

B. Commission Analysis

[1] The parties do not dispute the Company's need for and use of the diesel generator, both of which are amply supported by the record. Rather, the parties disagree on how the cost of the generator should be reflected in the Company's rates.

As stated above, the Company obtained the use of the generator by virtue of a multi-year lease. Under its terms, the Company pays rent to the lessor on a regular basis. Generally, such rental payments are considered expenses (as opposed to assets), recoverable through rates so long as they are both reasonable and recurring. However, where the terms of a lease in effect transfer all the benefits and risks of owning an asset and provide for an automatic transfer of title at the end of the lease term to the utility, treating lease payments as an expense in the ratemaking process is inappropriate. In those instances the above-described GAAP approach should be applied; the lease should be treated as an asset and be capitalized as part of net plant. The cost of the leased equipment shall be included in rate base and depreciated over its useful life.

The Commission finds that the Company's lease of the diesel generator should be capitalized for ratemaking purposes. The terms of the lease transfer possession and complete control to the Company during the pendency of the lease. The Company has thus assumed all the risks and will receive all the benefits of ownership. In addition, title will pass to the Company at the end of the lease's term which is sometime in 1986. Accordingly, the cost of the generator — the total

amount of the lease payments — less accumulated depreciation will be included in the Company's rate base and an appropriate amount of depreciation will be included in the depreciation expense figure.

In its Brief, the Company is highly critical of Staff's position regarding the diesel generator. As stated above, it argues that the proper ratemaking treatment of the lease was determined by the Commission in the Company's 1983 rate case and that the Staff had no

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right to raise the issue in this proceeding. The Company stated at page 21 of its Brief as follows:

Is not the Staff as obligated as the Company to read the historical record and follow established precedents which bind the Company? Or is the situation a one-way street in which Staff, as unbridled advocates, may assert any position at any time, no matter what the historic record reveals, and whether or not the position asserted has any support in applicable principles of utility regulation?

In light of the Company's criticism, we reviewed the record of the Company's last rate case, DR 82-239. We find no mention of the diesel generator issue in either the Settlement Agreement (Agreement) or the schedules attached thereto. The diesel generator may have been the subject of settlement discussions among the parties, however there is nothing in the Agreement stating that the issue was resolved. In addition, the financial schedules attached to the Agreement make no reference to the generator. While the generator may be included under specific headings, there is no way to ascertain that from the schedules themselves. Moreover, there is no mention of the issue in the Settlement Agreement or in Report and Order No. 16,408. As far as the Commission is concerned, the issue of the proper ratemaking treatment of the generator was never raised, considered or determined.

We agree with the parties that the capitalized lease agreement is in essence a long-term debt financing of the generator. As stated above, both the Staff and NHH argue that the Company should have obtained Commission approval as required by RSA 369 prior to entering into the lease agreement.[7](139) They further argue that the Commission should penalize the Company and exclude the generator from rate base until such approval is obtained. While we agree that RSA 369 approval should have been obtained, we decline to penalize the Company. For the reasons stated above, we find that the generator is properly included in the Company's rate base. Moreover, given that the lease has already expired or is about to do so, the need for Commission approval would arguably be moot. However, we hereby put the Company on notice that we consider capitalized leases of the type involved in this proceeding to be financing mechanisms subject to the provisions of RSA 369. Any similar future "financings" by the Company will require Commission approval.

As an alternate penalty, NHH argues that the Commission should eliminate the capitalized lease from the capital structure. As discussed below, we have not included the lease in the capital structure, however, not because the

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Company failed to obtain approval pursuant to RSA 369.

Regarding the cash working capital computation, we agree with the parties' recommendation that the Federal Energy Regulatory Commission (FERC) method should be utilized where no "lead-lag" study has been provided. As stated above, the FERC approach estimates a utility's cash working capital to be approximately 45 days or 12.5% of the company's operation and maintenance expense level where billing is done on a monthly basis. Applying the FERC approach to the operation and maintenance expense level approved herein, we calculate the Company's cash working capital as follows:

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

Total Proforma Operating Expenses per Commission Income Statement	
Less: Late Payment Royalty Payments (See discussion below in III. B. 7.)	

In view of the above, we find the Company's rate base to be as follows:

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

Utility Plant in Service	4,284,357
Add: Repairs to Equipment	17,800
Less: Accumulated Depreciation	586,609
Depreciation—Repairs of Equipment	607
	3,714,941
Working Capital:	
Contributed Capital	(62,921)
Deferred Federal Income Tax	(163,106)
Deferred State Tax	(33,601)
Cash Working Capital	292,753
Materials and Supplies	93,354
Prepayments	35,397
RATE BASE	3,876,817

III. OPERATING INCOME

A. Revenue

1. Position of the Parties

As set forth in the income statement in Mr. Lanning's original testimony (Exhibit 4), Staff originally proposed a revenue figure of $2,905,614 which represents the revenue received by the Company in the test year (the 12 months ending December 31, 1985). In his revised testimony (Exhibit 13), Mr. Lanning made two adjustments to that figure: 1) the revenue associated with the temporary rate increase approved by the Commission in Report and Supplemental Order No. 17,893 issued on October 9, 1985 was excluded; and 2) a weather normalization was made, that is, the revenue figure was increased to reflect a warmer than normal heating season in the test year. The adjustments resulted in a revenue figure of $2,857,447. Mr. Lanning's calculation of these adjustments is set forth in Exhibit 13. It provides in pertinent part as follows:

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

```
1. Calculation of Weather Adjustment

30 year average through December 1985
Degree Days

12 months through December 1985

Weather adjustment factor due to warmer
than normal 1985 weather

Calculation of Cogen Sales during heating
season (Jan.-Apr., Oct.-Dec.):
Total Cogen Sales during 1985
Heating Season %



1.  Calculation of weather adjustment:

Heating Mlbs. sold 1985 test year
Jan.-Apr., Oct.-Dec.)
Less Cogen sales during heating season(B)

Weather adjustment factor

Less actual sales
Mlbs. weather adjustment to normalize
Rate during test year
Revenue adjustment

2. Calculation of temporary rate in test year:

Sales October-December 1985 net of
Cogen Sales
Temporary rate
Revenue decrease

Total adjustment to revenue
```

To determine how the test year heating season compares with past years, the Staff analyzed heating degree day data compiled by the Concord Weather Station.[8(140)] That data established that the number of heating degree days in the test year (7,286) was lower than the average number of heating degree days in the past 30 years (7,547). Accordingly, Staff concluded that the test year heating season was warmer than normal and that the Company's test year revenues should be adjusted upward to reflect the statistical norm.

Staff's adjustment factor of 1.0346 is derived by dividing the degree day vari2ance by the historical average (261 ° 7,547 = .0346) and adding 1. By applying the factor to the test year retail sales during the heating months, Staff concludes that an additional 9,002.21 M lbs of steam would have been sold during a normal heating season, and, accordingly, additional revenues of $32,858.00 received.

The Company proposes a revenue figure of $2,824,589 (Exhibit 7). This figure includes test year revenues and one adjustment thereto. The Company agrees with the Staff that temporary rate revenues should be eliminated. Unlike the Staff, the Company proposed no weather adjustment. However, during the hearings the Company agreed through Mr. Blooomfield's testimony, that a weather adjustment was appropriate. In its Brief, the Company submitted the following calculation:

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


```
30 year average degree days     7,482
through December 1985

12 month degrees days (1/1/85   7,296
through 12/31/85


Weather Adjustment Factor:
(Degree day variance from
average, 186 degree days) divided
(30 year average degree days,   7,482)
                                (1.00) = 1.02485

To "normalize" revenues:
Total sales (1985 PUC Report)   315,860 Mlbs.
Less sales to cogen             11,570 Mlbs.
                                304,290 Mlbs.

Times weather adjustment factor 1.02485

Equals "normalized sales"       311,851 Mlbs.

Difference in sales             (311,851 M
- 304,290 M) =                  7,561 M x $3.65
per Mlbs. =                     27,599.84
```

9(141)

The $5,258 difference between Staff and the Company results from several data variations. First, the historical and test year degree day figures differ for reasons described below. Second, the Company uses total test year sales instead of the 8 month heating season Staff recommends. Lastly, notwithstanding that its calculation yielded a figure of 311,851 M lbs. in normalized sales, the Company argues that 310,000 should be used because it constitutes the mid-point of its historical experience over the past several years.

While it does not strenuously object to Staff's calculation, the Company argues that there is no point in refining the weather adjustment factor to a period less than the full 12 month test period because of a less than direct relationship between degree day variation and steam sales. According to the Company, much of its heating load serves older buildings and may be as much a function of wind conditions as of ambient temperature. Moreover, a significant portion of the Company's load is process steam used to heat water for laundry and kitchen use at two hospitals. The Company contends patient population rather than degree days determine the extent of that load.

NHH's weather adjustment calculation is as follows:

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

30-year average        7547
1985 actuals           7289

WEATHER ADJUSTMENT
FACTOR                 1.03540
(30-year average divided by
1985 actuals)

1985 Sales (Total)     315,860
Sales to Co-Gen        11,570
1985 Sales (Customers) 304,290

NORMALIZED SALES       315,061
(1985 sales times weather
adjustment factor)
```


Difference in Sales	10,771
ADDITIONAL REVENUE	
10(142) (8,058 times $3.65)	$ 39,314

Like the Company, NHH's calculation was submitted in its Brief along with 3 attachments reflecting data obtained from the Concord Climatological Station (CCS). Staff also utilized the CCS data and thus the Staff's and NHH's figures are the same except for a minor discrepancy between their 1985 degree day data figures (Staff - 7,286; NHH - 7,289). With regard to the difference between the NHH/Staff and Company 30 year historical average figures, 7,547 and 7,482 respectively, NHH contends that the Company's figure is not an historical average; it argues that the Company's figure is based on old heating season data instead of current data including the test year and is invalid.

NHH's adjustment factor differs from that presented by the other parties. Staff and the Company divide the degree day variance between the historical and test year by the historical average number of degree days and add 1. NHH argues that this is an incorrect approach; it contends that the factor should be derived by dividing the degree day variance by the 1985 actuals and adding one because the goal of the adjustment is to normalize the 1985 figures.

NHH agrees with the Company that the calculation should be based on the full year instead of the 8 month period recommended by Staff on the grounds that exclusion of the summer months requires the extrapolation of several figures and probably assumes more precision in the degree day formula than is justified.

NHH argues that the Company has failed to meet its burden of establishing that 310,000 M pounds should be utilized as the normalized steam sales figure given that both the 1983 and 1984 sale figures as contained in Exhibit 2 were substantially higher.[11](143)

2. Commission Analysis

[2] The Commission has allowed adjustments to revenue to account for an abnormally warm or cold test year where a correlation between degree-day changes and sales is established. Re Gas Service, Inc., 65 NH PUC 76, 78 (1980); Re Gas Service, Inc., 63 NH PUC 2, 4 (1978). The record in this proceeding clearly establishes, and indeed all parties agree, that the Company's heatrelated load is affected by changes in the weather and that the test year heating season was warmer than normal. We accept the parties' recommendation that a weather adjustment be made to 1985 test year sales.

We will adopt the heating degree day data which Staff and NHH obtained from the Concord Climatological Station (CCS). CSS data has consistently been utilized by the Commission in determining weather adjustments to revenue. See Re Gas Service, Inc., 65 NH PUC at pp. 77, 78; 63 NH PUC at pp. 4-6. We find the 30-year average number of heating degree days to be 7547 and the 1985 heating degree days to be 7289. Accordingly, the Company's unsubstantiated figures will be rejected. We agree with NHH that the Company's figure is based on old heating season data and is inappropriate for the adjustment calculation. We will adopt NHH's calculation

of the adjustment factor. Given that the goal of the

adjustment is to normalize the 1985 test period revenue, 1985 heating degree data and not the historical average should be used in calculating the adjustment factor. Thus, we will adopt 1.0354 as the adjustment factor which is calculated as follows: 258 ° 7289 = .0354 + 1 = 1.0354.

Lastly, we find that the adjustment should be based on the 8 month heating season and not the full test year. Changes in temperature only affect sales during the heating season. To include sales during non-heating months — non-heating load — would result in an overstatement of the revenue adjustment.

In view of the above, the Commission's weather adjustment calculation is as follows:

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

30 year average	7547
1985 Actuals	7289
Weather Adjustment Factor	1.0354
1985 Heating Season Sales	
(Ex. 13, Sch. F)	270,226.57 Mlbs.
Less Cogen Sales during heating season	
(Ex. 13, Sch. F)	10,047 Mlbs.
	260,179.57
Weather adjustment Factor	1.0354
	269,389.93
Less Actual Sales	260,179.57
Mlbs. weather adjustment	9210.36
Rate during test year	3.65
Revenue Adjustment	33,617.80

Adding $9210.36 to test year sales of 304,290 M lbs. yields normalized test year sales of 313,500. M lbs. We will utilize normalized test year sales in determining the Company's rate per M pounds of steam. That calculation is set forth in Section VI below.

B. Pro Forma Adjustments to Test Year Expenses

1. Annual Charges for New Hampshire Municipal Bond Bank Financing

During the test year the Company incurred expenses of $29,365 for premiums on life insurance policies for its president, Roger Bloomfield, and its vice president, Sheldon Morrill, the beneficiary of which is the Company. According to the Company, Mr. Bloomfield's policy was required by Citibank, N.A. in connection with its providing a letter of credit to support a $5,000,000 tax-exempt industrial revenue bond financing the Company obtained in 1983 through Shearson Lehman Brothers. The financing was approved by the Commission in Report and Order No. 16,807 issued on December 1, 1983 (68 NH PUC 728) (DF 83-361). Also included in the test year expenses are annual costs associated with the financing totalling $12,573 such as remarketing, registrar and agent fees.

Staff argues that a pro forma adjustment should be made to test year expenses to eliminate the life insurance premiums on the grounds the Company's ratepayers do not derive any benefit from the policies. In support thereof, Staff contends that in the event either policy matures, the proceeds would be recorded as equity and used to pay off the Company's debt thereby increasing the amount of equity in the Company's capital structure. Thus, because the increased equity

benefits the Company's stockholders and not its ratepayers, Staff takes the position that the costs of the life insurance policies should be borne by the stockholders. NHH concurs with Staff's recommendation.

According to Staff, the insurance premium and other financing costs referred to as "hidden costs" were not disclosed to the Commission in the DF 83-361 financing proceeding. Unlike the premiums, Staff makes no adjustment for the hidden costs but instead

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recommends that they be investigated by the Commission. NHH argues that the hidden costs are financing costs and therefore should not be included as part of the cost of service. NHH would include the hidden costs as part of the financing costs in the long term debt component of the Company's capital structure only if they were adequately presented to the Commission in Docket DF 83-361.

The Company argues that Mr. Bloomfield's policy was required by Chase Manhattan as precondition to its providing the 1983 $5 million tax-exempt financing. Thus, without the policy, the Company could not have obtained the financing and its favorable interest rate which was significantly lower than other debt financing alternatives available at that time. Given that the lower rate directly benefits the Company's ratepayers, the Company contends that the premium costs should be recovered through rates. While the Company does not object to including the premium costs in the long term debt cost component of the Company's capital structure, it takes the position that the proper ratemaking treatment would be to include them as an expense in the cost of service. In any event, it rejects Staff's recommendation that the costs be borne by the Company's stockholders. The Company did not address Mr. Morrill's policy, the premiums for which were also eliminated by Staff.

[3] It is well established that Commission approval of a utility's financing pursuant to RSA 369 does not carry with it a finding that the costs of the financing are reasonable for ratemaking purposes. That determination is left to the time when a utility seeks to pass the costs of the financings to its ratepayers. In Re Seacoast Anti-Pollution League, 125 N.H. 708, 490 A.2d 1329 (1985), the New Hampshire Supreme Court stated as follows:

Our holding does not assure that the costs of securities will ultimately be recovered through rates charged to customers. When a utility has exhibited inefficiency, improvidence, economic waste, abuse of discretion, or action inimical to the public interest, the costs may not be passed on to ratepayers. See Re Public Service Co. of New Hampshire, supra, [122 N.H. 1062, 1076, 51 PUR4th 298, 454 A.2d 435, 443 (1982)].

The life insurance policies are clearly not a necessary cost of providing service to the Company's ratepayers. Their sole purpose is to preserve, protect and indeed enhance the investment of the Company's stockholders in the Company. Should the policies mature, the proceeds would ultimately be used to reduce or eliminate the Company's debt obligation thereby increasing the equity component of the Company's capital structure to the benefit of the Company's stockholders. Moreover, an increase in the equity component generally results in a higher cost of capital and, as a result, higher rates for the Company's ratepayers. Thus, given that the policies are a stockholder-related expense, the Company's stockholders and not its ratepayers

should bear their cost. Accordingly, we will accept Staff and NHH's pro forma adjustment eliminating the life insurance premiums.

The Company's argument that but for the life insurance policies the 1983 financing and its then favorable rates would not have been possible is not supported by the record of that proceeding; there is no mention therein

of the policies. If, as the Company now asserts, the life insurance policies were an integral part of the financing, the Company had an obligation pursuant to RSA 369 et seq. to present all of the terms and conditions and their costs to the Commission which the Company failed do. Had the Commission been made aware of the life insurance policies, our decision to approve the financing may well have been different given the equity impact discussed above.

With regard to the hidden costs, we find that they are recurring costs commonly incurred in conjunction with a financing and should be recovered through rates. Moreover, they are properly included as an expense item in the Company's cost of service. We reject NHH's recommendation that the hidden costs be included as part of the long term debt costs in the Company's capital structure. The only costs recovered in that manner are costs related to the issuance of the security, such as broker and legal fees. Remarketing, registrar and agent fees are not part of the original issuance costs.

2. Costs Incurred In Connection With The Investigation Of The New Hampshire Air Resource Agency

During the test year the Company incurred $34,810 in expenses in connection with an investigation by the New Hampshire Air Resources Agency of the air quality, specifically the emission rates for mass particulates, of the Company's facilities, including $26,000 in consulting fees paid to Woodman Engineering and $8,810 in legal fees. The investigation has been ongoing since 1983. Recent developments include the filing of a suit in the Merrimack County Superior Court on June 20, 1986 by the State of New Hampshire against the Company alleging violations of air quality during 1985.

Both Staff and NHH argue that the costs are non-recurring and should not be included in the Company's ongoing cost of service. Instead, they propose that the total cost of $34,810 be amortized over a five-year period at a rate of $6,962 per year. Staff further recommends that a deferred account should be established and that the amortization be increased as additional expenses are incurred. The Company disagrees with the proposed amortization. Given the investigation's lengthy history and recent lawsuit, the Company argues that costs similar to those incurred during the test year will continue to be incurred in the future.

[4] It is well established that only recurring expenses may be included in a utility's cost of service. Non-recurring expenses are excluded because they are not indicative of a utility's ongoing cost of service. The Commission stated in Re Public Service Co. of New Hampshire, 69 NH PUC 67, 78, 57 PUR4th 563, 574 (1984) as follows:

The rule applicable to non-recurring 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. of New Hampshire v. New Hampshire, 120 N.H. 150, 162, 163, 30 PUR3d 61, 153 A.2d 801 (1959); Re Public Service Co. of New Hampshire, 65 NH PUC 251, 259, 260 (1980). 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.

Excluding non-recurring expenses from a utility's cost of service does not always prevent their recovery from ratepayers. Certain non-recurring expenses may be amortized over a defined period of years. Based on the evidence before us, we find the $34,810 test year expense to be non-recurring. We find that the investigation expenses are necessary and should therefore be amortized over a 5-year period. Thus, we will eliminate $34,810 from test year expenses and include an amortization amount of $6,962.

3. Rate Case Expenses

[5] The test year general and administrative expenses contain rate case expenses of $1,907 pertaining to this proceeding. Staff argues that rate case expenses should not be included in the Company's cost of service but should instead be investigated and, if reasonable, surcharged in accordance with accepted Commission practice. The Company strongly disagrees. It argues that the surcharge and investigation proposals constitute an unjustified departure from well-established Commission policy which is neither desired nor desireable. NHH takes no position on the manner in which rate case expenses should be recovered.

In New Hampshire v. Hampton Water Works Co., 91 N.H. 278, 38 PUR NS 72, 18 A.2d 765 (1941), the New Hampshire Supreme Court held that rate case expenses are a legitimate expense item to be recovered from a utility's ratepayers. Therein the Court stated at page 296 as follows (91 N.H. at p. 296, 38 PUR NS at p. 88):

With reference to the company's own rate case expense, the Commission assigns various reasons for denying its amortization. Among the reasons, excessive costs, some allocation to other matters, ability to pay and payment of all or a large part out of operating expense, and difficulty in determining a reasonable allowance, are given. These reasons are insufficient for the denial. Difficulty in performing the duty to determine what is just and reasonable is no relief from the duty. Excessive and improper charges may be found in amount as well as a fact. If unreasonably incurred, if undue in amount, if chargeable to other accounts, they may be to that extent reduced.

In determining whether rate case expenses are reasonable, the Commission relies on its discretion based on its experience with expenses in other proceedings and its own experience. Report accompanying Supplemental Order No. 18,294 at page 6 (DR 85-2, Pennichuck Water Works). Rate case expenses have been disallowed or reduced in several cases. Re Lakes Region Water Co., Inc., 68 NH PUC 154 (1983); Re Hillsboro Water Co., Inc., 67 NH PUC 785 (1982);

Re Gas Service, Inc., 65 NH PUC [sic] (1980); Re Union Teleph. Co., 65 NH PUC 30 (1980). In Report and Supplemental Order No. 18,294 issued on June 4, 1986 (71 NH PUC 351),

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the Commission disallowed certain legal expenses incurred by Pennichuck Water Works, Inc. in connection with a rate proceeding which were found to be unreasonable.

Historically, recovery of rate case expenses has been accomplished by amortizing the total amount over a one or two year period. This has been accomplished by including the amortized amount in base rates or recovering it by means of a surcharge on a customer's monthly bill. Presently, the Commission has been utilizing the surcharge method.[12(144)] In some instances the surcharge has reflected both rate case expense recoupment and any temporary rate refund or recoupment.

The Commission's review of rate case expenses has generally been accomplished within the confines of the rate case proceeding. However, in lengthy and heavily litigated proceedings where rate case expenses are substantial, the Commission will conduct a separate investigation, usually involving a separate hearing. In those instances the approved expenses will be recovered by means of a surcharge. This approach was utilized in the recent Pennichuck Water Works, Inc. and Manchester Gas Company rate cases. In Report and Order No. 18,365 issued on August 11, 1986 in DR 85-214 (Manchester Gas Company) the Commission stated at pages 22-23 as follows (71 NH PUC at p. 458):

... [w]e will order the Company to file an affidavit of rate case expenses. The expenses are to be detailed in such a manner that the purpose of each cost is easily discernable. Upon receipt of the affidavit the Commission will review the expenses. Based on that analysis the Commission will then determine whether a further hearing is necessary to address whether the amount requested to be recovered is reasonable.

The Company's test year rate case expenses of $1,907 do not reflect all of the rate case expenses associated with this proceeding, especially those incurred during 1986. Thus, the base rate-amortization method of recouping rate case expenses cannot be utilized. Accordingly, we will adopt the surcharge approach described above. To accomplish our "reasonableness" review, we will order the Company to file a detailed affidavit of its rate case expenses with the revised tariff pages reflecting the increase approved herein. In addition, we will order the Company to file a mechanism to recoup or refund reflecting the difference between rate case expense recoupment and temporary rate refund discussed below. If the rate case expenses are greater than the temporary rate refund the mechanism will be a surcharge to collect the recoupment; if the rate case expenses are less, the mechanism will be a refund. Whether the result is a refund or recoupment, the amortization period shall be one year.

4. Tax Liability of Subchapter S Corporation

[6] During the test year the Company paid no federal income taxes. The Company elected, pursuant to

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Subchapter S of the Internal Revenue Code, to be taxed through its stockholders on its taxable income in lieu of paying a corporate income tax. As a Subchapter S corporation, the Company's income is considered its stockholders' income in calculating the taxes owed by the stockholders.[13](145)

Staff argues that no federal tax effect should be included in the Company's revenue deficiency calculation because the Company has not incurred any federal income tax expenses. NHH concurs. It asks the Commission to adopt the finding of the Illinois Appellate Court in Monarch Gas Co. v. Illinois Commerce Commission, — Ill.App.3d —, 366 N.E.2d 945 (1977). Therein, the Court upheld the decision of the Illinois Commerce Commission to reject the utility's claim that it was entitled to the amount it would have paid if a Subchapter S election had not been made. The Court stated as follows:

Subchapter S permits a corporation to elect to "pass-through" its income and thereby avoid a double tax on the income. It does not purport to control the determination of the operating expenses and rates of public utilities. This function is properly vested in the Illinois Commerce Commission. The Commission exercised its discretion by rejecting a claimed expense that was not in fact paid by the company.

Id., 366 N.E.2d at p. 949.

The Company argues that a federal tax effect pro forma should be included in determining the Company's revenue deficiency whether or not the Company has selected Subchapter S status. This would be accomplished by segregating the utility's income from its stockholders' and computing tax liability on the segregated amount. The Company is willing to waive this request and terminate its Subchapter S status as of December 31, 1986 on the condition the Commission allows an automatic adjustment be made as of January 1, 1987 to reflect a pre-determined tax effect pro forma included in its Brief.

We agree with Staff and NHH that the Company should not include a federal income tax calculation in its rates. By virtue of its Subchapter S election, the Company pays no income taxes. Given that rates should only reflect actual expenses, a federal tax adjustment is inappropriate. In addition, we reject the Company's request for an automatic adjustment. The Company's termination of its Subchapter S Status is by no means certain; it may choose to keep its S status after reviewing the recently passed revisions to the Internal Revenue Code. Moreover, as a matter of policy, we refuse to approve any further step adjustments for the Company at this time because of the difficulties such adjustments have presented in this proceeding.

5. Payments to Wood Fuel Production Company

[7] During the test year the Company made payments totalling $73,440 to Wood Fuel Production Company (Wood Fuel) which were recovered from its ratepayers through the above described ECA. Staff examined the payments in the context of its audit of the Company and raised several issues at the hearings through the testimony of Mr. Lanning.

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Staff argues that wood was not provided by Wood Fuel but by Connecticut Valley Chipping

Co., (ConVal), to which the Company also paid a fee. Staff therefore contends that the Company made duplicate payments for the same wood. In addition, Staff, along with NHH, argues that the Company's transactions with Wood Fuel violate the provisions of RSA 366 regarding public utilities and their affiliates. NHH recommends that the Commission therefore disallow the payments to Wood Fuel pursuant to RSA 366:4. For both reasons, Staff and NHH contend that the Company be ordered to refund $73,440 to the Company's ratepayers through the ECA.

The Company strongly disputes that duplicate payments were made for wood purchases or that its contractual relationship with Wood Fuel violated RSA 366. The Company provides a detailed summary including relevant documents of Wood Fuel and its relationship with the Company in its Brief. The Company acknowledges that "royalties" were paid to Wood Fuel but states:

(T)he payment in compromise of threatened litigation and in consideration of the assignment of Wood Fuel of its rights under its agreement with ConVal can in no sense be treated as a brokerage fee or as a "double payment" for the same "product". (Brief at 50)

The Company asserts that the arrangement under the Termination and Assignment of Rights Agreement was proper; that it has been making payments pursuant to this agreement since January, 1982; and that the Company was reporting its fuel purchases monthly as required by the Commission, and that these reports were subject to audit.

The payment of "royalties" to Wood Fuel Production has raised very serious issues, the extent of which were not apparent until Commission questioning during the hearing resulted in disclosure of the real purpose of the royalty payment. The payments raise serious issues both because of the large amount involved — a total of some $400,000, and the fact that the contractual arrangements between Roger Bloomfield, Wood Fuel Products and Concord Steam were not disclosed to the Commission.

Based upon the record in this proceeding, the Commission can make the following factual findings about these arrangements:

(1) On April 2, 1981, a limited partnership known as Wood Fuel Production Co. was formed under the laws of New York State. (Brief WFP Co. 3)

(2) Roger Bloomfield, individually, and KIC Fuel Co. were the general partners.

(3) There were also 14 limited partners of WFP (Brief WFP Co. 2) who supplied the equity capital for the partnership.

(4) KIC Fuel Co. was affiliated with the investment banking firm of Lazard Freres & Co. and the limited partners were members of the Lazard firm. Lazard Freres was also the investment banker for Concord Steam Company.

(5) Roger Bloomfield filed an

application for WFP for authority to transact business in New Hampshire on May 19, 1981.

(6) The purpose of WFP was to establish a wood fuel processing center in Concord, New Hampshire. The plant was to have processed construction wood waste into densified, dried wood

fuel for use by Concord Steam and other users. (Brief at 42)

(7) A special credit was created by the Windfall Profits Tax Act of 1980 for producers of enhanced processed wood fuel which provided the primary economic incentive for the equity investors. (2 Tr 129)

(8) Concord Steam entered into a Qualified Wood Fuel Sales Purchase Agreement with WFP dated April 2, 1981, the same date as the formation of WFP.

(9)The sources of wood fuel from industrial wood waste did not materialize and WFP determined in August 1981 to pursue an alternative method which would qualify for the tax credit. Apparently, WFP intended to purchase wood fuel and dry or process it for use by Concord Steam.

(10) WFP entered into a contract with Connecticut Valley Chipping Co., Inc. on August 11, 1981 for a supply of raw wood.

(11) Negotiations relative to the specifications and the new price of the processed fuel failed.

(12) Mr. Bloomfield attempted to cancel the contract between Concord Steam and Wood Fuel. (Sept. 9, 1981 letter referenced in WFP Co. 4, Company Brief).

(13) WFP refused and cited its willingness to meet its obligation through the Connecticut Valley Chipping contract.

(14) The specifications of the wood which Concord Steam could have received were not satisfactory to Concord Steam and could not be used. (2 Tr 133-134)

(15) The original contract between Concord Steam and WFP did not provide specifications for the wood to be supplied.

(16) WFP was willing to assign the ConVal brokerage agreement to Concord Steam which would give Concord Steam control over the wood supply and specifications, in exchange for Concord Steam assuming the liabilities of WFP. (1 Tr 138-139).

(17) The royalty payment over a 5year period was to reimburse investors for the net losses incurred by WFP in developing the processing plant which amounted to some $400,000. (2 Tr 139)

(18) This arrangement was formalized by the execution of the Termination and Assignment of Rights Agreement. (Exh. 9)

(19) At the time of the termination a partnership amendment was

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executed whereby Roger Bloomfield's partnership interest was reduced from 10% to 1%.

(20) Although the effective date of the Agreement is indicated as September 10, 1981, it was not actually executed and delivered until the end of December 1981.

(21) Royalty payments commenced in January 1982, with respect to fuel consumed in December 1981, and will terminate in November 1986.

(22) Mr. Bloomfield resigned as a General Partner of Wood Fuel Production Company

effective March 15, 1982.

These factual findings relative to the events surrounding WFP lead the Commission to a number of additional findings relative to the propriety of Concord Steam's conduct in this matter.

Although Roger Bloomfield acting individually was clearly an affiliate of Concord Steam within the meaning of RSA 366, Concord Steam did not file with the Commission the Qualified Wood Fuel Sales Purchase Agreement entered into with WFP on April 2, 1981 as required by RSA 366:3.

Failure to disclose this contract and the WFP partnership agreement prevented the Commission from ascertaining the nature of the arrangements and the nature of the royalty payment.

It is clear from Staff's testimony which interpreted the royalty fee as a double payment for wood supply, that despite interrogatories in 1982-1983 and a Staff audit, that the true purpose of the "royalty" payment was not disclosed.

It was only as a result of extensive questioning by the Commission during the hearing process that the Commission and Staff learned that the royalty payment was to reimburse WFP investors for some $400,000 in losses in that ill-fated WFP enterprise. (2 Tr 138-139)

The Commission has recently expressed its concerns about insulating ratepayers from the risks of unregulated enterprises in the context of a holding company situation. (DR 84-345, Re Concord Nat. Gas Corp., 70 NH PUC 778, 781 [1985]):

In this context, the Commission's responsibility must be to ensure that the holding company's utility ratepayers are not required to bear any increased cost arising from either the higher risk itself or any adverse consequences resulting therefrom ... .

The Company did not file the Purchase Agreement with the Commission and, in fact, did not offer it during the proceedings. Failure to file the agreement alone is sufficient statutory basis for the disallowance of costs. However, a review of the testimony relative to the purchase agreement and the partnership agreement leads the Commission to conclude that Mr. Bloomfield did not act prudently in entering into these agreements. The purchase agreement did not provide specifications for the fuel to be provided Concord Steam. Consequently, WFP was in

a position to use the contract as a lever to force Concord Steam to assume WFP's losses. Furthermore, Mr. Bloomfield did not have management control over WFP, as the Company freely admits in its brief. (Brief at 48) The Agreement was carefully structured to give Mr. Bloomfield a 10% General Partner interest although he was providing no equity funds. At the same time his general partnership interest was subject to conversion by KIC Fuel Co., which held the ultimate general partnership authority and whose interest in WFP was as a tax shelter. Thus, Roger Bloomfield stood to profit handsomely if things went well, but neither he nor Concord Steam were protected if things went sour. This is precisely the kind of "wheeling and dealing" at ratepayers' expense that Commissions are required to prevent.

Based upon this analysis, the Commission finds that the royalty charges were an improper

charge to Concord Steam's ratepayers. Since this matter involves charges beginning in January 1982 and the record in this case does not provide the exact amount collected from ratepayers and since the amount is so large that a refund could have serious financial consequences for the Company, the Commission will open a separate docket to determine the proper disposition of this issue.

We are also cognizant of two events that have caused certain significant changes in Concord Steam's financial situation — the death of Mr. Bloomfield and a recent Supreme Court decision relative to the City of Concord sewer charge to Concord Steam. Since these changes will be important in assessing Concord Steam's financial situation in the disposition of a Commission ordered refund, we will consider the effect of these changes in the same docket. Since the payment of the royalty through the ECA has also raised Commission concerns about the Company's ECA mechanism costs, the Commission will also investigate whether the Company's ECA should be restructured in the manner of the semi-annual cost of gas and Energy Cost Recovery Mechanisms to provide for, inter alia, semiannual review of the Company's fuel costs. The Commission will issue an order of notice shortly detailing the scope of this proceeding as well as any legal issues it wishes the parties to address.

6. Late Payment Charges

[8] Staff and NHH also recommend that an additional $8,053 be refunded through the ECA to the Company's ratepayers. It represents the amount of late payment charges paid by the Company to its oil vendors during the test year. Staff and NHH argue that failure to make timely payments constitutes inefficiency and economic waste and that the costs thereof should not be passed on to the ratepayer.

Regarding the late payment charges, the Company contends that it was not able to obtain sufficient financing during 1985 and as a result was unable to pay its fuel and other bills as they came due. It argues that the late charges resulted from circumstances over which the Company had no control and that incurring late charges was not a management decision to voluntarily load expenses on ratepayers.

We agree with Staff and NHH that the Company's ratepayers should not bear the costs of the Company's failure to pay its bills on time. This is consistent with our holding in prior decisions where the Commission found that

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late payment charges constitute inefficiency and economic waste and should be excluded from rates. Re Policy Water Systems, Inc., 67 NH PUC 455 (1982); Re Concord Nat. Gas Corp., 67 NH PUC 180 (1982); Re Manchester Gas Co., 64 NH PUC 480 [sic] (1979). We disagree with the Company's contention that circumstances beyond its control rendered it unable to make timely payments. If the Company was experiencing financial difficulties in 1985, it should have filed for temporary rate relief sooner than September. We hereby reaffirm our prior holdings that "penalties incurred in connection with fuel costs are not a legitimate expense to be charged to the ratepayer— ... .[but] are the responsibility of management to be borne by the stockholders." 67 NH PUC at pp. 180, 181.

Despite our finding, we will not order a refund in the context of this docket. The manner in

which the $8,053 should be refunded will be considered in the forthcoming investigation. However, given our findings herein, we will exclude the late payment charges from the working capital calculation.

7. Other Operating Expenses

Staff presented a graph in Exhibit 4 which compares the Company's sales and expenses from 1981 to 1985. According to the Staff, the graph establishes that during the 5-year period, the Company's expenses have increased disproportionately relative to its decrease in sales. Staff recommends that the Commission investigate the trend to verify that the Company is not increasing rates in response to a sales decline instead of decreasing expenses in proportion to the drop in sales. Specifically, Staff suggests that the Commission investigate consulting fees, payroll expenses and recurring maintenance costs. However, it does not propose any adjustment in this proceeding.

The Company rejects Staff's recommendation and maintains that the record establishes its commitment to cost control, especially with regard to payroll expenses. It characterizes Staff's references to specific expenses as a "grabbag of irresponsible innuendo, suggesting significant waste and mismanagement." Brief at 34. NHH does not share this view of Staff's concerns. It states as follows at page 11 of its Brief:

The Hospital believes the staff has a responsibility to thoroughly investigate a company and to share with the company and with the Commission any concerns that staff may have. When staff observes that a company's costs have risen while its sales have fallen, this observation may be brought forward.

NHH is correct in its characterization of Staff's role. With regard to Staff's concerns, we note that many of the adjustments it recommended have been adopted. Further adjustments may be warranted, but there is insufficient evidence to make them at this time. The Commission and Staff will continue to closely monitor the Company's expenses and will take whatever action we deem necessary. However, we decline to commence a formal investigation at this time.

8. Maintenance Costs

[9] Staff argues that a pro forma adjustment should be made to test year expenses to eliminate $17,800 in

repair costs including $11,000 for repair of the #5 boiler, $1,200 to repair dump truck seals and $5,600 for conveyor repair. According to Staff, these costs should not be included in rates because they are extraordinary, unreasonable, and more importantly, nonrecurring. Staff argues that prudent and efficient management dictates that the equipment should be replaced. The Company contends that Staff's assertions are unsupported by the record.

The record supports Staff's contention that the above-described costs are non-recurring. Accordingly, we will remove them from the cost of service. However, we do not accept Staff's recommendation that no rate recovery be allowed. Without exception, the expenses were incurred to increase the useful lives of the respective equipment. We will capitalize the costs and adjust rate base accordingly. This approach is consistent with past decisions. See Re Lakes

Region Water Co., Inc., 68 NH PUC 134 (1983); Re Pennichuck Water Works, 64 NH PUC 206 (1979). We will capitalize $17,800 and increase depreciation by $607.00 (composite rate of 3.41 per the Company's 1985 Annual Report to the Commission). Accumulated depreciation will also be increased by $607.00.

9. Summary of Test Year Proforma Adjustments to Operating Expenses

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

Life Insurance Premiums	(29,365)
Air Quality Investigation (net)	(27,848)
Rate Case Expense	(1,907)
Equipment Repair Expense	(17,800)
Depreciation	607
Total	(76,313)

C. Operating Income Statement

Based on the foregoing the operating income statement is as follows:

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

Test Year Ending 12/31/85	Proforma Proforma Adjust	Test Year Ending 12/31/85
Revenue	$2,905,614	
Less Effect of Temporary Rates	(81,025)	
Weather Adjustment	33,618	2,858,207
Operating Expenses:		
Fuel	1,692,535	1,692,535
Other Product Costs	507,376	
Repair to Equip.	(17,800)	489,576
Distribution	48,289	48,289
Customer Acct.	9,776	9,776
Adm. & Gen.	242,463	
Air Quality Inv.	(27,848)	
Life Insurance	(29,365)	
Rate Case Expense	(	1,907)
2,500,439	(76,920)	2,423,519
Other Operating Expenses:		
Depreciation	108,114	
Capitalized	607	108,721
Amortization	16,188	16,188
Taxes		
Income	---	---
Property	142,822	142,822
Other	23,739	23,739
Rents	83,673	83,673
Operating Income/Loss	30,549	28,906

IV. Rate of Return - Cost of Capital

Neither the Company nor the Hospital filed testimony on the cost of capital. Mr. Bloomfield based his overall rate of return request of 9% on the Commission's 1983 findings and derived his cost of equity request as a residual from this overall cost of capital, the current capital structure

and the debt costs.

Staff presented the testimony of Mark Collin who recommended the following capital structure and costs rates:

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

Type of Capital	Component Amount	Component Ratio	Weighted Avg. Cost Rate
Long Term Debt	$3,255,000	0.8415	.01%
Common Equity	613,128	0.1585	12.75
Total	$3,868,128	1.0000	8.76%

Mr. Collin used the December 31, 1985 capital structure offered by the Company in its data response and entered in the Temporary Rates hearing (Ex. T-2). The response was drawn from the unaudited Accountants' Compilation Report available at the time. He did not include the Company's capitalized lease, arguing that it did not represent funds advanced by investors. Mr. Collin employed the Discounted Cash Flow (DCF) methodology to compute the cost of equity. He established a range of 12.43% to 12.82% by applying the methodology to two sample groups, one composed of seven water companies and a second composed of ten gas companies. He recommended a cost rate for ratemaking purposes of 12.75%.

The Company in Brief criticizes Mr. Collin's selection of a sample, first by dismissing his use of the water company sample group and secondly by objecting to the two gas companies with the lowest return as being "aberrant." The Company then argues that the results from the DCF method based on its proposed gas sample should act as a floor for a cost of equity finding. It asserts that Mr. Collin's sample is not comparable to Concord Steam because of the following reasons:

1) the difference in size;

2) the sample companies are not located in New Hampshire;

3) there is no trading activity in the Company's stock;

4) the Company has not paid dividends;

5) Mr. Collin did not attempt to compare the individual elements of the DCF method as they relate to Concord Steam and the sample companies; and

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6) Concord Steam has a narrow and diminishing customer base.

The Company cites previous Commission decisions in support of its arguments on comparability, in particular Re Concord Electric Co., 63 NH PUC 240 (1978) (Concord Electric, 1978) and Re Concord Nat. Gas Corp., 67 NH PUC 668 (1982) (Concord Natural Gas, 1982). The Company concludes its argument by stating that the Company's "situation is almost unique. The best guide to what is an allowable return on its common equity are historic returns which have been allowed by this Commission adjusted for the Company's present circumstances." Company Brief at 61.

The Hospital supports adoption of the Staff's methodology and conclusions. It suggests that the Company's attack on sample comparability is unsupported by evidence citing more comparable data and rather urges the Commission to select companies with the highest return. The Hospital also notes that the Company's stockholder enjoys additional benefits because of its Subchapter S status and its cogeneration potential. These benefits may offset aspects of the Company's operations that may present greater risks than the sample. The Hospital concluded that "while the closely-held company may offer different risks and benefits to the stockholder, the Company has not carried its burden of presenting better evidence or a better method of analysis." Hospital Brief at 18.

In reviewing the capital structure, the Commission notes that the audited statement of the Company's common equity capital as reported in the 1985 PUC report differs in the amount of the earned surplus and in the total:

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

	Unaudited	Audited
Common Stock	91,200	91,200
Capital Surplus	220,653	220,653
Earned Surplus	301,275	265,669
Total Common Equity	613,128	577,522

The parties have subsequently agreed that the audited numbers are the appropriate figures for ratemaking purposes, and the Commission concurs.

We will not include the capitalized lease in the capital structure. There is no record evidence before the Commission on the cost rate of the lease and no substantiation of how the Company has calculated its "effective rate of interest." Even the Company brief and data responses are ambiguous on the cost rate, citing it variously as 13.9% (Brie at p. 14, Response to Data Request]29 per cost rates as of March 31, 1986) and 13.96% (Brief at Ex. cc, Exhibit T-5).

While we are rejecting inclusion of the capital lease in the capital structure on the principle that there is no evidence regarding the cost rate of the lease, we note that the effect of including the capital lease is de minimums. Moreover, since the last payment on the lease will be made in November 1986, it is not an expense that the Company will incur while the rates are in effect.

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Therefore, we will adopt the following as the capital structure to determine the rate of return:

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

Type of Capital	Amount	ComponentRatio
Common Equity		
Common Stock	$ 91,200	0.0238
Capital Surplus	220,653	0.0576
Earned Surplus	265,669	0.0693
Sub-Total	577,522	0.1507
Long Term Debt		
Long Term Bonds	3,255,000	0.8493
Total Capital	3,832,522	1.0000

There is no dispute among the parties in regard to the cost of debt. Mr. Collin's

recommendation of 8.01% includes in the cost of the debt the annual interest cost, issuance costs amortized over the life of the long term debt issue and the annual fees for the letter of credit. Additional costs of servicing long term debt issues (registrar and agent fees to banks, the N.H. Municipal Bond Bank fee, annual remarketing fees to Shearson-Lehman and the premiums on life insurance on Roger Bloomfield) are properly designated as operating expenses, either above or below the line, rather than capital costs, and are further discussed above in the section dealing with operating expense. The Commission finds that the cost of debt to Concord Steam is 8.01%.

[10] The primary cost of capital issue is the cost rate to be applied to the equity component. As Concord Steam is the only regulated steam company under our jurisdiction and steam distribution companies are not followed by the financial analyst services (Valueline, etc.), it is first necessary to determine which utility industries are most comparable to steam utilities. Mr. Collin has testified that while superficially a steam company appears to most closely resemble water utilities since "the product flowing through the company's pipes is water" (Ex 12, Collin Testimony, p. 11) it also "competes with alternate fuels and methods of heating more like a gas company. Thus, the results from using a water company sample must be adjusted to reflect the additional risks facing the steam company." Ibid, p.12. The Commission agrees with Mr. Collin's analysis. The product sold by a steam company is composed of water and heat. Concord Steam is clearly riskier than a water company. However, while it does compete with alternate fuels and methods of heating like a gas company, its operational risk is less than that of a gas company because of its ability to shift among fuels to produce that heat. We find the samples proposed by Mr. Collin to be a reasonable solution to the problem of identifying comparable utilities for his DCF methodology.

The Company's criticism of Mr. Collin's inclusion of Michigan Energy has been analyzed in Re Manchester Gas Co., 71 NH PUC 446 (1986) (Manchester Gas, 1986) and there is nothing in the instant docket to disturb those findings. The Company offers no rationale for the exclusion of Bay State Gas other than that its cost of capital is below the average for the remainder of the sample. Therefore, we find the results of the DCF methodology as applied to the

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sample of gas companies, and the consequent range for Concord Steam's cost of equity of 12.43% to 12.82% (average for water utilities to average for gas utilities) to be reasonable.

The Company errs when it suggests that a properly applied DCF method requires comparability between each element of the equation (yield and dividend) as it relates to the Company and the sample. Such comparison is neither necessary or possible and the appropriate standard of comparability is between the Company and the sample companies. Mr. Collin's analysis has thus established the relevant comparability.

The Company asserts that any result from the DCF method applied to a sample of large actively traded companies should be increased if applied to Concord Steam. The Company's arguments in regard to size, location and trading activity and the relevance of the findings in Concord Electric, 1978 and Concord Natural Gas, 1982 have been fully analyzed in Manchester Gas, 1986 and we find nothing in the Company cross-examination or Brief to cause us to change those conclusions. The particular form of Concord Steam's ownership creates as many benefits

for its stockholder as it does additional risks; we find that there is no reason to modify the DCF results to compensate for alleged risks relating to that stockholder's decision to receive his profits in the form of consulting fees rather than dividends.

Finally, in arguing that the best guide to an allowable rate of return is the historic allowed returns adjusted for the Company's present circumstances, the Company in Brief cites that the Commission found its 1980 19-20% equity return only bordering on excessive and a 1983 14.75% return reasonable in its last rate case. Company Brief, at 61-62. The Company presumably considers its narrowing customer base to be a relevant circumstance but overlooks that one of the changed circumstances to be taken into account is the general level of interest rates. In 1980, the prime rate peaked at 21.25%, and in 1983, it stood at 12.5%. Today's prime rate is 7.5% and other interest rates have similarly declined. If the Commission were to rely simply on past findings and current conditions to derive a cost of equity for Concord Steam, based on the cases cited by the Company, our current findings would be in the range of 7.06 - 8.70% modified by whatever other circumstances the Commission deemed appropriate. However, the Commission finds that the more sophisticated analysis performed by Mr. Collin is the preferred approach to cost of capital determinations, and we here adopt his recommendation of 12.75% as a reasonable rate of return for Concord Steam.

Therefore, for ratemaking purposes we will adopt the following cost of service and cost rates:

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

Type of Component Capital	Amount	Component Ratio	Weighted Avg. Cost Rate
Common Equity	$577,522	.1507	12.75%
Long Term Debt	3,255,000	.8493	8.01%
Total	$3,832,522	1.0000	8.72%

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V. REVENUE REQUIREMENT

Based on the foregoing analysis, we calculated the Company's revenue deficiency as follows:

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

RATE BASE	$3,876,817
COST OF CAPITAL	8.72%
REQUIRED NET OPERATING INCOME	$338,058
NET INCOME	59,455
REVENUE DEFICIENCY	$278,603
TAX ADJUSTMENT	6,693
14(146)REQUIRED INCREASE	$285,296

VI. RATE STRUCTURE

In view of the above, we calculate the Company's rate per M pounds of steam as follows:

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

Return on rate base	$	338,058
Test year costs	$2,798,752	
Add: State Tax Adjustment	6,693	
Less: Fuel Costs	1,692,535	
Non Fuel Costs	1,112,910	
	$1,450,968	
Estimated Steam Load	313,500 Mlbs.	
Base Rate	$4.63	
Energy Cost Adjustment	$4.55	
	$9.18	

We will order the Company to file revised tariff pages reflecting this rate. The increase approved herein shall take effect for all service rendered on or after December 1, 1986.

VII. REFUND

As stated above, the Commission set temporary rates at $9.35 per M pounds of steam for service rendered on or after January 1, 1986 in Report and Second Supplemental Order No. 18,095 issued on January 29, 1986 (71 NH PUC 104). Because this decision sets permanent rates at $9.18 per M pounds, the Company will have to refund the excess amount that has been collected from customers since January 1, 1986. We will order the Company to submit a detailed calculation of the amounts overcollected during that period. In addition, as stated above, we will order

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the Company to file a mechanism to recoup or refund the difference between rate case recoupment and temporary rate refund. If the rate case expenses are greater than the temporary rate refund, the mechanism will be a surcharge to collect the recoupment; if the rate case expenses are less, the mechanism will be a refund. Whether the result is a refund or recoupment, the amortization period shall be one year.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that 7th Revised Page 1 filed by Concord Steam Corporation on December 9, 1985 reflecting a rate of $10.00 per M pounds of steam be, and hereby is, rejected; and it is

FURTHER ORDERED, that Concord Steam Corporation file revised tariff pages reflecting the approved rate; and it is

FURTHER ORDERED, that Concord Steam Corporation shall instead be allowed to collect additional annual gross revenues of $285,296 at a rate of $9.18 per M pounds of steam; and it is

FURTHER ORDERED, that because the temporary rate increase effective for service rendered on or after January 1, 1986 is greater than the increase approved herein, Concord Steam Corporation shall file a detailed calculation of the amounts overcollected under said temporary rates; and it is

FURTHER ORDERED, that Concord Steam Corporation shall file an affidavit detailing and describing the rate case expenses it seeks to recover; and it is

FURTHER ORDERED, that Concord Steam Corporation shall calculate and file a mechanism which will allow it to refund or recoup the difference between the amounts overcollected under temporary rates and its rate case expenses in accordance with the discussion in the foregoing Report; and it is

FURTHER ORDERED, that the above-stated items shall be filed by November 17, 1986 to allow for sufficient review prior to the December 1, 1986 effective date of the increase approved herein.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1986.

FOOTNOTES

[1]Under the Agreement, the Company's fuel costs are recovered through both the base rate and the ECA. $4.50 of the $8.20 base rate is allocated to recover fuel costs; the remainder are recovered through the ECA. Fuel costs below $4.50 per M pounds of steam are to be refunded. The ECA methodology is described in detail in the Company's tariff.

[2]The Company did not seek a re-opening of the ECA.

[3]At the October 2, 1985 hearing the Company indicated it would be willing to accept October 1, 1985 instead of July 1, 1985 as the effective date for temporary rates.

[4]The tariff page submitted by the Company in conjunction with the rate increase requested in its Motion To Reopen was designated 6th Revised Page No. 11. The tariff page submitted with the October 31 filing was likewise designated 6th Revised Page No. 11. Because of the confusion that could result from having two pages with the same designation, Staff recommended that the Company change the designation on the October filings tariff page from 6th to 7th which, as stated above, the Company did by letter dated December 9, 1986.

[5]With regard to Order No. 18,008, the Company believes that its October 31, 1985 filing appropriately designated the tariff page included therein as 6th Revised Page No. 11 because it was substituted for the original 6th Revised Page No. 11 filed on May 10, 1985. It argued that because 6th Revised Page No. 11 filed May 10, 1985 was suspended but not disallowed, the caption "6th Revised Page No. 11 was still available to be used in a substitute page. While the Company did not agree with Staff's recommendation as discussed in footnote 4, it made the change to "7th" to prevent further delay. The Company argued that Order No. 18,008 suspending 7th Revised Page No. 11 mistakenly presumes that it is intended to commence a new rate filing instead of accomplishing a simple substitution. It therefore argued that Order No. 18,008 should be modified, clarified or withdrawn to reflect the Company's reason for filing it.

[6]Mr. Lanning was also called to testify by the Company.

[7]RSA 369:1 provides as follows:

A public utility engaged in business in this state may, with the approval of the commission

but not otherwise, issue and sell its stock, bonds, notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes. The proposed issue and sale of securities will be approved by the commission where it finds that the same is consistent with the public good. Such approval shall extend to the amount of the issue authorized and the purpose or purposes to which the securities or the proceeds thereof are to be applied, and shall be subject to such reasonable terms and conditions as the commission may find to be necessary in the public interest; provided, however, that the provisions of RSA 293-A shall be observed by corporations organized under the laws of this state in respect of the corporate authorization required and of other formalities to be observed.

[8]A heating degree day is determined by subtracting the average daily temperature from 65 degrees. Thus, if the average daily temperature for a particular day was 30, it would be recorded as a 35 heating degree day.

[9]There is an error in the Company's calculation. 7,561 x $3.65 = 27,597.65, not 27,599.84.

[10]In arriving at $39,314, the Company multiplied $3.65 by 10,771, not 8,058.

[11]NHH took no position on the temporary rate adjustment to revenues.

[12]The surcharge approach was utilized in the following rate case decisions: Report and Order No. 17,767 issued on July 25, 1985 in DR 84-239, Re Concord Electric Co., 70 NH PUC 665; Report and Order No. 18,294 issued on June 4, 1986 in DR 85-2, Re Pennichuck Water Works, Inc., 71 NH PUC 351; Report and Order No. 18,365 issued on August 11, 1986 in DR 85-214, Re Manchester Gas Co., 71 NH PUC 446.

[13]The Company's sole stockholder is its President, Roger Bloomfield.

[14]The State tax effect proforma is calculated as follows:

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

Rate Base	$3,876,817
Equity Component of Return	1.92%
Income Required	$4,435
Business Profits Tax Effect	.9175
Required Revenue After Taxes	$81,128
Less Income Required	74,435
	$6,693

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NH.PUC*11/24/86*[60920]*71 NH PUC 698*Granite State Electric Company

[Go to End of 60920]

71 NH PUC 698

Re Granite State Electric Company

DF 86-259, Order No. 18,487

New Hampshire Public Utilities Commission

November 24, 1986

PETITION by an electric utility for authority to issue long-term notes; granted.

Security Issues, § 84 — Purposes — Reimbursement of treasury — Debt refinancing.

An electric utility was authorized to issue long-term notes in the amount of $5 million in order to refinance other debt that had been issued at higher interest rates and to reimburse its treasury for capital additions and improvements.

APPEARANCES: for the petitioner, Kirk L. Ramsauer, Esquire; for the Staff, Eugene F. Sullivan, Finance Director.

By the COMMISSION:

REPORT

By this unopposed petition filed September 29, 1986, Granite State Electric Company (the Company), a corporation duly organized under the Laws of this State and conducting an electric public utility business therein, seeks authority pursuant to RSA 369 to issue and sell a long-term note or notes (the Note) in an aggregate principal amount not exceeding $5,000,000. The proposed Note will mature in not exceeding 20 years and will bear interest at a fixed rate not exceeding 12% per annum. The Company proposed to issue and sell the Note on or before December 31, 1987. The Note will be issued 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 7, 1986.

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, 1986, the Company's authorized capital stock consisted of 60,400 shares, $100 par value, issued and outstanding. The retained earnings of the Company were $1,438,714. The Company also had outstanding, as of June 30, 1986, $4,000,000 of long-term debt in the form of a 12.55% note due 2000 issued to John Hancock Mutual Life Insurance Company, $2,400,000 of long-term debt in the form of a 9 1/2% note due December 15, 1986, issued

to John Hancock Mutual Life Insurance Company, and $1,750,000 of short-term debt. The Company also presented testimony showing the effect of the proposed note issue on its income statement and balance sheet.

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 and for the retirement at its due date of the Company's 9 1/2% note due December 15, 1986.

Company witness, John G. Cochrane, testified that Granite State Electric expects to issue the

note sometime in the months of December and January and that the interest rate would be approximately 9 to 9 1/4%. The request for authority to issue the note by December 31, 1987 is based upon the anticipation of unforeseen market delays. Although this Commission is approving the request authorization period, we would encourage the Company to issue the note at or near the current rates. It has been our recent policy to encourage utilities to refinance securities that were issued at high rates in the past. Interest rates have fallen dramatically in the past year and we view the current period as an excellent time to issue new debt.

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 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 for the retirement at its due date of the Company's 9 1/2% note. 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 twelve percent (12%) per annum; and it is

FURTHER ORDERED, that the proceeds of said note be applied to the payment of short-term borrowings of the Company incurred for or to the cost of, or to the reimbursement of the treasury for, capitalizable additions and improvements to the plant and property of the Company and for the retirement at its due date of the Company's 9 1/2% note due December 15, 1986.

FURTHER ORDERED, that Granite State Electric Company shall file a copy of its note or notes with this Commission upon finalization.

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FURTHER ORDERED, that on or before January first and July first in each year until the expenditures of the whole of the proceeds of said note shall be fully accounted for, said Granite State Electric Company shall file with this Commission a detailed statement, duly sworn to be 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 twentyfourth day of November, 1986.

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[Go to End of 60921]

71 NH PUC 700

Re Northern Utilities, Inc.

DF 86-288, Order No. 18,488

New Hampshire Public Utilities Commission

November 26, 1986

PETITION by an electric utility for approval of increased short-term borrowings; granted.

Security Issues, § 86 — Purposes — Working capital — Financing flexibility.

A natural gas distributor was permitted to increase its short-term borrowings in order to meet its winter season working capital needs and obtain greater financing flexibility.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a New Hampshire Corporation having its principal place of business in Portsmouth, New Hampshire, and operating as a gas utility, under the jurisdiction of this Commission, on November 10, 1986, filed with this Commission a petition to increase its short-term borrowing limitation to $8,000,000, and requests the authorization to be effective November 20, 1986 and to terminate March 31, 1987; and

WHEREAS, as of September 30, 1986, Northern Utilities, Inc., had outstanding short-term notes payable of $5,500,000; and

WHEREAS, Northern Utilities, Inc., is in the final stages of preparing to file a petition in connection with its project designed to free the Company from restrictive covenants contained in its mortgage indentures and provide additional financing flexibility; and

WHEREAS, Northern Utilities, Inc., claims that the aforementioned project will provide the capability to permanently finance the existing short-term indebtedness and significantly reduce the authorized short-term indebtedness; and

WHEREAS, Northern Utilities, Inc., states that the existing authorization for short-term indebtedness is insufficient to meet the winter season working

capital needs to be financed and requests an increase in the authorized amount from $6,000,000 to $8,000,000; it is

ORDERED, that Northern Utilities, Inc., be, and hereby is authorized to issue and sell, and from time to time renew, for cash its notes or notes payable due less than 12 months after the date thereof in an aggregate principal amount not exceeding $8,000,000; and it is

FURTHER ORDERED, that the authority to renew these notes up to an aggregate amount of $8,000, 000 shall expire March 31, 1987 at which time the aggregate level will be redetermined; and it is

FURTHER ORDERED, the notes shall bear interest at the most economical rates the Company can obtain; and it is

FURTHER ORDERED, that on or before January 1 and July 1 of each year, the Company shall file with this Commission a detailed statement, duly sworn by its Treasurer, showing the disposition of the proceeds of the notes herein authorized until the expenditures of the whole of said proceeds shall be fully accounted for.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of November, 1986.

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NH.PUC*11/26/86*[60922]*71 NH PUC 702*Gas Service, Inc.

[Go to End of 60922]

71 NH PUC 702

Re Gas Service, Inc.

DR 85-405, Fifth Supplemental Order No. 18,489

New Hampshire Public Utilities Commission

November 26, 1986

ORDER amending the procedural schedule in a natural gas distributor's rate case.

Procedure, § 25 — Hearings — Postponement — Data updates — Rescheduling.

Where a natural gas distributor's rate case hearings had been postponed so many times that the distributor requested another delay in order to update its outdated figures and recalculate its revenue requirement, the commission agreed, and revised the entire procedural schedule in the case.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on January 9, 1986, Gas Service, Inc. (Company) filed revised tariff pages

reflecting an increase in gross annual revenues of $1,371,468 to be effective with bills rendered on or after February 9, 1986; and

WHEREAS, by Order No. 18,106 issued on February 7, 1986, the Commission suspended the effective date of the tariff provisions pursuant to RSA 378:6 in order to conduct an appropriate investigation; and

WHEREAS, on March 25, 1986, the Commission issued Report and Supplemental Order No. 18,182 (71 NH PUC 190) which granted Gas Service, Inc. temporary rates sufficient to yield an increase in gross annual operating revenues of $634,270 to take effect with all bills rendered on or after April, 1986, and established a procedural schedule which set hearings on August 5, 6 and 7, 1986; and

WHEREAS, the hearings scheduled for August 5, 6 and 7, 1986 were postponed at the request of the Company to allow for an opportunity to review the effect, if any, the Commission's decision in Report and Second Supplemental Order No. 18,365 (71 NH PUC 446), might have on the issues in this proceeding; and

WHEREAS, on October 3, 1986, the Commission issued Report and Order No. 18,429 in which hearings were rescheduled for November 13, 14 and 25; and

WHEREAS, the November hearing dates were subsequently amended to provide for a conference to narrow issues on November 13, 1986 and hearings on November 25 and 26, 1986; and

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WHEREAS, on November 24, 1986, the Company filed a Motion To Update Test Year and Other Relief which requests the following relief:

1. permit the Company to file updated testimony and exhibits to recalculate the just and reasonable level of its permanent rates in this proceeding based upon a test year ending September 30, 1986;

2. amend the requested effective date of the tariffs contained in the Company's original filing from February 9, 1986 to March 31, 1986; and

3. continue the hearings presently scheduled for November 25 and 26, 1986 to February 24, 25 and 26, 1987;

4. establish the following procedural schedule:

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

December 23, Due date for
1986 Company to
file written
tesimony and
exhibits

January 16, 1987 Due date for
Staff and Intervenor data
requests

January 27, 1987 Due date for
Company responses to
Staff and Intervenor data


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requests

February 3, 1987 Due date for
Staff and Intervenor to
file written
testimony

February 10, 1987 Due date for
Company data requests directed toward
Staff or Intervenor

February 17, 1987 Due date for
Staff and Intervenor responses to
Company data requests
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5. establish a two part recoupment for reconciling permanent and temporary rates, in accordance with the following:

a. Recoupment for the period beginning October 1, 1986 and ending on the effective date of temporary rates: use the same recoupment procedure utilized by Manchester Gas Company in DR 85214;

b. Recoupment for the period beginning on April 1, 1986, the effective date of temporary rates in this proceeding, and ending on September 30, 1986: use the same recoupment procedure utilized in DR 85-214, with the exception that the amount to be recouped shall be calculated on the basis of the difference between the level of temporary rates and the level of permanent rates had such permanent rates been calculated on the basis of the Company's actual annual operating results for the

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base year ending September 30, 1986, using, however, a 13-month average rate base, depreciation expense and revenues calculated over the 12-month period ending March 31, 1986, adjusted for weather and subject to reasonable adjustments for items related to non-regulated activities;

and

WHEREAS, the other parties to the proceeding support the Motion; and

WHEREAS, the Commission finds the relief requested by the Company to be reasonable; it is hereby

ORDERED, that the above-stated procedural schedule be, and hereby is, adopted for the remainder of the proceedings in this docket; and it is

FURTHER ORDERED, that no further continuances will be granted; and it is

FURTHER ORDERED, that the Company shall be permitted to file updated testimony and exhibits based upon a test year ending September 30, 1986; and it is

FURTHER ORDERED, that the Company's request to extend the effective date of originally filed tariffs from February 9, 1986 to March 31, 1986 be, and hereby is, granted; and it is

FURTHER ORDERED, that the Company shall file amended tariff pages reflecting the new effective date; and it is

FURTHER ORDERED, that the above-described temporary rate recoupment methodology be, and hereby is, approved and adopted.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of November, 1986.

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NH.PUC*12/01/86*[60923]*71 NH PUC 705*New England Telephone and Telegraph Company

[Go to End of 60923]

71 NH PUC 705

Re New England Telephone and Telegraph Company

DR 86-36, Order No. 18,490

New Hampshire Public Utilities Commission

December 1, 1986

ORDER initiating dual billing of a local exchange carrier's customers during a test period for measured business service.

Rates, § 539 — Telephone — Measured business service — Dual billings.

Upon the completion of a local exchange telephone carrier's project to convert equipment to allow for measured business service, the carrier was required to institute dual billing in order to assess the comparative effect of flat rates versus measured business rates.

By the COMMISSION:

ORDER

WHEREAS, this docket was opened pursuant to Re New England Teleph. & Teleg. Co., 71 NH PUC 124 (1986), for the purpose of determining what other action on the part of the Commission and New England Telephone and Telegraph Company (hereinafter NET) may be appropriate regarding the implementation of measured business service so as to best serve the public good; and

WHEREAS, pursuant to Re New England Teleph. & Teleg. Co., 71 NH PUC 304 (1986), NET began a dual billing program intended to show comparative usage under flat rates and under measured business service for its business subscribers; and

WHEREAS, on November 7, 1986, NET filed notice with this Commission that it could not comply with the dates required by the Commission in Order 18,264 (71 NH PUC 304) since, due to technical difficulties, specifically incomplete conversion, not all accounts have had their usage recorded; and

WHEREAS, this incomplete conversion was attributable to difficulties related to the use of equipment never before used by the company; and

WHEREAS, accurate usage data is essential to allow customers and the commission to assess the effect of measured business service; and

WHEREAS, NET has stated in its filing that it will be finished converting all lines by year-end; and

WHEREAS, the following exchanges were originally excepted from the dualbilling requirement for technical and economic reasons: Alstead, Claremont, Dublin, Franklin, Goffstown, Greenfield, Greenville, Groveton, Marlow,

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New Boston, Sunapee, and Wolfeboro, and

WHEREAS, such technical reasons no longer exist since the above listed offices were recently converted to electronic switches; it is hereby

ORDERED, that NET will begin dual billing in every New Hampshire central office as soon after January 1, 1987 as is possible, given that it must renotify all customers in advance of the new dual billing program schedule and of the possible problems with their previous bills; and it is

FURTHER ORDERED, that NET shall conduct such dual billing program for six months; and it is

FURTHER ORDERED, that the filing dates of November 14, 1986 for the interim report and February 13, 1987 for the final report are hereby waived; and it is

FURTHER ORDERED, that NET shall file the following information with the Commission at the following times:

1. It shall file the renotification and the explanation given to the customers of problems related to their original dual-billing,

2. It shall notify the Commission of the exact date on which measured service was reinitiated,

3. It shall notify the Commission, after it has analyzed the first three months of data, of the percentage of lines and accounts with zero usage, and whether this percentage of zero usage accurately represents actual usage to the best of NET's knowledge, and

4. It shall specify filing dates for interim and final reports when, to the best of its knowledge all lines have been converted.

By Order of the Public Utilities Commission of New Hampshire this first day of December, 1986.

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NH.PUC*12/02/86*[60924]*71 NH PUC 707*Keene Gas Corporation

[Go to End of 60924]

71 NH PUC 707

Re Keene Gas Corporation

DR 86-185, Third Supplemental Order No. 18,491

New Hampshire Public Utilities Commission

December 2, 1986

PETITION by a natural gas distributor for approval of a stipulation agreement on a proposed rate increase; granted.

Rates, § 374 — Gas — Block rates — Stipulation.

A stipulation agreement was accepted in settlement of a natural gas distributor's rate case filing, with the stipulation providing for reflection of a net operating loss as the result of the distributor's mishandling of its state franchise tax expense, and for a revised rate structure calling for a customer charge and a three-step declining block rate.

APPEARANCES: For Keene Gas Corporation, Harry B. Sheldon, Jr.; For Commission Staff, Martin C. Rothfelder, Esquire.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On June 12, 1986, Keene Gas Corporation (the Company), a public utility engaged in the business of supplying gas service in the City of Keene, New Hampshire filed with this Commission certain revision to its tariff for an increase in revenues of $78,891.

On July 11, 1986, the Commission held a duly noticed public hearing to consider the proposed temporary/emergency rates and to establish a procedural schedule. On July 16, 1986 the Commission issued a report and order approving temporary rates in the amount $68,903 and ordering the Company to file a complete rate case in accordance with PUC filing requirements.

On October 10, 1986, the Company filed its complete case with the Commission. The Company's revised filing increases its revenue request from the original amount of $78,891 to $102,548. The Company and Staff met on November 5, 1986 for the purpose of narrowing the issues and to negotiate a settlement. As a result of that meeting the parties were able to reach agreement on the level of permanent rates and the rate structure.

The Commission held a hearing on November 12, 1986 at which time it received the proposed settlement agreement. The proposed settlement

provides for an increase in revenues of $102,548 excluding the effect of the State franchise tax. The major features of the settlement agreement are as follows:

1. A Stipulated rate of return of 3.22% using a capital structure as of April 30, 1986

2. A stipulated rate base of $297,349 based upon a twelve month average as of April 30, 1986

3. A stipulated adjusted net operating loss of $92,969 which removes the effect of the Company's incorrect method of handling the State Franchise Tax.

4. The Company's proposed rate structure was accepted as filed in its revised filing calling for a customer charge and three step declining block rate. Two rate classes were proposed to replace the former single class. (Residential and Commercial/Industrial).

During the hearing, staff witness Sullivan explained the revenue requirement portion of the settlement agreement. Staff witness Lenihan then explained the rate structure part of the agreement. Witness Lenihan pointed out that the Company did not perform a cost of service study due to the unique character of the system as well as the cost required to perform the study (in the range of $15,000 to $20,000.)

In accordance with the settlement agreement, the calculation of the revenue requirement, cost of capital and rate base is as follows:

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

RATE BASE

Plant in Service	$890,599
Less: Accumulated Depreciation	$576,804
Less: Fixed Capital Adjustment	$152,931
Less: Contribution in Aid Construction	$ 1,200
Net Utility Plant	$159,664
Plus: Cash Working Capital	56,430
Materials and Supplies	72,412
Prepayments	17,096
Less: Customer Deposits	8,253
Average Rate Base	$297,349

Income Statement

Operating Revenue	
Revenues-Firm	905,670
Revenues-Other	- 0
CGA	170,897
CGA (Over-Under Collection	(38,247)
Total Revenues	1,038,320
Operating Expenses	
Cost of Gas - Firm	637,584
Maintenance - Street	31,554
Maintenance - Lines	175,801
Maintenance - Service	19,977
Distribution	11,275
Customer Accounting	61,725
Sales and New Business	(23,002)
Administrative and General	149,405

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   Taxes

   Federal Income Tax - 0
   Property 8,080
   NH Franchise - 0
   Payroll 16,627
   Depreciation 41,743
   Amortization 520
   Total Revenue Deductions 1,131,289
   Operating Rents - 0
   Net Operating Income (92,969)

Revenue Requirement

   Rate Base $297,394
   Rate of Return 3.22%
   Required Net Operating Income $    9,579
   Adjusted Net Operating Income (92,969)
   Revenue Deficiency $(102,548)
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COMMISSION FINDINGS

The Commission accepts the settlement agreement. The Commission would also note the Company has moved to flatten the rate structure from that which it had proposed in the original filing. The Company will file with this Commission tariff pages designed to collect the amount of the revenue increase as well as the Franchise Tax which should be shown as a separate item on the tariff sheets. The tariff pages shall bear an effective date for all bills rendered on or after December 1, 1986.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Keene Gas tariff pages 9th revised Page 20 and 9th Revised Page 21 of its tariff NH PUC No. 1-GAS be, and hereby is rejected; and it is

FURTHER ORDERED, that Keene Gas Corporation file revised tariff pages in accordance with this report and order; and it is

FURTHER ORDERED, that such revised pages bear an effective date of December 1, 1986.

By Order of the Public Utilities Commission of New Hampshire this second day of December, 1986.

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NH.PUC*12/02/86*[60925]*71 NH PUC 710*New Hampshire Electric Cooperative, Inc.

[Go to End of 60925]

71 NH PUC 710

Re New Hampshire Electric Cooperative, Inc.

DE 86-213, Order No. 18,492

New Hampshire Public Utilities Commission

December 2, 1986

ORDER granting an electric cooperative a permanent license for its transmission lines to cross state land.

Electricity, § 7 — Authorization for transmission lines — Licenses for crossings — Permanent versus limited licenses.

Where an electric cooperative's limitedterm license for having a transmission line cross state-owned land had expired, the cooperative was granted a permanent replacement license, subject only to a one-time fee without the annual lease payments the limited-term license had required.

APPEARANCES: for the petitioner, Earl Hansen, Plant Manager, and Rose Blais, Assistant Plant Manager, for the New Hampshire Electric Cooperative, Inc.; Martin C. Rothfelder, Esquire and Ar- thur C. Johnson, Electrical Engineer, for Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On June 25, 1986, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with this Commission a petition pursuant to RSA 371:17 for a permanent license to maintain a power line across state-owned property in the Town of New Hampton, New Hampshire known as the Sky Pond Tract. This same property was previously subjected to a 20 year license to NHEC dated October 4, 1963 and which expired on October 4, 1983.

On July 11, 1986, an Order of Notice was issued setting a hearing for November 5, 1986, at 10:00 a.m. be- fore this Commission at its office in Concord. Notices were sent to Earl Hansen, Plant Department Manager, NHEC (for publication); Christopher J. Kersting, N.H. Aeronautics Commission; James Carter, Chief of Land Management, Department of Resources and Economic Development; Robert X. Danos, Director, Department of Safety Services; Wallace Stickney, Commissioner, Department of Transportation; Robert Patnaude, Court Reporter; and the Office of the Attorney General.

On August 4, 1986, the petitioner filed certification that publication had been made in the Union Leader on July 30, 1986.

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The hearing was held as scheduled, at which time no one appeared in opposition to the petition. As part of this Docket, a letter was received from John E. Sargent, Director, Division of Forests and Lands, Department of Resources and Economic Development, stating no objection

to a permanent license to maintain a power line in the same location and width as stipulated in the previous license dated October 4, 1963. Mr. Sargent's letter to the Commission further stated that should the line ever be abandoned the license should provide for reversion of the granted rights to the State. Moreover, a one time fee payment for the rights granted as determined to be just and equitable should be set by this Commission.

At the hearing, Mr. Hansen testified that this line serves a small number of customers on a permanent basis, and therefore, requests a permanent license for a one time fee of one hundred dollars. The annual fee for the previous temporary, twenty year license had been set at three dollars.

II. APPLICABLE LAW

RIGHTS IN PUBLIC WATERS AND LANDS

371:17 PETITION. Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipe line, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, public waters are defined to be all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility.

III. FINDINGS

NHEC seeks a permanent license for the purpose of maintaining an existing power line across state-owned land to continue serving a small number of customers. These customers have been served via a twenty year license which expired in 1983. The power line crosses state-owned land known as the Sky Pond Tract situated in the Town of New Hampton in the County of Belknap.

No one appeared in opposition to the petition, and Mr. Hansen offered a one time fee payment of one hundred dollars for consideration in keeping with Mr. Sargent's request for a one time fee instead of an annual token payment.

Upon review of the record, we find the proposed permanent license with a one time fee payment of one hundred dollars to be in the public interest. Accordingly, we will grant NHEC's petition. This Report and Order shall constitute a license in the context of RSA 371:17. This license grants NHEC permission to maintain the existing electric line at the above-described location subject to the one time fee payment and reversion to the state of the granted rights at such time of abandonment of said line.

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Our order will issue accordingly.

ORDER

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

ORDERED, that the petition of the New Hampshire Electric Cooperative, Inc. be, and hereby is, granted; and it is

FURTHER ORDERED, that NHEC pay a one time fee payment of one hundred dollars to the state for the permanent license; and it is

FURTHER ORDERED, that if the subject line is ever abandoned, then the rights granted by this license shall revert to the state; and it is

FURTHER ORDERED, that this order shall be considered a license for purposes of RSA 371:17.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1986.

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NH.PUC*12/02/86*[60926]*71 NH PUC 713*Petrolane-Southern New Hampshire Gas Company

[Go to End of 60926]

71 NH PUC 713

Re Petrolane-Southern New Hampshire Gas Company

Intervenor: Office of Consumer Advocate

DR 86-273, Supplemental Order No. 18,493

New Hampshire Public Utilities Commission

December 2, 1986

PETITION for approval of a revised purchased cost of gas adjustment; granted as revised.

Automatic Adjustment Clauses, § 32 — Cost of gas — Procurement practices — Least-cost gas.

Natural gas distributors are expected to purchase their gas supplies from the least costly, but most reliable, source available, and not to blindly depend on affiliate arrangements; least-cost gas can be obtained through a competitive bidding process or through any other approved comparative cost procurement practice.

APPEARANCES: For Petrolane-Southern New Hampshire Gas Company, Dom S. D'Ambruoso, Esquire; Consumer Advocate by Michael W. Holmes, Esquire; Commission Staff by Martin C. Rothfelder, Esquire.

By the COMMISSION:

REPORT

On October 15, 1986, the Commission issued an Order of Notice requiring that

Petrolane-Southern New Hampshire Gas Company (the Company) file certain revisions to its tariff providing a 1986-1987 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1986. Said tariff pages were to be filed on or before October 22, 1986. In compliance therewith, the Company filed a revised tariff page reflecting a CGA of $0.1597/therm, net of franchise tax.

On November 3, 1986, the Commission issued Order No. 18,467 (71 NH PUC 635), which accepted 136th Revised Page 15 of Petrolane-Southern New Hampshire Gas Company, tariff NHPUC No. 1-Gas, providing for a temporary Cost of Gas Adjustment rate of $0.1597 per therm for the period November 1, 1986 through April 30, 1987. The duly noticed hearing of October 28, 1986 was continued so that the Company could provide a witness able to respond to Commission concerns.

During the rescheduled hearing, November 6, 1986, the Company provided the required witness and submitted a revised filing which reflected a Cost of Gas Adjustment rate of $0.0440 per therm for the period November 1, 1986 through April 30, 1987, net of franchise tax. The Company witness

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testified that the need to revise the filing was due to a misquote of a gas purchase price for calculating the Cost of Gas Adjustment.

Through cross-examination, the Company witness answered the Commission concerns regarding purchase of propane. The Company is purchasing from a sister subsidiary, Petrolane Gas Service, Inc., and did not attempt to secure a lesser cost elswhere. During the hearings, the Company witness offered to seek least cost gas in the future. This Commission expects a gas utility in its jurisdiction to purchase gas from the least costly, most reliable source, determined through either a competive bidding process or other generally acceptable procurement practice.

Reconciliation of over or under collection will be processed for the six months, November 1986 through April 1987, in the following winter period as has been done in the past. The reconciliation will take into consideration the November 1986 temporary CGA rate and the December 1986 through April 1987 permanent CGA rate.

Based on the proceedings the Commission finds that Petrolane-Southern New Hampshire Gas Company CGA rate of $0.0440 per therm is just and reasonable and accepts that rate.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that 135th Revised Page 15 of Petrolane-Southern New Hampshire Gas Company, Tariff NHPUC No. 1-Gas, providing for a temporary Cost of Gas Adjustment of $0.1597 per therm for the period November 1, 1986 through. April 30, 1987 be, and hereby is, rejected; and it is

FURTHER ORDERED, that 135th Revised Page 15 of Petrolane-Southern New Hampshire Gas Company Tariff NHPUC No. 1-Gas, providing for a Cost of Gas Adjustment of $0.0440 per therm for the period November 1, 1986 through April 30, 1987 be, and hereby is, rejected; and it

is

FURTHER ORDERED, that Petrolane-Southern New Hampshire Gas Company file Revised Tariff pages reflecting a rate of $0.0440 per therm for the period December 1, 1986 through April 30, 1987, which will become effective with all billings issued on or after December 1, 1986; and it is

FURTHER ORDERED, that the above CGA rate may be adjusted by a factor of approximately 1% depending upon the utilities classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624; and it is

FURTHER ORDERED, that a public notice of this Cost of Gas Adjustment be given a one time publication in a newspaper having general circulation in the territories served.

By Order of the Public Utilities Commission of New Hampshire this second day of December, 1986.

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NH.PUC*12/02/86*[60927]*71 NH PUC 715*Hydroelectric Development, Inc.

[Go to End of 60927]

71 NH PUC 715

Re Hydroelectric Development, Inc.

DE 86-217, Order No. 18,494

New Hampshire Public Utilities Commission

December 2, 1986

ORDER authorizing an electric utility to install transmission lines over state-owned waters.

Electricity, § 7 — Authorization for transmission lines — Factors.

An electric utility was authorized to construct a transmission line across state-owned waters in order to be able to develop a small hydroelectric site which would make service to a nearby paper mill easier to provide.

APPEARANCES: John R Lavigne, Jr. P.E. of Rivers Engineering Corporation on behalf of Hydroelectric Development, Inc., Arthur Johnson, Electrical Engineer, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On July 21, 1986, Hydroelectric Development, Inc. (HDI) filed a petition for authority pursuant to RSA 371:17 for authority to construct and maintain a transmission line above and across the Ashuelot River in Winchester, New Hampshire. An Order of Notice was issued on July 23, 1986 which scheduled a hearing on the petition for September 10, 1986. Offering testimony and exhibits in support of the petition was John R. Lavigne, Jr., P.E. of Rivers Engineering Corporation. No one appeared in opposition.

II. APPLICABLE LAW

RSA 371:17 provides as follows:

371:17 Petition. Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, "public waters" are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the

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commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility.

III. FINDINGS

HDI, a corporation organized and existing under the laws of the State of Colorado with a principal place of business at 10394 W. Chatfield Avenue, Suite 108, Littleton, Colorado, seeks a license to cross the Ashuelot River in Winchester, New Hampshire at a point approximately 350 feet upstream from the Ashuelot Paper Company (APC), an operating paper mill.[1(147)] The purpose of the license is to enable HDI to construct and maintain an overhead electrical transmission line from a small hydroelectric facility it is constructing at a dam formerly owned by APC to the transmission lines of Public Service Company of New Hampshire (PSNH).[2(148)] PSNH will purchase the output of the facility pursuant to a negotiated contract with HDI.

The exact location of the crossing is set forth in Exhibit 1. Exhibit 2, a crosssection diagram looking upstream toward the dam, establishes that the crossing will consist of three 5KV lines extending from a wooden pole at the dam's powerhouse 180 feet over the dam at a height of 50 feet to PSNH pole 1/23-1. The installation of the line will be accomplished by the project's general contractor, Bancroft Construction Company of South Paris, Maine, and will comply with the relevant provisions of the National Electrical Code and the National Electrical Safety Code.

HDI originally intended to tie into PSNH's transmission lines on the side of the river on which the dam's powerhouse is located thereby obviating the need for a crossing. However, because the existing line on that side is of insufficient capacity, PSNH requested that the HDI line be connected with the PSNH transmission lines on the other side of the river near Route 119. Moreover, tying into the PSNH grid at that point will give PSNH the ability to disconnect the hydro facility when appropriate without having to cross the river at downstream bridges to

disconnect at the powerhouse.

After a complete review, we find that the installation of the above-described transmission lines is necessary to meet the reasonable requirements of service to the public and is in the public interest. Accordingly, we will grant HDI's petition. Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition of Hydroelectric Development, Inc. for a license to construct, operate and maintain 3 5KV transmission lines above and across the Ashuelot River be, and hereby is, granted; and it is

FURTHER ORDERED, that this

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Order shall be considered a license for the purpose of RSA 371:17.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1986.

FOOTNOTES

[1]HDI registered to do business in New Hampshire on March 7, 1983. In response to the hearing examiner's request, HDI submitted a Certificate of Good Standing from the New Hampshire Secretary of State dated September 11, 1986 which indicates that HDI registered to do business in New Hampshire on March 7, 1983, and is currently in good standing.

[2]HDI has obtained the requisite approvals from the Federal Energy Regulatory Commission, copies of which are on file at the Commission.

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NH.PUC*12/03/86*[60928]*71 NH PUC 717*Resource Electric Corporation

[Go to End of 60928]

71 NH PUC 717

Re Resource Electric Corporation

Intervenors: Public Service Company of New Hampshire and Office of Consumer Advocate

DR 86-77, Order No. 18,495

New Hampshire Public Utilities Commission

December 3, 1986

APPLICATION by a small power producer for the establishment of long.Pp term rates; rejected.

Cogeneration, § 24 — Rates — Long-term rates — Factors — Premature filings.

A small power producer's request for long-term rates was denied where it was discovered that the producer had filed prematurely for the long-term rate, because at the time of its filing, the producer had only preliminary engineering plans, had not chosen a general contractor, had not entered into any fuel supply contracts, and had not come close to finalizing its financing, yet it was attempting to establish a tire-burning facility, a venture considered to still be technologically risky.

APPEARANCES: Orr & Reno by Howard M. Moffett, Esq. for Resource Electric Corporation; Thomas B. Getz, Esq. and Sulloway, Hollis & Soden by Margaret H. Nelson, Esq. for Public Service Company of New Hampshire; Joseph Rogers, Esq. for Consumer Advocate; Dr. Sarah P. Voll, Mark Collin and Nadeen Gazaway for Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

Procedural History

On February 24, 1986, Resource Electric Corporation (REC) filed a long term rate petition for its Mini Power Plant in Rochester, New Hampshire, pursuant to Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984) (DE 83-62) and 70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85215). REC requested inter alia, a fully levelized 20 year rate for its Rochester plant based on tire derived fuel (TDF). The Commission approved REC petition nisi by Order No. 18,166 (71 NH PUC 161) and allowed Public Service Company (PSNH) the opportunity to file comments. On March 12, 1986, PSNH filed a Motion for Hearing and Scheduling of a Pre-Hearing Conference and REC responded on March 25, 1986. Having reviewed the petition, PSNH's comments and REC's response, the Commission found that the issues involved in the REC petition warranted further investigation and scheduled a

pre-hearing conference on April 16, 1986. By Order No. 18,234 (71 NH PUC 262), the Commission accepted the procedural schedule requested by the parties, which concluded with a hearing scheduled for June 12, 1986. At the request of REC, the June 12th hearing was postponed until July 21, 1986 and hearings were subsequently held on July 21, July 31, August 13 and September 8, 1986. The Commission granted the parties' request to file briefs and PSNH and REC submitted their briefs on September 29, 1986. REC amended its rate application on July 7, 1986 to incorporate a reduced amount of front-end loading, and submitted a correction to its amended filing on September 26, 1986.

Position of Parties

REC

REC identifies the issues to be decided as whether the REC project is a Qualifying Facility

(QF), whether REC can satisfy the requirements of the Commission in regard to filing for long term rates, and whether REC is entitled to a long term rate pursuant to DR 85-215 as opposed to a subsequently adopted long term rate. REC states, and PSNH did not dispute, that by virtue of its size, fuel use and nonutility ownership, REC is a QF and therefore eligible to petition for long term rates established by the Commission pursuant to the federal Public Utility Regulatory Policies Act, Sections 201 and 210 (PURPA) and the New Hampshire Limited Electrical Energy Producers Act, N.H. RSA 362-A (LEEPA).

REC cites the eligibility criteria for QFs seeking front-end loading in their long term rates from DE 83-62 as follows and argues that its witnesses have provided substantial evidence that it can meet the first two criteria, and that REC has offered to satisfy criteria three even though it is not required to do so under the Commission's orders:

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 twenty years, a surety bond or a junior lien on the Project must be given to cover the "buy-out" value at the site.

In Brief, REC cites the testimony of its witnesses Mssrs. Sheahan, Ormston and Dietz of Energy Partners, Inc., Ergon Fluidized Bed (Ergon), and Ford, Bacon and Davis (FB&D), respectively. They testify that once the project has attained commercial operation, it could reasonably be expected to operate for the period of the requested rate order. REC asserts that the combined guarantees of Ergon and FB&D assure that the plant will operate at an 85% availability level on an annual basis. Otherwise, Ergon, which will be responsible for the fluidized bed steam production, and/or FB&D, which will be responsible for the generation plant, will repair or replace the equipment up to the cost of their initial construction contracts. REC further cites the testimony of Terry Gray of Waste Recovery, Inc. (WRI) on the source of its tire derived fuel supply and its price. REC asserts

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that its project's financial summaries (Exh. 11 and 11-A) indicate that the project is financially sound over the life of the rate obligation.

REC states that it has demonstrated substantial compliance with the Commission's expectations of the maturity of project planning and development. REC asserts that it holds an option on the Rochester site, that the project size, technology and fuel had been determined by the time of the filing, and that project participants had not changed since February with the exception of the commitment of FB&D and the addition of WRI. It states that the cost of the project had increased by $2 million from the original estimates and commercial operation date may have slipped a year due to the "protracted rate hearings." Brief at 28. REC received approval from the Rochester Planning Board on April 15, 1986, has filed for its permit from the Air Resources Agency, and is prepared to review the issue of the jurisdiction of the Energy Facility Evaluation Committee. While REC has not completed its financing arrangements, it is confident that the project financing can be arranged on the terms presented to the Commission.

Finally REC argues, that it is entitled to the rates pursuant to DR 85-215 notwithstanding the fact that hearings on its rate application have extended beyond the moratorium for rate applications because its February 24, 1986 filing was prior to the moratorium.

PSNH

In addition to the eligibility criteria contained in DE 83-62, PSNH cites later dockets in which the Commission further illuminated the burden each QF must satisfy in order to obtain a long term rate. It quotes Re TDEnergy, Inc., 69 NH PUC 397 (1984) as requiring additional security for projects that pose substantial risk to ratepayers. It cites Re Concord Regional/Waste Energy Co., 70 NH PUC 736 (1985) Re Public Service Co. of New Hampshire, 71 NH PUC 288 (1986), and Re New England Alternate Fuels, Inc.-Swanzey, 71 NH PUC 423 (1986), as clarifying Commission expectations regarding the maturity of projects at the time of their rate filings.

PSNH asserts that "the Commission orders require a developer to have completed most, if not all, of the critical stages of development before [he] files a rate petition" (Brief at 20) and argues that such requirement is necessary for the Commission to be able to evaluate whether a developer will be able to satisfy the eligibility criteria of DE 83-62. PSNH contends that according to the standards set forth in the Commission orders, the REC petition was filed prematurely. It notes that the current technical configuration of the project was not adopted until December, 1985 and that by the time of the rate filing REC had only recently commenced negotiations with Ergon, had not chosen a general contractor and had only completed very preliminary engineering plans. Lacking detailed engineering plans, it was, therefore, not in a position to apply for any of the state or local permits except for the Rochester Planning Board approval. Brief at 22-23.

PSNH argues that REC's fuel supply arrangements were inadequate. It claims that prudency dictated a careful investigation prior to the rate filing of the tire pile proposed by Sprague. Failure to perform such an investigation has necessitated a "last moment"

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arrangement with WRI, a tire supplier who does not have facilities in New England. Construction of a TDF processing facility may require review by the Energy Facility Evaluation Committee under RSA 162-H. Brief at 23-24. In addition, PSNH notes that REC did not have contracts for its coal, limestone and basaltic material, or even price quotes until March 31, 1986 (a month after its filing); and that REC had only a price quote rather than a contract for its ash disposal. Brief at 24-25. Finally, PSNH observes that REC had not obtained financing for its project, or identified lenders or equity investors either prior to the rate filing or by the close of the hearings. Brief at 25-27.

PSNH also asserts that REC cannot satisfy the DE 83-62 criteria for levelized rates. The Ergon fluidized bed combustion unit is unproven, at least for producing electricity from TDF. There is no forecast price for TDF by either reputable forecasting services or WRI. The uncertainty of the fuel price and REC's choice of an escalation rate below that embodied in the DR 85-215 avoided cost rates undermines the validity of REC's financial summaries and sensitivity analysis. Use of escalation assumptions equal to those in DR 85-215 produces project

negative cash flows starting in the fourteenth year; use of lower escalation assumptions introduces an inconsistency in the calculation of REC's revenues (i.e., the rate) and its costs. Brief at 29-32. PSNH also questions REC's ability to provide uninterrupted service, given the limited fuel storage at the site and the current lack of arrangements with WRI for back-up storage.

PSNH also doubts REC's ability to fulfill the representations in its petition, in particular its commitment that the project will achieve commercial operation before September 1988, remain on-line throughout the rate term and repay any front end loading in the event of service termination. PSNH suggests that it is unrealistic to assume that REC will be able to obtain financing before the end of the year in light of the fact that it has not yet applied for most of its permits. Should the project cease operations, neither REC, Ergon, FB&D nor Eden will be both able and willing to repay the front-end loading: REC's net worth is currently only $6,000, Ergon and FB&D's guarantees extend only to the performance of the components they supply, and the offered lien is junior to the rights of the project lender.

Finally, PSNH argues that REC is not entitled to receive rates established in DR 85-215 because those rates no longer reflect the best current estimates of PSNH's avoided cost. It describes the current situation as being characterized by approximately 700 MW of QF capacity pending before the Commission, rate increases of 70% that would result from levelized rates from that quantity of capacity and indications that PSNH will not require additional capacity until the mid to late 1990's. Therefore it contends that the Commission should carefully scrutinize each pending project, and deny those that do not satisfy the Commission's previously established criteria.

Commission Analysis

The issues identified and contested by the parties relate to the timeliness of the rate filing, the eligibility of the project for levelized rates pursuant to the criteria set forth in DE 83-62, and the eligibility of REC to receive rates

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pursuant to DR 85-215 in light of subsequent estimates of avoided cost. Since a finding that a rate filing is not timely makes consideration of the levelization and avoided cost estimate issues moot, the Commission will turn first to the question of the maturity of the REC project development.

The Commission finds that REC has not demonstrated that its project has reached the development stage where it qualifies to apply for a long term rate under DR 85-215. REC has testified that until mid-November 1985 the company was planning to construct a facility based on technology provided by Combustion Power, Inc. Corporation. 3 Tr. 159. At that point, Mr. Sheahan of Energy Partners, Inc. convinced Mr. Schlaikjer of REC that the fluidized bed combustion technology that REC was considering would develop major technical problems when used to burn TDF. 1 Tr. A-24. On January 6, 1986, Mr. Schlaikjer met with D. Ormstrom of Ergon and following several weeks of negotiation "about the 12th of February" chose Ergon as the fluidized bed combustion supplier. Mr. Schlaikjer testified " ... essentially what we had was a 20 to 25 megawatt, somewhere in there, project where we were looking until around the

middle of February for our fluidized bed combustion supplier ... and we chose Ergon ...". III Tr. 160. On February 24, 1986, REC filed before this Commission its petition for a 20 year long term rate.

At the time of filing, the only state or local approval REC had obtained (or applied for) was the Rochester Planning Board approval. REC was in no position to apply for its other permits because it had only completed the preliminary design for its project (2 Tr. 138) not the primary engineering design required for the permit applications. 3 Tr. A-26.

Further, while REC has expressed confidence that it will be able to obtain debt and equity financing (4 Tr. 9-17), it does not yet have a commitment for either source of funds, even on a conditional basis. Mr. Selman, the project's investment banker and financial advisor, testified, "at this point the project is not at the financing stage, so we are not in formal solicitation for funds." 4 Tr. 13. REC has also testified that in order to reach the financing stage, REC must finalize its design, have all of its permits in hand or be able to assure potential investors that approval is imminent, secure its fuel supply and complete the terms and conditions of the project's design, construction and operation. 1 Tr. 26-27. In order to meet the commercial operation date specified in its rate petition, REC estimates that it must complete its financing by January 1987. 4 Tr. 47-48. REC cannot reasonably assure the Commission that it will be able to complete the necessary preliminary steps, first, to be in the financing state, and second, to close on its financing before January 1987. REC blames regulatory lag for its potential inability to meet its commercial operation date. However, the initial delays in hearings were at the petitioner's request and were required by the significant change in the facility's projected fuel supply.

Finally, the Commission is not satisfied that REC can reasonably represent that it has obtained a reliable fuel supply. REC retained WRI as its fuel supplier after the tire pile proposed by C.H. Sprague & Sons developed contamination hazards and Sprague did not offer an alternative source of TDF by August 16, 1986. WRI may well

ultimately prove that it will be able to deliver TDF to a tire burning facility in New Hampshire. However, at the present time, WRI has no facilities in New England, has only made theoretical studies on the availability of tire supplies in New England and has not yet investigated whether its facility would fall under the jurisdiction of the Energy Facility Site Evaluation Committee under RSA 162-H. Therefore it cannot at this time reasonably assure the Commission that it will be able to supply TDF to REC by August 1988.

Our finding that REC filed for its rates prematurely necessarily requires us to deny rates to REC under DR 85-215 but not foreclose the project's opportunity to apply for rates at a subsequent time. Failure to deny the instant petition risks the result that the approved rates will not equal the avoided cost of the utility over time and/or that REC may potentially be accorded preferential or discriminatory treatment compared with projects at the same state of development that did not file prematurely. Both results are contrary to our mandate under LEEPA, PURPA, and the PURPA regulations, 16 USC § 824a-3. See Re Pinetree Power-North, 71 NH PUC 638 (1986).

While we are denying the instant petition on the basis of prematurity, we will also express

our concern with the added risk stemming from the increased size of the proposed project. The Commission acknowledges that one of the goals of PURPA was to encourage the development of new and more efficient technologies. See Re Wormser Engineering, Inc., 71 NH PUC 617 (1986). Further we are fully cognizant of the incentives to increase the size of projects in order to achieve the economies of scale that enhance the feasibility of projects in the context of lower avoided cost rates. In the instant case, REC increased the size of its facility from 6 1/2 megawatts to 20 megawatts. This increase, however, triples the ratepayer risk already strained by providing front end loaded rates to an experimental technology designed to burn tire derived fuel in a fluidized bed combustion unit. While willing, in general, to provide support for the development of new technologies, the Commission cannot be indifferent to the scale of experiment and the total dollar risk imposed on the ratepayer.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Resource Electric Corporation's petition for a 20 year long term rate, be, and hereby is, denied; and it is

FURTHER ORDERED, that Docket DR 86-77 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this third day of December, 1986.

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NH.PUC*12/03/86*[60929]*71 NH PUC 723*Ideal Z-Tel, Inc.

[Go to End of 60929]

71 NH PUC 723

Re Ideal Z-Tel, Inc.

DE 86-285, Order No. 18,496

New Hampshire Public Utilities Commission

December 3, 1986

APPLICATION by a telecommunications business for recognition as a public utility; denied.

Public Utilities, § 54 — Status as a public utility — Foreign companies.

An entity not organized as a business through the state of New Hampshire may not be recognized as a public utility under the laws of New Hampshire.

By the COMMISSION:

ORDER

WHEREAS, on November 1, 1986 Ideal Z-Tel, Inc. filed a petition to obtain utility status; and

WHEREAS, Ideal Z-Tel, Inc. is not a business organized under the laws of the State of New Hampshire as is required for utility status under N. H. Rev. Stat Ann. § 374:24 (1984); it is therefore

ORDERED, that the Ideal Z-Tel, Inc. petition to obtain utility status is denied without prejudice.

By Order of the Public Utilities Commission of New Hampshire this third day of December, 1986.

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NH.PUC*12/03/86*[60930]*71 NH PUC 724*Claremont Gas Light Company

[Go to End of 60930]

71 NH PUC 724

Re Claremont Gas Light Company

Intervenor: Office of Consumer Advocate

DR 86-274, Order No. 18,497

New Hampshire Public Utilities Commission

December 3, 1986

ORDER accepting a natural gas distributor's revised cost of gas adjustment.

Automatic Adjustment Clauses, § 7 — Cost of gas — Average prices — Other factors.

In determining appropriate therm rates for a natural gas distributor's cost of gas adjustment, a survey of prices of various suppliers should be made, with an average price from those results being adjusted to account for geographical location, quantities demanded, and reliability requirements.

APPEARANCES: For Claremont Gas Light Company, Dom S. D'Ambruoso, Esquire; Consumer Advocate by Michael W. Holmes, Esquire; Commission Staff by Martin C. Rothfelder, Esquire.

By the COMMISSION:

REPORT

On October 15, 1986 the Commission issued an Order of Notice requiring that Claremont Gas Light Company (the Company), a public utility engaged in the business of supplying gas in

the State of New Hampshire, file certain revisions to its tariff, providing a 19861987 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1986. Said tariff pages were to be filed on or before October 22, 1986. In compliance therewith, the Company filed a revised tariff page reflecting a cost of gas adjustment of $.0462 per therm, net of franchise tax.

On November 3, 1986 the Commission issued Order No. 18,470 (71 NH PUC 650) which rejected 121st Revised Page 12-2 of Claremont Gas Light Company NHPUC NO. 9 - Gas and fixed a temporary CGA rate at $0.0444 per therm, net of franchise tax and ordered the Company to submit a revised tariff page 12-2. The October 28, 1986 hearing was continued to November 6, 1986 at which time the Company provided a proper witness for examination.

Through testimony and cross-examination, the Company witness attempted to answer the Commission concerns regarding the purchase of propane. The Commission does not believe that the Company's methodology of forecasting the price of propane is adequate. Future projections should be based on a survey of prices obtained from the

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Company's propane suppliers. The survey results should be adjusted for factors which are influenced by the Claremont location, the quantity demanded, and reliability requirements. The finalized rate, adjusted to reflect the foregoing, should provide a reasonable forecast of the Company's cost of propane.

In this docket we will not require an adjustment to the filed propane price projections. However, future estimates are to comply with the previous mentioned criteria.

The therm conversion factor error noted in the October 28, 1986 hearing was corrected by the Company from .91 to .915. The Commission accepts this adjustment as filed.

The Company filed Revised 121st Revision Page 12-2 of Claremont Gas Light Company NHPUC No. 9 - Gas reflecting a CGA rate of $0.0430 on November 12, 1986.

Reconciliation of over or under collection will be processed for the six months, November 1986 through April 1987, in the following winter period as has been done in the past. The reconciliation will take into consideration the November 1986 temporary CGA rate and the December 1986 through April 1987 permanent CGA rate.

Based on the proceedings, the Commission finds that Claremont Gas Light Company CGA rate of $0.0430 per therm is just and reasonable and 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 the temporary CGA rate of $0.0444 per therm fixed by the Commission by Order No. 18,470 is rescinded; and it is

FURTHER ORDERED, that Revised 121st Revision Page 12-2 of Claremont Gas Light Company, NHPUC No. 9 Gas providing for a Cost of Gas Adjustment of $0.0430 for the period November 1, 1986 through April 30, 1987 be, and hereby is, rejected; and it is

FURTHER ORDERED, that Claremont Gas Light Company file a revised tariff page reflecting a Cost of Gas Adjustment of $0.0430 for the period December 1, 1986 through April 30, 1987; and it is

FURTHER ORDERED, that the above CGA rate may be adjusted by a factor of approximately 1% depending upon the utilities classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624; and it is

FURTHER ORDERED, that a public notice of this Cost of Gas Adjustment be given a one time publication in a newspaper having general circulation in the territories served.

By Order of the Public Utilities Commission of New Hampshire this third day of December, 1986.

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NH.PUC*12/03/86*[60931]*71 NH PUC 726*Power House Systems

[Go to End of 60931]

71 NH PUC 726

Re Power House Systems

DR 86-248, Order No. 18,498

New Hampshire Public Utilities Commission

December 3, 1986

PETITION by a small power producer for approval of long-term rates; granted.

Cogeneration, § 24 — Rates — Long-term rates — Junior lien requirements.

A small power producer's request for a 30-year rate term was granted where the producer had complied with the commission's "junior lien" requirement for the project.

By the COMMISSION:

ORDER

WHEREAS, on September 8, 1986, Power House Systems filed a long term rate petition; and

WHEREAS, Power House Systems filed amendments to its filing on October 7, and November 14, 1986; and

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

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

WHEREAS, Power House Systems 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 of the Project; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) and 71 NH PUC 408 (1986); and

WHEREAS, the Commission will allow PSNH the opportunity to respond to Power House System's Petition for a thirty-year rate order; it is therefore,

ORDERED NISI, that Power House System's Petition for a thirty-year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheets is approved; and it is

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

FURTHER ORDERED, that this

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Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1986.

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NH.PUC*12/08/86*[60932]*71 NH PUC 727*New England Hydro-Transmission Corporation

[Go to End of 60932]

71 NH PUC 727

Re New England Hydro-Transmission Corporation

Intervenors: Environmental Protection Division of the Office of the Attorney General and Powerline Awareness Campaign

DSF 85-155, Order No. 18,499

New Hampshire Public Utilities Commission

December 8, 1986

APPLICATION for a certificate of site and facility to construct, operate, and maintain the Hydro-Quebec Phase II electric transmission line; granted, subject to conditions.

Electricity, § 7 — Authorization for transmission lines — Statutory standard.

State statute RSA 162-F:8 requires that prior to the grant of a certificate for the construction of an electric transmission facility the commission must find that the facility is (1) required to meet the present and future demand for electric power, and (2) will not adversely affect system stability and reliability and economic factors. [1] p. 729.

Public Utilities, § 73 — Electric transmission utility — Authority to act as a public utility — Statutory standard.

A corporation organized for the purpose of owning, constructing, operating, maintaining, and leasing transmission facilities associated with Phase II of the New England/Hydro Quebec project was authorized to conduct business as a public utility in the state of New Hampshire; the corporation was found to meet the standards of RSA 374:22 which requires a commission determination that the public interest would be served as a prerequisite to a grant of authority to act as a public utility; the public interest determination was based on an examination of the corporation's (1) financial backing, (2) management and administrative expertise, (3) technical resources, and (4) general fitness. [2] p. 731.

Electricity, § 7 — Authorization for transmission lines — Crossing of railroad land — Crossing of public land and waters — Safety standards.

An electric transmission corporation was authorized to construct and maintain a transmission line that would cross public

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lands and waters and parallel or traverse railroad tracks; the evidence indicated that all relevant safety standards would be met and railroad operations would not be adversely affected. [3] p. 732.

Electricity, § 3 — Interconnected systems — Authorization for transmission line construction project — Hydro-Quebec Phase II.

In support of its determination that the present and future need for electricity in New Hampshire required the construction of an electric transmission line that would expand the total transfer capacity between Hydro-Quebec and New England, the commission found that the cost of energy delivered under an agreement with HydroQuebec would be significantly lower than any other option for new sources of power and that economic analyses demonstrated that there were many other significant economic benefits associated with the transmission line project. [4] p. 741.

Electricity, § 3 — Interconnected systems — Transmission line construction project — Conditional certification — System reliability and stability — HydroQuebec Phase II.

A certificate of site and facility was granted to the Hydro-Quebec Phase II transmission facility, however, due to concern over the potentially severe economic damage that could occur from a major disturbance on the Hydro-Quebec electric system, certification was conditioned on the submission of a detailed plan that would assure that the transmission facility would not have any adverse effects on regional electric system reliability and stability. [5] p. 743.

Electricity, § 3 — Interconnected systems — Transmission line construction project — System reliability and stability — NEPOOL standards.

Discussion, in a decision granting a conditional certification for an electric transmission facility, of the standards used and studies performed by the New England Power Pool in drawing conclusions regarding system reliability and stability. p. 742.

APPEARANCES: Orr & Reno by Richard B. Couser, Esquire on behalf of the Applicant; Environmental Protection Division of the Attorney General's Office by Bradford W. Kuster, Assistant Attorney General and Larry M. Smukler, Assistant Attorney General, on behalf of the public; Brown, Olson & Wilson by Michael A. Walker, Esquire on behalf of the Powerline Awareness Campaign.

By the COMMISSION:

REPORT

This matter involves the application of the New England Hydro-Transmission Corporation (New England Hydro) for a Certificate of Site and Facility for a 121.0 mile transmission line at a design voltage of 450 kilovolts direct current (DC), from Monroe, New Hampshire to the New Hampshire/Massachusetts State Line in Hudson, New Hampshire. The application is addressed to the Bulk Power Supply Site Evaluation Committee (SEC) and the Public Utilities Commission of the State of New Hampshire (PUC).

As the application indicates, this proposed transmission line is the second part of a program designed to allow a total energy transfer of approximately 7 terawatt hours (TWh) (1 TWh = one million megawatt hours) a year from Hydro-Quebec, the provincial utility of Quebec, Canada to New England in addition to the energy purchased under Phase I. This program, referred to in the application as "Hydro-Quebec Phase II" or "Phase II", would expand the total transfer capacity between Hydro-Quebec and New England from 690 megawatts (MW) provided for by Phase I to approximately 2,000 MW

under normal conditions. Phase I includes the line and converter terminal from Des Cantons, Quebec to Monroe, New Hampshire.

The New Hampshire portion of Phase I of the project was certified by the SEC and the PUC in DSF 81-349, by the PUC's Fourth Supplemental Order No. 16,060, issued December 18, 1982 (67 NH PUC 910). The Findings of the SEC in Phase I were made on December 10, 1982 and incorporated into the PUC's Order.

Phase I of the project consists of approximately 107 miles of 450 kilovolt (kv) direct current transmission line, of which about 49 miles are in Quebec, about 52 miles are in Vermont, and 6.1 miles are in New Hampshire.

Phase II would consist of three principal elements. The first element would be a new 450 kV dc line, 121 miles of which would be located in New Hampshire. The line would follow an

existing, already occupied 230 kV ac transmission right-of-way, with the exception of 0.8 miles of the line which would be located on existing utility property, from the Phase I converter terminal in Monroe, New Hampshire to Hudson, New Hampshire, where it would depart from this right-of-way and follow an existing, already occupied 345 kV ac right-of-way for the last 8.5 miles to the New Hampshire/Massachusetts State Line.

From the State Line, the dc line would continue into Massachusetts to a proposed converter terminal.

The second element of Phase II would be the proposed converter terminal, designed to convert dc power to ac power and vice versa. The converter terminal would be located at the dc line's southern terminus.

Phase II's third element would be the construction of two new 345 kV ac transmission lines with a combined length of 51.8 miles along existing rights-of-way in Massachusetts. The ac lines would be constructed in order to reinforce the existing New England 345 kv ac transmission system.

[1] In its application, New England Hydro filed the following petitions with the PUC seeking a ruling on them at the same time a ruling is made on the application for a certificate of site and facility:

1) a Petition for License to Construct and Maintain a Transmission Line Crossing Public Waters of the State and Land Owned by the State;

2) a Petition for Permission to Construct a Transmission Line Traversing or Paralleling the Tracks and Property of Railroads; and

3) a Petition to Engage in the Business of a Public Utility and to Begin Construction of Transmission and Related Facilities in Certain Towns.

Under RSA 162-F.8 the PUC must find that the construction of the facility:

1) is required to meet the present and future demand for electric power; and

2) will not adversely affect system stability and reliability and economic factors.

The application and petitions filed by New England Hydro in the proceedings raise the following issues:

1) whether the proposed 121 mile 450 kV dc facility should require a certificate of site and facility because of substantial environmental impact?

2) whether New England Hydro should be authorized to conduct business as a public utility in the State of New Hampshire under RSA 374:22?

3) whether New England Hydro should be granted a license to construct

and maintain transmission line crossings of public waters of the State and of land owned by the State as requested and set forth in its petition filed with its application?

4) whether New England Hydro should be granted permission to construct a transmission

line traversing or paralleling the tracks and property of railroad as requested and set forth in its petition filed with its application?

5) whether the construction of the proposed Phase II transmission line by New England Hydro is required to meet the present and future demand for electric power?

6) whether the construction of the proposed Phase II transmission line by New England Hydro will adversely affect system stability and reliability and economic factors?

The PUC answers the first five of these issues in the affirmative. The sixth issue raises serious concerns and will be discussed below. Under the circumstances set forth, the proposed transmission line will be issued a conditional certificate. New England Hydro is authorized to conduct the business of a public utility in the State of New Hampshire; the license for the crossings of public waters of the State and of land of the State should be issued; and New England Hydro's petition for permanent easements to construct and maintain the transmission line traversing or paralleling the tracks and property of railroad is granted.

The SEC found that the proposed Phase II transmission line would not unduly interfere with orderly regional development and would not have unreasonable environmental effects, subject to certain conditions and requirements. (See Findings of SEC attached to this Report and Order as Attachment 2). Under the statute we are bound by these findings and accordingly incorporate them into this Report and Order, and the conditional Certificate of Site and Facility which we will issue.

As we will discuss in detail below, we find that the proposed facility will meet the present and future demand for electric power, that is the "need for power". However, we have serious concerns regarding system reliability and stability. RSA 162-F:8 I (b).

I. PROCEDURAL HISTORY

New England Hydro, the Applicant in these proceedings, had its application of a Certificate of Site and Facility for the New Hampshire portion of the Phase II dc transmission line approved for filing with the PUC and the SEC on August 8, 1985.

New England Hydro is a New Hampshire Corporation formed on December 27, 1984. It is part of the New England Electric System and was organized for the purpose of owning, constructing, operating, maintaining, and leasing electric transmission facilities associated with Phase II of the New England/Hydro-Quebec project. The subject of these proceedings was the New Hampshire portion of the project, which was designed to import Canadian hydro-electric energy into New Hampshire. Under Phase I and Phase II of the project, hydro-electric energy produced by Hydro-Quebec, the provincial electric utility of the Province of Quebec in Canada, will be purchased by participating member companies of the New England Power Pool (NEPOOL) for distribution to customers in New England. The pool consists of participating utilities in New England

whose members own 98% of the generating capacity in New England and most all of the transmission network. Exhibit 118 (Testimony of Robert O. Bigelow) pp. 12-13.

As required by the provisions of RSA 162-F:7, I (Supp. 1985), the Committee first held public informational hearings and then held seventeen days of public adversarial hearings which were conducted jointly by the SEC and the PUC between February 5, 1986 and August 14, 1986. Fourteen witnesses testified on behalf of New England Hydro regarding various aspects of the Phase II project during the hearings. Counsel for the public and counsel for the intervenor, Powerline Awareness Campaign cross-examined these witnesses.

The remainder of the background of these proceedings and the procedural history is adequately set forth in the SEC Findings and we incorporate them herein by reference (See Attachment 2.)

II. FINDINGS ON PRELIMINARY ISSUES (1)-(4).

Before discussing the principal findings on the need for power and effects on system reliability and stability and economic factors, it is first necessary to dispose of the preliminary issues, Nos. 1 through 4 set forth above.

The first issue is whether, under RSA 163-F 2, I (C), the proposed facility requires a Certificate of Site and Facility because of a substantial environmental impact. As noted by the SEC in its Findings, the statute authorizes the PUC and the SEC to determine whether the proposed facility requires a certificate. The SEC has found that the proposed facility should be certificated. We concur in that Finding.

[2] The second issue is whether New England Hydro should be authorized to conduct business as a public utility in the State of New Hampshire under RSA 374:22. This issue is exclusively the province of the PUC.

As noted in our Report and Order issued December 17, 1982 in DSF 81349, under the statute, the question is whether in the judgment of the PUC the "public interest" is served by permitting a business to operate as a public utility. In considering the "public interest" the PUC examines (1) Financial backing; (2) Management and Administrative expertise; (3) Technical resources; (4) The general fitness of an applicant. (See Report and Order. Re: International Generation & Transmission Co., Inc., 1982, 67 New Hampshire PUC 478).

Based on a review of all the evidence, we find that the "public interest" is served by permitting New England Hydro to operate as a public utility in the State of New Hampshire. New England Hydro is a subsidiary of New England Electric Systems, a large holding company which through other subsidiaries operates electric generation, transmission and distribution facilities in several New England States. (New England Hydro Application at p.4) (Exhibit 118, Testimony of Robert O. Bigelow, pp. 5-6). The New England Electric System has approximately 5,000 employees, a large engineering staff of approximately 300 people, and has considerable experience in high voltage transmission. New England Hydro will have ready access to these services as a subsidiary of New England Electric Systems (Exhibit 118, Testimony of Robert O. Bigelow, p. 6)

[3] The third issue concerns the matter of whether New England Hydro should be granted a license to construct and maintain transmission line crossings of public waters of the State and of

land owned by the State as requested and set forth in its petition filed with its application. The petition seeks a license to cross a number of public waters and public lands of the State on the Preferred Network. (New England Hydro Application, appendix F). The evidence indicates that, except as specified in New England Hydro's Application, Appendix E, no transmission line structure would be located within the body of public water and all clearances would conform to the National Electrical Safety Code. The evidence also indicates that the transmission line would be located, constructed, and operated and maintained in a manner which would not substantially affect the public waters to be crossed or the lands owned by the State. Accordingly, we find that the proposed public water or land crossings would not substantially affect public rights in such waters or lands and we hold that the license to permit the water and land crossings as set forth in New England Hydro's Petition, Appendix F, subject to meeting the National Electric Safety Code Standards, should be issued as a part of the Certificate of Site and Facility.

The fourth issue involves the matter of whether New England Hydro should be granted permission to construct a transmission line traversing or paralleling the tracts and properties of railroads as requested and set forth in a petition filed with its application, in Appendix G. The Petition identifies the railroads whose property would be crossed by the proposed facility. The evidence indicates that all conductor to ground clearances would conform to the National Electrical Safety Code, and construction, operation and maintenance of the transmission line would not adversely affect the interest of the railroads. Accordingly, we hold that New England Hydro should be granted permanent easements for the purpose of construction of the transmission line across the property of railroads as specified in its Petition after New England Hydro files proper plans and layout delineating the routes for the transmission line and compensates the railroads for the easements in accordance with orders to be issued by the PUC before the commencement of construction.

III. FINDINGS ON THE PRINCIPAL ISSUES ON NEED FOR POWER AND SYSTEM RELIABILITY AND STABILITY AND ECONOMIC FACTORS

The remaining findings concern whether the proposed facility:

(a) is required to meet the present and future demand for electric power; and (b) will not adversely affect system stability and reliability; (RSA 162-F:8, I (b).

A. The Proposed Facility is Required to Meet the Present and Future Demand for Electric Power

In its application, New England Hydro noted that the proposed Transmission line is needed to increase New England's capability to receive electricity from Hydro-Quebec, the provincial utility of Quebec, from the approximately 690 MW provided for by the Phase I project to a nominal power level of approximately 2000 MW. The electricity is available from the La Grande

Complex, a series of hydro-electric facilities which have been developed by HydroQuebec. The proposed transmission line's principal purpose according to the applicant would be to hold down the cost of electricity to New England consumers primarily by displacing oil fired generation. The evidence presented supports the applicants position in this regard.

The Applicant presented evidence that the demand for power is needed for New England and that as a result substantial benefits flow to New Hampshire. In our Report and Order issued June 12, 1982 in DSF 81-349 and Report and Order issued December 17, 1982 (67 NH PUC 910), the Commission set forth that the delicate balancing process, established in RSA 162-F:8, clearly implies that the SEC and this Commission must assess the benefits (i.e., the ability of a particular facility to meet present and future demands for electric power) to New Hampshire citizens. However, as a result of the integration of the electric system in New England many benefits criss-cross from New Hampshire to the rest of New England and vice versa. This is a result of cooperation with the NEPOOL planning process. This cooperative effort is seriously impaired when one state negotiates and contracts for power as a single state for an economic advantage over its neighbors. In the future, this Commission will carefully evaluate the benefits of regional projects, as well as projects of benefit to New Hampshire on a stand-alone basis.

Robert J. Lieber, an expert witness for the applicant in these proceedings, in the area of the oil supply and especially imported oil in the energy planning area for the United States, addressed the significance of recent price declines in the oil market to long range energy planning, and the risk of future crisis of price or supply in that market. After providing a historical perspective on oil supply and price during the past fifteen years, he described the relationship of New England to the World Oil and Energy Supply situation. He pointed out that New England's energy and electricity situation should be understood in a broader national and international context since New England is remote from both foreign and domestic sources of oil. World energy supply and demand patterns are shaped by the interplay of both market and political factors. For the most part, he noted, determinance of energy prices, and, above all, of cheap fuel oil, lie outside of regional control. He concluded that eventually, and even in the absence of another oil shock, it is prudent to anticipate that oil prices will again rise above spring 1986 levels. While it is difficult to offer plausible short-term forecasts, he indicated that higher prices are a prudent assumption by the end of this decade. Assumption of long term availability of cheap oil, whether from domestic or foreign sources, is imprudent, he stated.

Mr. Lieber stated that despite excess electrical generating capacity in some regions, even modest but steady growth in America's economy, for example 2.5% per year, and in electricity demand could cause electricity supply problems in some regions, possibly by the early 1990's. Long lead times for power plant construction mean that planning ahead remains critical. Decisions taken now determine the pattern of supply for the 1990's. He noted that the lessons of the years from 1970 to the present suggest that continued reduction of dependence on oil is

desirable over the long term. Long term needs make it important to insure electricity availability. The costs of unanticipated future energy and electricity short fall are so great that it is wise to "insure" by obtaining ample electricity sources well in advance. He stated that it is important not to forget the cost of the two energy shocks in the 1970's. These amounted to some $1.4 trillion in lost economic growth for the industrial democracies, as well as grave problems of unemployment, inflation and economic dislocation.

Mr. Lieber concluded by noting that seen from this perspective, New England Hydro's

proposal to purchase additional Quebec-Hydro electricity seems to represent a prudent judgment in the interests of the New England Region. We concur in this conclusion.

NEPOOL entered into a Firm Energy Contract with Hydro-Quebec on October 14, 1985 under which Hydro- Quebec is committed to deliver to the participating New England Utilities 7 terawatt hours of electricity per year for ten years beginning in 1990. Exhibit 118, Testimony of Robert Bigelow, p. 30; Exhibit 120 (Exhibit to Supplemental Testimony of Robert O. Bigelow) ROB-13, paragraph 2.1.

For the years 1990 through 1996, this 7 terawatt hours per year will be in addition to the 4 terawatt hours per year expected to be delivered under the terms of the Phase I energy contract. Exhibit 143, U.S. Department of Energy Draft Environmental Impact Statement, pp. 1-2.

As noted in the DOE report, the proposed project facilities are necessary to implement the new firm energy contract between NEPOOL and HydroQuebec. The benefits that would accrue to the New England Region as a result of the Phase II Energy Contract include (1) the displacement of 12 million barrels of oil per year that would otherwise be used to generate electricity; (2) a reduction in the cost of electric generation with concomitant reduction in the fuel component of customers' electricity bill; and (3) a reduction of 900 MW in the amount of new, as yet unplanned, generating capacity required to maintain adequate levels of electric reliability in the New England Region. Exhibit 143, pp. 1-2.

The evidence indicates that the displacement of the oil that would otherwise be used to generate electricity will result in annual net fuel savings of approximately $104 million in current dollars in 1990/91, the first power year of the contract, and increased to approximately $588 million in 1999/2000 the last power year of the contract. Net fuel savings were defined as the total fuel savings brought about by the Phase II import minus the payments to HydroQuebec for the Phase II energy. Exhibit 123 (Second Supplemental Testimony of Robert O. Bigelow), pp. 4-5.

In addition to fuel savings, the other economic benefits flowing to New England from the Phase II project will be capacity credits and transmission loss savings. Capacity credits are the economic benefits that will result from the use of Hydro-Quebec energy by New England to defer the necessity for new generating capacity. The interconnection with the Hydro-Quebec system will allow New England to defer the need for new reserve generating capacity that would otherwise be required to insure an adequate supply of electricity. Exhibit 118, pp. 35-36. The evidence indicates that the value of the capacity credits to be $51 million in 1990-93, increasing to $117 million in 1993/94,

and then decreasing gradually to $83 million in 1999/2000. Exhibit 123, pp. 5-6.

The third source of savings as a result of the Phase II contract will be a reduction in transmission system energy losses. With the importation of HydroQuebec energy, the generation dispatch in New England will change, because fossil fuel generators will be turned off. This will result in more efficient loading on the existing ac system and energy losses from the system would be reduced. The evidence indicated that reduction in losses would produce an annual savings of between $2.7 million and $6.4 million during the 1990's. Exhibit 123, p.7.

These three kinds of economic benefits, fuel savings, capacity credits and transmission loss savings, are additive. The evidence indicated that the projected gross annual benefits to New England as a result of the Phase II project will be approximately $108 million in 1990/91, increasing to approximately $677 million by 1999/2000. Exhibit 123, p.8.

The benefits to New Hampshire from the Phase II project will be substantial and New Hampshire participants will receive an additional 5% of the benefits from Phase I and Phase II above its normal allocation for being the host state. Approximately 12.1% of the annual savings expected from the project will flow to consumers in New Hampshire. This percentage consists of the 5% host state share plus 7.1% representing the New Hampshire share of 1980 kilowatt sales. Exhibit 118, p. 33; Transcript, Vol. XV, p. 105: Exhibit 119, p.1.

The evidence indicates that New Hampshire's share of the net annual benefits would amount to a $5 million dollar net cost in 1990/91, a $3 million dollar net cost in 1991/92, and then net annual benefits increasing to $68 million by 1999/2000. Exhibit 123, ROB-25, T.26.

New Hampshire utilities and their customers will benefit from their share of the energy savings, regardless of where the generating units are located that are backed off to take advantage of Hydro-Quebec.

Testimony presented by Roy G. Barbour of the Public Service Company of New Hampshire indicated that, according to his company's most recent projection, the savings to his company would be approximately 214 million dollars over the life of the Firm Energy Contract. Exhibit 142, Testimony of Roy G. Barbour, p.2.

The above discussion demonstrates some of the potential benefits to be conferred on New Hampshire. However, we are concerned with the obligation imposed on PSNH in the nature of the credit enhancement charge. The utilities that have their obligations guaranteed by the equity owners will pay a credit-enhancement charge for their service. This charge has been negotiated and agreed upon because the investment grade equity owners are using their credit to make the Phase II project financeable at reasonable costs. The credit enhancement charge will be based on 80% of the estimated savings generated by the use of the credit of the investment grade equity owners as compared to the cost of the belowinvestment grade participant's raising its own funds. Exhibit 119, pp. 27-29.

The Attorney General correctly analyzed the distribution of economic benefits between New Hampshire and the rest of New England and objected to the imposition of the CEC which

equates to $22.7 Million to the bills of New Hampshire ratepayers. The objection is grounded in the fact that the inclusion of the CEC represents a double recovery for the applicant for the risk of selling entitlements to weaker participants. Such a double recovery is inconsistent with long-standing regulatory policies which price utility commodities at cost. The Attorney General and the applicant have engaged in post hearing conferences to attempt to alleviate the impact of this issue and other issues. Unfortunately, the results of said conference (stipulation filed December 2, 1986) do not include any material pertaining to the CEC. The Commission recognizes that the issue effects New Hampshire ratepayers to the extent that savings from the

financing arrangement as a whole will be reduced for ratepayers of PSNH because of the CEC. The financing arrangement must be reviewed by the Federal Energy Regulatory Commission (FERC). Since the stipulation filed on December 2, 1986 does not mention the FERC proceeding, we conclude that the stipulation does not preclude continued active intervention in this proceeding or any other proceeding where the CEC is an issue, by the Attorney General or the State of New Hampshire. In order to insure that there is no ambiguity on this point, the Commission's Order incorporating the stipulation as a condition of the Certificate will also include language providing that acceptance of the stipulation is consistent with the Commission's interpretation.

While we question the propriety and the fairness of the CEC, we recognize that PSNH and its customers will receive some benefits from the financial arrangements. Mr. Barbour of PSNH testified that even after paying the CEC, a below-investment grade utility would have lower overall financing costs than the utility would have incurred on a stand-alone basis. This is the case because the arrangement provides that 20% of the savings achieved from the financing method in comparison to the stand-alone cost will be flowed back to the below-investment grade participant. The savings that result from the lower financing cost will be passed on to utility ratepayers. Transcript, Volume XVII, pp. 293-294, 231,236.

There are other benefits that flow to New Hampshire utilities and their rate payers from the Phase II project. The evidence indicates that it is anticipated that the construction of the project would result in New Hampshire communities receiving tax dollars totalling over $1.5 million dollars annually, based on 1984 tax rates. Exhibit 119, pp. 4-5.

Also, New England Hydro would pay a business profits tax under RSA Chapter 77-A. The revenues expected from this tax will exceed 600 Thousand Dollars in 1991, the first full year of operations. Exhibit 119, p.5; Transcript Volume 17, p.13.

A final benefit to Public Service Company of New Hampshire will be reimbursement for its portion of a right-ofway that will be occupied by the last 8.5 miles of the DC line. The evidence indicates that this reimbursement will be approximately 500 Thousand Dollars per year and will be treated as a direct reduction in the cost of service to Public Service Company of New Hampshire rate payers. Exhibit 119, p.1.

The evidence further indicates that there are other benefits which the construction of the Phase II facilities could provide, although these potential benefits have not been quantified.

The first potential benefit is that the building of the interconnection between New England and Quebec will create the possibility of additional business between the two parties, beyond what is provided for in the Firm Energy Contract. For example, there is a potential for energy banking under the Phase I agreement, whereby NEPOOL members would transmit relatively inexpensive energy north to Quebec during New England's off-peak period and receive equal amounts of energy back, adjusted for losses, during peak periods when generation costs are much higher. The Phase II facilities would increase the potential for energy banking.

The second benefit is that there is potential for sales associated with seasonal conditions. NEPOOL is a summer peaking system, whereas HydroQuebec is a winter peaking system with

minimum summer loads. Since HydroQuebec therefore should have excess capacity during the summer months for many years to come, summer sales are likely to continue even after the Phase II contract expires.

The third benefit is that there is the potential for energy interchange in the short term. If Hydro-Quebec has additional surpluses of energy, it could sell the surpluses to New England at a percentage; current Hydro-Quebec policy would place it around 80 percent of New England's avoided fuel cost.

The fourth benefit is that the individual utilities within New England, or NEPOOL on behalf of its members, would have the opportunity for negotiating the purchase of unit entitlements from Hydro-Quebec. Exhibit 118, pp. 39-40; Exhibit 119, p. 20; Transcript, Vol. XVII, p. 163.

The final benefit is that the transmission line will open a means for New England to do future energy business with Hydro-Quebec after the Phase II contract expires. Even though the nature of future contracts that would be economically beneficial to both parties remains to be negotiated, Quebec has a substantial amount of hydro potential that can be developed for future needs. The evidence demonstrated that interconnections have proven profitable to both parties in other instances, and it is likely that this interconnection will see much profitable use in the future. Exhibit 135, Testimony of M. Bernard Guertin, pp. 8, 13-14.

The applicant's evidence also presented an economic cost/benefit analysis, an analysis of the costs of HydroQuebec energy compared with other energy sources and a sensitivity analysis.

The evidence presented projected the net benefits from the project by calculating and deducting the annual costs, or carrying charges, including capital costs, financing costs, depreciation, operating and maintenance costs, local property taxes, and federal and state income taxes. Exhibit 118, pp. 40-41.

These projections, based on an expected capital cost of $547 million and assuming a thirty-year depreciation schedule, indicate the estimated carrying charges decreasing from approximately $139 million in 1990/91 to approximately $112 million in 1999/2000. Exhibit 123, p.9.

The expected annual costs were subtracted from the expected annual benefits to project the annual net benefits. This projection is negative for the first two years of the project, $31 million in 1990/91 and $25 million in 1991/92, but thereafter become positive in 1992/93 and increase to $565 million by 1999/ 2000. Exhibit 123, p.10.

The evidence presented also followed another approach to indicate the economic attractiveness of the project by comparing the cumulative present worth of the benefits and costs after ten years of operation and establishing a benefit/ cost ratio. On this basis, a benefit/cost ratio of 1.0 indicates that the cumulative present worth benefits and costs would be equal after ten years. Accordingly, the higher above 1.0 the ratio is, the more significant the benefits are.

Under this approach, on a cumulative present worth basis and using an expected capital cost of $547 million, project benefits are $1848 million, project costs are $762 million, making the benefit cost approximately 2.4. On this basis, the project is attractive from an economic

standpoint. Exhibit 123, p.10; Exhibit 123, ROB-25, p. 28.

New England Hydro's evidence also presented another way to evaluate the benefits of the Phase II project by comparing the cost of energy to be purchased from Hydro-Quebec with the cost of energy from new generation sources that might be available in New England. Three types of substitute generation sources were compared as representative options under current economic projections. Included were a gas turbine burning #2 oil, a combined cycle plant burning #2 oil, and a coal plant, and a plant such as Ocean State Power, which is a gas-burning combined cycle plant for which several NEPOOL participants had recently signed unit power contracts. Exhibit 123, pp. 17-18.

The analysis was conducted on a year-by-year basis throughout the 1990's, assuming that each source would be installed in 1990. For each source, including Phase II, the analysis projected the expected total cost of electrical energy at the source delivery point, including costs to support and recover capital investment, fuel costs, and both fixed and variable operation and maintenance costs. The analysis used economic assumptions consistent with those in the May 1986 economic analysis. Exhibit 123, p. 18.

The results of this analysis showed the total cost to New England consumers for Hydro-Quebec Phase II energy is substantially less than the cost of energy from any other new source that might be considered by New England utilities as an alternative to that energy. This is in spite of the fact that the projected cost of energy from these other sources does not include the cost of associated transmission facilities required to deliver the energy, whereas the cost of the Phase II project does include these transmission facilities. Exhibit 123, pp. 18-19; Exhibit ROB-28.

The May 1986 analysis used to calculate the benefits discussed above was based on the March 1986 Data Resources Inc. (DRI) fuel price forecast used by NEPOOL for fuel forecasting purposes. To allow for the possibility of variations from that forecast, project benefits were also computed for three sensitivity fuel price scenarios in addition to the base case. Except for the fuel price variation, all of the economic assumptions remained constant in each scenario.

One of the variations used assumed fuel prices 25 percent higher than DRI projections. The other two variations assumed fuel prices 25 percent and 50 percent below the DRI projections. For the +25 percent case, the total project benefits are $134 million in 1990/91, increasing to $814 million in 1999/2000. For the -25 percent case the total benefits increase from $82 million in 1990/

91 to $539 million in 1999/2000. For the -50 percent case, total benefits increase from $57 million in 1990/91 to $402 million in 1999/2000. Exhibit 123, p. 12.

By subtracting the costs from the total benefits associated with each fuel price scenario, the net benefits for each case were identified. For the +25 percent case, after a net cost of $5 million in 1990/91, net benefits increase to $702 million in 1999/2000. For the -25 percent case, after a net cost of $57 million in 1990/91, the net benefits increase to $427 million in 1999/2000. For the -50 percent case, after a net cost of $82 million in 1990/91, the net benefits increase to $290 million in 1999/2000. Exhibit 123, pp. 12-13.

On a cumulative present worth basis, even with fuel costs at only half those projected in the DRI forecast, the benefit/cost ratio is approximately 1.6. At a range of 25 percent around the expected costs, the benefit/cost ratio is between 2.0 and 2.9. Exhibit 123, p. 13.

Mr. Bigelow indicated that studies were also done to determine net benefits under a variety of project cost scenarios. One of the tests assumed project costs 25 percent higher than the expected $547 million, and the other assumed project costs 25 percent lower. These studies indicated that the benefits would outweigh the costs for both New England and New Hampshire under any of the scenarios. Exhibit 123, p. 14; Exhibit ROB-26.

On a cumulative present worth basis, with project costs 25 percent higher than expected, the benefit/cost ratio is 1.9. With project costs 25 percent lower than expected, the benefit/cost ratio is 3.2. Exhibit ROB-25, p. 28.

The worst-case scenario in terms of net project benefits would be one that uses the most extreme combination of low fuel prices and high project costs. Exhibit ROB-25 shows a cumulative present worth for the +25 percent capital cost sensitivity of $951 million in 1990 dollars for the ten-year contract life, and a comparable economic benefit for the -50 percent fuel cost sensitivity of $1,198 million, for a benefit/ cost ratio of 1.3 even with a combination of all worst-case sensitivity assumptions. Exhibit 123, Exhibit ROB-25, p. 28 and p. 31.

One other variable that could affect net project benefits is financing. The New England Electric System will initially own all of New England Hydro's common stock. Upon receipt of all major Phase II project approvals and licenses, New England Hydro will issue additional common stock to other purchasers so that the New England Electric System will own 51 percent of the outstanding common stock, and other investment-grade New England utilities will own 49 percent. Some below-investment-grade utilities will be participating in the Phase II project, but they will not have any equity in New England Hydro, and each below-investment-grade utility will have its share of the debt guaranteed by the investmentgrade owners unless it can arrange to have its debt guaranteed by a bank or other institution. Under this arrangement, lenders should be satisfied that all of the project's debt is either a direct obligation or a guaranteed obligation of an investment-grade utility or a financial institution and that all of the equity is being supplied by investmentgrade utilities. Exhibit 119, pp. 25-27.

New England Hydro plans to finance the Phase II construction costs through a combination of equity funds supplied

by its equity owners and debt funds from outside investors. The project will be funded approximately 60 percent by debt and 40 percent by equity. During construction, debt funds are expected to be provided through arrangements with banks or other lenders. Upon completion, New England Hydro expects to seek some form of longterm debt financing. Exhibit 119, p. 30.

Mr. Bigelow testified that the debt for the portion of New England Electric Transmission Corporation has a term of twenty years and an interest rate of 8.8 percent. New England Hydro's financial projection is that it will be able to obtain thirty years financing for the Phase II project, because its support agreements provide greater assurance of the financial soundness of the

project than do those for the Phase I project. This is the reason that the updated economic analyses reflect a thirty-year depreciation period for the Phase II facilities. Exhibit 123, p. 15.

Notwithstanding this, Mr. Bigelow indicated that for the sake of comparison, the May 1986 analysis was recomputed using the more conservative tenyear depreciation period for the project and, except for the depreciation period, all economic assumptions were kept the same as in the base case analysis.

Mr. Bigelow concluded that even using the ten-year depreciation, the Phase II project still shows significant positive annual benefits after the first few years of operation. By the fourth year of operation, annual net benefits would equal $107 million, and they would increase to $558 million by 1999/2000. Moreover, the cumulative present worth of project benefits would be $1,848 million and the cumulative present worth of project costs would be $901 million, yielding a cumulative present worth of net benefits of $947 million and a benefit/cost ratio of 2.1. In less than seven years on a cumulative present worth basis, total project benefits would exceed total project costs over the assumed ten-year depreciation period. Exhibit 123, p. 16; Exhibit ROB-27.

Mr. Bigelow further testified that, even with a combination of worst-case assumptions using the ten-year depreciation, the project is economically beneficial. The ten-year cumulative present worth in 1990 dollars shows a capital cost of $1,126 million at the -25 percent project cost sensitivity, compared to economic benefits at the -50 percent fuel cost sensitivity of $1,198 million, for a benefit cost ratio of 1.1. He concluded that even under the worst-case assumptions, the project has positive economic benefits. Exhibit 123, ROB-27, p. 6; Exhibit ROB-25, p. 31.

Another issue that received particular attention, was that of the fuel price forecast and the effect that variations from the projected prices might have on the extent of the benefits produced by Phase II. Counsel for the public questioned Mr. Bigelow regarding differences between the DRI fuel forecast that New England Hydro used and a projection that was produced internally by New England Electric System and used by Granite State Electric Company in an unrelated proceeding before the Commission. The New England Electric System forecast had shown fuel prices in the latter part of the 1990's being lower than those included in the DRI forecast. Transcript, Vol. XV, pp. 154-157.

It was pointed out that fuel prices would have to drop 72 percent below the March 1986 DRI fuel forecast in

order for the benefit/cost ratio to decrease to the "break even" point of 1.0. Exhibit 123, p. 16. It was the consensus of all the utilities that make up NEPOOL that the DRI forecast should be used. It was explained that the difference between the two forecasts results from the difficulty of predicting oil prices accurately and the broad spectrum of view points on the subject. Transcript, Vol. XV, pp. 158-163.

Professor Robert J. Lieber of Georgetown University, had testified regarding the extreme difficulty of predicting oil prices. Exhibit 117, pp. 10-14.

Mr. Bigelow explained that the New England Electric System forecast was within the range of scenarios covered by New England Hydro's sensitivity studies, which showed substantial

benefits from the project even at lower fuel costs. The Phase II project, he testified, clearly would still produce substantial benefits even if the New England Electric System forecast were to prove correct. Transcript, Vol. XV, pp. 160-161, 164-166.

Based upon an analysis of the evidence presented, and our concerns regarding the credit enhancement charge, we find that the proposed facility will not adversely affect economic factors.

One final matter should be considered. Issues were raised during the hearings concerning the impact of Phase II on Public Service Company of New Hampshire and, through it, on its ratepayers. These issues focused on the fact that PSNH, in its own evaluation of the project benefits, did not include a net economic benefit to itself from the capacity credits associated with the project, although New England Hydro contended that the capacity credits would be of substantial value to PSNH since it would have an assured market for any excess capacity with NEPOOL due to NEPOOL's projected need for capacity beginning in the 1992-93 power year. When the pool has such a capacity shortage, a market is assured for PSNH if it is in an excess capacity position. However, it was noted that the support payments for the project, being highest in the early years when the project's economic benefits are lowest, could result in the project having a net cost to PSNH during the first few years of the project, which coincide with a time period when rate increases anticipated due to Seabrook would have their greatest impact on PSNH's ratepayers.

These issues were addressed in the Attorney General's brief and included in the post hearing conference and resulted in a stipulation for the purchase of capacity credits. We find the stipulation, as presented will be of benefit to New Hampshire and its ratepayers and we accept it and make it a condition of the certificate to be issued. The stipulation is acceptable to the Commission and is attached hereto as Attachment 1.

The question of reallocation of the 5% host-state bonus is not addressed. The applicant views such a reallocation as an issue to be addressed, if at all, by the New Hampshire participants and their regulators, and takes no position on the matter.

The Commission agrees that this is a question for the State to determine. Since the 5% allocation is to the State and is not specific to a particular utility or franchise area, the Commission finds that the State, specifically this Commission, has the authority to determine or change the allocation of the 5% share should it elect to do so in the future.

[4] The Commission finds that the

Project is required to meet the present and future need for electricity. Economic analyses demonstrate that, over the entire range of project capital costs being used for financial planning purposes, there are significant economic benefits associated with proceeding with the Hydro-Quebec Phase II Project. Even if fuel prices were to fall significantly below the assumed March 1986 projection by DRI the Phase II Project would still provide significant economic benefits to New England and to New Hampshire. Finally, energy delivered under the Phase II Agreement at the price paid to Hydro-Quebec, plus transmission costs, is significantly lower than any other option we now see for new sources of power. Exhibit 123, pp. 19-20.

We find that the Phase II project subject to the conditions imposed is required to meet New Hampshire's present and future need for electricity.

B. The Proposed Facility Will Not Adversely Affect System Stability and Reliability

One of New England Hydro's witnesses, Robert H. Snow, Manager of the Planning and Computer Operations Department of the New England Power Service Company, one of the New England Electric System affiliates, testified on the issue of system reliability and stability.

Mr. Snow defined system reliability as that quality of a system which allows it to function effectively during normal operation and continue to function effectively during and following a disturbance, interruption, or failure of one or more of its components. Exhibit 25, Testimony of Robert H. Snow, p. 29.

There are standards which are used for the basis of drawing conclusions regarding system reliability. NEPOOL has adopted certain standards and these are set forth in a document which is attached to Mr. Snow's testimony as Exhibit RHS-5.

For the transmission system, these standards require that all equipment must operate within normal capacity limits when there is no disturbance, and must operate within acceptable emergency limit following any reasonably expected contingency.

They also require that the transmission system be designed so that loss of critical elements of the system will not adversely affect the stability of the bulk power supply system. Exhibit 35, pp. 29-30.

Mr. Snow described how the effects of the proposed facility on system reliability are evaluated. The response of the system, including the proposed new facility, to various disturbances or interruptions, called "Contingencies" is tested using a computer analysis known as electric power flow, or load flow study.

These studies are typically carried out to help determine what transmission system improvements, if any, are required in response to the addition of the proposed new facility, in order to assure the continued reliability of the system.

Load flow studies consist of detailed computer simulations of the behavior of the electrical system, both under normal conditions and with certain portions of the system out of service. Exhibit 35, p. 30.

Load flow simulations model electric loads, generating stations, transmission lines, and a variety of more specialized

system components such as phase shifters and transformer tap changers.

The information gained from these analyses include steady-state power flows in all parts of the system and voltage levels and all system buses and allows them to draw conclusions regarding system reliability.

According to Mr. Snow's testimony, the load flow studies indicated that certain contingencies would result in power flows in excess of the short-time emergency capabilities of the system.

These results demonstrated the need for additional facilities to ensure system reliability. The New 345 kV ac line from Sandy Pond to Millbury and the new 345 kV ac line from Millbury to Medway were included in the project specifically to respond to these requirements. Exhibit 35, pp. 33-35.

Mr. Snow testified further that load flow studies indicated system reliability could be maintained with the addition of these facilities, and no additional transmission facility requirements were identified. Exhibit 35, p. 35.

Mr. Snow also testified that in order to determine whether disturbances that may occur from time to time on the electrical systems would cause instability, or loss of synchronism, transient stability testing was conducted. The transient stability tests showed that a new 345 kv ac line from Sandy Pond to Millbury would be needed to maintain stability, if the converter terminal was to be located at Sandy Pond. This reinforced the conclusions of the load flow studies which showed that the line also would be needed to prevent overloads for certain contingencies. He indicated that tests also demonstrated a need for discontinuance of high-speed reclosing schemes on some ac lines near the converter terminal and for the use of independent pole tripping on some 345 kv ac circuit breakers. Exhibit 35, pp. 40-42.

The evidence establishes that New England Hydro's plans and cost estimates for the Phase II project include provisions for taking all steps that have been identified, as testified to by Mr. Snow, as necessary to ensure system reliability and stability.

[5] On the issue of system stability, Mr. Snow testified that the purpose of system stability testing is to determine whether expected disturbances on the electrical system will cause instability, or loss of synchronism, and to identify any necessary corrective measures.

The possible consequences of instability, or loss of synchronism, include permanent damage to generators and wide spread loss of electrical service to customers for a long period of time. Mr. Snow described the stability testing that was conducted and identified the additional bulk AC transmission system facility requirements which result from the load flow studies and stability tests. These were set forth in Exhibit RHS-21 attached to Mr. Snow's testimony.

Evidence was also presented on whether the Phase II project might adversely affect the reliability or stability of neighboring bulk power supply systems, even though there are no adverse effects in New Hampshire or New England. Transcript, Vol. XVII, pp. 41-65, 98-106, 226-229. (Testimony of Robert O. Bigelow)

New England Hydro and HydroQuebec recognize this concern, and a series of studies, some of which have been completed, is under way to determine what measures, if any must be taken to avoid such stability and

reliability problems. Exhibit 140 (Status Report #9).

Mr. Bigelow testified that the concern arises because, with the addition of the Phase II facilities, there will be five different facilities transmitting power from Hydro-Quebec into the northeastern United States—one into New York, two into Vermont, and two into New Brunswick (which is electrically tied into Maine with an ac transmission line). The total transfer

capability over those lines will be 3,900 MW. This raises the possibility that a major disturbance on the Hydro-Quebec electric system could cause the loss of 3,900 MW simultaneously, resulting in a serious regional disturbance in the northeastern United States. To avoid this possibility, Mr. Bigelow noted that HydroQuebec and NEPOOL are committed to taking steps to ensure that no single contingency would cause the simultaneous loss of more than 2,000 MW. Transcript, Vol. XVII, pp. 55, 101-102.

Hydro-Quebec and NEPOOL have identified and are studying possible ways of achieving this goal. According to Mr. Bigelow's testimony, the preferred option at this point is known as the dynamic isolation plan, or in his terminology, the "trigger-happy breaker" plan. Under this plan, the Phase II facilities with the generators serving them would be automatically separated from the rest of the Hydro-Quebec system upon the detection of a major disturbance on the Hydro-Quebec system, thus ensuring their continued service in such an event. Transcript, Vol. XVII, pp. 56-57. See also Exhibit 91, Dynamic Isolation Scheme and Alternatives.

Mr. Bigelow testified that the dynamic isolation scheme would have redundant circuit breakers so as not to be dependent on a single set of equipment. Whether any kind of additional redundancy in the form of another back-up plan is needed is under consideration. Transcript, Vol. XVIII, pp. 46, 64.

According to Mr. Bigelow's testimony, Hydro-Quebec and NEPOOL are also studying other possible ways of avoiding the simultaneous loss of more than 2,000 MW, and both parties are committed to implementing a plan that will maintain system reliability on the interconnected systems in the United States. Paragraph 8.1 of the Firm Energy Contract, Exhibit 120 at ROB-13, requires Hydro-Quebec to construct, at no cost to the New England utilities, any facilities on its transmission system that are required to maintain system reliability on the interconnected systems in the United States. Pursuant to this requirement, Hydro-Quebec is committed to implementing the dynamic isolation plan, unless some other plan is found to be more desirable, by 1990, when the Phase II system is expected to begin operating. Exhibit 135, Testimony of M. Bernard Guertin, pp. 10-11; Transcript, Vol. XV, pp. 125-126, Testimony of Robert O. Bigelow.

Mr. Bigelow testified further that the inter-regional reliability studies are also considering the effect on neighboring systems of a sudden loss of the 2,000 MW Phase II interconnection. Although these studies have not been completed, Mr. Bigelow indicated that there is no reason to expect that they will indicate the need for costly additions that would affect the economic viability of the project. Rather, it is expected that the most that might be required would be establishing operating procedures governing the import levels or timing of energy deliveries to reduce load flows under certain operating conditions.

Such timing changes could have a small effect on fuel savings, but it is unlikely that there will be a large impact. Transcript, Vol. XV, pp. 43-66.

A review of the testimony presented by Mr. Snow and Mr. Bigelow indicates that the effect of completing Phase II raises the possibility that a major disturbance on the Hydro-Quebec electric system could cause the loss of 3900 MW in the northeastern United States. As a result of the foregoing, the neighboring power pools, along with HydroQuebec and NEPOOL, are

conducting inter-regional reliability studies considering the effect of a sudden loss of the Phase II Hydro-Quebec inter-connection. Of the 11 studies being performed only 4 have been completed.

Hydro-Quebec and NEPOOL are committed to taking steps to ensure that no single contingency would cause the simultaneous loss of more than 2000 MW.

Although the preferred option is to design a plan referred to as the dynamic isolation plan, the evidence suggests that this plan is in the conceptual stages of development. In the absence of evidence supporting a finding that a successful plan can be designed, adopted and implemented, the Commission would be speculating about the simultaneous loss of a substantial amount of power which would/could potentially cause brown-outs or severely curtail the amount of power that could be transferred over this line, when it is most needed. Such a disaster has a potential to cause substantial economic damage to the area.

Currently, the Commission is aware that reliability restraints imposed by a voluntary agreement between neighboring pools, Hydro-Quebec and NEPOOL, have curtailed Phase I's 690 MW down to 300 MW subject to the neighboring pools waiving their priorities. The Commission is also aware that the HydroQuebec System went down twice in the last 30 days.

The Commission is confident that the technology and expertise exists to solve the issue and that Hydro-Quebec is prepared to expend the funds necessary to accomplish a satisfactory result, but we cannot give final approval to the project until such time as the Commission is assured that a properly designed plan has been developed and tested. The Commission acknowledges that the transmission line is to be a major conduit for power to flow from Canada to New England and does not want to destroy the project because of one component in the total review process. However, critical studies have not been completed. Cross-examination of Witness Snow disclosed that at least six of the eleven studies undertaken for or by the NYPP/NEPOOL/HQ/NB Steering Committee have not been completed. As two specific examples, Exhibit No. 140 shows that Study #6 (Overall Reliability Review of Final Plans) is expected to be completed by November 1986, yet its own completion must be preceded by Study #5 (the MEN Future Study) which will not be completed until the first or second quarter of 1987. Additionally, Exhibit No. 140 shows that a detailed multi-terminal model is required for the conduct of Study #4 (Analysis of the Interaction of HQ HUDC Interconnections (1990 System)), and that model is not yet avail able.

Therefore, the Commission will retain jurisdiction over this proceeding and will condition the approval of the requested certificate to require the applicant to submit to the Commission a detailed plan that secures the

reliability and stability criteria so that the Commission can be assured that the reliability and stability criteria adopted and implemented will meet the approval of neighboring pools and not restrict the flow of the 2000 MW's contracted for.

We are satisfied that the evidence and testimony presented on the issue of reliability and stability demonstrate that the adverse effects on the stability and reliability of the New England System can be eliminated, and that possible adverse effects on neighboring systems can be

avoided through measures that will not involve significant cost in relation to the benefits to be derived from the project.

Accordingly, we find the construction of the proposed facilities, upon approval of the Commission of an appropriate reliability plan, will not adversely affect system stability and reliability.

IV. CONCLUSIONS

For the reasons set forth in the foregoing report, this Commission finds that the proposed facility is required to meet the present and future demand for electrical power and, subject to a suitable plan approved by the Commission, will not adversely affect system stability and reliability and economic factors. Since we are bound by the findings of the Bulk Power Facility Site Evaluation Committee as set forth in Appendix A to this Report, we also find that the proposed facility will not unduly interfere with the orderly development of the region and will not have unreasonable adverse effects on aesthetics, historic sites, air and water quality, the natural environment and the public health and safety.

Accordingly, by the following Order, this Commission will issue a Conditional Certificate of Site and Facility for a 450 kV DC transmission line of approximately 121 miles in length along existing transmission rights of way between Monroe, New Hampshire and the New Hampshire/Massachusetts State Line. We will also add as a condition to the certificate the seven conditions in the Findings of the SEC as set forth in Attachment 2 to this Report and Order.

Finally, we will also include the findings by the Bulk Power Facility Site Evaluation Committee to the Wetlands Board and Water Supply and Pollution Control Commission and to the Commissioner of Public Works and Highways for the issuance of the permits and licenses as described and set forth in Attachment 2.

ATTACHMENT 1

STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION BULK POWER SUPPLY FACILITY SITE EVALUATION COMMITTEE

New England Hydro-Transmission Corporation DSF 85-155

Application of New England HydroTransmission Corporation for a Certificate of Site and Facility to Construct, Operate and Maintain an Electric Transmission Line in Grafton, Merrimack, Hillsborough, and Rockingham Counties

STIPULATION RELATING TO ISSUES ARISING UNDER RSA 162-F:8(II)(a)

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New England Hydro-Transmission Corporation, the Applicant herein, (hereinafter the "Company") and the Attorney General of The State of New Hampshire, a statutory party to this proceeding pursuant to RSA 162-F:9, (hereinafter "Attorney General"), submit the following stipulation to the Public Utilities Commission ("PUC") and Bulk Power Supply Facility Site Evaluation Committee ("SEC"):

1. This Stipulation (together with the Stipulation dated September 16, 1986) is submitted to the PUC and SEC by the Company and Attorney General in full and complete settlement

between them of all issues that have been or could have been raised in this proceeding. Company and Attorney General are satisfied that these Stipulations represent a reasonable resolution of the issues presented by this proceeding based upon the record and the evidence before the PUC and SEC herein.

The Attorney General agrees that the Company may be granted a Certificate of Site and Facility as requested in its application, as amended, subject to the conditions set forth in Exhibit A attached hereto. This Stipulation fully satisfies and constitutes the "further conditions relating to issues arising under RSA 162-F:8(II)(a) and as may be set forth in a further stipulation reached between the Company and Attorney General to be submitted to the SEC and PUC," referred to in paragraph 1 of Stipulation dated September 16, 1986, between Company, Attorney General and the Powerline Awareness Campaign, filed in this proceeding and accepted and incorporated by reference in the Findings of the SEC dated October 8, 1986, and for the purposes of this proceeding satisfies the Attorney General as to all issues raised and recommendations made in his brief and reply brief.

2. Company shall, through its affiliate, New England Power Company, make the offer to Public Service Company of New Hampshire set forth in Exhibit A hereto.

Respectfully submitted,

NEW ENGLAND HYDROTRANSMISSION CORPORATION
By Its Attorneys:
ORR AND RENO PROFESSIONAL
ASSOCIATION
One Eagle Square, P.O. Box 709
Concord, New Hampshire 03301-0709

By: Richard B. Couser

STEPHEN E. MERRILL,
ATTORNEY GENERAL

By: Larry M. Smukler
Assistant Attorney General

DATED: December 2, 1986

EXHIBIT A

New England Power Company ("NEP"), on behalf of New England Hydro-Transmission Corporation ("NEH"), offers, to purchase Public Service Company of New Hampshire's ("PSNH's") Hydro-Quebec Interconnection Capability Credits in the HydroQuebec Phase II project (the "Project"), as such credits are defined in the New England Power Pool Agreement, dated September 1, 1971 and as amended from time to time, upon the following terms and conditions:

(1) NEP will hold this offer open to PSNH until and including the 60th day after the date of the New Hampshire

Public Utilities Commission order issuing or denying a Certificate of Site and Facility in DSF 85-155. lf said 60th day is a Saturday, Sunday or legal holiday, the offer shall remain open through the next business day following.

(2) PSNH may accept this offer by agreeing to sell all or any part of such credits ("accepted credits").

(3) This offer is conditional upon the commercial operation of Seabrook I. If this offer is accepted by PSNH for all or any part of such credits, PSNH shall sell and NEP shall purchase the accepted credits effective upon the commercial operation of Seabrook I, for the time period set forth in subparagraph (3)(a) or (3)(b) below, whichever is applicable.

(a) If Seabrook I goes into commercial operation before the Project is in commercial operation, PSNH shall sell and NEP shall purchase the accepted credits for a ten-year period commencing on the date of commercial operation of the Project.

(b) If Seabrook I goes into commercial operation after, but no later than ten years from, the date the Project is in commercial operation, PSNH shall sell and NEP shall purchase the accepted credits for a period commencing on the date of commercial operation of Seabrook I and ending on the tenth anniversary of the Project's commercial operation date.

(c) If Seabrook I goes into commercial operation subsequent to the tenth anniversary of the Project's date of commercial operation, this offer and any purchase agreement made pursuant hereto shall be null and void.

(4) The price for the accepted credits shall be $75.50 per kilowatt-year to be paid to PSNH on a monthly basis commencing on the first day of the month following commercial operation of the Project or commercial operation of Seabrook I, whichever is later.

(5) NEP may make the terms of its offer or the purchase agreement available to other Project participants. NEP may assign the offer to purchase or the purchase agreement to any other subsidiary or affiliated company of the New England Electric System.

(6) This offer is further subject to NEP and PSNH mutually agreeing to such other terms and conditions as may be necessary to effectuate the purchase. This offer is also subject to regulatory approval of the purchase agreement.

ATTACHMENT 2

FINDINGS OF THE BULK POWER FACILITY SITE EVALUATION COMMITTEE IN DSF-85-155

I. BACKGROUND AND PROCEDURAL HISTORY

New England Hydro-Transmission Corporation (New EngIand Hydro), the Applicant in these proceedings, had its application for a certificate of site and facility for the New Hampshire portion of the Phase II dc transmission line approved for filing with the New Hampshire Public Utilities Commission (Commission) and the New Hampshire Bulk Power Supply Facility Site Evaluation Committee (SEC and Committee) on August 8, 1985.

New England Hydro is a New Hampshire Corporation formed on December 27, 1984. It is part of the New England Electric System and was organized for the purpose of owning,

constructing, operating, maintaining, and leasing electric transmission facilities associated with Phase II of the New

England/Hydro-Quebec project. The subject of these proceedings was the New Hampshire portion of the project, which was designed to import Canadian hydro-electric energy into New EngIand. Under Phase I and Phase II of the project, hydro-electric energy produced by Hydro-Quebec, the provincial electric utility of the Province of Quebec in Canada, will be purchased by participating member companies of the New England Power Pool (NEPOOL) for distribution of customers in New England. The Pool consists of participating utilities in New England and together, its members own of [sic] 98% of the generating capacity in New England and most all of the transmission network. Exhibit 118 (Testimony of Robert O. Bigelow) pp. 12-13.

The New Hampshire portion of Phase I of the project was certified by the Committee and the Commission in DSF 81-349, by the Commission's Fourth Supplemental Order No. 16,060, issued December I8, 1982. The Findings of the Committee in Phase I were made on December 10, 1982 and incorporated into the Commission's Order. Exhibit 118, p. 22.

Phase I of the project consists of approximately 107 miles of I 450 kilovolt (kv) direct current transmission line, of which about 49 miles are in Quebec, about 52 miles are in Vermont, and 6.1 miles are in New Hampshire.

The direct current (dc) power transmitted by the line is changed to alternating current (ac) power and vice versa by converter terminals located at the northern end of the line in DesCantons, Quebec, and at the southern end of the line at the Comerford terminal in Monroe, New Hampshire.

Under New England Hydro's proposal, the Phase II facilities would consist of an extension of the Phase I dc transmission line from Monroe, New Hampshire, to Groton, Massachusetts. In addition they would include:

1) An 1800 MW converter terminal at the southern end of the line at a site adjacent to the existing Sandy Pond 345 kv dc substation between Groton and Ayer, Massachusetts;

2) A 345 kv ac transmission line from the Sandy Pond substation to the existing Millbury 345 kv ac substation in Millbury, Massachusetts; and

3) A 345 kv ac transmission line from the Millbury substation to the existing 345 kv ac substation in Meadway, Massachusetts. Exhibit 35 (Testimony of Robert H. Snow) pp. 7-8.

The energy contract in Phase I calls for Hydro-Quebec to offer 3 terawatthours (twh) to NEPOOL participants. One terawatthour equals one million megawatthours of electricity. Although the Phase I converter terminals have a nominal design capacity of 690 megawatts (mw), the transmission line in that phase was designed to be able to transmit 2000 mw economically, in anticipation of possible additional purchases of energy from Hydro-Quebec. Exhibit 35, pp. 5-6.

Under a Firm Energy Contract entered into between Hydro-Quebec and the participating

members of NEPOOL, on October 14, 1985 7 terawatthours of energy per year will be made available by Hydro-Quebec to the NEPOOL participants in addition to the energy purchased under the Phase I contract. Exhibit 120, ROB-13, 2.1. This contract also provides for the construction of the Phase II facilities in order to allow

the transmission of the additional amount of energy.

The entire length of the transmission line proposed in Phase II in New Hampshire will be along existing utility rights-of-way or on utility-owned property. It will begin near the Comerford terminal in Monroe, New Hampshire and will first extend from the terminal about 0.8 mile on utility-owned property to an existing right-of-way already occupied by two 230 kv ac lines and then, will continue about 111.7 miles along this right-of-way to a point on the right-of-way in the Town of Hudson, New Hampshire known as Sandy Pond Junction.

South of Sandy Pond Junction, the dc line will depart the 230 kv right-ofway, along with the existing 345 kv ac line, and continue on another right-ofway for about 8.5 miles to the New Hampshire/Massachusetts state line in Hudson, New Hampshire. From there, the dc transmission line will continue in Massachusetts as previously described, to Millbury and Medway, Massachusetts. Exhibit 120, p. 24.

In its Application, New England Hydro filed the following petitions with the Commission seeking a ruling on them at the same time it rules on the application for a certificate of site and facility:

1) A Petition for a License to Construct and Maintain a Transmission Line Crossing Public Waters of the State and Land Owned by the State;

2) A Petition for Permission to Construct a Transmission Line Traversing or Paralleling the Tracks and property of Railroads; and

3) A Petition to Engage in the Business of a Public Utility and to Begin Construction of Transmission and Related Facilities in Certain Towns.

In addition, New England Hydro in accordance with the provisions of RSA 162-F:7, IV, included in its Application information to meet the requirements of other individual state agencies and departments having jurisdiction over the proposed construction of the Phase II dc line in New Hampshire. These included:

1) A Petition to the Commissioner of Public Works and Highways to Cross State-Maintained Highways with Overhead Electric Conductors;

2) An Application to the Wetlands Board and/or the Governor and Council and the Water Supply and Pollution Control Commission for Permission under RSA Chapters 483A, 482:41-e to-i, 488-A and 149:8-a Relating to Filling, Dredging or Construction of Structures in State Waters and Wetlands.

Subsequent to filing the Application, New England Hydro filed three amendments to it. They were as follows:

1) On January 6, 1986, it filed a Partial Withdrawal of and Amendment to Application. The

purpose of this amendment was to withdraw its application only to the extent that the Application requested certification of an 8.1 mile long Alternate Network to be located in the Towns of Hudson, Windham, and Pelham.

2) On February 21, 1986, it filed a Motion to Amend Application. The purpose of this Motion was to conform appendices E and F of the Application, which identify the wetlands

and waters to be crossed by the Phase II dc line to the evidence presented in the proceedings. The Committee accepted this amendment on May 22, 1986.

3) On August 12, 1986, it filed another Motion to Amend Application. The purpose of this Motion was to conform Appendices H and I of the Application to the evidence presented in the proceedings. The amendment of Appendix H was submitted to cover the possibility that New England Hydro might not expand the Phase I ground electrode as originally proposed in Appendix H, but might instead extend the dedicated metallic neutral return conductor from Littleton, New Hampshire to Norton, Vermont, along the Phase I transmission structures. The Amendment of Appendix I reflected updated cost estimates for the Phase I project. The Committee accepted this amendment on August 14, 1986.

As required by the provisions of RSA 162-F:7, I (Supp. 1985), the Committee held public informational hearings in Merrimack County on October 3, 1985; in Hillsborough County on October 10, 1985: in Rockingham County on October 17, 1985; and in Grafton County on October 24, 1985.

Other participants in the proceeding were an assistant attorney general as counsel for the public, representing the public and its interests throughout the proceeding as provided for the RSA 162-F:9, and one intervenor, the Powerline Awareness Campaign (PAC), which was granted permission to intervene on January 21, 1986 in accordance with the provisions of N.H. Admin. Reg. Bul 202.01. There was no other intervenors. [sic]

Seventeen days of public adversarial hearings were conducted jointly by the Committee and the Commission between February 5, 1986 and August 14, 1986. Fourteen witnesses testified on behalf of New England Hydro regarding various aspects of the Phase II project during the hearings. Counsel for the public and counsel for the intervenor, PAC, cross-examined these witnesses.

The Committee called as a witness, Dr. Michael G. Bissell, who testified about potential health effects of the project, and the Commission called as a witness, Roy G. Barbour, a vice president of Public Service Company of New Hampshire, who testified about the need for electricity and the benefits of the project to its customers. No witnesses were called by the intervenor or by counsel for the public.

On October 2, 1986, the Committee met in a public meeting in Concord, New Hampshire, and eight members of the Committee who were present unanimously voted to make the findings required by RSA 162-F:8, and to incorporate into and make a part of these findings, the seven conditions set forth in Stipulation dated September 16, 1986 filed by New England Hydro, PAC and the Attorney General, with certain modifications which are hereinafter set forth, and to

transmit these findings to the Commission as provided for in RSA 162-F.

II. FINDINGS

One preliminary matter on which a finding must be made, before taking up the two main findings which the SEC must make under the statute, is

whether the proposed 121 mile 12K450 kv dc facility should require a certificate of site and facility because of a substantial environmental impact. RSA 162-F:2(c) defines a Bulk Power Supply Facility, among other definitions, as a line in excess of 100 kilovolts (kv) which the Site Evaluation Committee or Commission determines should require a certificate because of a substantial environmental impact. The proposed facility is more than 100 kv in design and goes for its entire length over existing transmission rights-of-way.

This matter was not referred to in New England Hydro's Application and was not brought up during the proceedings. However, the SEC discussed this same matter in DSF 81-349, and consistent with our findings in that docket with reference to Phase I of this project, for the purposes of these findings, the SEC finds that the proposed facility is one which should require a certificate.

There are two main findings which are the responsibility of the SEC under RSA 162-F:8. The SEC must find that the proposed facility:

1) Will not interfere with orderly development of the region with consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies and

2) Will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, and natural environment and the public health and safety.

The SEC hereby finds that the proposed facility will not unduly interfere with the orderly development of the region and will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, and natural environment and the public health and safety.

The SEC makes these findings after having considered the available alternatives and the environmental impact of the site and facility presented by the Applicant, New England Hydro, and after due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies.

Several possible alternatives to both the project location and the specific use of the existing right-of-way for the project, the so-called Preferred Route, were discussed and studied by the Applicant and by NEPOOL. The primary elements with respect to general project location are the 1800 new converter terminal and the transmission facilities required to deliver the Phase II energy to New England Load centers. These apply regardless of which alternative is used. The Phase II converter terminal could theoretically be at some location other than Sandy Pond. Several options were considered for the placement of the converter terminal and the required transmission facilities.

NEPOOL originally studied six potential sites, and from these locations defined nine

different transmission line plans for study. The Preferred Route as presented in these proceedings came out of these studies. It was selected for reasons of economy, reliability and environmental suitability. Among other alternatives considered was a converter terminal at Comerford, with a single ac transmission line. The study of this alternative was requested by counsel for the public during the hearings. Although the study revealed the plan to

be technically feasible, it was considerably more costly than the Preferred route dc plan which was preferable both in terms of economy and reliability.

Another alternative considered was that part or all of the dc transmission line be placed underground. The resulting studies indicated that not only would costs be much higher, but the environmental impacts would be greater and system reliability would be lower for an underground system than for the proposed overhead system. Exhibit 143 (Draft DOE Environmental Impact Statement), sections 2.2.8.5, 4.2.1.4. Two other alternatives [sic] routes, the so-called Eastern and Western Alternatives were studied by the Applicant. These would also use existing rights-of-way located generally east and west of the Preferred Route. Both of these routes were not wide enough to accommodate the new dc transmission line, and would require significant right-of-way acquisition and clearing including relocation of homes and business. Exhibit 23 (Environmental Report, Vol I) pp. 188-189.

The evidence indicates that the dc overhead plan on the Preferred Route proposed by New England Hydro is preferable to each of the alternatives that have been examined, based on consideration of economics, environmental concerns, and power planning, and the SEC so finds.

The following is a discussion of the basis for these findings.

A. The Proposed Facility Will Not Unduly Interfere with the Orderly Development of the Region.

As was the case in docket DSF 81349, Phase I of the proceedings, the single most important fact bearing on this finding is that the proposed transmission line occupies or follows existing utility transmission rights-of-way or utility-owned property for its entire length of 121 miles. The width of the right-of-way along most of the line will be 350 feet.

The Phase II facilities would consist of an extension of the Phase I dc transmission line from Monroe, New Hampshire to Groton, Massachusetts. An 1800 MW converter terminal would be built at the southern end of the line adjacent to an existing 345 kv ac substation and then, 345 kv transmission lines constructed into and extended to two substations in Massachusetts.

Two kinds of support structures will be used for the dc transmission line. A lattice steel H-frame structure will be used for the first 112.5 miles of the line, from the Comerford converter terminal in Monroe to Sandy Pond Junction. A narrower single-shaft steel-pole structure will be used on the remaining 8.5 miles of the route, where there is insufficient room on the right-of-way for H-frame structures. Other structure types will be used on a limited basis.

On the issue of the orderly development of the region, New England Hydro presented an Environmental Report prepared by Chas T. Main, Inc. (Main) of Boston, Massachusetts, supported by the testimony of two of its employees, David F. Jenkins and James K. Nickerson,

Jr., and the testimony of Stewart Lamprey, a New Hampshire real estate broker and appraiser, who testified on the issue of land use. Main was retained by the Applicant to gather data on environmental resources and to evaluate potential environmental impacts associated with the Phase II transmission facilities.

One of the issues covered by

witnesses Jenkins and Nickerson was that of orderly development. Their Environmental Report, Exhibit 23, addresses several aspects of development, with the first one being land use. Their report notes that 99 percent of the length of the project would be constructed on rights-of-way that have been used by transmission lines for many years. It further notes that industrial, commercial, and residential development has taken place adjacent to the existing rights of way with no apparent adverse effect, and there is no reason to expect the Phase II transmission line to interfere with additional development. Exhibit 23, p. 9. Their report concludes that any direct impact on land use would be limited to effects on land use within the existing rights-of-way and would be confined to minor secondary uses such as sand and gravel excavation. It further concludes that potential impacts on adjacent land uses would be minimal and would be related primarily to incremental visual impacts. Exhibit 23, P. 112.

Mr. Stewart Lamprey, a real estate broker and appraiser, gave further testimony on the issue of land use. He performed a study of land uses and property values along the corridor proposed for construction of the Phase II transmission line in order to determine what effect the project would have on the values of existing properties. Mr. Lamprey prepared three reports totalling about 600 pages in length. Exhibits 12-17.

Mr. Lamprey examined and evaluated land uses along the existing rightof-way to determine whether the presence of the existing high-voltage transmission lines appeared to have altered 1and uses. Exhibit 12 (Testimony of Stewart Lamprey) pp. 7-13; Exhibit 13 (Land Utilization Study). Then he selected 46 properties in close proximity to the right-of-way that had been sold in recent arms-length transactions and compared their sales prices to the sale prices of comparable, recently sold properties away from the right-of-way in the same communities. Finally, he also looked for properties that had been sold within a reasonable time before and after the addition of highvoltage transmission line on a right-ofway with two or more existing highvoltage transmission lines. The purpose of these studies was to determine the effect on property values under the circumstances of each study. Exhibit 12, pp. 14-23; Exhibit 14 (Economic Impact of Transmission Lines on Property Values in the State of New Hampshire); Exhibit 15 (Exhibits SL-3 & SL-4 to Testimony of Stewart Lamprey)

Mr. Lamprey's conclusions were:

1) That land uses along the existing right-of-way are similar to those in surrounding areas and do not appear to have been adversely affected by the right-of-way. Exhibit 12, pp. 6, 13.

2) The presence of high voltage transmission lines does not affect sale price or marketability of nearby properties, although it may have some effect on depth of the market. Exhibit 12, pp. 6, 17-19; Exihibit 14, pp. 20-21.

3) Although, the data on Sales of the same properties before and after the addition of a high-voltage transmission line to a right-of-way with existing high-voltage transmission lines are insufficient to allow the formulation of any definite conclusions, there

is no evidence to suggest any negative effect on market values. Exhibit 12, p. 6, 23; Exhibit 15.

Mr. Lamprey concluded that the addition of the dc line along the existing right-of-way would not have a detrimental effect on market value of nearby properties. Exhibit 12, p. 7; Tr. Vol. II, pp. 58-59; Exhibit 20 (Kinnard, Tower Line and Residential Property Values 35 the Appraisal Journal 269 (1967)). No contradictory evidence was introduced to rebut Mr. Lamprey's Testimony.

The Environmental Report of witnesses Jenkins and Nickerson also considered the likely effects of the Phase II facilities on transportation and utilities, on agricultural areas, socioeconomic impacts, and on the recreational resources of the region, and concluded that the incremental impacts attributable to those factors would be minimal. Exhibit 23, pp. 121, 123, 126-127, 128, 135-137, and 143-144. Overall, they concluded that the Phase II project would not cause any undue interference with the orderly development of the region. Exhibit 23, p. 9.

On the issue of orderly development, the Committee is required to give "due consideration" to the views of municipal and regional planning commissions and municipal legislative bodies. Although these proceedings were widely noticed and publicized in the counties through which the proposed transmission line is to be routed, only two such bodies presented their views. These were the Bedford Board of Selectmen and the Bedford Planning Board. Both expressed concerns about the project, but did not state that the project should not be approved, and they did not present any facts to indicate that the project would interfere with the orderly development of the region.

On this issue, several commercial and industrial organizations made limited appearances during the proceedings to express strong support for the Phase II project. These were the New Hampshire Association of Commerce and Industry, which represents six hundred New Hampshire businesses, Tr. Vol. II, pp. 12-14; the Business and Industry Association of New Hampshire, which represents businesses employing more than 70,000 people in New Hampshire, Tr. Vol, XV, pp. 4-6; and the New Hampshire Farm Bureau Federation, which is a federation of ten county farm bureaus consisting of over 3,000 farm and rural member families engaged in various agricultural enterprises, Tr. Vol. VII, pp. 21-23.

New England Hydro's position on this issue, in summary, is that the proposed facilities would not interfere unduly with the orderly development of the region. We agree. No contradictory evidence was introduced to rebut this position. Under these circumstances, we conclude that the proposed Phase II facility is compatible with land use patterns in the area and will not interrupt or conflict with existing commerce.

We conclude, on the basis of the above findings, that the proposed facility will not unduly interfere with the orderly development of the region.

B. The Proposed Facility Will Not Have an Unreasonable Adverse Environmental Impact.

The SEC must address five specific categories of environmental impacts in this proceeding. These are 1) impacts on esthetics, 2) impacts on historic sites, 3) impacts on air and water

quality, 4) impacts on the natural environment, and 5) impacts on public health and safety. RSA 162-F:8. We will treat each impact separately below.

As stated in our findings in the Phase I proceeding, docket DSF 81-349, and as we have already noted, the proposed facilities will be located on existing utility transmission rights-of-way or on utility-owned property for its entire length of 121 miles. Also, as previously stated, every human activity has some effect on the environment and, as with the Phase I facilities, construction and operation of the Phase II Facilities is no exception to the rule. However, we again note, that the relevant inquiry under the statute is whether the proposed facility will have an "unreasonable" environmental impact. We also again note that whether the impacts are "unreasonable" depends on the assessment of the environment in which the facility will be located, an assessment of statutory or regulatory constraints or prohibitions against certain impacts on the environment, and a determination as to whether the proposed facility exceeds those constraints or violates those prohibitions.

New England Hydro had an environmental assessment performed for it by Main and offered the testimony of witnesses Jenkins and Nickerson on this overall assessment. Further, on the issue of public health and safety, New England Hydro offered the testimony of witnesses Johnson, Charry, Justesen and Banks as well as the exhibits they introduced. The Committee offered the testimony of Dr. Michael G. Bissell on this issue. Finally, the Draft Environmental Impact Statement dated August, 1986, prepared by the U.S. Department of Energy, was offered in evidence. It concluded that the environmental impacts of this project would be minor and incremental in nature, and the operation of the proposed line and associated facilities would not pose any significant hazards associated with electric fields or related effects, or seriously affect other components of human health and welfare in the project region.

The testimony and the exhibits show no violation of existing regulatory or statutory constraints by construction, operation and maintenance of the proposed Phase II facilities. On the evidence adduced and on the record before us, we find that there will be no unreasonable, adverse environmental effects.

1) Esthetic Impacts

The proposed Phase II transmission line will be located entirely on existing right-of-way and utility property. The proposed towers will be from 75 to 115 feet tall, with a typical height of 90 feet, some 25 to 40 feet taller than the existing towers. The structures for the dc line will be located in line with the structures of the existing 230 kv ac lines, thereby maintaining symmetry with the existing facilities. The average span between structures will be about 600 feet, but could be increased to about 1200 feet to accommodate special conditions. Exhibit 37 (Testimony of Frank S. Smith) pp. 6-7; Tr. Vol. V, pp. 102-103 (Testimony of Mr. Nickerson) Tr. Vol. VI, pp. 27-30.

Very little additional clearing would be required for construction of the facilities. The proposed facilities would have only an incremental visual impact. The Main study concluded that the overall visual impact of the line would be low to moderate, Exhibit 23, pp. 152, 159, and that the visual impact at

most points along the line would be minimal or none. Exhibit 23, pp. 159160; Tr. Vol. II, pp. 177-198.

We find that the esthetic impacts of the proposed Phase II facility will be minimal and would not have an unreasonable adverse effect.

2) Impacts on Historic Sites.

The undisputed evidence produced by New England Hydro is that the Phase II project would not have an unreasonable adverse effect on historic sites. The Applicant has developed a Cultural Resources Plan in consultation with the New Hampshire State Historic Preservation Officer and this plan provides for a thorough evaluation of sites listed in or potentially eligible for listing [sic] the National Register of Historic Places and development of mitigative measures at such sites, if necessary. Exhibit 23, pp. 10, 114-146. The Main study indicated that the project would not have a physical impact or an unreasonable incremental or new visual impact on any known historic sites and that the project is not expected to have an adverse effect on the eligibility of any known sites for inclusion in the National Register of Historic Places. Exhibit 23, p. 10. The United States Department of Energy has tentatively concluded that the project will have no adverse effect on significant archaeological sites and that effects on historic structures are not likely to exceed those already created by the existing rightsof-way. Exhibit 143, (DOE Draft Environmental Impact Statement) These studies indicate that there will not be an unreasonable adverse impact on historic sites.

We find there wi11 be no unreasonable adverse impact on historic sites by the proposed Phase II facility.

3) Impacts on Air and Water Quality

The construction of the Phase II facilities will require some excavation and filling of wetlands and surface waters of the State. Of 206 surface waters on the existing rights-of-way, 197 will be crossed by the Phase II facilities. Of these, only a few may require some excavation and filling activities within their limits. A minima1 number of stream crossings could require clearing of some vegetation adjacent to an existing cleared right-of-way. These clearings would have minimal impacts. Exhibit 23, p. 68.

Mr. Frank S. Smith, one of Applicant's engineers, described how streams would be crossed and access gained to wet areas. Small streams would be forded where possible. Otherwise a culvert or bridge would be installed that would allow free passage of water and fish. Existing access roads and stream crossings would be used where practicable and access roads would be built only as necessary to cross streams and wetlands. Exhibit 23, p. 49; Exhibit 25 (Environmental Report Correction) p.1.

Overall impacts on wetlands would be low, and there would be no longterm impact on water quality in wetlands. Exhibit 23, pp. 54-56; Tr. Vol. IV, p. 131; Exhibit 143, B-3 to B-5. Effects on ground water and surface water would primarily be constructionrelated and short-term. Impacts from erosion and sedimentation would be minimized by construction and soil stabilization procedures. Exhibit 23, p. 11.

Only a very small percentage of the surface waters traversed by the Phase II Transmission line would be on

rights-of-way where any additional clearing of tall-growing vegetation or additional right-of-way maintenance would be required. Temporary increases in sedimentation and turbidity might result in a few cases. Mitigative measures, including soil erosion and sedimentation controls, would minimize these effects. Water quality would not be adversely affected in the long run. Exhibit 23, p. 12. The project is not expected to have any effect on rivers that are inventoried under the Federal Wild and Scenic Rivers Act. Tr. Vol. V, p. 140.

With respect to air quality, impacts of construction-related dust and vehicle emissions would occur only intermittently on the rights-of-way and would be confined to their vicinity. Exhibit 23, p. 46, the situations involving air ions and herbicide applications are discussed under "5) Impacts on Public Health and Safety."

Long-Term air quality in New England would benefit because the Phase II imports of electricity would displace fossil-fuel generation, thereby reducing air emissions. Exhibit 23, p. 11.

On the basis of this evidence we find that there would be no substantial impacts on air and water quality of the construction and operation of the proposed Phase II facilities, and no unreasonable adverse effect on air and water quality.

4) Impacts on the Natural Environment.

A review of all the testimony and exhibits indicates that there would be no continuing, significant overall impacts on the natural environment by the construction and operation of the proposed Phase II facilities. About 25 acres of forest out of a total of 5,000 acres of rights-of-way would have to be cleared for construction. The impact on local forest resource would be minimal. There would be no negative impact on species of rare plants on or in the vicinity of the right-of-way. Long-term changes to micro-climate conditions of the cleared area would be minimal. Exhibit 23, pp. 85-86.

As noted above, overall impacts on wetlands would be low and there would be no long-term impact on water quality in wetlands. Effects on fish and wildlife would be minimal. potential effects on fish would be associated with habitat alteration and short-term changes in turbidity, sedimentation and temperature. These effects would be minor and there would be no long-term adverse effects. The only impacts on wildlife that use the shrub/herbaceous habitat on the existing right-of-way would be short term impacts associated with construction. There would be no significant risk of harm to endangered species. Exhibit 23, pp. 98-101, 103105.

Dr. Gary Johnson, in his testimony, stated that the construction of the Phase II dc line in existing rights-of-way, will either have no effect on the audible noise levels at the edge of the existing rights-of-way or else have only a small effect by increasing the audible noise levels by 3dB(A) or less.

For the case of the dc line alone, the audible noise levels, that will be found at the edge of the right-of-way, due to the dc line, will be quite low and will likely be less than the ambient noise levels. Except in extremely quiet areas, it is unlikely that the audible noise levels from the dc line would be detectable above ambient background noises.

Dr. Johnson explained the

significance of the calculated levels of audible noises.

These audible noise levels in all cases would be below the guideline value of audible noise established by the Environmental Protection Agency to protect public health and welfare.

The construction of the dc line causes only a small increase, or in many cases no increase, in the audible noise levels at the edge of the right-of-way. Exhibit 57, pp. 10-12.

Dr. Johnson also described the expected effects of radio interference.

He stated that the construction of the Phase II dc line in existing ac rights-of-way causes only a small increase, generally 3dB or less, in the radio interference levels that existed at the edges of the right-of-way prior to construction, and in some cases actually causes a decrease in the radio interference levels.

Dr. Johnson then described how a dc conductor can cause television interference when it is in corona and then concluded that the proposed line should not create a problem with regard to television interference. Exhibit 57, pp. 12-16.

We find that, on the basis of this evidence, the Phase II project will not have an unreasonable adverse effect on the natural environment.

5) Impacts on Public Health and Safety.

The issue of public health and safety received a substantial amount of attention during these proceedings, both by the Applicant and by various individual members of the public who made limited appearances and expressed their views on this issue.

Dr. Gary B. Johnson, a witness for the Applicant and an expert in the field of electrical phenomena associated with high-voltage transmission lines, testified about phenomena associated with operation of the dc line. Among these phenomena are electric and magnetic fields caused, respectively, by voltage on the conductors and current in the conductors. Another phenomenon is ion production caused by corona on the surface of the conductors. Exhibit 57 (Testimony of Gary B. Johnson) p. 4.

Three other expert witnesses, Dr. Jonathan M. Charry, Dr. Don Robert Justesen, and Robert S. Banks testified for the Applicant on the potential health effects of electrical phenomena associated with hv dc transmission systems. The Committee also called its own independent

expert witness, Dr. Michael G. Bissell to testify regarding the potential for health effects.

All of these witnesses were subjected to extensive cross-examination. The opinion expressed by all of these witnesses was that based on available evidence, the proposed dc transmission line is unlikely to cause adverse health effects and that concern for public health should not prevent or delay the construction of the facilities proposed. The DOE Draft Environmental Impact Statement reached a similar conclusion. It stated that "the operation of the proposed line and associated facilities would not pose any significant hazards associated with electric fields or related effects, or seriously affect other components of human health and welfare in the project."

These witnesses discussed electric and magnetic fields, corona and air ions associated with the proposed Phase II dc line, the behavioral and biological effects of air ions and public health studies related to these phenomena.

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The proposed dc line would produce electric fields from two sources, one caused by voltage on the line, and the other produced by the charge carried by the ions from corona. These two electric-field components combine to produce an [sic] electric fields that can be measured at ground level. Dr. Johnson, in his research and studies, measured these fields. He stated that the electric fields at the edge of the rightof-way along most of the length of the line during summer fair weather conditions would be within the range of the earth's natural electric fields, that is, the electric fields to which people are constantly exposed under normal conditions. He testified that a person located at the edge of the right-of-way would not perceive any effects from the electric field and that a person within the right-of-way might perceive a very mild sensation, similar to that from exposure to a light wind, during periods of high corona activity. Exhibit 57, pp. 20, 23, 24.

Dr. Jonathan M. Charry testified about the potential health effects of the dc electric fields. He had performed an exhaustive review and evaluation of the literature on dc field effects. Data from the studies on the effects of dc electric fields on human beings indicate mixed results. None of the studies on human responses to dc electric fields meet the criteria for minimally acceptable scientific studies. Only a few of the studies on dc electric field effects in animals meet the criteria for minimally acceptable scientific quality. Based on his review of the literature on dc electric field effects, Dr. Charry concluded that, while there is a possibility that dc electric field exposure could produce biological effects, these effects cannot be considered harmful. There is no scientifically credible evidence to indicate adverse health effects at the electric field strengths characteristic of the proposed dc line. Exhibit 61 (Testimony of Jonathan M. Charry) pp. 23, 9, 26-28.

Dr. Michael G. Bissell, the Committee's witness, an expert in the field of behavioral and biological effects of air ions and electric fields agreed with Dr. Charry's conclusions. He indicated that there is no scientific basis for believing that the electric fields or magnetic fields produced by the powerline would cause adverse health effects. Exhibit 110 (Testimony of Michael G. Bissell) pp. 4-5.

No testimony was presented to contradict the opinions of Dr. Charry and Dr. Dissell, and the Committee finds that electric fields produced by the Phase II project will not cause unreasonable

adverse health effects.

Current flowing through dc conductors will produce a static magnetic field whose strength can be measured in gauss. Dr. Johnson measured the magnetic fields of the proposed line and concluded that the values he measured are all close to or less than the earth's natural field and thus should present no problems not already present in the natural environment. Another witness, Dr. Don Robert Justesen, elaborated on the possible effects of the dc magnetic field. He explained that the magnetic field created by the dc line would not have harmful effects on human beings or other mammals, because of the weakness of the field. Exhibit 72 (Testimony of Don Robert Justesen) pp. 9-11, 19. Tr. Vol. VII, pp. 175-181.

Again, no contrary evidence was presented to rebut the testimony of Dr. Johnson and Dr. Justesen.

The public health issue which received the most attention in these proceedings was the potential effects of air ions produced by corona and the dc transmission line's conductors. Corona is a partial electrical breakdown of the air surrounding the conductors. It occurs when local electrical stress on the surface of the conductor (the "surface voltage gradient") becomes large enough to dislodge one or more electrons from the molecules of air surrounding the conductors. When this happens, the air molecules are broken down into two components (ions) one having a positive electric charge and the other having a negative electric charge. Ions produced by corona will drift, under the influence of the electric field, from conductors of one polarity to conductors of the other polarity and also toward the ground. Exhibit 57, pp. 6-8.

The Phase II transmission line is designed so that the conductors will normally be operating below the corona inception gradient, which is a level of electrical stress, at which corona occurs, 30 kv/cm. However, nicks in the conductor, small airborne particles of vegetation, pollen, insects, raindrops, or snowflakes on the conductors will create points where the electrical stress is intensified sufficiently to produce corona. Among the potential effects of corona are audible noise, radio interference, ozone and air ions. Dr. Johnson discussed these effects and testified that noise, radio interference, and ozone are not serious concerns. Exhibit 57, pp. 7-16.

One major concern regarding corona has been the production of air ions. Dr. Johnson testified at length regarding the level of air ions that can be expected to exist on the transmission right-of-way, at the edges of the rightof-way, and beyond the right-of-way under various weather conditions. Exhibit 57, p. 17; Tr. Vol. VIII, pp. 28-30 (Testimony of Dr. Johnson.).

Ions are a common phenomenon and are not unique to dc transmission lines. They are produced by many natural and man-made causes, including sunlight, waterfalls, precipitation, and combustion processes. The ion levels expected at the edges of the right-of-way will in many cases be within the range of ambient background levels and will generally be less than ion levels commonly encountered during daily activities. Exhibit 57, p. 18. The ion levels expected to exist under the dc transmission line are substantially less than those found in many common situations.

A substantial amount of laboratory investigation has been done on the effect of air ions on human beings and animals. The many studies of air ion effects were evaluated by Dr. Charry and

Dr. Bissell. After evaluating these studies, Dr. Charry concluded that while there is a possibility that ion and/or dc field exposure could produce biological and behavioral effects under certain conditions in the laboratory, these effects do not extrapolate to harm. He noted that the kinds of effects observed in the studies are similar to those caused by every-day stimuli and are likely to disappear when the stimulus is removed. Exhibit 61, pp. 27-28.

Dr. Bissell agreed with Dr. Charry's view. Dr. Bissell was asked by the Committee to represent the Minnesota Environmental Quality Board Science Advisors. In his direct testimony, Dr. Bissell quoted at length from two documents published by the Science

Advisors, the first published in Decem

ber 1982, and the second in April 1986.

The Science Advisors concluded in 1982 that "there is now no scientific basis to believe that the electric and magnetic fields and air ions produced by the powerline pose a hazard to human or animal health." In the same study they stated that "there is insufficient reason to believe that acute exposure to air ions are harmful or injurious. As far as is known, all effects that have been described in animals and human are quite mild and fully reversible, usually within a few hours." In 1986, "the six Advisors unanimously agreed that their December 1982 conclusion [quoted above] is still valid." Exhibit 110, (Testimony of Michael G. Bissell) pp. 406.

When asked on direct examination whether any of his laboratory work in this area could be "construed as suggesting that negative air ions might be biologically harmful," Dr. Bissell answered that it could not. Exhibit 110, p. 11. On cross-examination, Dr. Bissell stated that he agreed with Dr. Charry's conclusions that effects of air ions are fully reversible, are small in magnitude, and are within normal biological variability. Tr. Vol. XIII, pp. 116, 172. Dr. Bissell's opinion was that there is no reason to believe that the proposed Phase II transmission line would cause adverse health effects.

Dr. Bissell stated that, having at one time lived and slept with a negative air ion generator for a year or two, he would be quite comfortable living and raising a family as an abutter to the right-of-way if the Phase II line should be constructed. Tr. Vol. XIV, pp. 152153, 187.

Dr. Charry and Dr. Bissell were the only expert witnesses to testify regarding laboratory studies of the biological effects of air ions, and both of them agreed that there is no scientific basis for believing that the proposed transmission line will have any adverse health effects. Although some studies reporting the certain effects were referred to during the hearings and were submitted as exhibits, both of the witnesses evaluated these studies and agreed that they do not indicate a likelihood of adverse effects from the transmission line.

There are currently four hv dc transmission systems in operation in North America. To date, six studies have been undertaken to examine the human and veterinary public health implications of the hv dc electrical environment, based on the operating experience of one or more of these systems. Robert S. Banks, an expert in the field of public health implications of energy facilities, testified for the applicant about the results of the studies. Dr. Bissell also testified on this subject.

Mr. Bank's conclusion regarding the results of the six human and veterinary health studies

was that, taken as a whole, they indicate that there is no evident pattern of adverse health effects in proximity to the four North American HVDC transmission systems suggesting a general absence of perceivable health effects from exposure to the HVDC electrical environment. In addition, he stated, "While of themselves of limited public health significance, these conclusions are consistent with the available laboratory and clinical research findings which, as discussed by Dr. Charry, indicate that acute adverse health effects are not likely to result." Exhibit 65, pp. 46-47.

Dr. Bissell agreed with Mr. Banks' assessment of various public health studies. Although he acknowledged that

each of the studies had some limitations, he still attributed a substantial amount of value to them. He explained that it probably would be impossible for any epidemiological study to show affirmatively that no health effects will result. He stated, however, that "each study that is successfully completed is a piece of evidence one way or the other." Dr. Bissell expressly agreed with Mr. Banks' statements that there is no evident pattern of health effects in proximity to any of the existing hv dc systems and that the studies indicate a general absence of perceivable health effects from such systems. Tr. Vol. XII, pp. 156-164.

On the basis of these public health studies, considered in the light of the laboratory studies discussed previously, both Mr. Banks and Dr. Bissell concluded that hv dc power systems do not have an adverse impact on human or animal health. On this basis, Dr. Bissell's opinion was that there is no public health reason to delay the construction of the Phase II system in New Hampshire.

Rufin VanBossuyt, Jr., system arborist for New England Power Service Company, testified about the vegetation management practices that will be used on rights-of-way to be occupied by the Phase II facilities. The Phase II facilities would be located almost entirely on established rights-of-way that are already being managed in the manner described by Mr. VanBossuyt. The vegetation management program that is currently being used successfully on these rights-of-way would be continued with the addition of the Phase II facilities. Exh. 5 (Testimony of Rufin VanBossuyt), pp. 10-11.

Mr. Vanbossuyt testified that the primary vegetation management technique will be the selective use of herbicides, which will be applied in accordance with new England Electric System policies and procedures and all applicable federal and state laws and regulations. The New Hampshire Division of Pesticide Control or its designated agent must approve any vegetation treatment on the rights-of-way. Exhibit 5, pp. 5-6.

In certain sensitive areas, such as near public water supply reservoirs, public and private wells, wetlands containing standing water, and gardens, special management techniques such as hand-cutting, mowing, use of only certain herbicides, and use of only certain herbicide application methods will be employed. Herbicides will be applied only by professional herbicide application companies that are licensed by the New Hampshire Division of Pesticide Control. Exhibit 5, pp. 6-7.

System contractors are instructed to use only certain herbicides, all of which are registered

by both the Environmental Protection Agency and the New Hampshire Department of Agriculture for use of rights-of-way. The contractors are also instructed to take special steps to minimize the chance that herbicides will drift off the right-of-way. If wind speed reaches a point at which herbicides might drift, the vegetation treatment is discontinued. Exhibit 5, pp. 9-10.

Mr. VanBossuyt concluded that maintenance of the phase II rights-of-way will not have an unreasonable adverse effect of public health and safety, air and water quality, or the natural environment. Exhibit 5, p. 12.

The Statute requires that the Committee to make a finding on the reasonableness or unreasonableness of the impacts on public health and safety of the electrical effects of the proposed

line. Although the witnesses on this issue testified that the available scientific data and information was uneven and often unsatisfactory, they agreed that there is no basis for concluding that the proposed Phase II facilities will have an unreasonable adverse effect on the public health and safety.

From the evidence, it is evident that the proposed dc transmission line is designed so as to produce as low a level of air ion emissions as possible. It will emit air ions only when it is corona and the concentrations of air ions emitted from the line will be substantially less, in most instances, than those encountered by human beings under many ordinary circumstances.

With this state of the testimony and evidence, we find that the risks of adverse effects on the public health and safety are minimal and fall within an acceptable range. Accordingly, we find that the electrical effects of the facility will not have an unreasonable adverse effect on the public health and safety.

III. OTHER PETITIONS OF THE APPLICANT

In its Application, New England Hydro included several petitions to the Commission for licenses and permits within its jurisdiction, and to the other state agencies which have jurisdiction to issue licenses and permits needed by the Applicant for this project. These petitions will be referred to state agencies involved for their appropriate action in accordance with the provisions of RSA 162-F, and consistent with the findings of the Committee herein, to be included in any certificate of site and facility issued by the Public Utilities Commission in this proceeding.

IV. STIPULATIONS OF THE

PARTIES

At the conclusion of the proceedings, the Applicant and the two other parties, PAC, and the Attorney General's office filed two stipulations. The first stipulation provided that the designation "for identification" may be stricken from all exhibits and they may be accepted as full exhibits. The Committee accepts and approves this stipulation, and all exhibits are considered full exhibits.

The second stipulation was submitted by the parties in full and complete settlement between

them of all issues that have been or could have been raised in this proceeding. After entering into the stipulation, the Powerline Awareness Campaign withdrew its appearance and removed itself from further participation in this proceeding.

At its October 2, 1986 meeting, the Committee voted unanimously to include the seven conditions of the stipulation as a part of its findings after first amending Exhibit B to the stipulation. On page 3 of Exhibit B, the Committee amended the first paragraph to read as follows:

This Exhibit shall be construed so as to obligate the Company to conduct the human epidemiological study should it be deemed feasible by the Site Evaluation Committee and the Public Utilities Commission upon such terms and conditions as they deem advisable.

The Committee further amended the third paragraph on page 3 of Exhibit B to read as follows:

All costs associated with compliance

with this Exhibit B shall be borne by the Company.

The seven conditions set forth in the stipulation are otherwise accepted by the SEC as set forth in its conclusions below.

V. CONCLUSION

The SEC hereby finds and determines that:

1. The proposed facility, in the light of all the circumstances, is a facility which has a sufficiently significant environmental impact, to require a certificate of site and facility.

2. The proposed facility consisting of 121 miles of a 450 kv dc transmission line from Monroe, New Hampshire to the Massachusetts border and a 1800 mw converter terminal at the southern end of the line at a site adjacent to the existing Sandy Pond 345kv ac substation, and its associated transmission lines:

a) Will not unduly interfere with the orderly development of the region.

b) Will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment and the public health and safety.

3. The petitions and applications in New England Hydro's Application are referred to the Wetlands Board and Water Supply and Pollution Control Commission, to the Commissioner of Public Works and Highways and to the Public Utilities Commission for the findings required by them and for their issuance of such permits and licenses as required by law and pursuant to standard and normal conditions for such permits, to be included in any certificate of site and facility issued by the Public Utilities Commission in this proceeding.

4. The seven conditions in the stipulation of the parties are acceptable as part of the SEC's findings herein as follows:

A. The stipulation is accepted as a full and complete settlement between them of all issues that have been or could have been raised in these proceedings upon the terms expressed therein.

B. New England Hydro shall conduct a monitoring study concerning static electric and magnetic fields and ion levels as set forth in Exhibit A to the stipulation.

C. New England Hydro shall undertake an investigation of the feasibility of a long-term epidemological study as set forth in Exhibit B to the Stipulation as amended by the SEC herein.

D. New England Hydro shall fulfill the mitigation requirements of Exhibit C of the stipulation during the final design of the Project.

E. New England Hydro shall report, on a calendar-year basis by May 21 of the following year, to the Public Utilities Commission the nature and resolution of all visual, noise and healthrelated complaints made to it in any way related to the direct current transmission line for the period before and five (5) years after the proposed transmission line is first energized. Such reports of such complaints, their nature and manner of resolution shall be available for public inspection.

F. New England Hydro agrees that commencement of construction (as defined in RSA 162-F:2 (VI)) of the Project shall not take place until the

required United States and New Hampshire government permits and approvals necessary for such commencement of construction are obtained.

G. New England Hydro agrees to adopt the mitigation measures set forth in Exhibit D to the stipulation.

5. The stipulation is hereby incorporated by reference as a part of the SEC's findings.

The undersigned members of the Bulk Power Supply Facility Site Evaluation Committee, hereby adopt these findings and transmit them to the New Hampshire Public Utilities Commission under RSA 162-F:8, I:

William A. Healy, Chairman
Executive Director, Water Supply
and Pollution Control Commission

Robert Estabrook, Chief
Aquatic Biologist, Water Supply
and Pollution Control Commission

John T. Flanders, Commissioner
Department of Resources and
Economic Development

Allen F. Crabtree III, Director
Fish and Game Department

David G. Scott, Director
Office of State Planning

Wilbur LaPage, Director
Division of Parks and Recreation

Department of Resources and
Economic Development

John E. Sargent, Director
Division of Forests
Department of Resources and
Economic Development

Wallace E. Stickney, Commissioner
Public Works and Highways

Vincent J. Iacopino, Chairman
Public Utilities Commission

Dennis R. Lunderville, Director
Air Resources Agency

Delbert F. Downing, Chairman
Water Resources Board

William T. Wallace, Jr., Director
Division of Public Health Services
Department of Health &
Human Services

DATE: October 8, 1986

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
BULK POWER SUPPLY FACILITY
SITE EVALUATION COMMITTEE

New England Hydro-Transmission
Corporation
DSF 85-155

Application of New England HydroTransmission Corporation for a Certificate of Site and Facility to Construct, Operate and Maintain an Electric Transmission Line in Grafton, Merrimack, Hillsborough, and Rockingham Counties

STIPULATION

New England Hydro-Transmission Corporation, the Applicant herein, (hereinafter the "Company"), the Powerline Awareness Campaign, an intervenor herein, (hereinafter "Campaign"), and the Attorney General of The State of New Hampshire, a statutory party to this proceeding pursuant to RSA 162-F:9, (hereinafter "Attorney

General"), submit the following stipulation to the Public Utilities Commission ("PUC") and Bulk Power Supply Facility Site Evaluation Committee ("SEC"):

1. This Stipulation is submitted to the PUC and SEC by the Company and Campaign in full

and complete settlement between them of all issues that have been or could have been raised in this proceeding. Company and Campaign are satisfied that this Stipulation represents a reasonable resolution of the issues presented by this proceeding based upon the record and the evidence before the PUC and SEC herein. The parties have had full opportunity to obtain, and have had full and complete advice of counsel, with respect to this Stipulation. Company and Campaign agree that the Company may be granted a Certificate of Site and Facility for the Project, as requested in its Application, as amended, and all other licenses, permits or approvals by state agencies having jurisdiction, subject to the conditions set forth in Exhibits A through D attached hereto. Company and Campaign recognize that their agreement does not bind the SEC, the PUC or other state agencies having jurisdiction, but submit this Stipulation as fully expressing those terms and conditions which they recommend as conditions to the Certificate of Site and Facility in the event that such a Certificate is issued.

The Attorney General agrees that the Company may be granted a Certificate of Site and Facility as requested in its applications, as amended, subject to the conditions set forth in Exhibits A through D attached hereto and subject to such further conditions relating to issues arising under RSA 162-F:8(II)(a) as may be set forth in a further stipulation reached between the Company and the Attorney General to be submitted to the SEC and PUC, or as may be set by the Public Utilities Commission after considering the recommendations of the Attorney General and the Company in their respective briefs. Nothing in this agreement shall be construed as a waiver of Company's right to dispute recommendations of the Attorney General in its brief.

2. Company shall conduct a monitoring study concerning static electric and magnetic fields and ion levels as set forth in Exhibit A, hereto.

3. Company shall undertake an investigation of the feasibility of a longterm epidemiological study as set forth in Exhibit B hereto.

4. Company shall fulfill the mitigation requirements of Exhibit C hereto during the final design of the Project.

5. Company shall report, on a calendar-year basis by May 21 of the following year, to the Public Utilities Commission the nature and resolution of all visual, noise and health-related complaints made to it in any way related to the direct current transmission line for the period before and five (5) years after the proposed transmission line is first energized. Such reports of such complaints, their nature and manner of resolution shall be available for public inspection.

6. Company agrees that commencement of construction (as defined in RSA 162-F:2 (VI)) of the Project shall not take place until the required United States and New Hampshire government permits and approvals necessary for such commencement of construction are obtained.

7. Company agrees to adopt the mitigation measures set forth in Exhibit D hereto.

Respectfully submitted,

NEW ENGLAND HYDROTRANSMISSION CORPORATION
By Its Attorneys:
ORR AND RENO PROFESSIONAL

ASSOCIATION
One Eagle Square, P.O. Box 709
Concord, New Hampshire 03301-0709

By: Richard B. Couser

POWERLINE AWARENESS CAMPAIGN
By Its Attorneys:
BROWN, OLSON & WILSON
21 Green Street
Concord, New Hampshire 03301

By: STEPHEN E. MERRILL, ATTORNEY GENERAL

By: Robert P. Cheney, Senior Assistant Attorney General

DATED: September 16, 1986

EXHIBIT A

By January 31, 1987, New England Hydro-Transmission Corporation ("Company") shall identify two (2) or more independent organizations, with notice to the Bulk Power Supply Facility Site Evaluation Committee ("SEC"), the Attorney General's Office and Campaign that are qualified to perform a monitoring study designed to provide (1) detailed and comprehensive measurements of existing ambient air ion concentrations and static electric and magnetic field levels at various distances from the centerline of the Phase II right-of-way under various wind and weather conditions, and (2) detailed and comprehensive measurements of air ion concentrations and static electric and magnetic field levels at various distances from the Phase II conductors under various wind and weather conditions after the Project is energized.

The Company shall, no earlier than sixty (60) days following the notice of identification of the independent organization described in the preceding paragraph, select one of the independent organizations to perform the monitoring study and notify SEC, Campaign and the Attorney General of the selection. The independent organization selected by Company shall prepare a plan of study setting forth the manner in which it proposes to perform the monitoring study set forth herein. Company shall provide the plan of study to the SEC, Attorney General and Campaign at least sixty (60) days prior to commencing the monitoring study. Company shall consider comments, if any, on the plan of study by the Attorney General or Campaign during the sixty-(60-) day period. Studies related to existing ambient static electric and magnetic fields and ion level monitoring shall be performed for a period equal to at least one (1) full year prior to energizing of the Phase II line. After the Phase II line is energized, the studies of ambient air ion levels and static electric and magnetic field concentrations shall be conducted for a period of no less than two (2) consecutive years.

Periodic results of the monitoring study shall be made available to the SEC, Attorney General and Campaign and to the public libraries in which the transcripts in DSF 85-155 have been filed, not less frequently than annually. All costs of the monitoring study shall be borne by

the Company, provided, however, that the Company shall

not be obligated to expend in excess of $750,000.00 to meet its obligations to conduct the monitoring study described in this Exhibit A.

"Independent" for purposes of this Exhibit A shall mean any organization other than the Applicant, its parent and affiliated companies, and utility participants in the Project and their affiliated companies. No organization shall be deemed not "independent" by virtue of past, present or prospective future contractual relationships with the Applicant or its parent or affiliated companies or utility participants in the Project or their affiliated companies. The High-Voltage Transmission Research Facility of Lenox, Massachusetts is independent for purposes of this Exhibit A.

Any disputes arising under this Exhibit A shall be resolved by the SEC. The SEC may delegate its functions hereunder to any agency or department of the State represented by it. In the event the SEC should cease to exist due to legislative changes, its functions hereunder shall be performed by its successor agency, if any, and if not, by the Public Utilities Commission or an agency designated by it.

EXHIBIT B

Within three (3) months after the date of the issuance of a Certificate of Site and Facility in DSF 85-155, or March 1, 1987, whichever date is later, the Company shall submit to the SEC (or an agency designated by the SEC) with copies to the Attorney General's Office and Campaign its recommendations concerning the composition of a panel of not less than three (3) nor more than seven (7) independent scientists to review a study of the feasibility of performing a human epidemiological study concerning the effects on human health of exposure to air ions generated by the Phase II 12K450 kV dc powerline. One or more members of the panel shall be qualified in the field of epidemiology. The membership of this panel shall be approved by the SEC (or an agency so designated by the SEC). Approval shall be deemed to have been given by SEC if no objection is made by the SEC, Attorney General or Campaign within thirty (30) days of written notice of the composition of the panel by Company.

Within three (3) months after approval of the membership of the independent scientific panel, Company shall submit to the panel for approval a design for studying the feasibility of conducting a human epidemiolgical investigation including identification of an independent contractor or contractors through whom it proposes to conduct the feasibility study. Copies of said design shall be sent to the SEC, Attorney General and Campaign. The feasibility study to be addressed by this design shall include, but not be limited to, analyzing the feasibility of preparing a time series designed epidemiological survey, defining the control group to be studied, and establishing procedures for controlling and monitoring exposure of the control group. This survey could require multiple determinations over a period of time, some of which would need to be conducted before the line is energized in order to obtain before-and-after exposure data. This feasibility study shall include an analysis of the feasibility of selecting accurate endpoints in order to ensure that all data obtained will be reliable and valid. Included in this analysis shall be an evalution of the reliability of

subjective self-reported symptoms by exposed individuals and an assessment as to whether the study would require invasive techniques (e.g., physical examination, blood tests, urine samples, etc.) and, if so, the feasibility, as well as the advantages and disadvantages of utilizing such techniques. The feasibility study design shall also address the bearing of the results of the monitoring study described in Exhibit A on the usefulness and cost effectiveness of a human epidemiological study. The feasibility study shall consider, as an element of feasibility, the question of whether the useful information expected to be obtained from a human epidemiological study is sufficient to justify the anticipated cost of such a study.

Upon approval of the design by a majority of the panel (which shall occur within three (3) months of submission of the design to panel by the Company), Company shall conduct (by one or more independent contractors) and submit to the panel the approved feasibility study with copies to the SEC, Attorney General and Campaign. The feasibility study shall be completed and submitted to the panel within nine (9) months following approval of the design by the panel.

If the results of this feasibility study indicate that such an epidemiological study is feasible, and the panel concurs, the Company shall evaluate the cost and operational characteristics of an epidemiological survey and, if deemed appropriate by the Company, and within sixty (60) days from the date of panel concurrence, present reasons why the Company believes the study would be uneconomical or otherwise not feasible at this time. Copies of such presentation shall be provided to the panel, the SEC, Attorney General and Campaign. The panel shall, within thirty (30) days, review the Company's presentation and make a final recommendation to the SEC with copies to the Attorney General, Campaign, and to the public libraries in which transcripts of the proceedings in DSF 85-155 have been filed.

Nothing in this Exhibit shall be construed so as to obligate the Company to conduct the human epidemiological study should it be deemed feasible by the panel.

The Company shall use reasonable efforts to monitor developments in laboratory research related to or concerning air ion and magnetic field exposure in dc transmission line enviroments until five (5) years after the project is first energized. The Company shall by May 21 of each year while this moni- toring program is required report to the SEC new developments identified in this monitoring program with copies to the Attorney General and Campaign.

All costs associated with compliance with this Exhibit B shall be borne by the company, provided, however, that the Company shall not be obligated to expend in excess of $500,000.00 (excluding Company's internal costs) to meet its obligations under this Exhibit B.

The SEC may delegate its functions hereunder to any agency or department of the state represented by it. In the event the SEC should cease to exist due to legislative changes, its functions hereunder shall be performed by its successor agency, if any, and if not, by the Public Utilities Commission or an agency designated by it.

EXHIBIT C

During the final design of the Project, the Company shall implement the mitigation measures set forth in section 3 of the Environmental Report attached to Exhibit D in sensitive areas (e.g., moderate to high visual impact, active agricultural operations, wetlands) through or adjacent to which the Phase II transmission line will be located.

Any person aggrieved by the Company's implementation, or lack of implementation, of these specific mitigation measures may notify the Company in writing. Company agrees to make a good faith effort to resolve such grievances.

The Company shall, prior to "commencement of construction" (as defined in RSA 162-F:2 (VI) of the Project give a one-time notice, by regular mail, to abutters of the Project (as identified on Company's mailing list of abuttors) of the provisions of this Exhibit C and Exhibit D and file a copy in the public libraries in which transcripts of the proceedings in DSF 85-155 have been filed.

EXHIBIT D CONSTRUCTION, OPERATION AND MAINTENANCE MITIGATION MEASURES

During the course of construction, operation and maintenance of the Phase II transmission line, the Company shall comply with the following conditions designed to mitigate any potential adverse impact of the project on the environment:

(A) Herbicide Applications

(1) Notwithstanding the provisions of subparagraphs (A) (2) through (7) hereof, the Company shall only use herbicides registered and approved by the new Hampshire Division of Pesticide Control and shall comply with all conditions of any permit issued thereby, and all other appropriate regulations concerning the storage, use and disposal of such herbicides;

(2) The Company shall selectively apply such herbicides to individual plants and shall not conduct aerial spraying or soil treatment along or adjacent to the Phase II right-of-way;

(3) Under no circumstances will the Company apply herbicides to active agricultural areas within the Phase II right-of-way;

(4) The Company shall not use herbicides within 400 feet of any public gravel packed well, within 250 feet of any other type of public well, nor within 50 feet of any private well.

(5) The Company shall not use herbicides except for cut stump treatments within 10 feet of any surface water body without the prior approval of the N.H. Division of Pesticide Control;

(6) Any herbicide application company applying herbicides to the right-of-way must be registered with the New Hampshire Division of Pesticide Control and at least one member of the firm must have supervisory certification. At least one operational certified person must be present on

the crew that is actually in the field applying the herbicides;

(7) The Company may modify the procedures set forth in (A) (2) through (6) above upon notice to the SEC provided that such modification does not violate any applicable law or

regulation or permit issued by the Division of Pesticide Control and is consistent with good practices to protect the public health at the time of modification. The conditions set forth in paragraphs (A) (2) through (6) above shall be binding only until December 31, 1997.

(B) Visual Resources

(1) The Company shall consult with interested property owners adjacent to the right-of-way concerning reasonable methods to minimize any adverse visual impacts from the proposed line, including, but not limited to, the planting of shrubs, where feasible, and taller growing vegetation on the right-of-way where visual benefits could be gained;

(2) Where vegetation clearing is required for the construction, operation or maintenance of the line, the company will selectively clear vegetation where feasible adjacent to highways or in the vicinity of dwellings where visual benefits could be gained;

(3) The Company will endeavor to take all steps reasonably necessary in the placement of structures to minimize visual impacts on residential areas;

(4) The Company shall remove all construction roads not required for maintenance of the line and wherever reasonably possible, the Company shall locate access roads away from residential areas.

(C) Other

(1) The Company shall avoid placement of structures in wetlands and surface waters where practicable;

(2) The Company shall design and construct all necessary access roads adjacent to or over suface waters in such a manner as to minimize any potential impacts on fish passage, normal streamflow and water quality, including but not limited to the use of silt-traps, riprap, water bars, interceptor ditches and check dams;

(3) The Company shall clean up and restore disturbed areas, including grading and seeding where necessary;

(4) The Company shall use its best efforts to avoid structure placement and access road placement in active agricultural areas where feasible and shall restore any compacted cropland soil by contouring, plowing, seeding and mulching with the advice and consultation of the owner and/or operator of the agricultural operation;

(5) The Company shall use its best efforts to employ such other mitigation measures as discussed in Section 3 of the Environmental Report, attached hereto, for the

Phase II line which it deems prudent under the circumstances; and

(6) Following issuance of a Certificate of Site and Facility, the Company shall contact (which contact may be in writing) all appropriate federal and state agencies and boards of selectmen of towns and municipal legislative bodies of cities in which the project is located and solicit their recommendations concerning any additional measures that may be implemented to further mitigate any potential adverse impacts associated with the Phase II transmission line.

ORDER

Upon consideration of the foregoing report, which is made a part hereof, together with the Stipulation Agreement dated December 2, 1986 between the Attorney General and the Applicant (Attachment 1 hereto) and the report and findings of the Bulk Power Facility Site Evaluation Committee (Attachment 2 hereto), all of which are made part of this order, it is

ORDERED, that New England Hydro-Transmission Corporation is authorized to commence and engage in business as a public utility in the State of New Hampshire and to construct, operate and maintain transmission facilities in the municipalities of Monroe, Lyman, Bath, Haverhill, Benton, Warren, Wentworth, Rumney, Groton, Hebron, Alexandria, Hill, Andover, Salisbury, Webster, Concord, Hopkinton, Dunbarton, Goffstown, Bedford, Merrimack, Litchfield, Londonderry, Hudson and Pelham, New Hampshire; and it is

FURTHER ORDERED, that the proposed 450kV DC transmission line and related facilities requires a certificate of site and facility because of substantial environmental impact; and it is

FURTHER ORDERED, that a Conditional Certificate of Site and Facility be, and hereby is, granted to New England Hydro-Transmission Corporation for the construction, maintenance and operation of a direct current transmission line and related facilities approximately 121 miles in length between Monroe, New Hampshire and the New Hampshire/Massachusetts State Line; and it is

FURTHER ORDERED, that a license be issued and is hereby issued under RSA 371:17 to permit, in conformity with the National Electrical Safety Code, the water crossings of public waters of the State and of land of the State, as set forth in Appendix C of New England Hydro-Transmission Corporation's application; and it is

FURTHER ORDERED, that New England Hydro-Transmission Corporation be granted and is granted permission to construct a transmission line traversing or paralleling the tracks and properties of railroads as set forth in Appendix G to its Application, and further be granted permanent easements for this purpose after it files proper plans and layout delineating the routes for the transmission line and adequately compensates the railroads for these easements in accordance with orders to be issued by the Commission before the commencement of construction; and it is

FURTHER ORDERED, that all licenses and/or permits referred to in the foregoing Report and attached findings

of the Bulk Power Site Evaluation Committee, including the permits to be issued by the Wetland Board, the Water Supply and Pollution Control Commission, and the Commissioner of Public Works and Highways under the appropriate statutory authority, are granted, or are to be granted, as specified, thus constituting compliance under RSA 162-F:8 II that all state standards and requirements shall be met by the New England Hydro-Transmission Corporation as a condition of granting this Certificate of Site and Facility; and it is

FURTHER ORDERED, that the authority granted herein be and hereby is conditional upon

the applicant obtaining the necessary approvals, permits and/or licenses from the United States Federal Energy Regulatory Commission, the United States Department of Energy and/or the President of the United States; and it

FURTHER ORDERED, that the Certificate of Site and Facility is subject to the following conditions:

(A) The Stipulation between the Attorney General and the Applicant filed on December 2, 1986, as interpreted by the Commission in the foregoing Report, is made a part of the Certificate. (See Attachment 2) (B) Prior to operation of this subject Phase II transmission line, the Applicant shall submit a detailed plan demonstrating that the design and operation of the subject transmission line will meet the reliability and stability concerns of the neighboring pools and that reliability constraints will not limit the 2000 MW's of power contracted for; and it is

FURTHER ORDERED, that the Certificate of Site and Facility with the seven (7) conditions imposed by the Bulk Power Site Evaluation Committee and the two (2) conditions imposed by this Commission will issue accordingly.

By Order of the Public Utilities Commission of New Hampshire this eighth day of December, 1986.

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NH.PUC*12/09/86*[60933]*71 NH PUC 775*Hanover Water Works

[Go to End of 60933]

71 NH PUC 775

Re Hanover Water Works

Intervenor: Office of Consumer Advocate

DR 86-50, Second Supplemental Order No. 18,501

New Hampshire Public Utilities Commission

December 9, 1986

ORDER authorizing an increase in water rates.

Valuation, § 287 — Working capital — Lead-lag study — Formula method — Small water utility.

While the lead-lag study is the most detailed and accurate method for determining utility cash working capital requirements, the commission does not require smaller utilities to perform such a study in every rate case because of the substantial cost burden; accordingly, the cash working capital requirement of a small water utility was calculated using a formula designed to approximate the results of a lead-lag study without the cost and detail. [1] p. 778.

Valuation, § 287 — Working capital — Formula method — Revision to calculation — Water

utility.

A water utility request to revise its working capital computation to include property and payroll taxes was denied where the computation had been determined according to the formula method; the commission found that to allow the requested revision would distort the formula's results and defeat the purpose of using a standardize formula. [2] p. 778.

Expenses, § 89 — Rate case expenses — Surcharge approach — Water utility.

A water utility was directed to recover its rate case expenses through means of a surcharge rather than through inclusion in base rates; the commission found that the surcharge approach allows for a more thorough review of rate case expenses. [3] p. 779.

Expenses, § 19 — Depreciation — Expense disallowance — Water utility.

The use of accelerated depreciation is inappropriate for rate-making purposes; accordingly, a portion of the claimed depreciation expense of a water utility was disallowed where the utility had used accelerated depreciation in calculating its operating e xpenses. [4] p. 780.

Return, § 26 — Cost of capital — Discounted cash-flow method — Embedded cost method — Water utility.

In determining that a water utility should be allowed an opportunity to earn an overall rate of return of 11.32%, the embedded actual cost methodology was used to calculate the cost of long-term debt and the discounted cash-flow method was used to calculate the cost of equity. [5] p. 782.

Return, § 26.4 — Attraction of capital — Cost of equity — Water utility.

A request by a water utility for a 0.5% increase in its common equity cost rate because of the lack of marketability of its stock was denied; there was no evidence that a higher equity cost rate was needed either to maintain current, or attract additional, equity investors. [6] p. 782.

Rates, § 596 — Water — Consumption rate — Blocks or steps.

The proposed two-step rate structure of a water utility was adopted as reasonable,

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however, the utility was put on notice that it should file a one-step "flat" consumption rate in its next rate proceeding. [7] p. 782.

Valuation, § 287 — Working capital — Lead-lag study — Formula method — Balance sheet approach.

Statement, by commission, that it has historically used three methods for calculating utility cash working capital requirements: the lead-lag study, the balance sheet approach, and the formula method. p. 778.

APPEARANCES: Stebbins, Bradley, Wood & Harvey by S. John Stebbins, Esquire; Consumer Advocate by Deborah Dow; Daniel J. Kalinski, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On May 12, 1986, Hanover Water Works Company (Company), a public utility providing water service in Hanover, New Hampshire, filed revised tariff pages reflecting an increase in annual revenues of $113,543 (22.42%) to become effective June 12, 1986. Thereafter, the Commission issued Order No. 18,283 suspending the effective date of the tariff revisions pursuant to RSA 378:6 to allow for a full investigation.

An Order of Notice was issued on June 19, 1986 setting a prehearing con- ference for July 25, 1986, at which the Commission Staff and Consumer Advocate entered appearances. On August 5, 1986, the Commission issued Report and Supplemental Order No. 18,359 fixing a procedural schedule which included, inter alia, a hearing on the merits on September 11, 1986. At the September 11 hearing, Edward S. Brown, the Company's Executive Vice President, and C. Bennett Brown, Jr., a CPA with the accounting firm of Smith, Batchelder & Rugg, testified and submitted exhibits on behalf of the Company. Testifying on behalf of the Commission Staff were Dr. Sarah Voll, Chief Economist, and James C. Nicholson, PUC Examiner.

II. RATE BASE

A. Position of the Parties

The Company originally proposed a rate base of $1,163,487 for the test year ending December 31, 1985. Except for cash working capital, the various components, including, inter alia, plant in service and accumulated depreciation, were calculated by averaging their 1984 and 1985 year end balances, to which post test year proforma adjustments were made. The cash working capital component presented 120 days (4 months) of the Company's adjusted operation and maintenance expenses.

Subsequently, the Company submitted a revised rate base calculation which utilized average test year balances for the components without any pro forma adjustments in recognition of the Commission's well-established policy. The Company also revised its cash working capital computation by utilizing 75 days (2 1/2 months) instead of 120 as recommended by Mr. Nicholson in his testimony. Moreover, in addition to operation and maintenance expenses, the Company included property and payroll taxes in the calculation. It argues that payroll taxes, paid bimonthly, and property taxes, paid biannually, are, like wages and electricity, everyday

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operating expenses and should likewise be included. The Company's proposed rate base is as follows:

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

Gross Plant	$2,395,609
Less:	
Accumulated depreciation	800,382
Contributions in aid of construction	504,274
Unfinished construction	1,027

Reduction to Gross Plant	$1,305,683
Net Utility Plant	$1,089,926
Add:	
Working Capital:	
Materials and supplies	$39,826
Prepayments	28,002
Deferred income taxes	(52,441)
Investment tax credit	(36,537)
Customer Advances	(6,567)
Cash Working Capital:	2.5 months operating and maintenance expenses and "other taxes" (271,086 + 108,818 = 379,904 ° 12 = 31,658.67 x 79,147) 79,147
Rate Base	$1,141,356
Add:	
Amortization of prior year's construction pursuant to Re Hanover Water Works, 68 NHPUC 721 (1983)	12,604
Rate Base	$1,153,960

Staff's proposed rate base is identical to the Company's with the exception of the cash working capital calculation. Staff utilizes only operating and maintenance expenses, the amount of which is $5,000 below the Company's figure as discussed below; property and payroll taxes are excluded. Instead of $79,147, Staff proposes a cash working capital allowance of $55,435 ($266,086 ° 12 = $22,173.80 x 2.5= $55,435) and a rate base of $1,130,248.

3. Commission Analysis

The various rate base components on which Staff and the Company agree are amply supported by the record and have been calculated consistent with well-established ratemaking principles. Accordingly, we will adopt them for purposes of this proceeding. Regarding cash working capital, we will adopt Staff's calculation for the reasons discussed below.

An allowance for working capital is included in rate base so that investors are compensated for the capital they have supplied to a utility for non-plantrelated items, such as materials and supplies and the cash necessary to meet current obligations and to maintain minimum bank balances. With the exception of a cash allowance, the individual non-plant inputs and offsetting items (deferred income taxes, investment tax credits and customer advances) are derived by taking an average of the components balances at the beginning and end of the test year, the same approach utilized to derive the net plant

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rate base component.[1(149)]

Historically, three methods have been utilized by commissions to calculate cash working capital: the lead/lag study, the balance sheet approach and the formula method. The lead/lag study compares the time period necessary for expenses to be paid (lead) with the time it takes for revenues to be received (lag) and applies them to the various components of revenue and cost of service to determine the cash necessary to sustain day-to-day operations. Under the formula method, cash working capital is deemed to be equivalent to 45 days of a utility's operation and maintenance expenses where bills are rendered monthly. Originally formulated by the Federal

Energy Regulatory Commission, this approach has been modified by the Commission to accommodate utilities which bill on a quarterly basis. For those utilities, 75 days (2.5 months) is utilized. The third method, the balance sheet approach, derives a cash working capital allowance by subtracting current liabilities (noninterest bearing) from current assets.

[1, 2] Given its detailed nature and relative accuracy, the lead/lag study is the preferable alternative. However, because its cost can be substantial, the Commission has not required smaller utilities to perform a study in every rate case, opting for the formula approach instead. Given the Company's small size, we agree with the parties that the formula approach is appropriate for this proceeding. We see no reason to depart from or modify the formula. The formula was designed to approximate the results of a lead/lag study without the cost and detail. It takes into account the various expense leads and revenue lags experienced by utilities in general; it is not a utilityspecific approach. To include, as the Company has requested, its property and payroll taxes would distort the formula's results and defeat the purpose of using a standardized formula. If the Company wants the Commission to consider the leads and lags of specific items, it should conduct a full study.

We find the Company's rate base to be as follows:

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

Net Utility Plant	$1,089,926
Working Capital	
Materials & Supplies	$39,826
Prepayments	28,002
Deferred Income Taxes	(52,570)
2(150)Investment Tax Credit	(36,537)
Customer Advances	(6,567)
Cash Working Capital	55,435
	$1,117,515
Add:	
Amortization of prior year's contribution in aid of construction pursuant to Re Hanover Water Works, 68 NHPUC 721 (1983)	12,604
	$1,130,119

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III. OPERATING INCOME

A. Position of the Parties

In its original filing, the Company proposed net operating income for the test year of $69,935, which includes pro forma adjustments for known and measureable changes to revenues and expenses (Exhibit 1, Section B-26, Page 7). Through the testimony of Mr. Nicholson, submitted subsequent to the Company's filing, Staff proposes that the Commission utilize an

operating income of $83,833 (Exhibit 7), the derivation of which is not set forth therein.[3](151) The difference in the calculations apparently results from Staff's disallowance of certain expense items. In response to Staff's testimony, the Company filed a revised calculation which incorporated all of Staff's recommendations except one (Exhibit 2). The net operating income proposed therein is $79,244.

The Company takes issue with Staff's treatment of the Company's estimated ratemaking expenses. Staff argues that the Company's $5,000.00 pro forma adjustment to operation and maintenance expenses should be disallowed, and that consistent with recent decisions, rate case expenses should be recovered by means of a surcharge. While the Company agrees that the surcharge approach has merit, it contends that for a small company such as itself, the surcharge will cause additional expense, and may cause confusion and bad will among customers.

B. Commission Analysis

As the above discussion indicates, Staff and the Company appear to be in agreement on all income statement components except for rate case expenses. With the exception of an item of depreciation expense discussed below, we find that the agreed upon components are supported by the record and have been calculated pursuant to this Commission's fundamental regulatory principles. They will be adopted for purposes of this proceeding.

[3] Recovery of reasonable rate case expenses has historically been accomplished by either amortizing the total amount over a one or two year period through base rates, or by means of a surcharge to a customer's monthly bill, likewise for a one or two year period. The Commission has recently been utilizing the surcharge method.[4](152) We find that of the two methods, the surcharge approach alone allows the Commission to conduct a thorough review of a Company's expenses. Including rate case expenses in base rates does not allow for a review of actual costs; rather, the Commission is asked to review estimates made prior to the rate case proceedings. There is nothing in the record to support the Company's contention that the surcharge approach would be unduly burdensome.

Accordingly, as we have done in the prior cases, we will order the Company to file an affidavit of rate case expenses. The expenses are to be detailed in such a manner that the purpose of each cost item is easily discernable. In addition, we will order the Company to file a

proposed surcharge that will allow the expenses to be recovered over a one year period.

[4] Through cross-examination, Staff questioned the Company witnesses regarding an $8,100 expenditure in 1984 for gravel fill for the roadway leading to the pump on the top of Balch Hill. The test year contains $1,400 in depreciation expenses related to this item. Mr. Ben Brown testified that $1,400 was calculated using accelerated depreciation over an 18 year useful life. The Company utilized $1,400 for both ratemaking and federal income tax purposes to avoid any difference between the two. According to the Company, "the difference between the two would be minimal and the bookkeeping involved would be cumbersome". (Exhibit 6, Response to Data Request 1-4).

It is axiomatic that land is a nondepreciable item. Technically speaking, the roadway fill is an

improvement to land and not depreciable. However, according to well-established accounting principles, the roadway fill can be construed as an improvement to the pump. The cost of the fill should be added to the value of the pump in the appropriate plant account and depreciated according to the approved rate of the pump. However, because the pump has approximately 18 years of useful life remaining, we will allow the Company to list the $8,100 fill as a separate item in that account (2316.2) and to depreciate it separately.

The Company does not dispute that the accelerated depreciation (ACRS) is inappropriate for ratemaking purposes; it acknowledges that only straight line depreciation is permitted. However, it has utilized ACRS for this item because of the cumbersome nature of the required bookkeeping and the minimal impact on rates that would result. While we appreciate the Company's concerns, we do not agree that they provide a sufficient justification for abrogating a fundamental principle. Accordingly, we will disallow the $1,410 depreciation expense, and in its place substitute $450 which represents the total cost divided by the useful life ($8,100 ° 18 = $450).

Reducing depreciation expense by $960 ($43,936 - $960 = $42,976) necessitates an adjustment to rate base, specifically, to accumulated depreciation and deferred taxes. Like the depreciation expense, accumulated depreciation will be reduced by $960.00. In addition, because ACRS is being used for tax purposes and straight-line for rat emaking, an adjustment to year end deferred taxes will have to be made and the average deferred tax balance for the test year be recalculated. Yearend deferred taxes will be increased by the tax effect of $960 difference. Utilizing the Company's effective tax rate of 27%, the year end 1985 deferred tax balance will be increased by $259. Averaging the new year end figure of $55,677 ($55,418 + $259 = $55,677) with the year end 1984 figure ($49,463) results in a deferred tax balance of $52,661 ($105,140 ° 2 = $52,570), an increase of $129 over the level proposed by the Company (52,441).

In view of the above, we find the Company's adjusted test year operating income to be as follows:

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

Operating Revenues	$506,346
Operating Expenses	
Operation & Maintenance Expenses	266,086
Depreciation	42,976
Taxes: Property Tax, Payroll, etc.	108,812
Total Operating Expense	$417,874
Net Operating Income	$

IV. RATE OF RETURN - COST OF CAPITAL

A. Position of the Parties

In its original filing, the Company proposed the following capital structure, cost rates and weighted cost of capital:

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

CAPITAL STRUCTURE

WEIGHTED		
COST		
RATIO		
Long Term		
Debt		
Notes Payable		
Total Debt		
Common Stock		
Surplus (1)		
Total Equity		
Total Capital		

The Company provided no testimony in support thereof.

Subsequently thereto, Dr. Sarah Voll, of the Commission Staff, submitted testimony containing a rate of return recommendation based upon a detailed calculation of cost rates for both senior capital and common equity. Dr. Voll recommends the following capital structure, cost rates and overall rate of return.

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

COMPONENT TYPE OF CAPITAL	COMPONENT AMOUNT	WEIGHTED RATIO
Common Equity		
Common Stock		
Capital Surplus	$155,000	
Earned Surplus	551,414	
Total	$706,414	51.89%
Long Term Debt	655,000	48.11%
TOTAL	$1,361,414	100.00%

The Company's updated filing (Exhibit 2) incorporates all of Dr. Voll's recommendations except for the cost rate for common equity. The Company argues that .50% should be added to Dr. Voll's 12.46% because of the "lack of marketability" of the Company's stock. Utilizing 12.96% for equity

results in an overall rate of return of 11.58%.

B. Commission Analysis

[5, 6] We agree with the parties that Dr. Voll's use of the embedded actual cost methodology to calculate the Company's long term debt cost and the DCF method to calculate its equity cost rate is consistent with well-established ratemaking principles. The various components utilized in each methodology have substantial support in the record. Accordingly, we will approve and adopt Dr. Voll's analysis for purposes of this proceeding. In accordance therewith, we find that the Company should be allowed an opportunity to earn an overall rate of return of 11.32%.

We decline to make any adjustment to Dr. Voll's DCF-determined equity because the Company's stock is not marketable. We disagree that the closely held nature of the Company's stock make it a more riskier investment than publicly-traded companies. There is no evidence that a higher equity cost rate is needed to either maintain current, or attract additional, equity investors. In fact, the evidence is to the contrary; the existing investors, the Town of Hanover and Dartmouth College, appear to be quite satisfied with the return provided by their equity

positions in the Company. As Mr. Edward Brown testified, their respective ownership shares are not for sale. (Transcript, Page 24, Line 7).

V. REVENUE REQUIREMENT

Based on the foregoing analysis, we calculate the Company's revenue deficiency as follows:

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

```
Rate Base          $1,130,119
Rate of Return     11.32%
Income Required    $127,929

Adjusted Net Operating
Income             88,472
Revenue Deficiency $39,457
Tax Effect (1.40)

    5(153)                          15,760
Revenue Deficiency 55,217
```

VI. RATE STRUCTURE

[7] The Company proposes to apportion the increase among customer classes according to the allocations contained in its existing rate structure. In addition, the Company proposes to narrow the gap that currently exists between the two steps of the consumption charge

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

```
                           $506,346
                           39,457
Revenue                    $545,803
Less:
O&M Expenses               $266,086
Depreciation               42,976
Taxes Other                108,818
Long Term
Interest                   65,000
                           $482,880
                           62,923
NH Bus. Profits Tax
8.25% (5.191)              5,191
Taxable Income             57,732
1st 25,000 at 15%          3,750
2nd 25,000 at 18%          4,500
                           8,250
7,732 at 30%               2,319
Total Tax Liability        10,569
Total Overall Tax
Liability                  10,569
                           5,191
                           15,760
Overall Tax Effect 15,760 = .40 (1.40)
                           39,457
Federal Tax Effect 10,569 = .27 (1.27)
                           39,457
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component of the General Service (G-M) rate. Under current rates, the differential is $.07, while under the proposed rate structure the differential is $.05.

After review, we find the proposed rate structure to be reasonable and will adopt it for purposes of this proceeding. However, we hereby put the Company on notice that we expect it to file a one-step "flat" consumption rate in its next proceeding. We accept the Company's characterization of narrowing the gap between the two steps as movement towards an eventual uniform rate for all blocks of usage.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that 3rd Revised Pages 14, 16, 18 and 19 filed by Hanover Water Works on May 17, 1986 reflecting an increase of $113,543 in gross annual revenues be, and hereby are, rejected; and it is

FURTHER ORDERED, that Hanover Water Works shall be allowed to collect additional annual gross annual revenues of $55,217 (10.9%); and it is

FURTHER ORDERED, that Hanover Water Works shall file revised tariff pages reflecting the increase which shall become effective on all bills rendered on or after January 1, 1987; and it is

FURTHER ORDERED, that Hanover Water Works shall file an affidavit detailing and describing the rate case expenses it seeks to recover; and it is

FURTHER ORDERED, that Hanover Water Works shall file a surcharge mechanism to allow it to recoup its rate case expenses over a one year period; and it is

FURTHER ORDERED, that the revised tariff pages and surcharge mechanism shall be filed on or before December 19, 1986.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1986.

FOOTNOTES

[1]Where available, monthly balances are utilized.

[2]The deferred tax balance differs from that proposed by Staff and the Company, the reasons for which are discussed in detail below.

[3]Staff's recommended operating and maintenance expense level is set forth in Mr. Nicholson's testimony.

[4]The surcharge approach was utilized in the following rate case decisions: Report and Order No. 18,484 issued on November 18, 1986 in DR 85-304, Re Concord Steam Corp., 71 NH PUC 667; Report and Order No. 17,767 issued on July 25, 1985 in DR 84-239, Re Concord Electric Co., 70 NH PUC 665; Report and Order No. 18,365 issued on August 11, 1986 in DR 85-214, Re Manchester Gas Co., 71 NH PUC 446.

[5]The tax effect is calculated as follows:

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NH.PUC*12/10/86*[60935]*71 NH PUC 786*Wormser Engineering, Inc.

[Go to End of 60935]

71 NH PUC 786

Re Wormser Engineering, Inc.

DR 86-1, Order No. 18,503

New Hampshire Public Utilities Commission

December 10, 1986

ORDER denying rehearing of a prior order that had authorized a small power producer to amend its long-term rate filing.

Cogeneration, § 24 — Small power production — Long term rate filing — Reasonableness.

The commission denied an interconnecting electric utility's petition for rehearing and clarification of an order that had allowed a small power producer to amend its long-term rate filing in such a way as to remain eligible for a long-term levelized rate established at the time of the original filing rather than subsequently established longterm rates; the petition for rehearing was denied notwithstanding the interconnecting utility's argument that the original order was unjust, unlawful, and not supported by adequate reasoning.

By the COMMISSION:

ORDER

The New Hampshire Public Utilities Commission (Commission) having by Report and Order No. 18,460 (71 NH PUC 617) denied the petition by Wormser Engineering, Inc. and Martin Energy Inc. (Wormser) for a 20 year long term levelized or escalating rate for its proposed 20 mw cogeneration project in North Rochester and allowed Wormser to amend its petition to file for (1.) a 20 year long term levelized rate for a 9 mw project, or (2.) a non-levelized rate for a 20 mw project, or (3.) a 20 year long term rate for a 20 mw project incorporating an amount of front-end loading not to exceed the dollar amount of front-end loading represented by a 9 mw project and a net present value less than that available pursuant to DR 85-215, conditional on the provision of the security mechanisms offered by the petitioner; and

WHEREAS, on November 18, 1986 Public Service Company of New Hampshire (PSNH) filed a Motion for Rehearing and Clarification alleging the following:

1. that the Order is unjust, unlawful or unreasonable in that the Commission did not provide its reasons for authorizing long term rates pursuant to Docket DR 85215 rather than the subsequently approved rates in DR 86-134;

2. that the Order is unjust, unlawful or unreasonable in that the Commission found that the Applicant's project was sufficiently mature to receive a long term rate;

3. that the Order is unjust, unlawful and unreasonable in that it did not take into account the financial vulnerability of the Applicant's project; and

4. that the Order is unjust, unlawful and unreasonable in that no meaningful security has been required;

and further requests that the Commission to clarify how much less the net present value of the purported rates should be as contrasted with the net present value of Docket DR 85-215 rates; and

WHEREAS, Wormser's eligibility for rates established in DR 85-215 is based on Commission practice since the issuance of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), an Order based on a Settlement Agreement signed by PSNH, that applicants who meet the eligibility criteria for applying for long term rates are eligible to receive the rates in effect at the time of their filing and Wormser filed for a rate on January 6, 1986, nearly five months before the memorandum on the rates established pursuant to DR 85-215; and

WHEREAS, the issues of the project's maturity, financial vulnerability and necessary security provisions were fully addressed in Order No. 18,460 and PSNH has proffered no new facts or arguments that would cause us to disturb those findings; and

WHEREAS, the Commission does not intend to specify the degree of the discount in the present value from that available pursuant to DR 85-215 but rather intends to allow the applicant, should Wormser decide to file a long term rate under Option]3, to propose a rate less than the full value of the DR 85-215 rate and the Commission will, in reviewing the application, determine whether the discount is sufficient to offset the additional risk imposed by a 20 mw project in contrast to a 9 mw project; it is therefore

ORDERED, that PSNH's Motion for Rehearing and Clarification be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this tenth day of December, 1986.

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NH.PUC*12/11/86*[60934]*71 NH PUC 784*Salmon Falls Hydro Company, Inc.

[Go to End of 60934]

71 NH PUC 784

Re Salmon Falls Hydro Company, Inc.

DR 86-247, Order No. 18,502

New Hampshire Public Utilities Commission

December 11, 1986

ORDER authorizing a small power producer to petition for a long-term rate.

Cogeneration, § 20 — Small power production — Long-term rates — Eligibility for levelized rates.

On rehearing of an order that had dismissed a small power producer's petition for long-term levelized rates on the grounds that the facility for which the rates were sought was already in operation and had been selling energy under contract to an interconnecting utility, the commission determined that the small power producer may petition for a non-levelized long-term rate, or in the alternative, present evidence that its expenses, including operation and maintenance and current debt service being incurred, exceed the non-levelized rates and that without some degree of front-end loading, the project would, of necessity, cease operations.

By the COMMISSION:

ORDER

The New Hampshire Public Utilities Commission (Commission), having by Order No. 18,461 (71 NH PUC 626) denied the petition of Salmon Falls Hydro Co., Inc. (Salmon Falls) for a thirty year front loaded rate for its facility at the Rollinsford Manufacturing Company on the grounds that the facility is currently in operation and has been selling energy under contract to Public Service Company of New Hampshire (PSNH) dated August 21, 1980 and that therefore the petition, which requests front end loaded rates to finance the purchase of the facility from the present owner, does not fulfill the intent of stimulating the development of small power producer sites set forth in Re Small Energy Producer and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (DE 83-62); and

WHEREAS, on November 19, 1986 Salmon Falls filed a Motion for Rehearing alleging

1. that the Commission erred in dismissing the Salmon Falls Rate petition because Salmon Falls has complied with the requirements of DE 83-62 for petitioning the Commission for a long term rate;

2. that DE 83-62 allowed small power producers (SPP's) on the short term rate to elect a long term rate;

3. that the Commission provided that the rates established in Docket No. DR 86-134 would be applicable to all SPP's;

4. that Salmon Falls' current short term contract with PSNH is for energy only such that the project receives no payment for a capacity value and therefore denial of the long term rate denies

Salmon Falls the opportunity to receive capacity payments they would be entitled to under a long term rate; and

5. that the denial is inconsistent with the "buy out" provisions of DE 83-62 that allow an SPP to transfer from one long term rate to a higher subsequently found rate; and

WHEREAS, Salmon Falls errs when it avers that denial of a long term rate to its facility denies Salmon Falls the opportunity to receive capacity payments as its eligibility for capacity payments is not affected by its choice of a short or long term rate and that in fact the Rollinsford Manufacturing Company project has received capacity payments either as part of its energy charge or as a separate payment since 1980; and

WHEREAS, the Commission's denial of Salmon Falls' petition for a front end loaded 30 year long term rate was based on the facts presented in the petition that the purpose of the front end loading in the rate was to finance the purchase of the facility from the present owner; and

WHEREAS, an SPP may be eligible for long term rates pursuant to DE 83-62 without being eligible for front end loading of those rates; it is therefore

ORDERED, that Salmon Falls may petition for a non-levelized long term rate pursuant to Re Small Energy Producers and Cogenerators, 71 NH PUC 408 (1986), or in the alternative, present evidence that its expenses including operation and maintenance and current debt service being incurred by the present owner exceed the nonlevelized rates and that without some degree of front end loading, the project will of necessity cease operations.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of December, 1986.

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NH.PUC*12/16/86*[60936]*71 NH PUC 788*Manchester Gas Company

[Go to End of 60936]

71 NH PUC 788

Re Manchester Gas Company

DF 86-302, Order No. 18,504

New Hampshire Public Utilities Commission

December 16, 1986

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

Security Issues, § 98 — Short-term debt authorization — Gas distribution utility.

A gas distribution utility was authorized to increase its short-term debt limit for one year, or until such time as it obtained permanent financing, whichever occurred earlier; the increase was required due to (1) increased annual construction needs resulting from customer growth and

plant improvements, and (2) higher working capital needs for the winter heating season.

By the COMMISSION:

ORDER

WHEREAS, Manchester Gas Company, a public utility operating under the jurisdiction of this Commission as a gas utility in Manchester, Goffstown, and a limited area in Hooksett, seeks authority to increase its short term debt limit from $3,000,000 to $3,600,000; and

WHEREAS, Manchester Gas Company is petitioning for the increase of $600,000 due to higher requirements of increased annual construction, due to customer growth and plant improvements, and higher working capital needs for the winter; and

WHEREAS, the short term debt of Manchester Gas Company is in the form of issuing and selling short term notes payable on demand or in less than twelve months; and

WHEREAS, Manchester Gas Company will file for permanent financing by January 31, 1987; it is

ORDERED, that Manchester Gas Company, be and hereby is, authorized to increase its short term debt limit to a maximum of $3,600,000 until permanent financing can be obtained, or one year from the date of this order, whichever occurs sooner and a new limit shall be set at that time; and it is

FURTHER ORDERED, that on or before January 1st and July 1st, Manchester Gas Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1986.

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NH.PUC*12/16/86*[60937]*71 NH PUC 789*Concord Natural Gas Company

[Go to End of 60937]

71 NH PUC 789

Re Concord Natural Gas Company

DF 86-303, Order No. 18,505

New Hampshire Public Utilities Commission

December 16, 1986

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

Security Issues, § 98 — Short-term debt authorization — Gas distribution utility.

A gas distribution utility was authorized to increase its short-term debt limit for one year, or until such time as it obtained permanent financing, whichever occurred earlier; the increase was required due to (1) increased annual construction needs resulting from customer growth and plant improvements, and (2) higher working capital needs for the winter heating season.

By the COMMISSION:

ORDER

WHEREAS, Concord Natural Gas Company, a public utility operating under the jurisdiction of this Commission as a gas utility in Allenstown, Bow, Boscawen, Concord, Loudon, Pembroke, and a limited area in Hooksett, seeks authority to increase its short term debt limit from $1,500,000 to $2,000,000; and

WHEREAS, Concord Natural Gas Company is petitioning for the increase of $500,000 due to higher requirements of increased annual construction, due to customer growth and plant improvements, and higher working capital needs for the winter; and

WHEREAS, the short term debt of Concord Natural Gas Company is in the form of issuing and selling short term notes payable on demand or in less than twelve months; and

WHEREAS, Concord Natural Gas Company will file for permanent financing by January 31, 1987; it is

ORDERED, that Concord Natural Gas Company, be and hereby is, authorized to increase its short term debt limit to a maximum of $2,000,000 until permanent financing can be obtained, or one year from the date of this order, whichever occurs sooner and a new limit shall be set at that time; and it is

FURTHER ORDERED, that on or before January 1st and July 1st, Concord Natural Gas Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1986.

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NH.PUC*12/16/86*[60938]*71 NH PUC 790*Gas Service, Inc.

[Go to End of 60938]

71 NH PUC 790

Re Gas Service, Inc.

DF 86-304, Order No. 18,506

New Hampshire Public Utilities Commission

December 16, 1986

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

Security Issues, § 98 — Short-term debt authorization — Gas distribution utility.

A gas distribution utility was authorized to increase its short-term debt limit for one year, or until such time as it obtained permanent financing, whichever occurred earlier; the increase was required due to (1) increased annual construction requirements, and (2) higher working capital needs for the winter heating season.

By the COMMISSION:

ORDER

WHEREAS, in our order 17,779 in DF 85-22 (70 NH PUC 674), this Commission approved a short term debt maximum of $5,000,000 for Gas Service, Inc.; and

WHEREAS, Gas Service, Inc., a public utility operating under the jurisdiction of this Commission as a gas utility in Nashua, Merrimack, and Hudson; and

WHEREAS, Gas Service, Inc. is petitioning for authority to increase their short term debt maximum to $5,600,000 to meet higher requirements of increased annual construction and working capital for the winter; and

WHEREAS, the short term debt of Gas Service, Inc. is in the form of issuing and selling short term notes payable on demand or in less than twelve months; and

WHEREAS, Gas Service, Inc. will file for permanent financing by January 31, 1987; it is

ORDERED, that Gas Service, Inc. be, and hereby is, authorized to increase its short term debt limit to a maximum of $5,600,000 until permanent financing can be obtained, or one year from the date of this order, whichever occurs sooner, at such time a new limit will be set; and it is

FURTHER ORDERED, that on or before January 1st and July 1st, Gas Service, Inc. shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1986.

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NH.PUC*12/17/86*[60939]*71 NH PUC 791*Connecticut Valley Electric Company, Inc.

[Go to End of 60939]

Re Connecticut Valley Electric Company, Inc.

DE 86-276, Order No. 18,508

New Hampshire Public Utilities Commission

December 17, 1986

ORDER authorizing an electric utility to place and maintain a distribution line over public waters.

Certificates, § 26 — When a certificate is required — Statutory standard.

State statute RSA 371:17 requires that a public utility obtain commission authorization before constructing a line across public waters. [1] p. 792.

Certificates, § 102 — Electric plant — Distribution line.

An electric utility was authorized to place and maintain a distribution line over public waters for the purpose of replacing an existing line that had been subject to ice damage; the utility had obtained all the necessary easements and had agreed that the line would be constructed in accordance with all applicable codes and requirements. [2] p. 792.

APPEARANCES: Morris Silver, Esquire representing Connecticut Valley Electric Co., and Arthur Johnson, Electrical Engineer on behalf of the Commission staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On October 17, 1986 Connecticut Valley Electric Company (CVE) filed a petition pursuant to RSA 371:17 for authority to place and maintain poles, wires and fixtures thereon over the Ammonosuc River in the Town of Bath, N. H. An Order of Notice was issued on November 3, 1986 and was subsequently superceded by an Order of Notice issued on November 10, 1986 setting a hearing on the petition for December 3, 1986 at 10:00 A.M. The company also requested permission for Morris L. Silver, Esquire an attorney in Vermont, to participate in the proceeding.

Notices were sent to Morris L. Silver, Esquire for Connecticut Valley Electric Co. (for publication); Selectmen of the Town of Bath, N.H.; Wallace Stickney, Department of Transportation; Christopher J. Kersting, N.H. Aeronautics Commission; Robert X. Danos, Department of Safety Services; Jim Carter, DRED; Robert Patnaude, Court Reporter and Larry Smukler, Office of Attorney General.

The hearing was held as scheduled with Mr. Phillip Morse of CVE

presenting testimony in support of the petition. No one appeared in opposition.

At the hearing an affidavit was filed certifying that notice of the hearing was published in the Eagle Times, Claremont, N.H. on November 20, 1986. Mr. Silver was also informed that permission had been granted for his participation in the hearing.

II. APPLICABLE LAW

[1] RSA 371:17 provides as follows:

371:17 Petition. Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, "public waters" are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility.

III. FINDINGS

[2] Connecticut Valley Electric Company, Inc. seeks a license to place and maintain poles, wires and fixtures thereon across the Ammonosuc River in the Town of Bath, New Hampshire. The proposed line replaces an existing 3 phase 8 KV distribution line which had been subject to ice damage, being located within the flood plain of the River. The proposed line will follow a new route crossing the river at a point downstream of the previous crossing and traversing land outside of the flood plain. The proposed route and the previous line are shown on exhibits 1 and 2 filed during the hearing.

The crossing which is the subject of this report occurs between poles 1 and 2 of the line identified as line 5. Agreement has been reached with property owners at these locations and easements have or will be obtained, according to the petitioner. The company testified that they have obtained all necessary local approvals except those dependent on receipt of the petitioned license and that the line will be constructed in accordance with all applicable codes and requirements including the National Electrical Code.

The company has identified alternatives to the proposed crossing including continued use of the existing route and a somewhat modified new route which would cross the river further downstream. The former was dismissed because of the demonstrated lack of reliability associated with this route. The latter was dismissed due to higher cost. No one appeared in opposition to the petition and no obviously superior alternatives are apparent.

After complete review of the facts we find that installation of the above described crossing of the Ammonosuc River is necessary to meet the reasonable requirements of service to the public and is in the public interest.

Accordingly, we will grant the petition of Connecticut Valley Electric Company.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition of Connecticut Valley Electric Company for authority to place and maintain poles, wires and fixtures thereon over the Ammonosuc River in the Town of Bath, N. H. be and hereby is granted; and it is

FURTHER ORDERED, that the poles, wires and fixtures shall be constructed in accordance with the maps identified as exhibits 1 and 2 of the record and in accordance with the National Electric Safety Code; and it is

FURTHER ORDERED, that this order shall be considered a license for purposes of RSA 237:17.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1986.

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NH.PUC*12/18/86*[60940]*71 NH PUC 794*Nuclear Emergency Planning

[Go to End of 60940]

71 NH PUC 794

Re Nuclear Emergency Planning

Intervenor: New Hampshire Civil Defense Agency

DE 86-306, Order No. 18,510

New Hampshire Public Utilities Commission

December 18, 1986

ORDER assessing the costs of radiological emergency response planning against an electric utility.

Atomic Energy — Radiological emergency response planning — Cost assessments — Electric utility.

Pursuant to the authority granted to the chairman of the commission by state statute RSA 107-B, costs associated with the implementation and maintenance of a radiological emergency response plan for the Seabrook nuclear power plant were assessed against the electric utility operator of the plant, New Hampshire Yankee Division of the Public Service Company of New Hampshire.

By the COMMISSION:

REPORT

On December 11, 1986, the New Hampshire Civil Defense Agency (Civil Defense) submitted a request for an assessment against New Hampshire Yankee Division of Public Service Company of New Hampshire for resources and personnel required by the Department of Public Health to fulfill their responsibility in the preparation, implementation and maintenance of the Radiological Emergency Response Plan for the Seabrook Station Nuclear Power Plant. The request totals $88,075 and includes the following costs:

(A) Installation of precision air conditioning system and uninterruptible power sources unit to support nuclear testing at Health & Welfare Laboratory. $40,000

(B) Establishment of two new positions related to the Radiological Emergency Response Plan. $48,075

RSA 107-B sets forth the Chairman of the Public Utilities Commission's jurisdiction over the assessment of these costs. The Chairman's function is a limited one. See Re Hollingsworth, 122 N.H. 1028 (1982). That function is to determine whether the costs requested are related to "preparing the plan and providing equipment and materials to implement it."

The Civil Defense Agency submits

that the above costs represent equipment and personnel costs necessary to complete the preparation, operation and implementation of the Radiological Emergency Response Plan.

After review of the request made and the materials presented therewith, I find that the sums requested for the installation of a precision air conditioning system with an uninterruptible power source unit to conduct and support nuclear testing pursuant to the responsibilities of the Department of Public Health with the establishment of two positions is necessary for the completion, maintenance and implementation of the plan; therefore, I approve the request for an assessment of $88,075 against New Hampshire Yankee Division of Public Service Company of New Hampshire.

My Order will issue accordingly.

ORDER

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

ORDERED, that I hereby certify that the sum of $88,075 be assessed against the New Hampshire Yankee Division of Public Service Company of New Hampshire.

By Order of the Chairman of the Public Utilities Commission of New Hampshire, as authorized by RSA 107-B, this eighteenth day of December, 1986.

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71 NH PUC 796

Re Bridgewater Steam Power Company

Additional petitioner: Public Service Company of New Hampshire

DE 86-233, Order No. 18,511

New Hampshire Public Utilities Commission

December 19, 1986

ORDER rejecting, without prejudice, a petition to construct and maintain an electric transmission line across state-owned railroad property.

Electricity, § 7 — Authorization for transmission lines — License to cross stateowned property.

An electric utility's petition to construct and maintain an electric transmission line across state-owned railroad property was rejected without prejudice where another utility submitted a like petition that was found to be more appropriate.

By the COMMISSION:

ORDER

WHEREAS, on August 14, 1986, Steven J. Smith & Associates, on behalf of its client, Bridgewater Steam Power Company, filed a petition with this Commission seeking license to construct an electric transmission line over and across state-owned railroad property in the Town of Bridgewater, New Hampshire; and

WHEREAS, by letter of October 10, 1986, counsel for said Bridgewater Steam Power Company requested postponement of said hearing to allow discussion with the Public Service Company of New Hampshire (PSNH); and

WHEREAS, that petition was scheduled for public hearing on October 15, 1986 at the Commission's Concord Offices by Order of Notice issued on August 27, 1986; and

WHEREAS, such postponement was granted by Commission letter of October 15, 1986, subject to rescheduling at the ca11 of the parties; and

WHEREAS, on November 26, 1986, PSNH filed with this Commission a revised petition for license to construct and maintain the electric transmission line crossing previously being sought by Bridgewater Steam Power; and

WHEREAS, the Commission finds the PSNH petition more appropriate than the earlier petition by the Bridgewater Steam Power Company, it is

ORDERED, that the petition of Steven J. Smith & Associates on behalf of Bridgewater

Steam Power Company be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that the like petition filed by PSNH be accepted, and hereby assigned docket DE 86-299.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1986.

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NH.PUC*12/19/86*[60942]*71 NH PUC 797*Public Service Company of New Hampshire

[Go to End of 60942]

71 NH PUC 797

Re Public Service Company of New Hampshire

DE 86-299, Order No. 18,512

New Hampshire Public Utilities Commission

December 19, 1986

ORDER nisi authorizing an electric utility to construct and maintain a transmission line across state-owned railroad property.

Electricity, § 7 — Authorization for transmission lines — Crossing state-owned property.

An electric utility was authorized to construct and maintain a transmission line crossing state-owned railroad property where the line was necessary to serve a small power producer.

By the COMMISSION:

ORDER

WHEREAS, on November 26, 1986, the Public Service Company of New Hampshire (PSNH) filed with this Commission a petition seeking license to construct and maintain an electric transmission line over and across state-owned railroad property in the Town of Bridgewater, New Hampshire, said line to serve the Bridgewater Steam Company, a small power producer; and

WHEREAS, said transmission line is necessary for the delivery of power to said company as well as to receive power generated by it; and

WHEREAS, finds such construction necessary and in the public good; and

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

ORDERED, that all persons interested in responding to this petition be notified that they may

submit their comments or file a written request for hearing on the matter before this Commission no later than January 16, 1987; and it is

FURTHER ORDERED, that PSNH effect said notification by publication of this order once a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than December 30, 1986 and designated in an affidavit to be made on a copy of this order and filed with this office; and it is

FURTHER ORDERED, NISI that PSNH be authorized, pursuant to RSA 371:17 et seq to construct, operate and maintain electrical transmission facilities over and across State-owned

railroad property in Bridgewater, New Hampshire, as depicted in PSNH Drawing 9835; and it is

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

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1986.

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[Go to End of 60943]

71 NH PUC 798

Re Coos Power Corporation

DR 86-238, Supplemental Order No. 18,513

New Hampshire Public Utilities Commission

December 19, 1986

ORDER denying a motion for rehearing of a long-term small power production rate filing.

Cogeneration, § 5 — Qualifying status — Eligibility for standard long-term rates — LEEPA — PURPA.

While the commission may have authority to establish long-term rates for those cogeneration and small power production facilities that are qualified under the Public Utility Regulatory Policies Act but that have a maximum capacity of greater than 20 megawatts and therefore do not qualify under the Limited Electrical Energy Producers Act (RSA 362-A:4), the standard longterm rates established by the commission were intended for only those facilities that are

qualified under LEEPA and any facility that is not qualified under LEEPA is ineligible for the established standard long-term rates.

By the COMMISSION:

On August 20, 1986 Coos Power Corporation (Coos) filed a petition for a long term rate for its Stark, New Hampshire 25 MW woodburning small power project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4TH 132 (1984) (DE 83-62) and Re Small Energy Producers and Cogenerators, 71 NH PUC 408 (1986) (DR 86-134). The Commission denied Coos's petition on November 18, 1986 by Order No. 18,483 on the grounds that the long term rates in DE 83-62 were established pursuant to the Limited Electrical Energy Producers Act RSA 362-A:4 (LEEPA) and Coos does not qualify as a small power producer (SPP) under LEEPA because of its size. On December 8, 1986 Coos filed a Motion for Rehearing alleging that while its project does not qualify under LEEPA, it does qualify as an SPP under the Public Utilities Regulatory Policies Act of 1978 (PURPA). Coos further states that the avoided cost procedures of DE 83-62 "were explicitly based on the Commission's statutory responsibility to implement both

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LEEPA and PURPA" and quotes from Order No. 17,104 at 17 (69 NH PUC at p. 361, 61 PUR4th at p. 141):

Eligible facilities are Qualifying Small Power Producers and Qualifying Cogenerators as defined in LEEPA and PURPA. 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.

The Commission opened DE 83-62 by Order of Notice dated February 25, 1983 and stated inter alia:

WHEREAS, the Commission has the authority and the responsibility of establishing rates for small power producers and cogenerators under, inter alia, Sections 201 and 210 of PURPA and the regulations promulgated pursuant thereto; and RSA 362-A:1 et seq.; it is hereby

ORDERED, that Docket No. DE 8362 is established for the purpose of updating and establishing the short term and long term rates to be paid by Public Service Company of New Hampshire to small power producers and cogenerators and the methodologies to be employed in deriving such rates ... .

Public Service Company of New Hampshire (PSNH or Company) informed the Commission in its opening statement by counsel:

The Company, first of all, notes in the Order of Notice that the Commission intends to go

into the long term rates, and I would like to put the Commission on notice that the Company will reserve its right to challenge the Commission's authority to look into that. We concede that you have the power to set short term rates, but we wish to reserve our rights with respect to long term rates. We intend to present evidence under that reservation. March 25, 1983, Transcript at 5.

The Commission is aware that PSNH's challenge would have been based on the somewhat ambiguous nature of the authority to set long term rates under PURPA and the Federal Energy Regulatory Commission's implementing regulations at 18 C.F.R § 292.304(b)5. PSNH withdrew its objections, however, when the New Hampshire Legislature amended RSA 362-A:4 and specifically gave the Commission the authority to establish long term rates for all cogenerators and for SPP's with a maximum capacity of less than 20 MW. The Commission subsequently issued its final order in DE 83-62 and established, inter alia, standard rates, terms and conditions for purchases from eligible small power producers. Eligible facilities, as cited above, were defined as those SPP's that satisfy the criteria as defined in both PURPA and LEEPA. The Commission did not, at that time, test its authority to establish long term rates for those facilities that qualified only under PURPA, i.e. SPP's

larger than 20 MW and smaller than 80 MW. Thus, while the Commission may have the authority to establish long term rates for facilities that are ineligible under LEEPA, it did not do so in DE 83-62, and therefore an SPP that is ineligible under LEEPA cannot petition for a standard long term rate pursuant to DE 83-62 and DR 86-134.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, the Coos Power Corporation's Motion for Rehearing be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1986.

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[Go to End of 60944]

71 NH PUC 801

Re Detariffing Telephone Utilities' Inside Wire

Intervenors: New England Telephone and Telegraph Company, Granite State Telephone Company, Merrimack County Telephone Company, Kearsarge Telephone Company, Meriden Telephone Company, Continental Telephone Company of New Hampshire, Continental Telephone Company of Maine, Office of Consumer Advocate, and Union Telephone Company

DE 86-154, Order No. 18,514

New Hampshire Public Utilities Commission

December 19, 1986, Revised December 30, 1986

ORDER implementing the detariffing of telephone inside wire installation and maintenance services.

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1. Apportionment, § 38 — Telephone — Inside wire services — Separations.

Telephone companies were not required to establish separate subsidiaries for the provision of detariffed inside wire services, however, they were required to abide by accounting separations guidelines designed to prevent the subsidization of deregulated services by regulated services. [1] p. 811.

2. Service, § 435 — Telephone — Inside wire — Deregulation.

Notwithstanding the Federal Communications Commission's order requiring the deregulation of inside wire installation and maintenance services, telephone companies may continue to offer such services on a regulated monopoly basis where both of the following conditions exist (1) the costs of providing deregulated service would be higher than customers would be willing to pay, and (2) no competitor is willing to provide inside wire services. [2] p. 812.

3. Service, § 435 — Telephone — Inside wire — Detariffing — Placement of network interface devices.

In connection with the implementation of detariffed inside wire services, telephone companies were allowed flexibility with respect to the placement, type, and installation program of the network interface device (NID), however, the companies must install NIDs at the time of service installation, reinstallation, or a maintenance call; less flexible requirements would be imposed should the companies use the flexibility to accomplish illegal, unreasonable, or antitrust purposes. [3] p. 812.

4. Rates, § 553 — Telephone — Inside wire services — Effect of detariffing.

In connection with the implementation of detariffed inside wire services, all telephone companies, with the exception of two nonprofit companies, were required to reduce their basic rates by 10 cents to reflect the fact that customers would be required to pay separately for inside wire services. [4] p. 813.

5. Service, § 435 — Telephone — Inside wire — Detariffing — Statutory authority.

The commission has statutory authority to detariff inside wire installation and maintenance services; state statute RSA 374:28 empowers the commission to discontinue any utility service and remove the equipment essential to the same, "whenever it shall appear that the public good does not require the further continuance of the service" on a tariffed basis. [5] p. 814.

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6. Service, § 435 — Telephone — Inside wire — Detariffing — Ownership of inside wire.

In connection with the implementation of detariffed inside wire services, telephone

companies were required to relinquish ownership of inside wire, despite the fact that the Federal Communications Commission would not require the companies to give up ownership as long as the companies did not use their ownership to interfere with detariffing requirements. [6] p. 814.

7. Service, § 435 — Telephone — Inside wire — Detariffing — Ownership of inside wire.

In connection with the implementation of detariffed inside wire services, telephone companies were required to waive the maintenance of the inside wire service charge where the customer does not have a network interface device. [7] p. 814.

8. Service, § 435 — Telephone — Inside wire — Detariffing — Customer notice requirements.

The commission has the authority to require telephone companies to comply with guidelines designed to ensure that customers receive adequate notice of the deregulation of inside wire installation and maintenance services; the commission rejected the argument that the guidelines violated the companies first amendment rights in that they prevented the inclusion of advertisements for inside wire services in the same envelope as the notification. [8] p. 815.

9. Payment, § 33 — Termination of service — Arrearages for deregulated services — Telephone inside wire services.

In connection with the implementation of detariffed inside wire services, telephone companies were prohibited from terminating telephone service for nonpayment of the deregulated portion of a customer's bill. [9] p. 816.

APPEARANCES: Phillip M. Huston, Jr., Esquire for New England Telephone and Telegraph; Frederick Coolbroth, Esquire for Granite State Telephone Company, Merrimack County Telephone Company, Kearsarge Telephone Company, and Meriden Telephone Company; Thomas Platt, Esquire for Continental Telephone Company of New Hampshire and Continental Telephone Company of Maine; Michael Holmes, Esquire for the Consumer Advocate; Wallase Flaherty for Union Telephone Company; and Martin Rothfelder, Esquire, Eugene Sullivan, and Mary Hain, Esquire for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket was opened pursuant to N.H. Rev. Stat. Ann. §§ 365:5, 374:3, 374:4, 378:7 (1984) by the final order in Re Telephone Utilities Deregulation of Inside Wiring, DE 84-64, Order No. 18,270 (May 22, 1986). This order cited the Federal Communications Commission (hereinafter F.C.C.) report and order that required certain actions and preempted the jurisdiction of the New Hampshire Public Utilities Commission (hereinafter the Commission or P.U.C.) on the following issues. See Re Detariffing the Installation and Maintenance of Inside Wiring, (Second Report and Order) CC Docket No. 79-105, F.C.C. 86-63, 51 FR 8498 (February 24, 1986). In that order the F.C.C. required the detariffing of the installation of simple inside wire[1(154)] and the maintenance of simple and complex inside wire[2(155)] after

December 31, 1986. Id. at 25. In addition, the F.C.C. order required all telephone companies to relinquish ownership of inside wire that had been expensed in Uniform System of Accounts, Account 605 (67 U.S.C. § 31 (19----) effective no later than January 1, 1987. The order required further that telephone companies relinquish ownership of inside wiring which has been capitalized and recorded in Account 232, at the time this investment is fully amortized. Id. at 26.

New England Telephone Company and Contel Services filed a petition for reconsideration of this F.C.C. decision as to the ownership issue. Upon reconsideration, the F.C.C. decided not to require companies to relinquish ownership of inside wire; but merely to preclude them from conduct which is inappropriate to detariffing inside wire services, such as, charging customers for telephone maintenance services. Re Detariffing the Installation and Maintenance of Inside Wiring, (Memorandum Opinion and Order) CC Docket No. 79-105, F.C.C. 86-513 (to be released).

In Order No. 18,270 the P.U.C. delineated the issues which had not been preempted by F.C.C. action as the issues to be investigated in New Hampshire Docket DE 84-154. The issues were listed as, inter alia:

1. standard operating practices concerning the network interface or demarcation point and

2. the financial impact of the changes resulting from the FCC's order. In this order, the P.U.C. required the telephone companies to file tariffs and plans by August 1, 1986 which addressed the above issues. A hearing date of September 16, 1986 was set by the Order.

In a letter dated July 3, 1986, New England Telephone requested a four week extension to file tariffs and plans. The Commission granted such extension on July 9, 1986. The Commission required the filing of plans and tariffs by August 29, 1986 and rescheduled the hearing for October 8, 1986. Letter dated July 9, 1986 from the Commission Executive Director and Secretary.

N.E.T. filed a tariff to be effective September 28, 1986. Since the tariff would go into effect before the hearing, the tariff was suspended by Re Detariffing Telephone Utilities' Inside Wire, DE 86-154, Supplemental Order No. 18,408 (September 23, 1986). Chichester, Continental, Dunbarton, Granite State, Kearsarge, Meriden, Merrimack, Union and Wilton filed tariffs with effective dates of January 1, 1987. Bretton Woods Telephone Company and Dixville Telephone Company did not file tariffs on the filing date. Due to their very small size and the resultant difficulty in meeting the filing date the Commission did not impose sanctions for non-compliance. Instead, in a letter dated September 22, 1986 Bretton Woods and Dixville were required to have tariffs filed and effective January 1, 1987 which complied with both F.C.C. requirements and P.U.C. Orders in this docket.

In Re Detariffing Telephone Utilities' Inside Wire, 71 NH PUC 545 (1986), the Commission found that customer understanding would be important to carry out the intent of the F.C.C.'s

order. The Commission required the companies to file a mailing designed to inform customers of the F.C.C. mandated changes and to inform them that, as of January 1, 1987, the

installation and maintenance of inside wire will be provided on a competitive basis. The Order required telephone companies to mail this notification to customers at least thirty days before the effective date of detariffing and deregulation.

Due to the lateness of the above mentioned notification order, the Commission waived the requirement that the mailing and supporting testimony be filed ten days before the October 8, 1986 hearing. In a letter to the parties dated September 26, 1986 the Commission made the following requirements in lieu thereof. First, the Commission proposed the following nonbinding guidelines for customer notification.

1. There should be no language which advertises deregulated installation or maintenance programs mailed in the same envelope with this notification.

2. The notice may state that installation and maintenance will be available from the utility, so long as it states other possible providers of these services, for example: contractors, house builders, CPE sellers, etc.

3. It may not state the terms, conditions, or prices of the deregulated services.

4. It must state that customers may install and service their inside wire.

5. It should state that these services are no longer provided under rates approved by this Commission, due to the F.C.C.'s order.

6. The notice should provide drawings of the protector, the currently provided network interface device, (NID) and jacks which may be in place in lieu of NIDS.

7. The notice should contain several schematic drawings of residences and businesses which depict the location of the protector, the NID, or other demarcation point; and which show the customer what wire the utility owns and what wire the customer owns.

Second, the Commission required that the parties testify at the October 8, 1986 hearing and submit written testimony on October 3, 1986 addressing any opposition to the proposed guidelines and any guidelines the parties would like to propose. In addition, the letter stated that formalized guidelines would be approved by the Commission in its Final Order. The companies would be required to file notices which comply with the Final Order.

The following parties filed prefiled testimony: James D. Tebbenhoff on behalf of Continental Telephone Company of New Hampshire; William R. Stafford for Granite State Telephone Company; Duane H. Dunbar on behalf of Meriden Telephone Company and Kearsage Telephone Company; James M. Henley for Merrimack County Telephone Company; David W. Burke for New England Telephone and Telegraph Company; Wallase J. Flaherty on behalf of Union Telephone Company; and Mary C. Hain for the Staff of the State of New Hampshire Public

Utilities Commission. The Commission allowed the oral testimony of James T. McCracken to be heard at the time of the hearing.

N.E.T. filed a legal memorandum. Granite State Telephone Company, Merrimack County Telephone Company, Meriden Telephone Company, and Kearsarge Telephone Company filed a joint legal memorandum.

The hearing on the merits was held on October 8 and 29, 1986.

II. POSITIONS OF THE PARTIES

A. ACCOUNTING REQUIREMENTS

One of the issues that the evidence addressed was the separation of the business of regulated telephone service from the business of the provision of deregulated services. None of the parties advocated the creation of separate subsidiaries for the provision of inside wire installation and maintenance. The only company proposing to utilize a separate subsidiary (Merrimack County Telephone Company) has an extant separate subsidiary (MCI Communications, Inc.) through which it plans to provide inside wire installation and maintenance. Testimony of Henley, Attachment II, at 1. Staff did not recommend the creation of separate subsidiaries, at this time, because revenues connected with inside wire installation and maintenance are so small and the cost connected with the creation thereof is not worth the benefit. Testimony of Hain at 2.

The parties recommended the use of various accounting methodologies to separate the deregulated business from the regulated business. Concerning direct costs, all of the companies noted that they use either time sheets or "functional accounting" to charge employee time to the appropriate below the line accounts. Testimony of Tebbenhoff at 1, Testimony of Stafford at 8, Testimony of Henley at 7, Testimony of Burke at 9, Testimony of Flaherty at 2. Contel stated that they will use functional accounting to charge for materials used for installation and maintenance of inside wire below the line. Tebbenhoff at 1. NET and Union stated that they use the F.C.C.'s Uniform System of Accounts to place revenues and expenses directly associated with detariffed services in below the line accounts. Burke at 9 and Flaherty at 2. In addition Contel's billing system and NET's revenue accounting systems track and record deregulated revenues. Tebbenhoff at 1, Burke at 9. Staff stated that direct costs (i.e. costs caused solely by a detariffed product or service) should not be assigned to or recovered by charges for telephone services. Hain, Appendix III, at 1. Granite State stated that expenses and revenues will be accounted for as prescribed by the F.C.C. in Re Detariffing the Installation and Maintenance of Inside Wiring, (Second Report and Order) CC Docket No. 79-105, (February 24, 1986).

Concerning Joint and Common costs, many of the telephone companies advocated the use of the methodology to be established by the F.C.C. in "Part X." Re Notice of Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, (Notice of Proposed Rulemaking) CC Docket No. 86-111, FCC 86-146 (April 17, 1986). Tebbenhoff at 1, Burke at 9, and Flaherty at 2. Contel and Staff propose a review of Part X to determine if differing allocations are necessary for intrastate operations. Tebbenhoff at 2, and Hain at 3-4. Contel recommends that,

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between the time of this Order and a final F.C.C. decision, the Commission determine interim cost allocation methodologies on a company specific basis as rate case proceedings arise. Tebbenhoff. Merrimack proposed to use its present practices and policies to assign overhead to all deregulated functions. Henley at 7. Granite State proposes to allocate overhead in the same manner it is allocated to the regulated accounts. Stafford at 8.

Granite State, Kearsarge, and Merrimack argue that the Commission should examine the F.C.C. regulations when they are promulgated rather than establishing procedures at this time. They state that any previous decision could be "inconsistent and therefore burdensome." Memorandum of Granite State Telephone Company, Kearsarge Telephone Company, Meriden Telephone Company, and Merrimack Telephone Company at 4.

In addition, they argue that the commission should consider their circumstances as very small rural companies. They state that accounting separations which may be appropriate for the Bell Operating Companies might have "unforeseen effects" when applied to them. Meriden further supports its position with evidence indicating that it has one person who performs inside wire services in addition to other services. It argues that utilizing the fully distributed cost method to allocate overhead could make the company economically incapable of providing the deregulated service. Id.

B. STANDARD OPERATING PRACTICES

All of the telephone companies filed almost identical definitions for the network interface device, network terminating wire, premise and premises wire. The telephone companies expressed a common interest concerning standard operating practices. All companies asked that they be given flexibility in establishing the location, technology, and installation program of network interface devices (NIDs). The reasons for flexibility of location and technology were several. New England Telephone has many large customers with different serving configurations. In other words, they serve multi-family units, apartment complexes, condominiums and varied sized businesses which require varying amounts of regulated "house wire". In many apartments, N.E.T. would like to put the NID in each apartment, for customer security. However, NET would like flexibility of location because some complexes may be wired with locked utility rooms designed for NID location. Oral testimony of James T. McCracken.

The independent telephone companies stated that, generally speaking, they will locate the NID on the exterior of a house. They determined that, in order for their NID installation programs to be successful, they would need access to the installation area. They found that, in the case of interior installations, money and time would be lost if customers were not at home, and the company had to make a return trip. In addition, they favored retrofitting their existing protectors with kits provided by the manufacturer which co-locate the NID and the protector. They determined these conversions to be the most efficient and reasonable cost method, e.g., Stafford at 5.

Although the independents favor exterior installation, in multi-tenant situations, they would like to be able to

perform interior NID installation. Henley at 4. In these situations interior installation would minimize the complexity of network terminating wire installation, since only one wire would be required from the protector to the NID. Id. Because of these different wiring needs, the telephone companies would like to have the flexibility to decide the best NID location for each application.

Staff stated that exterior NID location will facilitate theft of telephone service. Record (Oct. 8, 1986) at 159. Merrimack countered that although theft of services has been relatively easy to accomplish to date, it has not been a problem. N.E.T. stated that, should it become necessary, it would be possible to lock the NIDs to prevent theft of service. Record (Oct. 8, 1986) at 14.

The telephone companies have proposed differing installation programs. All of the companies have proposed to install a network interface device on all new installations. Contel, "Response of Continental Telephone Company of New Hampshire to the Commission Order on Deregulation of Inside Wire," (Aug. 28, 1986) at 1. Some companies have also proposed to provide NIDs on reinstallations. Granite State, Implementation plan, (Aug. 29, 1986) at 5, Meriden and Kearsarge Implementation plans at 3.

Contel proposes to charge a customer who specifically requests a visit for the installation of a network interface device its tariffed network charge. Contel at 1. Granite State proposes to apply its service order and central office line connection charges for such installations.

Granite State, N.E.T., Contel, Meriden, Kearsarge, Union, and Wilton propose to not impose a charge for the network interface device where the NID is installed during a premises maintenance visit. Granite State at 5, N.E.T., Contel, at 1, Meriden and Kearsarge plans at 3, Union Tariff Filing, Proposed Plan: Deregulation of Inside Wiring, August 29, 1986, Tariff Filing of Wilton Telephone, September 4, 1986, Exhibit] Two, page 1. The remainder of the independents requested flexibility on when the NID would need to be installed, Tariff Filing of Merrimack County, August 29, 1986, Attachment II, page 1, or were not specific as to their policies

C. FINANCIAL IMPACT

N.E.T. stated that it had plans to file proposed tariffs to reduce basic exchange service rates for residential and business customers by $.10 per line per month. This amount was approximately equivalent to the $.09 found to be attributable to inside wire maintenance. Burke at 10.

The following table contains the amount the independent companies stated they would save as a result of no longer having to provide inside wire installation and maintenance.

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

CHART 1 Independent Company Cost Savings

Company	Amount per line per customer	Cite
Chichester Telephone Co.		
Continental Telephone Co. of N.H. & Maine	($.28)*	Tebbenhoff, Appendix A, P.3
Dunbarton Telephone Co.		
Granite State Telephone Co.	(.06)	Record (10/8/86) at
Kearsarge Telephone Co.	.10**	Dunbar, at 3
Meriden Telephone Co.	.42**	Dunbar, at 3
Merrimack County Telephone Co.	.05	Henley, at 7
Union Telephone Co.	.10	Record (10/29/86) at 33
Wilton Telephone Co.		

Note that the above table does not contain dollar amounts for Dixville Telephone Co. and Bretton Woods Telephone Co. as they have been allowed to file late tariffs given their small size and concomitant difficulty in complying with regulatory requirements. The empty spaces reflect the companies which did not make an appearance at the hearing. * Includes calculation of contribution from toll separation and settlements. ** Calculated in terms of inside wire revenue contribution to local exchange service rates.

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The independent telephone companies have not proposed lowering their basic service rates, regardless of the above-mentioned financial impacts. Many of the independents have stated that these impacts will be offset by the cost of installing the NID, e.g. Record (Oct. 8, 1986) at 119.

Granite State Telephone has planned to expense the cost of retrofitting protectors to include NIDs. They plan to capitalize NIDs only where there is a new installation. All of the other telephone companies plan to capitalize all NID installations.

Staff argued that for public policy reasons, the Commission should require the telephone companies to lower their basic exchange rate by the amount of expense to be saved or the revenues related to the installation and maintenance of inside wire. Customers should not be required to pay for inside wire individually, on a detariffed basis, while there is still an amount in their basic service rate which could be used to provide these same services.

Staff averred that the NID is telephone equipment which should be capitalized. If the cost of the inside wire expenses are allowed to remain in the basic rate to cover the cost of the NID, the company will effectively be receiving compensation for equipment which is not yet providing service to customers. This is not allowed under N.H. Rev. Stat. Ann. § 378:30-a (1984).

Merrimack, Kearsarge, Meriden, and Granite State argue that the Commission should not reduce their basic rates. They state that Staff's calculations of the net savings to be experienced by the companies are based on 1985 expenses and revenues. They argued in their memorandum that these expenses and revenues should be pro-formed to take into account "that the overall level of the toll contribution to these companies from the settlements process will be materially reduced as the recovery associated with non-traffic sensitive plant is reduced."

D. TARIFF REVISIONS

The tariff modifications proposed by the companies have the following effects: they delete references to inside wire services, they detariff the inside wire related service charges, and they expand the application of the

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maintenance of service charge. None of the parties expressed any differences of opinion with respect to the first two tariff modifications. However, Staff did not agree with the expansion of the maintenance of service charge.

The maintenance of service charge is a charge which the companies propose to assess when a customer reports a service problem and the company finds that the problem is in the inside wire

or customer premises equipment. Some of the companies propose to not apply the maintenance of service charge under certain circumstances. N.E.T. and Granite State Telephone Co. propose to not apply the charge where a NID does not exist. Burke, at 6 and Stafford, Exhibit I, at 5. The rationale for not applying the charge is that customers without a NID will not have the ability to determine if the problem is in the network access facilities or in the premises wire or telephone set. Burke at 6. N.E.T. proposes to not apply the charge, even if the customer has a NID, if the customer has subscribed to one of its two inside wire maintenance plans. Id. at 8. In addition, for the first six months during which N.E.T. offers its maintenance plans, the customer will be able to subscribe to the maintenance plan at the time of the trouble visit.

Staff objected to the maintenance of service charge. According to Staff's argument, the company is already responsible, under the basic rate, to make sure the system is working up to the demarcation point. The customer must install and maintain premises wire and station equipment. Therefore, the maintenance of service charge would allow the company to provide a service, on a tariffed basis, that contractors will be providing on a competitive basis. Hain at 6.

In addition, Staff objected to N.E.T.'s "tying" of its deregulated maintenance plans to its regulated business. Staff states that N.E.T.'s proposal to waive the payment of the tariffed maintenance of service charge where a customer has subscribed to a detariffed maintenance plan, amounts to a use of the company's monopoly position in a way its competitors could not to give it at a competitive advantage. Hain at 5.

E. CUSTOMER NOTIFICATION

The parties had varied opinions with respect to the Commission-proposed nonbinding guidelines. Granite State Telephone Company and Merrimack Telephone Company agreed to follow the guidelines. Further, Merrimack proposed to continue customer education with bill stuffers addressing the most asked questions and points which require clarification. The staff also supported the guidelines.

New England Telephone supports guidelines #2, #4, and #5, and what it believes is the Commission's intent in #6 and #7. It opposes the wording of guidelines #6 and #7 because several drawings and schematics may not best facilitate customer understanding. In addition, it argues that the proposed definition of inside wire will facilitate customer understanding and notification. Regarding ownership of inside wire, NET pointed out that it had a Petition for Reconsideration before the F.C.C. challenging the F.C.C.'s legal authority to transfer ownership. Burke at 12. It proposes to combine #6 and #7 and state the guideline as follows: "The notice should describe, and where it is important to facilitate understanding,

depict, the proposed demarcation devices and their location." Id. at 13.

N.E.T. does not support guidelines #1 and #3. It believes that separate notifications for the deregulation of inside wire installation and maintenance and for the subscription effort for the wire maintenance plans "will greatly increase customer confusion and anxiety." Id.

Staff argues in favor of guidelines #1 and #3. Staff states that an advertisement of the deregulated maintenance plans that is included in the inside wire deregulation notification is an

indirect subsidy. Assuming that the regulated business is properly renumerated for the cost of this advertisement, such advertisement still has two flaws. First, it does not compensate the utility business for "good will." Second, it gives its maintenance plans an advantage unavailable to its competitors. Hain at 5.

N.E.T. filed a legal memorandum on the issue of whether the Commission could impose guidelines for customer notification in connection with the issues addressed in this proceeding. The company argued that

It has a constitutional right to use the bill insert for any lawful purpose, including ... advertising detarriffed products and services offered by N.E.T.

The company believes there is a "fundamental constitutional deficiency, ... in a flat prohibition of the use of N.E.T.'s bill insert." The company argued that the United States Supreme Court decision in Consolidated Edison Co. of New York, Inc. v. New York Pub. Service Commission, 447 U.S. 530, 34 PUR4th 208, 65 L.Ed.2d 319, 100 S.Ct. 2326 (1980), would govern in this instance.

The company argues that Consolidated Edison, 447 U.S. at p. 534 Footnote 1, 34 PUR4th at p. 210, 65 L.Ed.2d at p. 325, stands for the proposition that a "[public utility's] status as a privately owned but government regulated monopoly [does not] preclude its assertion of First Amendment rights." They also assert that this case finds that flat prohibitions of bill inserts should not be allowed because the customer does not have to read the bill insert, they can simply throw it out. Id., 447 U.S. at p. 542, 34 PUR4th at p. 215, 65 L.Ed.2d at p. 331.

The company cited a quote from Ohralik v. Ohio State Bar Asso., 436 U.S. 447, 456, 56 L.Ed.2d 444, 453, 98 S.Ct. 1912 (1978), which states that commercial speech is subject to "a limited measure of protection." It noted that the Supreme Court has established a four part test to determine whether a government regulation of speech is warranted. The analysis is, for commercial speech to come within the First Amendment,

it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest. Central Hudson Gas & E. Corp. v. New York Pub. Service Commission, 447 U.S. 557, 566, 34 PUR4th 178, 184, 65 L.Ed.2d 341, 351, 100 S.Ct. 2343 (1980).

N.E.T. presumed that the governmental purpose to be served by the guidelines is to assure that the

ratepayers receive accurate information concerning the Federal Communications Commission's deregulation of inside wire in Re Detariffing the Installation and Maintenance of Inside Wiring. It asserts that the First Amendment protects the informational nature of advertising. Central Hudson Gas and Electric, 447 U.S. at p. 563. N.E.T. argues that the guidelines conflict with the assumed governmental purpose of informing customers and that the interest can be served by a more limiting restriction, viz., the remainder of the guidelines.

F. DISCONNECTION FOR NONPAYMENT OF DEREGULATED BILLS.

Staff was concerned that the utility portion of the business would terminate service for the nonpayment of deregulated service bills. Some company representatives made assurances that the companies would not adopt such policies.

II. COMMISSION ANALYSIS

A. ACCOUNTING REQUIREMENTS

The Commission will not require telephone companies which provide inside wire services on a deregulated basis to conduct these businesses via a separate subsidiary. The continuing availability of these services is important. The amount of revenues derived from these services is small. Since telephone companies would no longer be able to take advantage of economies of scale and scope where they are required to have separate subsidiaries, they may find it economically infeasible to provide these services. Since the Commission will not require separate subsidiaries, the Commission will assure that telephone companies do not cross-subsidize deregulated wiring services with revenues from regulated services by requiring accounting separations. The F.C.C. is currently formulating accounting separations for application at the Federal level in Re Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities.

[1] At this time, the Commission is not ready to outline all of the accounting separations which it will require. However, the following general guidelines will be a basis to allow the companies to begin the separations. All of the direct costs of deregulated wire services should be assigned to the deregulated business. The joint and common costs of regulated and deregulated services should be directly assigned. If such costs are not directly assignable they should be allocated according to overhead rates or allocations of accounts to be determined by the Commission based on fully distributed costs. The telephone companies will be subject to Commission audit to insure that these overhead rates or allocations are compensatory and nondiscriminatory. The companies may use their current system to track employee time and materials, whether they use time sheets or functional accounting.

We will not adopt the F.C.C. "Part X" allocations of joint and common costs for the allocation of intrastate costs without first having an opportunity to review them. Re Notice of Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, (Notice of Proposed Rulemaking) CC Docket No. 86-111, FCC 86-146 (April 17, 1986). We must first make a finding that the allocations are appropriate for state rate making purposes. States are

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not preempted by this F.C.C. proceeding since the allocation methodologies to be determined will only be applicable for the determination of interstate rates. See Louisiana Pub. Service Commission v. Federal Communications Commission, — U.S. —, 74 PUR4th 1, 90 L.Ed.2d 369, 106 S.Ct. 1890 (1986).

Telephone companies will not be allowed to reassign business investment which was made for the benefit of the deregulated portion of the business to the regulated part of the business. It

is not just and reasonable for utility customers to have to assume the risks of the deregulated competitive business forays of the telephone company. The Commission will establish rules for the transfer of assets between regulated and structurally separate entities, where the companies choose to establish a structurally separate subsidiary, on a case by case basis. Companies shall petition the Commission before such transfers to allow the Commission to establish procedures. In addition, structurally separate subsidiaries shall not obtain credit under an arrangement that would permit the creditor to have recourse to the assets of the telephone company.

[2] Meriden asserts that strict application of fully distributed allocations of overhead to the costing of deregulated inside wire services may result in the inability of Meriden to provide inside wire service at a cost which customers will be willing to pay. In this instance these services should be provided by competitive providers. Inside wire service is offered statewide by telephone equipment vendors, building and electrical contractors and home repair businesses. Materials for "do-it-yourself" installation are readily available at hardware stores, electronics stores, department stores, and other retail outlets, including some mail order houses. If Meriden can not compete at their fully distributed cost, then regulated telephone customers should not subsidize this uneconomic provision of service. In the unlikely event that no competitor is willing to provide this service in a given exchange where a subsidy would be necessary, we will insure service provision by allowing the telephone company in that service territory to provide it and we will allow the subsidy of the service as a regulated monopoly service. We feel sure that the F.C.C. can not preempt and thereby detariff state rate regulation of services which are fundamentally monopolistic in nature, necessary for the provision of local service, and intrastate with respect to the Federal Communications Act. 47 U.S.C. §151 (1934), See Louisiana Pub. Service Commission v. Federal Communications Commission.

B. STANDARD OPERATING PRACTICES

[3] We approve of the companies proposed tariff definitions of the network interface device, network terminating wire, premise, and premises wire. These definitions are in compliance with the definitions of inside wire, (CC Docket No. 79-105, FCC 86-63 at 1 n.1 and 2, and infra n.1), network interface or demarcation point (First Report and Order, CC Docket No. 81-216, FCC 84-182, (May 18, 1984), Appendix, at 1, item 3 as confirmed in CC Docket No. 79-105, FCC 86-86), and network interface device (68 C.F.R. Subpart B, §68.104, page 16) as defined by the F.C.C. We favor the flexibility that these definitions give the utilities and the continuity, for regulatory purposes, which comes from their similarity.

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It is apparent from the differing positions taken by the companies, with respect to the location of the NID, that flexibility is needed. They have differing access requirements, different investment requirements, and even different individual customer requirements. Therefore, the Commission will not mandate a location, technology, or time period for installation of the NID. We approve of the company plans (with respect to these issues) as submitted and will give the companies the opportunity to change these plans as they see fit. However, interior NID installation is required if a customer specifically requests it. The companies are entitled to charge a higher cost, based on time and materials, for installations that are at other than their standard location. The Commission will also expect companies to maintain policies which promote the

fastest possible NID installation program given the company's individual circumstances. It is required, at the very least, that NIDs be installed at all installations and reinstallations of service and maintenance visits.

The Commission is not relinquishing its jurisdiction over the operating practices issues. However, we will allow the businesses to make their own choices for the time being. We will subject these decisions only to the requirement that these plans be just and reasonable and we will not impose more specific requirements unless it becomes apparent that the companies are using this flexibility to accomplish illegal, unreasonable, or antitrust purposes.

C. FINANCIAL IMPACT

[4] The record shows that many of the telephone companies will be experiencing lower costs of service. In addition, it shows that all customers will be experiencing reductions in service. In other words, these customers will have to provide their own maintenance and installation of inside wire.

Each of the telephone companies which reported a reduction in their cost of service reported a different cost reduction. Many companies included the difference in their F.C.C. settlements in their cost of service calculation. However, it is not at all clear in which cases the companies were referring to their overall diminution in settlements due to F.C.C. dockets which do not have final orders (such as the new determinations to be made with respect to the percentage of intrastate versus interstate usage of nontraffic sensitive equipment in CC Docket 80-286) or whether they were referring to account specific changes in settlements. Some of the companies, those which did not produce a calculation which was already proformed to F.C.C. settlements changes, did not show a reduction in net expenses. None of the companies did a calculation pro-forming their expenses to take into consideration the probable benefits of the new tax laws.

Granite State, Kearsarge, and Merrimack provided their pro-forma analysis for the first time in their legal memorandum. This did not provide the parties with an adequate opportunity to cross-examine on these figures, nor did the companies provide any more than the total of such calculations. They did not provide the calculations, assumptions, or work papers used. This is not adequate proof for a Commission proceeding.

The Commission finds that only NET adequately supported the financial impact which it found to be approximately 10 cents.

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The Commission will require a reduction in the basic rate for the public policy purpose of reflecting the fact that customers will now be required to pay for this service separately. The Commission recognizes the difficulty of determining with exactitude the revenues and expenses associated with these services, particularly for the small companies. We are also aware of the fact that any amount calculated is an estimation because the companies did not historically keep separate accounts for the provision of these services.

Accordingly, we believe that the NET estimate is the best approximation available, and the Commission will adopt their 10 estimate as a proxy for all companies with the exception of Dixville Notch and Bretton Woods. We recognize that the rates of these two companies are not

calculated to earn a profit and that they have so few employees and economies of scale that they will not experience any savings in expense due to detariffing. If the Commission lowered their current rates they would experience a negative return. Consequently, the Commission will require all telephone companies except Dixville and Bretton Woods to lower their basic rates by 10 cents.

D. TARIFF REVISIONS

[5-7] In this proceeding, the F.C.C. has preempted the state commissions' authority over the regulation of inside wire installation and maintenance and required companies to detariff these services. Even if this preemption is challenged, this Commission has the authority to require that these services be detariffed under N.H. Rev. Stat. Ann. §374:28 (1984). This provision gives the Commission the power to discontinue any part of a company's service permanently and remove the equipment essential to the same, "whenever it shall appear that the public good does not require the further continuance of such service." Id. Since these services are currently being provided competitively, the public good does not require the further continuance of the services, and they are detariffed.

New England Telephone and Contel have asserted that we should not require them to relinquish ownership of the inside wire because the F.C.C. has, upon reconsideration, decided not to mandate that companies give up ownership. The F.C.C. reasoned that they would not require the companies to give up ownership as long as the companies did not use their ownership to interfere with the detariffing requirements. We see this as basically a difference of semantics. We will not allow the companies to maintain the ownership of inside wire.

The companies have made appropriate tariff revisions by deleting references to inside wire services and charges. The Commission will allow the companies to include inside wire in their tariffed maintenance of service charge. Given all of the confusion which will result from the implementation of these new detariffed services, it is reasonable to assume that some customers, even those who have a network interface device, might not understand how to test their system.

The Commission will allow the companies to charge the maintenance of service charge where the company has made a reasonable attempt to instruct the customer on the use of the NID. If a customer calls with a trouble and the company informs them over the telephone as to the location of the NID

and instructs them how to test their inside wire and telephone set using the NID and the customer still insists that the company make a service call, the company may charge a maintenance of service charge for the visit. The Commission will require the companies to keep track of the number of these calls and the revenue derived therefrom.

Customers may have a difficult time determining if a problem is in the network or in the inside wire without the existence of a NID. Customers could test the phone and the inside wire without the NID if they had access to the protector. However, the telephone companies insist that customers should not have access to the protector. For this reason, companies should not apply the maintenance of service charge for a trouble call when a NID has not been installed. The company should install a NID at the time of this trouble call. In this way, the company could

include the cost of the call in rate base or expenses after the equipment has been installed, since they would have had to have made the call to install the NID.

Testimony was received which suggested that there will be customers who, despite the fact that their NID has been installed, will nevertheless call the company if their phones fail to operate. Those customers will be liable for a service charge if the trouble is found to be "downstream" of the NID unless they have subscribed to a maintenance policy. The company proposes to waive this service charge if, at the time of the visit, the customer agrees to sign up for the maintenance plan. We find this waiver to be inappropriate. The maintenance plan is, in effect, an insurance policy and is priced based on the risks of its being exercised. If it is offered customers who have already exercised it, it will not only risk becoming improperly priced but will also be contrary to the very purpose for which a maintenance plan should be devised.

E. CUSTOMER NOTIFICATION

[8] This Commission clearly has the authority to regulate the type of speech proposed in the nonbinding customer notification guidelines. The Commission agrees with N.E.T. that commercial speech is subject to a limited measure of protection. Ohrelik v. Ohio State, 436 U.S. at p. 436. In addition, it agrees that the test established in Central Hudson Gas and Electric applies.

However, the Company is not correct in stating that the only governmental interest served by the guidelines is the assurance of adequate customer notification. The guidelines are intended to insure many government interests. The following are some of the many interests addressed:

1. adequate customer notification,

2. eradication of hidden cross-subsidies between the regulated and deregulated businesses,

3. elimination of the customer confusion which may result from including the business of the deregulated portion of the business in the same envelope as information sent by the regulated portion of the business, and

4. elimination of the unfair competitive advantage that the deregulated business may derive from having customers think that the services advertised are regulated

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services for which competitive options do not exist.

Regulation is proper because it is a time, place, or manner regulation that serves a significant governmental interest and leaves ample alternative channels for communication. These guidelines only prevent the deregulated operation from including its advertisements in the same envelope as company customer notifications. It does not prevent the company from advertising by separate mailings or from advertising in the billings which do not contain information about customer notification. These guidelines serve all of the governmental interests listed above. They are strictly drawn to specifically address those issues, so they are not overly broad.

We will require separate envelopes for customer notification. This requirement of separate envelopes will also serve to thwart anticompetitive problems created by the company proposed plan. The company will probably initially be in a monopoly position in this area which is to be

made competitive. The requirement of a separate notification and advertisement will serve to eliminate any unfair advantage that the telephone company might derive from including their ad with their notice.

We find that the customer may not understand and be notified of his ownership responsibilities by the tariff definitions. This Commission has had many customer complaints where the customer does not understand the meaning of the tariff. See e.g. Putnam v. New Hampshire Electric Co-op., DC 86-95, Order No. 18,297 (June 9, 1986). Customers may not be able to understand the definition of the network interface device or of the types of wire which are inside wire without some pictures. Particularly for residential customers, we find that each notification should include a picture or drawing of the standard NID and a description of how to test with it. There should also be a drawing or schematic of where the NID is usually located in a single family home and/or where it usually [sic] located in an apartment complex. A more particularized description should be given of the NID and of what constitutes inside wire. These descriptions should be in laymen's terms.

We are particularly concerned here about the understanding of the single family residential customer as they will be the most likely to want to "do-itthemselves." Businesses will have many equipment vendors and other entrepreneurs eager to provide them with inexpensive services.

The notice to businesses should include a picture or drawing of the most used NID in the business classes. There should be an explanation that this may not be the NID located on the premises. There should be an example drawing or schematic of where the NID is most often placed for business customers. There should be a more particularized description of the NID and of inside wire. Compliance with the above notification will constitute compliance with the intent if not the language of guidelines #6 and #7.

F. DISCONNECTION FOR NONPAYMENT OF DEREGULATED BILLS

[9] The Commission will not allow the termination of service for nonpayment of the deregulated bill. This policy was determined previously by the Commission in the Re Sale of Customer Premises

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Equipment, DE 84-285, DR 83-290, DR 84-282, DR 84-289, DR 84-57, DR 85-357, DR 84-281, DR 84-299, DR 84-377, Report and Order No. 18,044 [sic] (1986), at 9.

Our Order will issue accordingly.

ORDER

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

ORDERED, that all telephone companies in the state of New Hampshire which are regulated by this Commission relinquish ownership to all inside wire in accordance with the original accounting and finance requirements as delineated by the Federal Communications in Re Detariffing the Installation and Maintenance of Inside Wiring, (second Report and Order) CC Docket No. 79-105, F.C.C. 86-63, 51 FR 8498 (February 24, 1986); and it is

FURTHER ORDERED, that telephone companies will not be required to establish separate

subsidiaries for the provision of the detariffed inside wire services, but they will be required to abide by such accounting separations as are found necessary in this report and in further proceedings; and it is

FURTHER ORDERED, that the companies will be allowed flexibility with respect to the placement, type, and installation program of the network interface device (NID); however, the companies will be required to install NIDs at least at the time of installations, reinstallations and maintenance calls; and it is

FURTHER ORDERED, that each company except Dixville Telephone and Bretton Woods shall lower their basic rate by $.10 to reflect the detariffing of the maintenance and installation of inside wire; and it is

FURTHER ORDERED, that companies tariff definitions of premises, premises wire, network interface, and network interface device are approved, that proposed tariff deletions of charges for inside wire services are approved, and that inclusion of inside wire in the maintenance of service charge is approved; and it is

FURTHER ORDERED, that companies shall waive the maintenance of service charge where the customer does not have a NID but that they shall not waive the maintenance of service charge because the customer has subscribed to a detariffed service; and it is

FURTHER ORDERED, that companies must capitalize the cost of the NID whether it is retrofitted or new; and it is

FURTHER ORDERED, that companies shall comply with the guidelines proposed by the Commission in its letter dated September 26, 1986.

FURTHER ORDERED, that all companies shall file compliance tariffs for effect January 1, 1987.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1986.

FOOTNOTES

[1]Inside wire is defined herein as telephone plant including installation costs, installed on the customer's side of the demarcation point as set forth in 47 C.F.R. §68.3 (h). Amendment of Part 68 CC Docket 81-216, 97 F.C.C.2d 527 (1984).

[2]Complex wiring includes all cable wire, and associated components located on the customer's side of the demarcation point, when this wiring is inside a building located on the same or contiguous property not separated by a public thoroughfare, which connect station components to each other or to the common equipment of a PBX or key system. CC Docket No.79-105, Second Report and Order, at 1, n.2.

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NH.PUC*12/22/86*[60945]*71 NH PUC 818*Concord Natural Gas Corporation

[Go to End of 60945]

71 NH PUC 818

Re Concord Natural Gas Corporation

DR 86-156

Re Gas Service, Inc.

DR 86-157

Re Manchester Gas Company

DR 86-158

Supplemental Order No. 18,517

New Hampshire Public Utilities Commission

December 22, 1986

ORDER amending the service and main extension tariffs of three natural gas distribution companies.

Service, § 188 — Burden of cost — Customer contributions — Natural gas main extensions — "25% test."

A natural gas distribution company was permitted to revise its tariff governing residential main extensions by replacing its policy of providing extensions of up to 400 feet without a customer contribution with a "25% test" whereby customers requesting main extensions would be required to make a contribution if the estimated net annual revenue associated with the main extension was less than 25% of the estimated construction costs. [1] p. 819.

Service, § 188 — Burden of cost — Customer contributions — Natural gas service extensions.

Three natural gas distribution companies were permitted to revise their tariffs governing residential service extensions so that extensions would be provided without a customer contribution only where the meter is located within 80 feet of the property line and within 5 feet of the closest corner of the residence to the street; such a revision was found to be in accord with the commission's view that a customer should bear the cost of a greater than normal service extension. [2] p. 819.

APPEARANCES: Orr and Reno by David Marshall, Esquire on behalf of Concord Natural Gas Corporation, Gas Service, Inc. and Manchester Gas Company Daniel J. Kalinski, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On May 21, 1986, Concord Natural Gas Corporation (Concord), Gas Service, Inc. (Gas Service) and Manchester Gas Company (Manchester), sister corporations under the common ownership of EnergyNorth, Inc. (ENI), filed revisions to their respective tariffs 41regarding service and main extension policies to take effect June 21, 1986.

1(156) The Commission suspended the effective date of the filing pursuant to RSA 378:6 to allow for an investigation. An

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Order of Notice was issued on August 13, 1986, which consolidated the filings and scheduled a prehearing conference on September 18, 1986. In Order No. 18,419 issued on September 29, 1986, the Commission set a procedural schedule which established, inter alia, a hearing on the merits for October 21, 1986. At the hearing, Donald Inglis, president of each company, submitted testimony and exhibits in support of the proposed revisions.

II. COMMISSION ANALYSIS

[1, 2] Under their current tariffs, Manchester and Gas Service's main extension policies for residential customers are essentially the same. Main extensions are provided without a customer contribution if a customer's estimated net annual revenue is equal to or greater than 25% of the estimated construction costs. This is referred to as the "25% test". Concord, on the other hand, currently provides main extensions of up to 400 feet at no extra charge. All three companies currently provide service extensions (the connection between the main and customers residence) at no charge.

Concord proposes to eliminate the 400 feet allowance and insert the 25% test in its place. In addition, all three companies propose that service extensions be provided without a customer contribution only when the meter is located within 80 feet of the property line and within 5 feet of the closest corner of the residence to the street. Also proposed are certain language changes which are clarifying in nature. The end result is that all three companies' main and extension tariff provisions will be identical.2(157)

In support of changing Concord's main extension policies, Concord argues that the 400 feet allowance is, in essence, a no contribution policy because most, if not all, extensions are within 400 feet. It points out that all utilities collect some form of contribution for main extensions as a way of lessening the impact of rate increases.

Concord argues that 25% test approved by the Commission for Manchester and Gas Service is a more appropriate methodology. Regarding the proposed so-called "80 feet allowance", the companies argue that it is necessary to protect against extraordinarily long service lines that have been increasingly requested in recent years for pool heaters and detached garages. Like main extensions, the companies contend that the cost of a greater than normal extension should be born by the customer requesting it and not all customers as a group. According to Mr. Ingalls, the impact of this charge will be minimal given that nearly all routine service extensions are within 80 feet.

After a complete review, we will approve the proposed revisions. As we have stated

previously, we find the 25% test to be a fair and equitable means of determining a customer's contribution. We likewise agree that a customer should bear the cost of a greater than normal service extension. Accordingly we will direct the Companies to refile tariff pages reflecting the revised provisions as set forth in Attachment II to

Exhibit 1. Attachment II, presented at the hearing contains several amendments to the originally filed tariff pages which resulted from prehearing discussions with the Commission Staff.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the following tariff pages be, and hereby are rejected:

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

Concord - Second Revised Page 6 and
Original Pages 6A, 6B, 6C
and 6D
Gas Service - First Revised Pages 24 and
25 and Original Pages 25A,
25B and 25C
Manchester Gas - Second Revised Page 23 and
Original Pages 23A, 23B,
23C and 23D

and it is

FURTHER ORDERED, that the proposed tariff revisions for Concord Natural Gas Corporation, Gas Service, Inc. and Manchester Gas Company as set forth in Attachment II to Exhibit I be, and hereby are, approved; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation, Gas Service, Inc. and Manchester Gas Company file revised tariff pages reflecting those contained in Attachment [sic] to become effective as of January 1, 1987.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of December, 1986.

FOOTNOTES

[1]The tariff page designations for the Companies are as follows:

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

Concord - Second Revised Page 6 and
Original Pages 6A, 6B, 6C
and 6D

Gas Service, Inc. - First Revised Pages 24 & 25
and Original Pages 25A,
25B and 25C

Manchester Gas - Second Revised Page 23 and

Original Pages 23A, 23B,
23C and 23D

[2]No changes are proposed to the non-residential main and service extension policies.

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[Go to End of 60946]

71 NH PUC 821

Re Public Service Company of New Hampshire

DR 86-41

Re UNITIL Service Company

DR 86-69

Re New Hampshire Electric Cooperative

DR 86-70

Re Granite State Electric Company

DR 86-71

Re Connecticut Valley Electric Company

DR 86-72

Intervenors: Pinetree Power Development Corporation, Glen Hydro, American Cogenics, Inc., Granite State Hydropower Association, Enesco, Concord Electric Company, Exeter and Hampton Electric Company, Public Service Company of New Hampshire, KTI Energy, Inc., and New England Coastal Generation Company

Order No. 18,520

New Hampshire Public Utilities Commission

December 23, 1986

ORDER denying motions for the establishment of utility specific dockets for determining avoided cost rates for cogeneration and small power production.

Cogeneration, § 25 — Rates — Avoided costs — Procedure.

Motions for the consideration of utility specific issues concerning avoided cost rates for cogeneration and small power production in individual dockets, rather than in the context of a consolidated avoided cost rate proceeding, were denied; the commission found that it could

make utility specific findings based on utility specific evidence in the context of the consolidated proceeding, and that a consolidated proceeding would likely result in a more fully developed record from which to resolve policy issues.

By the COMMISSION:

REPORT REGARDING MOTIONS REQUESTING CONSIDERATION OF CERTAIN ISSUES IN INDIVIDUAL DOCKETS, MOTION ON SCHEDULE AND COMMISSION SCHEDULING CONCERNS

On September 23, 1986 the Commission issued Report and Order No. 18,407 (71 NH PUC 547) consolidating dockets DR 86-41, DR 86-69, DR 86-70, DR 86-71, and DR 86-72, continuing all due dates currently set in them, setting an additional pre-hearing conference, and setting additional procedural dates for the consolidated

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dockets. On October 3, 1986 Granite State Electric Company (Granite State) filed a motion to consider particular issues individually in Docket DR 86-71. Pinetree Power Development Corporation, Glen Hydro, American Cogenics, Inc., Granite State Hydropower Association, and Enesco (hereafter the Intervenors) filed a motion on October 3, 1986, requesting consideration of certain issues individually in dockets DR 86-41, DR 86-69, DR 86-70, DR 86-71, and DR 86-72. On October 17, 1986 Concord Electric Company and Exeter & Hampton Electric Company (collectively referred to as the UNITIL Companies) filed a response in support of the motion filed by the Intervenors. On October 15, 1986 Public Service Company of New Hampshire (PSNH) filed a response to Granite State's motion in DR 86-71 and separately to the Intervenors' motion. On December 1, 1986, KTI Energy, Inc. and New England Coastal Generation Company filed a motion titled MOTION FOR LIMITED AMENDMENT TO THE HEARING SCHEDULE requesting modification of the hearing schedule in this docket to accommodate a conflict the monitoring parties have with Florida Power Commission hearings on January 12-14, 1986. This report and order disposes of the above described motions, sets a deadline for motions to strike prefiled testimony, and requires parties to meet before the hearing on January 15, 1986.

GRANITE STATE AND INTERVENOR MOTIONS REGARDING INDIVIDUAL DOCKETS

Granite State's motion requests the Commission consider the following four issues in the individual docket DR 8671, rather than in the consolidated proceeding:

1. The issue of the limitation that should be set on the maximum amount of new, long-term QF capacity that Granite State could be required to purchase from any one or more producers, at Commission established long-term rates, during any one twelvemonth period.

2. The issue of the limitation that should be set on the maximum capacity, in megawatts, of any single QF unit that Granite State could be required to accept on its system, and from which Granite State could be required to purchase electricity at Commission established long-term rates, at any time.

3. The issue of the limitation that should be placed on front-loading, the related payment schedules, and the nature and extent of accompanying security that could be required, in connection with purchases from QFs by Granite State, at Commission established long-term rates.

4. The issue of the terms and conditions that should govern purchases from QFs by Granite State, at Commission established long-term rates.

In support of its motion for separate consideration of these four issues, Granite State argues that the limitations imposed by its small size, dispersed load centers and interconnection points and its relationship as a full requirements

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customer of New England Power Company (NEP); require the establishment of terms and conditions keyed for the unique nature of Granite State.

Granite State also avers that longterm purchases from QF's on frontloaded rates would impose significant rate increases on Granite State's customers. Further, Granite State argues that purchases from QF's could present serious difficulties for both the Company and QF's, in terms of demand charges, QF delivery's [sic] in excess of Granite State's own load, and problems for Granite State's distribution system.

The Intervenors' motion proposes two alternate courses of action for the Commission to undertake. First, the Intervenors propose that the Commission grant an extension of time for the parties to further identify and attempt to reach agreement concerning the scope of the policy issues and to determine those issues that may be resolved in utility specific dockets and those that may be addressed in a consolidated proceeding.

In the alternative, the Intervenors request the Commission consider only the following policy issues in a consolidated proceeding:

1. the length of any rate term(s) established by the Commission;

2. to what extent front loading of rates should be permitted;

3. the nature and extent of any security required for the front loaded rates;

4. whether a project milestone procedure should be established for QF projects; and

5. the timing and basis for updates to avoided cost data.

The Intervenors request, under this alternative proposal, that all other policy issues be addressed on a utility specific basis.

In support of their motion the Intervenors state that policy issues will ultimately establish how the avoided costs are translated into QF rates. Further, the Intervenors state that a number of these policy issues are dependent upon the distinct characteristics of the particular utility in question.

The Intervenors aver that any attempt to address utility specific policy issues within the context of a consolidated proceeding will reduce the likelihood of resolving certain policy issues and waste valuable administrative resources. In addition, the Intervenors express the concern that

if all policy issues are addressed in a consolidated docket a presumption will exist that equivalent rate designs and contract terms and conditions should be expected regardless of utility specific characteristics.

UNITIL AND PSNH RESPONSES REGARDING INDIVIDUAL DOCKETS

In its response, UNITIL supports the Intervenors motion in its entirety with particular support of the first alternative of the Intervenors. In support of its position UNITIL essentially re-states the arguments put forth by the Intervenors.

In separate responses to the Granite State and Intervenor motions, PSNH requested the Commission deny the motions. PSNH argues that Report and Order No. 18,407 protects the rights of all parties to present evidence with

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respect to any special or unique circumstances pertaining to an individual utility. Further, PSNH avers that presentation of utility specific evidence in a consolidated proceeding will serve the public good. PSNH claims that a consolidated proceeding will allow for the more efficient use of scarce administrative resources and provide the best forum for the Commission to hear and evaluate any claims of utility specific circumstance.

Although PSNH argues against the adoption of the Intervenors' request that the parties attempt to reach agreement on policy issues to be tried in individual proceedings, they state a willingness to work with the other parties to identify, review and better define issues remaining for litigation.

COMMISSION DECISION

The Commission has accepted and duly considered the above described motions. Having reviewed the motions and responses discussed herein, the Commission will deny the Granite State and the Intervenor motions requesting consideration of certain issues in individual dockets, and grant scheduling relief requested by KTI Energy, Inc. and New England Coastal Generation Company.

This Commission recognized the concerns raised by Granite State and the Intervenors with respect to the differences that exist among the electric utilities under our jurisdiction when it established separate dockets for each utility. The Commission emphasized this recognition when we consolidated these dockets, via Order 18,407 for purposes of hearing, with the following lan guage:

The Commission, however, anticipates that it may need to make utility specific findings in this consolidated docket from utility specific evidence. (71 NH PUC at p. 548.)

As stated in Report and Order No. 18,407, this Commission "considers it of utmost importance that the policies set by these avoided cost proceedings be consistent in their statewide, multiutility, and multi-qualified application". 71 NH PUC at p. 547. The presentation of the evidence for all utilities in a single proceeding will provide the best arrangement to accomplish this goal. The goal of consistency does not conflict with the recognition that we may need to make utility specific findings based on utility specific evidence.

The Commission also disagrees with the Intervenors claim that "any attempt to address utility specific policy issues within the context of a consolidated proceeding will reduce the likelihood of resolving certain policy issues and waste valuable administrative resources". On the contrary, the evidence presented in a consolidated proceeding is likely to result in a more fully developed record from which to resolve policy issues. Further, a consolidation of the docket for purposes of hearing will lead to a better utilization of resources and provide this Commission and the parties involved in these dockets with administrative benefits.

With regard to scheduling, the Commission will continue these hearings until January 15, 1987.

On that date, the parties shall meet at 9:00 a.m. for a prehearing conference to, at a minimum consider order of witnesses and parties. The Commission will accept an agreement on order of parties which is different than the

order developed in its order of September 23, 1986. On January 15, 1987, the hearing will begin upon conclusion of this prehearing conference or at 10:00 a.m., whichever is later. On all other days, the hearings shall begin at 10:00 a.m., except for January 19 and 26. On those days, the hearings shall begin at 1:00 p.m. and 11:00 a.m., respectively.

Our Order will issue accordingly.

ORDER

Based on the foregoing REPORT REGARDING MOTIONS REQUESTING CONSIDERATION OF CERTAIN ISSUES IN INDIVIDUAL DOCKETS, MOTION ON SCHEDULING AND ADDITIONAL SCHEDULING CONCERNS, which is incorporated hereby by reference, the Commission orders that:

1. The Motion of Granite State Electric Company requesting consideration of particular issues individually in Docket No. DR 86-71 is denied;

2. The Motion of Pinetree Power Development Corporation, Glen Hydro, American Cogenics, Inc., Granite State Hydropower Association, and Enesco requesting consideration of certain policy issues in individual utility dockets is denied;

3. The Motion of KTI Energy, Inc. and New England Coastal Generation Company for changes to the hearing schedule is granted as described above; and

4. The procedural schedule is modified as described above.

By Order of the Public Utilities Commission of New Hampshire this twentythird day of December, 1986.

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71 NH PUC 826

Re New England Telephone and Telegraph Company

DE 86-287, Order No. 18,521

New Hampshire Public Utilities Commission

December 23, 1986

ORDER authorizing a telephone utility to place and maintain a submarine plant crossing state-owned public waters.

Certificates, § 123 — Telephone — Submarine plant — Crossing public waters.

A telephone utility was authorized to place and maintain a submarine plant crossing state-owned public waters where no objection was received, the Wetlands Board had authorized the placement of the plant, and the utility stated that all construction would be in accord with applicable safety codes.

APPEARANCES: For the New England Telephone & Telegraph Company, Samuel M. Smith, Outside Plant Supervisor, Right-of-Way.

By the COMMISSION:

REPORT

On November 7, 1986, New England Telephone & Telegraph Company, Inc. (NET) filed with this Commission a petition seeking license to place and maintain submarine plant under Lake Winnipesaukee in Meredith, New Hampshire. An Order of Notice was issued on November 19, 1986 setting the matter for public hearing on December 9, 1986 at 10 A.M. in the Commission's Concord Offices. Notices were sent to NET for publication, the Meredith Selectmen's office, the Chief of Land Management (DRED), the Director of the Division of Safety Services, the Department of Transportation, the Attorney General and to the Commission's Court Reporter.

The duly noticed hearing was held as scheduled with Samuel M. Smith appearing for NET. No intervenors were present, nor was any objection received by mail.

Mr. Smith presented four exhibits: (1) a map of the Winnipesaukee Quadrangle siting the proposed crossing, (2) Drawing 29-74 depicting a vertical view of the crossing, (3) authorization by the Wetlands Board, and (4) the petition of NET. Mr. Smith described the crossing as two pair of submarine wires originating at a house on Welcome Island extending about 40 feet underground to the shore of Lake Winnipesaukee, continuing submarine about 300 feet to the shore of Isle of Pines where they would terminate in a weatherproof jack

on the subscriber's dock. All construction would be according to the National Electrical Safety Code and other applicable codes.

With no objections to this construction, the Commission finds that it is in the public interest and will issue its approval order accordingly.

ORDER

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

ORDERED, that New England Telephone & Telegraph Company, Inc. be, and hereby is, granted license to place and maintain submarine wires between Welcome Island and Isle of Pines in Lake Winnipesaukee, Meredith, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this twentythird day of December, 1986.

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NH.PUC*12/23/86*[60948]*71 NH PUC 828*Connecticut Valley Electric Company, Inc.

[Go to End of 60948]

71 NH PUC 828

Re Connecticut Valley Electric Company, Inc.

DR 86-301, Order No 18,522

New Hampshire Public Utilities Commission

December 23, 1986

ORDER nisi authorizing a reduction in the purchased power rate of an electric utility.

Automatic Adjustment Clauses, § 13 — Purchased power tariff — Rate reduction — Electric utility.

An electric utility was authorized to revise its purchased power tariff to reflect a decrease in the wholesale rates charged by its principal power supplier.

By the COMMISSION:

ORDER

WHEREAS, on December 1, 1986 Connecticut Valley Electric Company, Inc., a public utility providing electric service within New Hampshire, filed certain revisions to its purchase power tariff, Page 17, effective January 1, 1987; and

WHEREAS, said revisions represent an estimated decrease in annual revenues of $312,555 based on a decrease in wholesale rates from Central Vermont Public Service Company,

Connecticut Valley Electric Company's principal power supplier; and

WHEREAS, Central Vermont Public Service Company has filed said decrease in wholesale rates with the Federal Energy Regulatory Commission also effective January 1, 1987; and

WHEREAS, the reduction in Connecticut Valley Electric Company's tariff directly results from Central Vermont Public Service Company's wholesale rate change which is subject to reconciliation and refund; and

WHEREAS, pursuant to the New Hampshire Supreme Court decision in Re Sinclair Machine Products, Inc., 126 N.H. 822, 498 A.2d 696 (1985), the Commission has found this rate is just and reasonable and in the public good; it therefore is

ORDERED NISI, that Connecticut Valley Electric Company's tariff NHPUC No. 4-Electricity, 12th Revised Page 17 be, and hereby is, approved; and it is

FURTHER ORDERED, that any party which so desires may file comments, exceptions or such other responses 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 as of January 1, 1987 unless the Commission

provides otherwise in a Supplemental Order issued prior to the effective date subject to possible reconciliation after the nisi period.

By Order of the Public Utilities Commission of New Hempshire this twentythird day of December, 1986.

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NH.PUC*12/23/86*[60949]*71 NH PUC 829*Public Service Company of New Hampshire

[Go to End of 60949]

71 NH PUC 829

Re Public Service Company of New Hampshire

DR 86-122, Fourth Supplemental Order No. 18,523

New Hampshire Public Utilities Commission

December 23, 1986

ORDER authorizing an electric utility to place proposed rates into effect prior to completion of its rate case, and setting procedural schedule.

Rates, § 249 — Effective date — Implementation of rates prior to commission approval —

Statutory requirements — Bond to secure refund — Electric utility.

State statute RSA 378:6 provides that if the commission is unable to make its determination in a rate proceeding prior to the expiration of six months from the originally proposed effective date of the rate schedule, the affected utility may place the filed schedule of rates in effect upon furnishing the commission with a bond in such form and with such sureties, if any, as the commission may determine. [1] p. 831.

Rates, § 656 — Procedure and practice — Effective date — Implementation of rates prior to commission approval — Bond to secure refund — Electric utility.

An electric utility was permitted to place its proposed rates into effect, despite the fact that the commission had not issued a final determination on the proposed rates, where more than six months had elasped from the originally proposed effective date of the rate schedule and the company furnished a bond to secure repayment of any overcollection. [2] p. 831.

Rates, § 656 — Procedure and practice — Effective date — Implementation of rates prior to commission approval — Bond to secure refund — Electric utility.

Statement, in dissenting opinion, that in allowing an electric utility to place proposed rates into effect prior to a final commission determination, the majority erred by not requiring the utility to provide, in addition to a bond, a surety to guarantee repayment of any overcollections and that the bond be interest bearing. p. 831.

(AESCHLIMAN, commissioner, concurs in part and dissents in part. p. 831.)

By the COMMISSION:

REPORT AND ORDER REGARDING RATES SUBJECT TO REFUND AND PROCEDURAL MATTERS

On December 1, 1986 and subsequently during hearings held through

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December 10, 1986, the Commission was presented various scheduling problems and proposals. This report and order resolves most pending scheduling matters. On December 10, 1986 Public Service Company of New Hampshire (PSNH) filed a document with the Commission entitled REPAYMENT BOND. In that document, PSNH represents to the Commission that it will, on January 1, 1987, place into effect the rates of the suspended tariff NHPUC No. 30. This Report and Order provides safeguards and procedures for potential PSNH action of that type.

I. PROCEDURAL SCHEDULES

On May 29, 1986, PSNH filed proposed rate schedules for service designated as NHPUC No. 30 - Electricity, superseding NHPUC Tariff No. 29. The proposed rate schedules bore July 1, 1986 effective dates. On June 24, 1986 the Commission suspended the proposed rate schedules.

The initial procedural schedule clearly was designed around disposition of this case by

January 1, 1987. However, at the first day of the substantive hearings, the parties indicated an agreement to allow PSNH to file rebuttal testimony after the hearings on the direct testimony and thus necessarily extending the hearings beyond the January 1, 1987 date. There was also a desire among the parties to have more time for class allocation and rate design issues. To accommodate these desires, the parties recommended a procedural schedule. Some dates in that schedule were tied to dates yet to occur. The Commission hereby adopts and orders most of that schedule. The ordered schedule provides as follows.

A. Revenue Requirements Schedule

December 18, 1986 PSNH rebuttal testimony due (except for witness Rosenberg)

December 23, 1986 Rebuttal testimony by PSNH witness Rosenberg due

January 2, 1987 Staff rebuttal or surrebuttal testimony due, except for testimony related to PSNH witness Rosenberg

January 6, 1987 Staff rebuttal or surrebuttal due related to PSNH witness Rosenberg

January 6, 1987 Hearings on Staff and thru PSNH rebuttal

January 8, 1987 and surrebuttal (10:00 a.m.)

B. Rate Design Schedule

December 15, 1986 First set of additional data requests on rate design

January 2, 1987 Responses to data requests on rate design submitted in response to December 15, 1986 due date due

January 13, 15 and Prehearing Conference on 16, 1987 Rate Design issues

February 13, 1987 Rebuttal testimony on rate design for all parties

March 3, 1987 thru Hearing on Rate Design March 6, 1987 Issues (10:00 a.m.)

The Commission anticipates that further adjustment may be requested to deal with the delay of PSNH witness Rosenberg, PSNH desires to file additional revenue requirement testimony, and the Consumer Advocates desire to hire additional witnesses. While the Commission believes all these scheduling matters are discretionary, the Commission will consider such requests if and when they arise. The Commission further orders that parties make their

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best efforts to turn around any data requests outside the particularly scheduled ones above as soon as possible and preferably within five days.

II. BOND TO SECURE REPAYMENT

[1, 2] Section 378:6 N.H. Rev. Stat. Ann. provides that if the Commission is unable to make its determination in a rate proceeding such as this one prior to the expiration of six months from the originally proposed effective date of the rate schedule, the public utility affected may place the filed schedule of rates in effect upon furnishing the Commission with a bond in such form and with such sureties, if any, as the Commission may determine. Under that Section, the bond and sureties, if any, shall secure the repayment to the customers of the public utility of the

difference, if any between the amounts collected under said schedule of rates and the schedule of rates determined by the Commission to be just and reasonable. Such rates found by the Commission to be just and reasonable may be at a higher level or lower level than the currently existing rates.

The Commission notes that the Company has voluntarily submitted a bond designed to cover the excess, if any, of the amounts collected by the company pursuant to bills rendered under the schedule designated NHPUC No. 30 over the amounts that would have been collected pursuant to bills rendered upon such meter readings and the rates that the Commission determines as just and reasonable during the period which the company renders bills pursuant to Tariff NHPUC No. 30.

The Commission finds the bond submitted by the Company to be satisfactory with regard to surety, interest, and specification of basic refund mechanisms. Our Order on the above items will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing REPORT AND ORDER REGARDING RATES SUBJECT TO REFUND AND PROCEDURAL MATTERS, which is incorporated herein by reference, the Commission orders the following:

1. the procedural schedule of this docket shall be modified as set out in the foregoing Report and Order; and

2. the Company may implement rates in suspended tariff NHPUC No. 30 only upon compliance with the procedure specified in the foregoing Report and Order relating to bond and surety.

By order of the Public Utilities Commission of New Hampshire this twentythird day of December, 1986.

Separate Opinion of Commissioner Lea Aeschliman Concurring in Part and Dissenting in Part

I concur with the procedural schedule outlined in the Commission's Order but dissent to the extent that it fails to provide additional procedures which I believe are appropriate and necessary in this case. Those procedures relate to the statutory right that PSNH has under New Hampshire law to place its proposed increase into effect on January 1, 1987 subject to refund. In my opinion, the Commission should at this time order PSNH to: 1) guarantee repayment of refunds regardless of their

financial condition by provision of a surety; 2) provide interest on any refund paid to customers; and 3) set specific procedures which guarantee reasonable efforts to provide accurate refunds for each customer, rather than merely repayment of overcollected amount to the ratepaying public as a whole.

Under New Hampshire statutes (Section 378:6 N.H. Rev. Stat. Ann.), if the Commission is unable to make its determination in this case prior to January 1, 1987 PSNH may place the entire

proposed rate increase into effect. Such rates would be subject to refund, based on the eventual rate level provided by Commission order. New Hampshire law also provides that prior to placing such an increase into effect, PSNH must provide a bond and sureties the Commission may require to secure payment.[1(158)] § 378:6 N.H. Rev. Stat. Ann.

Under the original procedural schedule, the Commission anticipated completing this case by January 1, 1987 — thereby avoiding the problem of a rate increase subject to refund. However, as the Commission order indicates, the procedural schedule in this case is being revised beyond January 1, 1987. This revision is primarily to provide PSNH an opportunity to provide additional testimony to rebut testimony provided by the Commission Staff.

On December 10, 1986, PSNH filed a document entitled "Repayment Bond" which states that it will place its proposed increase into effect on January 1, 1987. Thus, the Commission must consider what bond or surety it should require to secure repayment. Absent a Commission order on this matter, the "Repayment Bond" filed by PSNH shall govern. It provides no surety, no interest on refunds, no specific refund procedures, and no specific refund timing.

In my opinion, the Commission should require a surety to guarantee payment of any refunds which may be necessary due to the January 1, 1987 increase. In addition, the bond should provide interest to ratepayers on any refund calculated at the rate utilized by the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.19a (1986). The bond should further provide for specific refund mechanisms to guarantee not only that the Company pays back any excess revenues paid in, but that reasonable efforts are made to pay customers in a timely manner and in the amounts which they individually actually overpaid.

My concerns related to repayment to customers are raised by facts developed in the testimony of the Company's Chief Financial Officer, Mr. Bayless. According to Mr. Bayless, the Company will be filing a petition for additional financing with this Commission in January of 1987. Under my understanding of his testimony, failure of the Company to receive financing either because of this Commission's failure to approve it or due to the markets unwillingness to provide such financing would result in the Company having difficulty meeting its obligations at a time estimated to be around September, 1987.

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The new schedule of this rate case indicates that a Commission decision is likely some time between April 1987 and late June, 1987. Thus, refunds to customers are highly likely to fall during a time period of potential financial difficulties of PSNH. Thus in my opinion it would be prudent for this Commission to require PSNH to purchase a surety under which a separate entity would guarantee payment of these refunds if PSNH is unable to provide them.

With regard to interest on such refunds, I believe the following also uncontested facts dictate the appropriateness of providing the customers with interest on any refund they might receive. First, the Commission has regularly provided temporary rates at current rate levels as a procedural mechanism to protect companies from the problem of undercollection between the time they request such temporary rates and the time the Commission provides a rate increase (if any). Under that procedure, companies eventually receive any underrecovery at the rate provided after the Commission issues its eventual rate order. Thus the Company recovers the rates the

Commission decides it should recover for the entire time period, but does not implement rates which may be significantly beyond what the Commission eventually approves. PSNH has not pursued such a procedure in this case. Instead, PSNH will place the entire amount of its increase into effect January 1, 1987. By this procedure, PSNH receives the ratepayer funds which may be in excess of what the Commission orders in this rate case. That is particularly problematic in this rate case, for as I understand the record before the Commission, even if Public Service Company of New Hampshire prevails on all the issues currently before the Commission, it will receive less than the original rate increase filing which it will implement on January 1, because of tax changes that are not reflected in the Company's filing.

Finally, any potential overcollection by ratepayers should be refunded, to the extent possible, to the actual ratepayers who paid the excess amounts. Procedures which guarantee the customers receive their actual overcollection in a timely manner should be required prior to allowing PSNH to implement its full rate increase request. Such procedures should include the mailing of checks to customers who have overpaid and subsequently left the PSNH system.

FOOTNOTE

[1]A bond is a certificate or evidence of a debt upon which interest is often paid. See Blacks Law Dictionary, (4th Ed.) (1968). A surety is one who undertakes to pay money or to do any other act in event his principal fails to take such action. Id, at 1611. A surety company is a company whose business is to assume the responsibility of a surety on bonds in consideration for a fee. Id. New Hampshire statutes regulate the operation of surety companies in New Hampshire. See: N.H. Rev. Stat. Ann. Chapter 416.

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[Go to End of 60950]

71 NH PUC 834

Re Fuel Adjustment Clause

Intervenors: Concord Electric Company, Exeter and Hampton Electric Company, Granite State Electric Company, and Connecticut Valley Electric Company

DR 86-296, Order No. 18,525

New Hampshire Public Utilities Commission

December 31, 1986

ORDER authorizing electric utilities to place revised fuel adjustment clause rates into effect.

Automatic Adjustment Clauses, § 59 — Procedure — Filing requirements — Fuel adjustment clause revisions.

The commission requires electric utilities to file revisions to their fuel adjustment clause rate tariffs at least one month prior to the effective date of the tariffs.

APPEARANCES: For Concord Electric and Exeter & Hampton Electric Company, Elias G. Farrah, Esquire; for Granite State Electric Company, Philip Cahill, Esquire; for Connecticut Valley Electric Company, C. J. Frankiewkz.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on December 22, 1986 to review the Fuel Adjustment Clause (FAC) filings of Concord Electric Company, Exeter & Hampton Electric Company, Granite State Electric Company and Connecticut Valley Electric Company for the first half of 1987.

I. Connecticut Valley Electric Company, Inc. (Conn. Val.)

On December 11, 1986, filed a FAC rate for the period January - June, 1987, of $0.61 per 100 KWH.

The Company witness, (C. J. Frankiewkz) asked to delay the hearing because the Order of Notice scheduling the hearing had not been published, as required by the Commission's Rules and Regulations. Accordingly, the Commission has rescheduled the hearing for Connecticut Valley Electric Company, Inc.'s FAC on January 7, 1987 at 10:00 a.m.

II. Granite State Electric Company

Granite State Electric Company (Granite State) made its January-June 1987 filing for a FAC and an Oil Conservation Adjustment rate ("OCA") on December 15, 1986. Granite State had a FAC rate of $0.013 per 100 KWH in effect for July 1, 1986 through December 31, 1986 and an OCA rate credit of $0.006 per 100 KWH in effect for the same period.

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The rates requested on December 15, 1986 were a credit of ($.088) per 100 KWH for FAC, and $.015 per 100 KWH for OCA. In addition, Granite State filed revised Qualified Facilities tariff rates.

Issues raised during the December 22, 1986 hearing included:

1. the estimated oil and coal prices for the upcoming period;

2. the sales projection for the period January - June, 1987;

3. the Qualified Facilities in the Fuel Adjustment Clause; and

4. the filing date of the FAC and OCA rate change.

As noted above, Granite State filed its tariff pages revising the current FAC and OCA rate on December 15, 1986. This filing was made fifteen days prior to the effective date of the tariffs (January 1, 1987). Staff inquired into Granite State's ability to file revisions to the FAC and OCA

tariff along with supporting testimony and exhibits at least a month in advance. Granite State witnesses responded that such filings could be made, although they would be subject to later revisions.

The Commission believes it is in the best interest of all parties to have the filings made at least thirty days in advance. Therefore, we will require Granite State to provide its FAC and OCA filings at least thirty days in advance.

Based on the evidence provided, the Commission will accept the filed FAC rate of a credit of ($.088) per 100 KWH, the OCA rate of $.015 per 100 KWH, and the revised QF rates as filed.

III. Concord Electric Company and Exeter & Hampton Electric Company

Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") presented three witnesses, Susan G. Hersey, George R. Gantz and David K. Foote.

Concord's FAC in effect during the period October 15, 1986 through December 31, 1986 was a credit of ($1.476) per 100 KWH and Exeter and Hampton's FAC was a credit of ($1.514) per 100 KWH during the same period. These two companies filed revised FAC surcharge credits of ($.896) and ($.872) per 100 KWH for Concord and Exeter & Hampton respectively (exclusive of franchise tax effects).

On December 16, 1986 the companies filed testimony and exhibits which supported the proposed revision to their respective FAC surcharge credits.

Both companies state these increases result entirely from the fact that the present fuel charge rate contains a credit of approximately $.009 KWH intended to pay back the substantial over collection estimated in September 1986.

The following issues were discussed during the December 22, 1986 hearing:

1. Cost comparisons of purchase power costs between Unitil Power Corp., the companies sole provider of electric service, and Public Service Company of New Hampshire;

2. Fulfillment of NEPOOL capability, responsibility requirements by Unitil Power Corp.;

3. Qualified facility (small power producer) purchases, and its effect on the FAC;

4. Sales forecasts for the companies;

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5. Estimated cost of oil; and

6. The filing date when the companies revise the FAC.

Like Granite State (above) the Commission will require that the companies file their revisions to the FAC at least one month prior to the effective date of the tariffs. Witnesses for the companies have ackowledged that such a filing date is possible. This revised filing date is in the best interest of all parties.

Based on the evidence provided, the Commission will accept the filed rate of ($.896) and ($.872) per 100 KWH (credits) for Concord and Exeter & Hampton respectively.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 7th Revised Page 20A of Concord Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge credit of ($0.896) per 100 KWH for the months of January through June, 1987, be, and hereby is, permitted to go into effect on January 1, 1987; and it is

FURTHER ORDERED, that 33rd Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of ($.872) per 100 KWH for the months of January through June, 1987, be, and hereby is, permitted to go into effect January 1, 1987; and it is

FURTHER ORDERED, that 18th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of $.015 per 100 KWH for the months of January through June, 1987, be, and hereby is, permitted to go into effect for January 1, 1987; and it is

FURTHER ORDERED, that 22nd Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 Electricity, providing for a fuel surcharge credit of ($.088) per 100 KWH for the months of January through June 1987, be, and hereby is, permitted to go into effect for January 1, 1987; and it is

FURTHER ORDERED, that 7th Revised Page 11C of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a Qualifying Facility Power Purchase Rate be, and hereby is, accepted for effect during January through June, 1987; and it is

FURTHER ORDERED, that 73rd Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity, providing for a fuel charge of $1.78 per 100 KWH for the month of January, 1987, be and hereby is, permitted to become effective January l, 1987; and it is

FURTHER ORDERED, that 124th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC NO. 3 - Electricity, providing for a fuel surcharge credit of ($.56) per 100 KWH for the month of January, 1987, be, and hereby is, permitted to become effective January 1, 1987.

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 thirtyfirst day of December, 1986.

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Endnotes

1 (Popup)

[1]The rates established in Report and Order No. 17,104 were updated by the Commission in Re Small Energy Producers and Cogenerators, 70 NH PUC 753, 69 PUR4th 365 (1985).

2 (Popup)

[2]On March 19, 1985, the Commission issued an Order On Notice in this regard. Ashland filed an affidavit of publication on March 28, 1985 which evidences timely publication of the Order of Notice.

3 (Popup)

[3]See the discussion at pp. 5-7 of the Report (69 NH PUC at pp. 355, 356, 61 PUR4th at pp. 135, 136).

4 (Popup)

[4]The rates are contained in Report and Order No. 17,104 (69 NH PUC 352, 61 PUR4th 132) and were updated in Report and Order No. 17,838 (70 NH PUC 753, 69 PUR4th 365).

5 (Popup)

[5]In Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742, 47 PUR4th 1, 72 L.Ed.2d 532, 102 S.Ct. 2126 (1982), the United States Supreme Court upheld the constitutionality of PURPA.

6 (Popup)

[6]RSA 372-A:3 provides as follows:

7 (Popup)

[6]RSA 372-A:3 provides as follows:

8 (Popup)

[1]For a definition of the small power producers and cogenerators who are eligible for QF status under PURPA, see 18 C.F.R. §§292.201 et seq.

9 (Popup)

[2]The constitutional foundation for the "Bright line" identified in Attleboro was, subsequent to the enactment of PURPA, modified by the court in Arkansas Electric Co-op. Corp. v. Arkansas Pub. Service Commission, 461 U.S. 375, 52 PUR4th 514, 76 L.Ed.2d 1, 103 S.Ct. 1905 (1983). That modification does not effect the federal and state regulatory structure governing investor-owned electric utilities subject to the FPA See, note 2 in Re Connecticut Valley Electric Co., Inc., 69 NH PUC 319, 323 (1984), rev'd on other grounds, Re Sinclair Machine Products, Inc., — N.H. —, 498 A.2d 696 (1985).

10 (Popup)

[3]If the QF was not located in the buyer's service territory, the FERC would also regulate,

to a certain extent, the rates charged for transmission or wheeling services. FPA, § 201.

11 (Popup)

[4]The Court subsequently affirmed certain challenged provisions of those regulations in American Paper Institute, Inc. v. American Electric Power Service Corp., 461 U.S. 402, 52 PUR4th 329, 76 L.Ed.2d 22, 103 S.Ct. 1921 (1983).

12 (Popup)

[1]Contrary to the Movant's argument at paragraph 2, we did not hold that RSA 362-A confers public utility status. Rather, RSA 362:2 confers that status. The analysis of the provisions of RSA 362-A was for the purpose of ascertaining whether BWS had been exempted from the RSA 362:2 definition.

13 (Popup)

[1]If any party objects to such individual participation because that party believes that there is not in fact a divergence of positions, the matter will be resolved by the Commission.

14 (Popup)

[1]Investigation into the wholesale rate is usually conducted by the FERC staff when the reconciliation is filed.

15 (Popup)

[1]Mr. Lahtinen sponsored the testimony of Steven J. Allenby, Assistant Vice-President of Corporate Planning, Rates and Financial Analysis of Central Vermont Public Service Corporation. Exhibit 19. We accepted the testimony as that of Mr. Lahtinen since it was his own individual expertise and analysis which allowed him to adopt Mr. Allenby's submission and he was the witness available for cross-examination.

16 (Popup)

[2]EUA Power also cited certain language in Grafton County Electric Light & P. Co. v. New Hampshire, 77 N.H. 539, PUR1915C 1064, 94 Atl. 193 (1915) as pertinent to the public good standard. That case applied to the determination of whether financing authority should be granted to a public utility already doing business in New Hampshire. We do not believe that the same standards governing whether an existing public utility business may issue and sell securities are necessarily pertinent to the market entry considerations inherent in an RSA 374:22 determination.

17 (Popup)

[3]The authority was granted nisi because the request was filed by NHY rather than the joint owners and, as entities directly affected by a Commission decision, we believed that the joint owners should be made parties to the proceeding and given an opportunity to comment. No adverse comments were filed by the joint owners and the nisi order became effective under its terms on July 17, 1985.

18 (Popup)

[4]As of June 1, 1985 the Maine and Vermont Utilities had invested $433,894,000 in plant and $29,441,000 in fuel. EUA Power will pay a base price of $35,959,000 for plant and

$29,441,000 for fuel. Exh. 9.

19 (Popup)

[5]Those additional monthly payments are $1.9 million per month for November and December, 1985 and $4.7 million per month for January, February and March 1986.

20 (Popup)

[6]The continuing cost of construction from April 1, 1986 is estimated to be $39,415,000 assuming an October 31, 1986 commercial operation date. Exh. 12.

21 (Popup)

[7]On December 27, 1985, the parties to the FERC proceeding filed a settlement agreement with the FERC which, if accepted, will be the equivalent to a declaratory order that the cost based rates resulting from the capital structure which is a part of the settlement agreement will be just and reasonable for wholesale ratemaking purposes.

22 (Popup)

[8]It is true that Connecticut Valley Electric Company (CVEC) a wholly owned subsidiary of Central Vermont Public Service Corporation (CVPS), is a New Hampshire public utility serving New Hampshire retail ratepayers. CVEC does not as a separate corporate entity own any Seabrook shares. Although CVEC currently purchases practically all of its power requirements from CVPS, such a buyer-seller relationship must be investigated and approved by the Commission. Re Sinclair Machine Products, Inc., — N.H. —, 498 A. 2d 696 (1985). If CVEC's purchases from CVPS are found to be imprudent, the Commission can take appropriate action. Currently, the Commission is investigating CVEC's power supply relationship with CVPS pursuant to the Court's remand in Re Sinclair, supra. See, Order of Notice in Re Connecticut Valley Electric Co., Inc., DR 83-200, Jan. 2, 1986.

23 (Popup)

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24 (Popup)

[1]It is interesting to note that witnesses for both Central Maine Power Company and Central Vermont Public Service Company testified that their economic analysis produced the same conclusion. (Trans. Vol. II at 26, 70.)

25 (Popup)

[1]The Commission's rationale for suspending implementation is discussed in full at pp. 6-11 of the Report accompanying Order No. 17,911 (70 NH PUC at pp. 853-856).

26 (Popup)

[1]Equity in this filing is the accumulated retained earnings for the water works.

27 (Popup)

[1]The low-usage benefits of the existing nontargeted rate are paid by those customers whose usage is between 550 and 800 kwh. The Petitioners' Exhibit TL-11 shows that 14% of the certified low-income customers had monthly usage ending in the 501-800 kwh block and 6.6% of the certified low-income customers had monthly usage which exceeded 801 kwh.

28 (Popup)

[2]We are not required to grant Motions for Rehearing to hear evidence or argument available at the original proceedings. Re Gas Service, Inc., 121 N.H. 797, — A.2d — (1981); O'Laughlin v. New Hampshire Personnel Commission, 117 N.H. 999, — A.2d — (1977).

29 (Popup)

[1]Although permanent rates may exceed $9.05 per M pounds of steam, they cannot exceed the $10.00 level of relief requested by the Company absent a further formal request by the Company and appropriate notice to the public. See e.g., Re Pennichuck Water Works, 120 N.H. 562, — A.2d — (1980); RSA 541-A:16 III.

30 (Popup)

[2]If permanent rates exceed $9.05 but are less than $9.38, the Company will refund the difference between the permanent rates allowed and the $9.38 second-tier temporary rates established herein. If permanent rates exceed $9.38, the Company will be permitted to recover the difference between the permanent rates and the $9.38 second-tier temporary rates established herein. See e.g., RSA 378:29 and 30.

31 (Popup)

[3]In the instant docket, the Company filed its request on December 17, 1985. However, in that filing it requested an effective date of January 1, 1986. Consequently, January 1, 1986 is the earliest effective date that could be established for the second-tier temporary rates established herein.

32 (Popup)

[4]See, Exihibit T-4 at 2 which shows an increase in working capital of $25,000 if the Company were permitted a rate of $9.50 in the January to June, 1986 period. Mr. Biser testified that if the January rate stayed at $9.05 and the February to June rate increased to $9.50, the impact would be an approximate loss of $14,000 in January net income. This $14,000 decrease is reflected in the six month total which decreases the $25,000 increase to $11,000.

33 (Popup)

[5]As noted above, accurate information on the Company's sales was not provided in the Company's monthly reports to the Commission. This was disclosed by the Company at the January 24, 1986 hearing. The utilization of the most accurate sales information decreased the

rate calculated by Staff from $9.49 to $9.38 per M pounds of steam.

34 (Popup)

[1]Claremont also filed a Motion for Extension of Time on November 27, 1985 requesting that the Commission extend the December 1, 1985 deadline until the Commission resolves the matters raised in its Motion for Rehearing. To date, the Commission has taken no action on the Motion for Extension of Time. Thus, in effect, the Commission has de facto granted the extension. The issue of when Claremont should begin utilizing the semiannual CGA method will be addressed herein.

35 (Popup)

[2]As far as we can determine, Claremont never implemented any such deferred account.

36 (Popup)

[1]At the procedural hearing, the Campaign for Ratepayers' Rights submitted an oral Motion to Recuse Commissioner McQuade. A follow-up written Motion was filed on July 31, 1985 and, on August 2, 1985, the Seacoast Anti-Pollution League filed a written joinder in the Motion. Inasmuch as Mr. McQuade is no longer a member of the Commission, the issue is moot and there is no need for a further ruling on the matter in this proceeding.

37 (Popup)

[1]The original filed rate was designated as PPCA W-7 by Granite.

38 (Popup)

[1]Costs associated with construction which is abandoned may not be recovered through retail rates. RSA 378:30-a; Re Public Service Co. of New Hampshire, 125 N.H. 46, 480 A.2d 20 (1984).

39 (Popup)

[2]The figure displayed excludes extraordinary
Vermont Yankee outage costs of $317,541. Inclusion of those costs would yield a rate of $58.58/MWH. Exh. R-1, Attach. CJF-2 at 1.

40 (Popup)

[3]For example, we question the propriety of assuming that wheeling costs will not differ for purchases from NEP, a supplier with interconnection points close to the CVEC system. We also question CVEC's assumptions about the potential for small power producer or congeneration development in its service territory. As noted above, the effect of a rejection of these company assumptions, even in combination, is not sufficient to alter the results of the analysis.

41 (Popup)

[4]The Commission has previously provided that it favors power supply arrangements which will allow the Commission to review periodically the decisions of the regulated distribution company. Re Concord Electric Co., 69 NH PUC 701, 705, 706 (1984). The one-year termination provision in the CVPS RS-2 rate satisfies the Commission's concern in this area.

42 (Popup)

[5]One example of the action that could be taken by such an individual would be the arms-length questioning of certain costs in the RS-2 rate. For instance, CVPS' allowed return on equity under the current RS-2 tariff is 17%. This figure has not changed since 1982, a time when capital costs were substantially higher than current costs. The FERC's own generic returns for electric utilities are in the 13 to 14% range and this Commission's allowed return on equity for CVEC (based on an assessment of the equity costs of its parent CVPS) is 14.85%. Re Connecticut Valley Electric Co., Inc., supra, 69 NH PUC at p. 321. Given that CVPS' major generation investments are nearing completion and, in any event, CVPS is allowed to include some of its construction work in progress in rate base, and given the general decline in capital costs since 1982, it would appear that an allowed equity return of 17% is excessive. A person with the responsibility of protecting CVEC's interests could have pursued this point in the course of FERC settlement discussions or adjudicative proceedings.

43 (Popup)

[1]NEPA's Petition to Intervene in this docket was granted by the Commission in Report and Order No. 17,529 issued on April 4, 1985 (70 NH PUC 145). NEPA's intervention was limited to the legal/jurisdictional issue.

44 (Popup)

[1]The Iowa State Commerce Commission mistakenly referred to this decision of the IRS as a "revenue ruling" when it is in fact a private letter ruling. Iowa Power Co. #8523067.

45 (Popup)

[2]A change in the federal tax rate will necessitate Commission review of deferred tax reserves for all of the utilities and a policy determination of the appropriate treatment of any excess tax reserves.

46 (Popup)

[1]As they testified at the hearing, the Vergatos state that they spoke with a man at PSNH's Milford office in June, 1985 who told them they could go ahead and install the meters. PSNH denied any such conversation took place.

47 (Popup)

[1]It should be noted that the commission is aware of an F.C.C. proposal to preempt state entry regulation in public land mobile service. See Preemption of State Entry Regulation in the Public Land Mobile Service, (Notice of Proposed Rulemaking) CC Docket No. 85-89, 50 Fed.Reg. 21,904 (1985). This proposal, by its terms, does not apply to state regulation of cellular services. Id., 50 Fed.Reg. 21,904 Footnote 1.

48 (Popup)

[2]See Re Advanced Mobile Phone Service, Inc., 60 PUR4th 421, 448 (Ariz.C.C.1984).

49 (Popup)

[1]Symbol: 12.6M Offset

50 (Popup)

[2]Symbol: PSNH Filing

51 (Popup)

[3]Symbol: + Actual Gen.

52 (Popup)

[1]GSEC motion of April 16, 1986 1-2.

53 (Popup)

[2]DR 86-69 Concord Electric Company and Exeter and Hampton Electric Company; DR 86-70 New Hampshire Electric Cooperative, Inc.; DR 86-72 Connecticut Valley Electric Company.

54 (Popup)

[1]DR 86-70 New Hampshire Electric Cooperative, Inc.; DR 86-71 Granite State Electric Company; DR 86-72 Connecticut Valley Electric Company.

55 (Popup)

[1]The Memoranda submitted on behalf of SES and Swift River are referred to subsequently herein by reference to the company submitting each memorandum. Each of the remaining two Memoranda were submitted on behalf of several companies and will for convenience be referred to hereafter by the name of the attorney submitting the Memoranda on behalf of his several clients.

56 (Popup)

[1]NET compliance filing dated January 31, 1986, ATTB, p. 2 of 6, in docket DR 84-95.

57 (Popup)

[1]Re TDEnergy, Inc., 71 NH PUC 5, 15(1986), Dissenting Opinion of Commissioner Aeschliman.

58 (Popup)

[2]Id. at 7. (71 NH PUC at p. 18).

59 (Popup)

[1]Coos Power Company, Connecticut River Power Company, Groveton Cogeneration Power Corporation and Riverside Steam and Power Company.

60 (Popup)

[1]These filings were made pursuant to Order No. 17,104 (July 5, 1984) in DR 83-62 (69 NH PUC 352, 61 PUR4th 132), which set the terms and conditions of the avoided cost rates for PSNH.

61 (Popup)

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PSNH.

62 (Popup)

[2]DR 86-100 Pinetree Power - North, Inc. DR 86-101 Pinetree Power - Berlin, Inc. DR 86-102 Pinetree Power - Campton, Inc. DR 86-103 Pinetree Power - Winchester, Inc. DR 86-104 Pinetree Power Energy Corporation DR 86-105 Pinetree Power - Hinsdale, Inc. DR 86-109 Pinetree Power - Lancaster, Inc.

63 (Popup)

[3]The Orders NISI thereby suspended were order nos. 18,112 in DR 86-28 (71 NH PUC 123); 18,168 in DR 86-35 (71 NH PUC 164); 18,196 in DR 86-52 (71 NH PUC 217); 18,197 in DR 86-53 (71 NH PUC 218); 18,198 in DR 86-54 (71 NH PUC 219); 18,199 in DR 86-55 (71 NH PUC 220); 18,200 in DR 86-56 (71 NH PUC 221).

64 (Popup)

[4]The prehearing conference and procedural hearing was scheduled by Order 18,223 issued on April 17, 1986.

65 (Popup)

[5]Order No. 18,287 issued June 3, 1986 (71 NH PUC 339).

66 (Popup)

[6]See chart, supra, column 4.

67 (Popup)

[7]Applicants' Motion for Rehearing at 4-8.

68 (Popup)

[8]Id. at 8-12.

69 (Popup)

[9]See RSA 365:5, 365:19 and 378:6 I.

70 (Popup)

[10]It is ironic that now the applicants contend that the Commission's use of NISI orders creates in them certain vested rights which precludes further inquiry into the proposed rates unless the rates are suspended within the NISI period. This interpretation of the law endows the Commission with legislative powers to amend, inter alia, the provisions of RSA 362:A by simply allowing, through design or neglect, the NISI period to pass on rates that would otherwise be held to the illegal, unreasonable or otherwise contrary to the public good.

71 (Popup)

[11]See Footnote 5, supra.

72 (Popup)

[1]The Company specifically acknowledges that the two step design was agreed to as a compromise with the Commission staff. (Exhibit 14 at 3).

73 (Popup)

[1]At the procedural hearing, the Campaign for Ratepayers' Rights submitted an oral Motion to Recuse Commissioner McQuade. A follow-up written Motion was filed on July 31, 1985 and, on August 2, 1985, the Seacoast Anti-Pollution League filed a written joinder in the Motion. Inasmuch as Mr. McQuade is no longer a member of the Commission, the issue is moot and there is no need for a further ruling on the matter in this proceeding.

74 (Popup)

[2]These figures are based upon evidence establishing the timing of expenditures and receipts. The Commission has made no findings about the appropriate treatment of salvage or tax losses in this proceeding.

75 (Popup)

[3]See Footnote 2.

76 (Popup)

[1]The Commission revised the companies' FAC via the trigger mechanism in April 1986 in Order No. 18,203. This revision decreases the FAC rate of ($0.297) per 100 KWH to ($1.363) per 100 KWH, for Concord and ($0.289) per 100 KWH to ($1.393) per 100 KWH for Exeter & Hampton.

77 (Popup)

[2]See DR 84-263, Report and Order No. 17,373 (69 NH PUC 701).

78 (Popup)

[1]The Commission reopened DR 85-398 in April 1986 for the purpose of reviewing the then effective ECRM rate. Subsequently the Commission issued Order No. 18,248 (71 NH PUC 269) decreasing the ECRM component from $0.03408/KWH to $0.02424/KWH for the months of May and June 1986.

79 (Popup)

[2]We also note that ECRM has a trigger mechanism specifically designed to correct potentially substantial over or under collections during an ECRM period.

80 (Popup)

[3]The Estimated Net Unscheduled Outage Adjustment shall be ten (10) percent of the difference between estimated and actual increased energy costs for the Effective Period resulting from unscheduled outages at generating stations wholly-owned by the Company, jointly-owned by the Company with others, or from which the Company purchases unit power and has an ownership interest in the corporate entity which is the owner and operator. Such difference shall be based, in part, on actual data for the Effective Period To Date and revised estimated data for the Remainder of the Effective Period.

81 (Popup)

[4]Note: PSNH's testimony, by Mr. Dennis R. Brown indicated that the outage length would be the same with or without the rescheduled overhaul. Permitting the three weeks as

planned simply eliminating a penalty against PSNH which otherwise would be necessary in accordance with the ECRM Net Unscheduled Outage Adjustment.

82 (Popup)

[5]See Recommendations of the Parties Concerning the Schiller Coal Conversion, Page 15.

83 (Popup)

[1]Between the August hearings and the March filing, the stated size of the project increased from 7.2 MW to 10 MW.

84 (Popup)

[2]The other reason that the Commission does not grant rate orders for commercial operation more than four years from the establishment of the rates is that the Commission is reluctant to rely on a forecast that is more than four years old by the time the project commences production.

85 (Popup)

[3]No case has yet come before us involving an already constructed project whose commercial operation is a short period beyond the date specified in its rate order. Therefore, the Commission has not yet decided the continuing effectiveness of a rate order in such a circumstance.

86 (Popup)

[4]Subsequent events proved both sets of representations to be incorrect.

87 (Popup)

[5]The other non-hydroelectric 30 year rate was approved in Re SES Concord Regional Waste/ Energy Project, 71 NH PUC 168 (1986) (Order No. 18,171) (SES). The Commission generally considers municipal solid waste projects to be less risky than woodfired facilities. This is especially true in the case of municipal-sponsored projects that have undergone review in the "request for bid" process before applying for a Commission rate. In addition, SES had already finalized its financing predicated on a 30 year rate when it applied for the Commission rate.

88 (Popup)

[1]Order No. 18,171 dated March 12, 1986 (71 NH PUC 168).

89 (Popup)

[2]Response of Public Service Company of New Hampshire to Motion of SES Concord Company, L.P. for Extension of Time dated April 14, 1986.

90 (Popup)

[3]Reply of Public Service Company of New Hampshire to SES Concord Company's Memorandum Opposing Hearing dated April 25, 1986.

91 (Popup)

[4]Memorandum of SES Concord Company, L.P. In Opposition to the Motion of Public Service Company of New Hampshire for a Hearing and for the Scheduling of a Prehearing

Conference (April 18, 1986) at 4-5.

92 (Popup)

[5]Supplemental Memorandum of SES Concord Company, L.P. in Opposition to the Motion of Public Service Company of New Hampshire in docket number DR 86-39 dated May 2, 1986, at 2.

93 (Popup)

[6]Supplemental Order No. 18,269 (71 NH PUC 313, 314).

94 (Popup)

[7]Id., 71 NH PUC at p. 314.

95 (Popup)

[8]Order No. 17,104 (69 NH PUC at p. 353, 61 PUR4th at p. 133).

96 (Popup)

[9]Re Small Energy Producers and Cogenerators, 68 NH PUC at p. 535; 69 NH PUC at p. 355, 61 PUR4th 132.

97 (Popup)

[10]To implement the rate setting process, the Commission opened docket DE 83-62 in which the Commission established a procedure for processing small power producer rate cases and established an avoided cost rate for PSNH; Re Small Energy Producers and Cogenerators, 68 NH PUC at p. 535.

98 (Popup)

[11]Id., 68 NH PUC at p. 544.

99 (Popup)

[12]The filing requirements and procedures established in the Interim Order were subsequently adopted as modified in DE 83-62, 8th Supp. Order No. 17,104, 69 NH PUC at p. 367, 61 PUR4th at pp. 146, 147.

100 (Popup)

[13]Id., 69 NH PUC at p. 367, 61 PUR4th at pp. 146, 147.

101 (Popup)

[14]Re Small Power Producers and Cogenerators, 68 NH PUC at p. 580.

102 (Popup)

[15]Id., 68 NH PUC at p. 580.

103 (Popup)

[16]Although the Commission is granting a 30 year rate in this case, we are becoming increasingly concerned about the potential ratepayer exposure under 30 year rates in general. Thirty year rate proposals will be particularly scrutinized to insure that ratepayers are not exposed to unnecessary risk of losing front end loaded amounts.

104 (Popup)

[17]The Commission disagrees with SES's implication, however, that the procedures established in DE 83-62 are mere checklist procedures. The SPP has the burden of proof and must demonstrate that the full levelized rate is necessary to permit development of the site. 69 NH PUC at p. 366, 61 PUR4th 132.

105 (Popup)

[18]Supplemental Order No. 18,269 at 2 (71 NH PUC 313).

106 (Popup)

[19]The parties to DE 83-62, including PSNH, also recommended to the Commission, which accepted the recommendation, that where possible, informal discussion, rather than formal litigation or arbitration, be used to resolve disputes among the parties. 69 NH PUC at p. 367, 61 PUR4th 132.

107 (Popup)

[1]The Staff accepted the proforma adjustment to operating revenues proposed by the Company.

108 (Popup)

[2]Applying the growth rate to the yield is mathematically the same as applying the growth rate to the dividend. The product of multiplying the growth rate times the last four quarters is the calculation of the next four quarters of dividends assuming a constant growth rate.

109 (Popup)

[3]We note, for example, that Connecticut Natural Gas, used by both witnesses, sells steam and chilled water as well as propane. Bay State, also in both samples, engages in exploration, and Connecticut Energy Corporation, used by Mr. Jackson, has subsidiaries engaged in transmission, exploration and general building contracting.

110 (Popup)

[1]The Staff did not submit a memorandum.

111 (Popup)

[2]RSA 674:30 provides as follows:

Exemptions. Structures used or to be used by a public utility may be exempted from the operation of any regulation made under this subdivision if, upon petition of such utility, the public utilities commission shall after a public hearing decide that the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public.

112 (Popup)

[1]The Commission has heretofore refused to accept a future (or projected) test year.

113 (Popup)

[2]The Commission found that the additions were in fact revenue producing.

114 (Popup)

[1]The 1985 annual report was filed 34 weeks after the December 12, 1985 deadline established in Order No. 17,941. Thus, Gunstock's potential fine is 34 x 100 = $3,400.

115 (Popup)

[1]RSA 371:1 provides as follows:

Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a line, branch line, extension, or a pipeline, conduit, line of poles, towers or wires across the land of another, or should acquire land, land for an electric generating station or electric substation, land for a dam site, or flowage, drainage or other rights for the necessary construction, extension or improvement of any plant, water power, or other works owned or operated by such public utility, and it cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor, such public utility may petition the public utilities commission for such rights and easements or for permission to take such lands or rights as may be needed for said purposes.

116 (Popup)

[2]Appendix A to the Penacook's petition contains a listing of the affected landowners and the legal descriptions and deed references of their parcels.

117 (Popup)

[3]RSA 362:2 states as follows:

The term "public utility" shall include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations operating within their corporate limits, owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages or for the manufacture or furnishing of light, heat, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public, or owning or operating any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of gas, crude petroleum, refined petroleum products, or combinations of petroleum products,

cooperative marketing associations organized for purposes of rural electrification, any other business, except as hereinafter exempted, over which on September 1, 1951, the pubic utilities commission exercised jurisdiction.

118 (Popup)

[1]The procedural history of this docket is set forth in detail in the Report accompanying Order No. 18,309 and need not be repeated here.

119 (Popup)

[1]Manchester Water Works filed a memorandum of law on July 15, 1986.

120 (Popup)

[2]At the July 14, 1986 hearing, Mr. Smith withdrew his full party intervention in lieu of being allowed to give a public statement as a limited intervenor at the close of the evidentiary portion of the proceedings.

121 (Popup)

[3]The tariff provides that an adjustment shall be made to the estimated cost to reflect any costs associated with public fire protection.

122 (Popup)

[4]Southern will also undertake a recalculation where a subsequent main extension is made from the original extension upon which a deposit is still refundable. If the further extension results in an increased customer density, it will be combined with the original extension and pro rata and equitable refunds will be made to the original depositors; if the customer density is decreased, then the extension will be considered a new and separate extension.

123 (Popup)

[5]A "developer" is defined in the tariff as "any real estate developer, development company, building contractor, or ... any other person, business, firm or corporation, or agent thereof ... "

124 (Popup)

[6]In his testimony, Mr. Bisson utilized customer growth of 350 per year. Mr. Phelp's projections assumes 500 new customers per year.

125 (Popup)

[7]As stated above, the SDC is not designed to recover all of the expected $4.3 million cost of the plant expansion.

126 (Popup)

[8]Southern proposes to have the Commission approve in advance the projects that qualify for the SDC.

127 (Popup)

[9]RSA 378:30-a provides as follows:

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.

128 (Popup)

[10]The change in Southern's overall revenue requirement is contained in a post-hearing filing submitted in a response to a request by the Commission at the hearing.

129 (Popup)

[11]Because of the generic nature of holding herein, it is not necessary to address the SDCspecific issues such as whether it can properly be construed as a contribution-in-aid, whether it violates RSA 378:10, whether it contravenes RSA 378: 30-a, etc.

130 (Popup)

[1]The 1985 annual report was filed October 15, 1986.

131 (Popup)

[1]The 1985 annual report was filed October 10, 1986.

132 (Popup)

[1]In accordance with a Commission mandate Manchester provides the Commission with monthly reports reconciling the CGA. One of the supporting Schedules in this report provides detail of the interruptible sales.

133 (Popup)

[1]Docket No. DR 86-41, Re Public Service Co. of New Hampshire; Docket No. DR 86-69, Re Concord Electric Co.; Docket No. DR 86-70, Re New Hampshire Electric Co-op., Inc.; Docket No. DR 86-71, Re Granite State Electric Co.; and Docket No. DR 86-72, Re Connecticut Valley Electric Co., Inc.

134 (Popup)

[2]In administering the provision of rates to QF's, the Commission is cognizant of the fact that the anticipated downward changes in rates may lead QF's or proposed QF's to file earlier than they otherwise might to receive higher rates prior to the reductions. The Commission must make sure that such action does not result in providing rates which exceed the utility's avoided costs or which otherwise do not meet the statutory criteria.

135 (Popup)

[1]Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 365, 61 PUR4th 132 (1984) obligations of five to thirty years will be permitted. The initial year of the long-term rate obligation may not be more than four years from the time of filing); Re Wormser Engineering, Inc., 71 NH PUC 617 (1986) (Since the Settlement and Order in DE 83-62 allowed developers to file for rates up to four years before commercial operation, clearly it was not anticipated that all developmental problems needed to be resolved before filing. Rather the developer must show that there is a reasonable expectation that the project will be developed as proposed. While certain milestones provide indications of project maturity, the methodology and criteria of DR 83-62 do not require the achievement of specific milestones. Whether a project is ready to receive a long term rate is a question of Commission judgment.).

136 (Popup)

[1]Under the Agreement, the Company's fuel costs are recovered through both the base rate and the ECA. $4.50 of the $8.20 base rate is allocated to recover fuel costs; the remainder are recovered through the ECA. Fuel costs below $4.50 per M pounds of steam are to be refunded. The ECA methodology is described in detail in the Company's tariff.

137 (Popup)

[2]The Company did not seek a re-opening of the ECA.

138 (Popup)

[3]At the October 2, 1985 hearing the Company indicated it would be willing to accept October 1, 1985 instead of July 1, 1985 as the effective date for temporary rates.

139 (Popup)

[4]The tariff page submitted by the Company in conjunction with the rate increase requested in its Motion To Reopen was designated 6th Revised Page No. 11. The tariff page submitted with the October 31 filing was likewise designated 6th Revised Page No. 11. Because of the confusion that could result from having two pages with the same designation, Staff recommended that the Company change the designation on the October filings tariff page from 6th to 7th which, as stated above, the Company did by letter dated December 9, 1986.

140 (Popup)

[5]With regard to Order No. 18,008, the Company believes that its October 31, 1985 filing appropriately designated the tariff page included therein as 6th Revised Page No. 11 because it was substituted for the original 6th Revised Page No. 11 filed on May 10, 1985. It argued that because 6th Revised Page No. 11 filed May 10, 1985 was suspended but not disallowed, the caption "6th Revised Page No. 11 was still available to be used in a substitute page. While the Company did not agree with Staff's recommendation as discussed in footnote 4, it made the change to "7th" to prevent further delay. The Company argued that Order No. 18,008 suspending 7th Revised Page No. 11 mistakenly presumes that it is intended to commence a new rate filing instead of accomplishing a simple substitution. It therefore argued that Order No. 18,008 should be modified, clarified or withdrawn to reflect the Company's reason for filing it.

141 (Popup)

[6]Mr. Lanning was also called to testify by the Company.

142 (Popup)

[7]RSA 369:1 provides as follows:

A public utility engaged in business in this state may, with the approval of the commission but not otherwise, issue and sell its stock, bonds, notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes. The proposed issue and sale of securities will be approved by the commission where it finds that the same is consistent with the public good. Such approval shall extend to the amount of the issue authorized and the purpose or purposes to which the securities or the proceeds thereof are to be applied, and shall be subject to such reasonable terms and conditions as the commission may find to be necessary in the public interest; provided, however, that the provisions of RSA 293-A shall be

observed by corporations organized under the laws of this state in respect of the corporate authorization required and of other formalities to be observed.

143 (Popup)

[8]A heating degree day is determined by subtracting the average daily temperature from 65 degrees. Thus, if the average daily temperature for a particular day was 30, it would be recorded as a 35 heating degree day.

144 (Popup)

[9]There is an error in the Company's calculation. 7,561 x $3.65 = 27,597.65, not 27,599.84.

145 (Popup)

[10]In arriving at $39,314, the Company multiplied $3.65 by 10,771, not 8,058.

146 (Popup)

[11]NHH took no position on the temporary rate adjustment to revenues.

147 (Popup)

[12]The surcharge approach was utilized in the following rate case decisions: Report and Order No. 17,767 issued on July 25, 1985 in DR 84-239, Re Concord Electric Co., 70 NH PUC 665; Report and Order No. 18,294 issued on June 4, 1986 in DR 85-2, Re Pennichuck Water Works, Inc., 71 NH PUC 351; Report and Order No. 18,365 issued on August 11, 1986 in DR 85-214, Re Manchester Gas Co., 71 NH PUC 446.

148 (Popup)

[13]The Company's sole stockholder is its President, Roger Bloomfield.

149 (Popup)

[14]The State tax effect proforma is calculated as follows:

Rate Base!$3,876,817 Equity Component of Return!1.92% Income Required!$4,435 Business Profits Tax Effect!.9175 Required Revenue After Taxes!$81,128 Less Income Required!74,435 !$6,693

150 (Popup)

[1]HDI registered to do business in New Hampshire on March 7, 1983. In response to the hearing examiner's request, HDI submitted a Certificate of Good Standing from the New Hampshire Secretary of State dated September 11, 1986 which indicates that HDI registered to do business in New Hampshire on March 7, 1983, and is currently in good standing.

151 (Popup)

[2]HDI has obtained the requisite approvals from the Federal Energy Regulatory Commission, copies of which are on file at the Commission.

152 (Popup)

[1]Where available, monthly balances are utilized.

153 (Popup)

[2]The deferred tax balance differs from that proposed by Staff and the Company, the reasons for which are discussed in detail below.

154 (Popup)

[3]Staff's recommended operating and maintenance expense level is set forth in Mr. Nicholson's testimony.

155 (Popup)

[4]The surcharge approach was utilized in the following rate case decisions: Report and Order No. 18,484 issued on November 18, 1986 in DR 85-304, Re Concord Steam Corp., 71 NH PUC 667; Report and Order No. 17,767 issued on July 25, 1985 in DR 84-239, Re Concord Electric Co., 70 NH PUC 665; Report and Order No. 18,365 issued on August 11, 1986 in DR 85-214, Re Manchester Gas Co., 71 NH PUC 446.

156 (Popup)

[5]The tax effect is calculated as follows:

157 (Popup)

[1]Inside wire is defined herein as telephone plant including installation costs, installed on the customer's side of the demarcation point as set forth in 47 C.F.R. §68.3 (h). Amendment of Part 68 CC Docket 81-216, 97 F.C.C.2d 527 (1984).

158 (Popup)

[2]Complex wiring includes all cable wire, and associated components located on the customer's side of the demarcation point, when this wiring is inside a building located on the same or contiguous property not separated by a public thoroughfare, which connect station components to each other or to the common equipment of a PBX or key system. CC Docket No.79-105, Second Report and Order, at 1, n.2.

159 (Popup)

[1]The tariff page designations for the Companies are as follows:

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

Concord -  Second Revised Page 6 and
 Original Pages 6A, 6B, 6C
 and 6D

Gas Service, Inc. -  First Revised Pages 24 & 25
 and Original Pages 25A,
 25B and 25C

Manchester Gas -  Second Revised Page 23 and
 Original Pages 23A, 23B,
 23C and 23D
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160 (Popup)

[1]The tariff page designations for the Companies are as follows:

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

Concord -  Second Revised Page 6 and
 Original Pages 6A, 6B, 6C
 and 6D

Gas Service, Inc. -  First Revised Pages 24 & 25
 and Original Pages 25A,
 25B and 25C

Manchester Gas -  Second Revised Page 23 and
 Original Pages 23A, 23B,
 23C and 23D
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161 (Popup)

[2]No changes are proposed to the non-residential main and service extension policies.

162 (Popup)

[1]A bond is a certificate or evidence of a debt upon which interest is often paid. See Blacks Law Dictionary, (4th Ed.) (1968). A surety is one who undertakes to pay money or to do any other act in event his principal fails to take such action. Id, at 1611. A surety company is a company whose business is to assume the responsibility of a surety on bonds in consideration for a fee. Id. New Hampshire statutes regulate the operation of surety companies in New Hampshire. See: N.H. Rev. Stat. Ann. Chapter 416.

